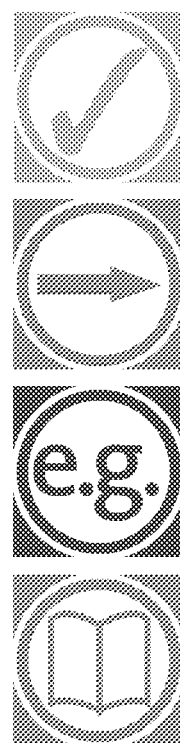


# Statutory Guidance

Statutory guidance to the  
police service and police  
authorities on the handling  
of complaints



Pursuant to Section 22  
Police Reform Act 2002

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## INTRODUCTION

- i The Independent Police Complaints Commission (IPCC) has a statutory duty to promote public confidence in the police complaints system, and the IPCC's statutory guidance is a key tool through which the IPCC is able to deliver on that duty.
- ii The IPCC first published statutory guidance about the complaints system for the police service and police authorities in 2005. Since then there have been two key developments which impact on the police complaints system. In 2008 the police misconduct system underwent substantial reform. In the same year, the IPCC's Stock Take<sup>1</sup> of the complaints system recommended a range of reforms. Amongst the most important elements of both developments were efforts to change the complaints and discipline systems from just focusing on blame and punishment to giving much greater emphasis to learning and improving both individual and organisational performance. This revised version of statutory guidance is a response to both these key developments. It also reflects the experience that the IPCC, the police service and police authorities have gained in operating the complaints system in the last five years.
- iii The purpose of the statutory guidance is:
  - to make explicit the underlying principles for an effective police complaints system, which inspires public, police officer and police staff confidence;
  - to explain how the police service, police authorities or the IPCC should execute their powers and duties in relation to the handling of complaints, conduct and death and serious injury (DSI) matters;
  - to give the general public, police officers, special constables and police staff a clear understanding of the procedures which will be followed under the complaints system;
  - to drive national consistency in the complaints system.
- iv The focus of this guidance is on the complaints system created by the Police Reform Act 2002 (referred to throughout this guidance as 'the Police Reform Act') rather than the effects of any other legislation (for example the Freedom of Information Act 2000 or the Police and Criminal Evidence Act 1984). It is not the purpose of the guidance to provide a digest of all the relevant law, nor to provide a comprehensive operational manual for the police complaints system. It does not attempt comprehensively to describe all the rights available to the public or to persons serving with the police in the context of the police complaints system. It is not a collection of best practice examples, nor a response to frequently asked questions.

<sup>1</sup> A review of the police complaints system carried out by the IPCC that identified key shifts to improve and speed up the system.

## WHO THE GUIDANCE APPLIES TO

- v The IPCC issues this guidance under Section 22 of the Police Reform Act. It applies fully to all 43 Home Office forces in England and Wales. All police officers, police staff members and special constables working within those forces are covered by this guidance. This guidance applies also to the police authorities for the 43 Home Office police forces, which are responsible as the ‘appropriate authority’ for dealing with complaints against senior officers (i.e. members of a police force holding a rank above that of chief superintendent).
- vi This guidance similarly applies to those agencies and non-Home Office forces that have entered into Section 26<sup>2</sup> agreements with the IPCC (for example, the British Transport Police or the Serious Organised Crime Agency (SOCA)), subject to any particular provisions contained within those agreements. The IPCC will however allow a degree of flexibility to account for the specific nature and specialisms of the non-Home Office forces that it oversees.
- vii It is the duty of everyone to whom this guidance applies to have regard to it when exercising the powers and duties to which it relates.
- viii Clearly therefore, this guidance is written for the police service and police authorities. It is not written for, and does not apply to, other organisations within the IPCC’s jurisdiction (i.e. Her Majesty’s Revenue and Customs (HMRC) and the United Kingdom Border Agency (UKBA)) though the principles within it are intended to be compatible with the IPCC’s oversight role in relation to those organisations. This guidance is not written for the public though it is a public document, and members of the public will be able to understand from it the IPCC’s expectations of how the complaints system should operate.

## HOW THE GUIDANCE IS ARRANGED

- ix This guidance is divided into five distinct chapters, which chart the course of a complaint or other matters through the complaints system. The guidance first deals with ‘Access’ to the complaints system, then addresses ‘Initial Handling’, which includes decisions on the recording of complaints and conduct matters under the Police Reform Act. From there the guidance turns to ‘Resolving’ a complaint or other matter, which includes the process of local resolution and investigation. Next come the ‘Outcomes’ that can follow from a complaint or conduct matter. Finally the guidance deals with ‘Monitoring and Development’ within the complaints system.

<sup>2</sup> Section 26, Police Reform Act 2002 (as amended)

- x All five chapters are further subdivided. Each begins with a statement of principles relevant to that phase of handling, which sets the tone for detailed practical guidance which then follows. The 'Resolving' and 'Outcomes' chapters both contain a specific section on communication, which complements their practical guidance.

## **THE 'OLD' AND 'NEW' POLICE OFFICER MISCONDUCT AND UNSATISFACTORY PERFORMANCE SYSTEMS**

- xi As mentioned previously, police systems for dealing with police officer misconduct and unsatisfactory performance underwent major change in 2008. Complaint and conduct cases arising on and after 1 December 2008 are subject to different procedures. This guidance is primarily written for dealing with cases commenced under the system as it stands since 1 December 2008. Where it has been appropriate to discuss guidance in relation to cases begun prior to this date, this is done through supplementary references outside the main body of text. This guidance refers to 'pre-2008 cases' and 'post-2008 cases' where it is necessary to distinguish between guidance for the two different systems.
- xii Following these reforms, police officers and special constables are subject to the Standards of Professional Behaviour and a new disciplinary and unsatisfactory performance system. The performance procedures for senior police officers have not changed. Police staff disciplinary and capability procedures will be described in individual contracts of employment. The Police Staff Council has agreed standard terms of contract for staff in forces that are members of the Council. These incorporate agreed Standards of Professional Behaviour for police staff. For police staff in forces that are not members of the Council, the appropriate standards of behaviour on and off duty will be set out in their contracts of employment.

# Chapter 1: **ACCESS**



## **PRINCIPLES**

1. Planning for and providing access to, and information about, the complaints system should be shaped by the following general principles:
  - Positively promote the complaints system, especially to groups and communities known to feel less confident about using it.
  - Support and protect persons serving with the police who report concerns or misconduct.
  - Provide quality information on how to use the system and local procedures.
  - Identify and accommodate individual needs.

### ***Positive promotion***

2. Forces and police authorities must promote the complaints procedure and take positive steps, using modern media, to make the general public aware of the complaints system and how to make a complaint.
3. Some groups in the community are known to be reluctant to use the complaints procedure, e.g. young people. Forces and police authorities must pursue positive strategies and practices designed to promote the complaints system to such groups.

### ***Encourage reporting***

4. Forces should encourage their officers and staff to report concerns, supporting and protecting them when they do so.

### ***Quality information***

5. Information on how to complain (in person, by phone, letter or email) needs to be clear, accurate, understandable and relevant. It should be available when and where it may be needed. It should tell people what they can and cannot expect from the complaints system, and about their own responsibilities.

6. If a force or police authority has adopted minimum standards for handling complaints, information on these should be readily available.

### ***Accommodating individual needs***

7. A person's personal situation, background or means of communication should not be a barrier to making a complaint. Forces and police authorities should treat people with sensitivity, bearing in mind their individual needs, for example using language they can understand and which is appropriate to them and their circumstances.

## **PRACTICAL GUIDANCE**

### ***The definition of a complaint for the purposes of the Police Reform Act***

8. Anyone who wishes to complain about any provision of service by the police should be free to do so. All complaints concerning the police should be properly and professionally handled, and although different classes of complaint call for different handling rules and procedures, the core principles governing the police response – reflected in this guidance – should be broadly similar whatever the type of allegation.
9. The system established by the Police Reform Act is, however, limited to those complaints that have to be recorded and acted upon in the systematic and formal manner provided for in that Act.
10. For a complaint to be dealt with under the Police Reform Act, it must follow this rule: a **complaint** has to be about the **conduct** of a **person serving with the police**, and not relate to the **direction and control** of the police force, and be made by a **member of the public** (who claims to be the person in relation to whom the conduct took place or to have been adversely affected by it or to have witnessed it) or **someone acting on his or her behalf**.<sup>3</sup> Each of the key concepts shown in bold is explained further below. Any expression of dissatisfaction that does not follow this rule should not be dealt with under the Police Reform Act.

### **Complaint**

11. This means an expression of dissatisfaction with what has happened or how someone has been treated. Often, someone who wishes to complain will be

<sup>3</sup> Section 12, Police Reform Act 2002 (as amended)



explicit about his or her intentions. If not, the person's wishes and expectations should be established. Although the IPCC does not *require* the word 'complaint' to be used by someone voicing discontent, this term denotes a considered grievance needing to be resolved, not just an observation for the service to note or a question that the person wishes to have answered. The IPCC expects this level of dissatisfaction to be present for the matter to be recordable.

12. There will be occasions when, in the course of police operations or otherwise, a member of the public makes known a concern or criticism to an officer or member of police staff and it is reasonable to judge that this is not a complaint as envisaged by the Police Reform Act. From all the circumstances, including the gravity of what is alleged, the person's own actions or words and his or her response to what may immediately be offered by way of information, explanation or apology, it may be concluded that the person does not expect his or her communication to be received and acted upon as a Police Reform Act complaint.
13. Although in these cases such dissatisfaction will not lead to recording and action under the Police Reform Act, data on public perceptions of policing activity may be significant as community intelligence or as feedback on performance. Where practicable, forces and police authorities should consider the need to capture and use it.



### **Examples**

- A woman contacts her local police station to state that a control room operator was rude and put the phone down on her. She is upset when she reports this and says she wants the person dealt with before she does this to someone else. A supervisor immediately contacts the woman, who confirms that she wants her complaint looked into. The supervisor obtains her version of what happened and listens to a recording of the conversation, which confirms the allegation. The operator accepts she was discourteous and personally apologises to the caller. *This should be treated as a recordable complaint.*
- A man calls at his local police station wanting to speak to a patrol officer's supervisor to give feedback from his recent conversation with the officer. He thinks the officer was out of his depth and did not know what he was doing. He tells the supervisor that he does not want to make a complaint but just pass on his concerns. *This does not amount to a recordable complaint.*

**Examples (continued)**

- A road has to be closed by the police while forensic examination is undertaken at the scene of a crime. Thirty-six hours later a local resident approaches the cordon and asks when the road will be reopened. He objects to the length of time he has been prevented from using his car and says he cannot accept that the police need all this time to do what is required. An officer tells him that the street will be reopened in two hours and he walks away without further comment or question. *This does not amount to a recordable complaint.*
- A girl in her early teens on the way to church is stopped by the police and searched, according to the explanation given by the officer, for firearms. She tells the officer that this should not have happened to her. *This is a complaint which should be recorded.*<sup>4</sup>

**Conduct**

14. The complaint must be about the conduct of a person serving with the police.
15. The effect of this is two-fold. First, the Police Reform Act uses the word ‘conduct’, not ‘misconduct’. A complaint does not have to amount to misconduct, as understood within the police service, for it to fit this definition since someone does not have to allege a failure to meet the Standards of Professional Behaviour<sup>5</sup> before his or her complaint is recordable. A complaint under the Police Reform Act includes an expression of public dissatisfaction with the service provided or with the way the person perceives he or she has been treated by an individual, which may or may not be justified and may or may not be associated with professional misconduct.
16. Second, this means that a complaint that is merely about the substance of local police policy or how that service is organised, and not about conduct, should not be handled under the Police Reform Act.<sup>6</sup>
17. Conduct means actions and decisions or omissions to act or decide. This may occur, for example, through:
  - language used and the manner or tone of communications;
  - illegality;
  - possible breaches of the Human Rights Act 1998;

<sup>4</sup> See guidance on how officers and staff should be trained to deal with complaints made directly to them at paragraph 54 on page 31.

<sup>5</sup> For Standards see Schedule to Police (Conduct) Regulations 2008, Police Staff Council Joint Circular 54 (2008) or individual contractual terms for police staff in forces that are not members of the Police Staff Council.

<sup>6</sup> But should be handled under local arrangements compliant with Home Office guidance. Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008).

- breach of a published code or policy;
- an individual's failure to meet defined and expected standards of performance, which may have been published and which can include what are loosely termed 'quality' standards.

18. A complaint about conduct could therefore consist of:

- an allegation that an officer or member of police staff has by act or omission behaved in an unjustified, unlawful or unreasonable way towards the complainant;
- an allegation of a specific failure by an officer to meet one or more of their published Standards of Professional Behaviour;
- an allegation of a specific failure by a member of police staff to meet one or more of their Standards of Professional Behaviour (or alternative standards set out in his or her contract of employment);
- an allegation that identified or unidentified personnel have failed to meet published standards of service or response to which the complainant was entitled.

This list is not exhaustive.

19. Depending on the circumstances, off duty conduct is included within the definition. However, the police should ensure that such complaints are in the public interest and do not arise, for example, from a personal dispute. For police officers, the Standards of Professional Behaviour set very high standards to follow at all times, placing some necessary restrictions on officers' private lives.<sup>7</sup> However, when being applied these should be balanced against an officer's right to a private life. To be recordable, a complaint about off duty conduct must be judged against a test of whether the alleged behaviour discredited the police service as a whole or undermined public confidence.<sup>8</sup>



### **Example**

A police officer has a dispute with a neighbour about parking and the police officer is not on duty at the time of the dispute. This should not automatically trigger an investigation of off duty conduct simply because the neighbour knows the person is a police officer. It would be a different issue if the officer decided to go 'on duty' by, for example, producing and showing his or her warrant card.

<sup>7</sup> See paragraphs 1.70 – 1.76 Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008).

<sup>8</sup> See paragraphs 1.60 and 1.71 – 1.72 Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008).

20. For police staff, the standard for off duty conduct will be defined by an express or implied term in the contract under which the person is employed. Police staff in forces that are members of the Police Staff Council will by their contracts be subject to the Standards of Professional Behaviour for Police Staff.<sup>9</sup>
21. Forces and police authorities must be mindful that complaints relating to the conduct of persons serving with the police which mention the Policing Pledge or other local public commitments may require recording under the Police Reform Act.



### Examples

- Armed police stop a car and its driver, reasonably believing the car to have been used in a robbery. They are mistaken and apologise. Police have a power to stop any moving vehicle. The driver complains that he was mistakenly stopped by the officers and should not have been detained. Initial assessment suggests the officers acted appropriately and there was no misconduct. *This is a clear example of a complaint about conduct even though it transpires there is no misconduct.*
- A person complains that when he attended a monthly public meeting under the Force Policing Pledge to hear and respond to local concerns and priorities for policing, a police community support officer (PCSO) used disrespectful and discriminatory language about a group of travellers who had moved onto a local farm. The complainant writes to the chief constable complaining of a breach of Paragraph 1 of the Pledge. *Though raised under the Pledge this complaint is clearly recordable under the Police Reform Act and should be handled accordingly.*
- A police officer becomes involved, in a voluntary capacity and off duty, with running a local charitable association helping to keep young people out of trouble. Other trustees become concerned that the officer has arranged for a relative to benefit from a contract for improving the association's premises, without declaring his interest and without complying with the association's strict procedures for procurement. This comes to light only when the local newspaper runs a front page story on what is termed the police officer's unethical and sleazy behaviour. The trustees make a complaint to the chief constable. *This is a complaint genuinely involving the reputation of the force and should be recorded under the Police Reform Act.*

<sup>9</sup> Police Staff Council Joint Circular 54 (2008)

## Person serving with the police

22. The person whose conduct can be complained about must be serving with the police i.e. be a police officer, police staff member or special constable who at the time of the alleged conduct being complained about was under the direction and control of the chief constable. Volunteers (other than special constables) are not covered by this definition.
23. In a small number of forces, contracted out staff who are not under the direction and control of the chief officer undertake duties and provide elements of the policing service to members of the public, for example carrying out escort duties. Complaints about the acts or omissions of such staff cannot be recorded under the Police Reform Act. A chief officer has power to ‘designate’ such staff under the Police Reform Act, and the Secretary of State has the power<sup>10</sup> to make regulations creating a separate complaints investigation system for such designated staff.



### Examples

- The next of kin of a person whose body is found by police complains that failures by a police staff crime scene investigator (CSI) resulted in unreasonable delays in the person being identified and the family informed. *The CSI, being a police staff member, is subject to the Police Reform Act system.*
- A person dies while detained in a police station cell. His next of kin complains that the custody officer and custody assistants neglected to comply with PACE Code C by not rousing him and obtaining medical help. The custody assistants are employed by a private contractor whose own managers supervise them, not the force. *Although a complaint can be recorded relating to the custody officer's conduct, no complaints can be recorded against the custody assistants under the Police Reform Act.<sup>11</sup>*

## Direction and control

24. The Police Reform Act excludes any complaint or part of a complaint related to the ‘direction and control’ of a police force by the chief officer of that force or anyone carrying out the functions of the chief officer (i.e. under delegated authority).
25. The IPCC considers the term ‘direction and control’ to include the following

<sup>10</sup> Section 39(9), Police Reform Act 2002 (as amended)

<sup>11</sup> This does not prevent the custody assistants being made the subject of a criminal inquiry, if appropriate.

strategic or operational management action:

- the drafting of local operational policing policies (e.g. on missing persons, roads policing, response to reports of domestic abuse or on the use of taser) and the process leading to their approval;
- decisions about the configuration and organisation of policing resources e.g. recruitment decisions, where officers or police staff should be located, how they should be managed or trained and what equipment should be procured for them;
- the level of general policing standards in the area e.g. the fact that one basic command unit's (BCU) detection rate is lower than that of its neighbours or of the adjoining force.

26. A complaint that concerns any of the above is excluded from the main provisions of the Police Reform Act and should not be recorded under it.

27. Complaints about operational deployment and direction decisions and actions taken by police supervisors and managers should generally be treated as 'direction and control' matters. However, the exemption should not be used where one or both of the following conditions apply:

- the complaint is that the decision or action does not itself comply with current force policy and practice or the law;
- the conduct of the police manager responsible for the deployment is so closely associated with the actions of others whose conduct is subject to complaint that the manner in which they were deployed or directed forms part of the complaint requiring resolution and cannot be separated or distinguished from it.



### **Example**

Arising from the policing of a major international football match, a person complains he (and others close to him) were victims of excessively forceful and oppressive police actions by frontline officers and were prevented from exercising their right to free movement, in breach of the Human Rights Act. The complainant states that he had no complaint until after the deployment of what he termed a 'riot squad'. He states that before the arrival of these police officers, the police already there were behaving quite reasonably. As well as alleging that he was assaulted, he complains that these additional specialist officers should not have been deployed. *In dealing with the complaints about the frontline officers it is also necessary to answer the complaint about the decision that led to the deployment of the specialist officers at that time. This should be recorded.*

28. In the course of inquiries into complaints, conduct matters and death or serious injury (DSI) matters, investigators comment on policies and on non-conduct or organisational matters as part of their investigation. These might be classed as direction and control matters if they were alleged as part of a complaint. Such observations and recommendations are often of great significance and the IPCC expects the practice to continue since lessons about such matters must be identified and communicated, sometimes rapidly.



### Examples

- A chief constable has sought and obtained the necessary legal authority for officers to stop and search members of the public at all railway stations in the force area, under the Terrorism Act. A member of the public, who has not yet been stopped, complains that he will now be at risk of being stopped without reason. *The chief constable's actions are not subject to the Police Reform Act, being a direction and control decision.*
- A head of criminal justice policy decides that the force policy on use of Section 136 of the Mental Health Act will continue to provide that police cells, rather than a local hospital, will be used to detain people. A woman is detained in a police station and after she is released she complains about this policy and how it criminalises her distress. *A complaint about the decision to continue with this policy cannot be recorded under the Police Reform Act, but an investigator reporting on a recorded complaint arising from the use of the policy may make observations and recommendations on the policy's fitness for purpose.*
- The head of roads policing decides to initiate a local campaign to stop and impound uninsured drivers' vehicles, using automatic number plate recognition (ANPR) equipment. Teams of officers with a supervisor are tasked to carry this out. When her vehicle is stopped and taken, a member of the public complains of oppressive and discriminatory treatment by the officer stopping her and that the police should not have been spending time and money on this, but on catching burglars and rapists. There is nothing to suggest the initiative itself was anything other than lawful and proper. *Any complaints arising from the encounter will be recordable. The complaint about the campaign will not, being one about direction and control. An investigator who reports on the complaints may also comment on the policy context for the police activity and how a published or different policy may have improved the way in which the public experienced what happened.*

**Examples (continued)**

- A chief constable obtains his police authority's approval to close half the open access police stations in the force area. A person complains. *The person may have a strong sense of grievance but this is a direction and control decision, so outside the Police Reform Act.*
- A woman is fatally wounded at home by her husband. Police and ambulance personnel called to the house where she is injured apply agreed policy and delay entering the house until they know the threat of further violence is reduced. By the time the woman is found she has died. Her next of kin complains that the police failed to act fast enough to save her life. There is nothing to suggest the police did not comply strictly with their own policy. The complaint is therefore about the substance of that policy. *This is a complaint about direction and control. However, the circumstances of the death (being a potential DSI matter) must be referred to the IPCC for it to determine if and how the circumstances of police contact should be investigated under the Police Reform Act. The IPCC will expect any resulting investigation to describe how the policy and its interpretation may have influenced police actions and comment on its usefulness.*

**Member of the public**

29. The member of the public must:
- claim to be the person in relation to whom the conduct took place;
  - claim to have been adversely affected by the conduct. Being 'adversely affected' is further defined in the Police Reform Act<sup>12</sup> and includes experiencing distress, inconvenience, loss or damage or being put in danger or at risk. This might apply, for example, to other people physically present at an incident mainly involving another party, or to the parent of a child arrested by the police;
  - claim to have witnessed the conduct. The Police Reform Act defines 'witness' narrowly<sup>13</sup> as someone who "acquired his knowledge of [the] conduct in a manner which would make him a competent witness capable of giving admissible evidence of [the] conduct in criminal proceedings" or has in his possession or control anything which would in any criminal proceedings constitute admissible evidence of the conduct. This will usually be an eyewitness present at the incident but will also include, for example, someone in control of CCTV cameras who views an event in real time.

<sup>12</sup> Sections 12(3) and (4), Police Reform Act 2002 (as amended)

<sup>13</sup> Section 12(5), Police Reform Act 2002 (as amended)



Alternatively, the person must be acting on behalf of a person falling into any of the three categories above.



### **Examples**

- The partner of a man stopped and searched by the police was present when he was detained. She was not stopped herself but saw what happened and was upset. *This should be recorded. The woman is a member of the public capable of making a complaint, being both adversely affected and a witness.*
- The local race equality council (REC) writes to the chief constable to complain that the police are stopping and searching people in the railway station and this is unreasonable and unjustified. The author of the letter has not actually been stopped and he has not witnessed people being stopped. *This should not be recorded. The REC cannot be classed as a member of the public in this situation.*

## **Complaints by persons serving with the police**

30. Serving officers and police staff members cannot make complaints under the Police Reform Act if:
- they were on duty at the time of the conduct they allege; or
  - their complaint relates to the conduct of a person serving with the police who, at the time of the alleged conduct, was under the direction and control of the same chief officer to themselves.<sup>14</sup>

Former officers or members of police staff are under no such restriction, unless their allegation relates to conduct prior to their leaving the police service.

31. This is not to say that officers and police staff cannot raise concerns about the conduct of other people serving with their own force. Indeed, officers and police staff subject to their respective Standards of Professional Behaviour have a duty to report, challenge or take action against their colleagues' conduct when appropriate. Such concerns may prompt managers to take action in particular cases, or constitute recordable conduct matters. However, the officer or police staff member raising the concern does not have any of the statutory rights of a complainant in relation to such a recordable conduct matter.

<sup>14</sup> Section 29(4), Police Reform Act 2002 (as amended)

### *Personnel issues*

32. Personnel issues (relating, for example, to pay, promotion, appointments or pensions) do not fall under the Police Reform Act. The preferred means of dealing with personnel issues is through internal grievance processes, not the complaints system. Personnel issues may occasionally give rise to a recordable conduct matter (see ‘Definition of a “recordable conduct matter”’ at paragraphs 42-46, pages 27/28), most likely because they are tainted by discriminatory behaviour or negligence.

### *Partners and relatives*

33. A partner or relative of someone who has served or is serving with the police will not be able to make a complaint on that person’s behalf where the exclusion discussed above in paragraphs 30 and 31 (page 25) applies to the person who is or has served with the police. Where the exclusion does not apply, a complaint could then be made on his or her behalf.
34. Alternatively a partner or family member might legitimately claim to have been adversely affected by the conduct alleged (see ‘Member of the public’ at paragraph 29, page 24), and so become a complainant in his or her own right. Such a complaint should be recorded. However, consideration may be given to whether a request for dispensation (see paragraphs 163 to 196, page 55) from the IPCC is appropriate, depending on the nature of the complaint (for example, where it is an attempt to avoid the general rule and so may be an abuse of process).

### *Internal reports of concern*

35. Police forces should ensure that they have adequate systems in place to support and protect officers and police staff members who want to raise concerns about the conduct of their colleagues. This includes extending confidentiality to anyone raising such a concern, as far as this is possible and appropriate.
36. In addition, the IPCC is designated as a prescribed body for the purposes of public interest disclosure in relation to the conduct of a person serving with the police. The IPCC’s Report Line is a dedicated phone line and email address for the use of officers and police staff wishing to report that someone serving with the police may have committed a criminal offence or behaved in a way that would justify misconduct proceedings.
37. Anyone serving with the police can contact the Report Line. This includes anyone who has left the police and wishes to report wrongdoing that took place while they were still serving.

38. The IPCC Report Line works alongside each force's existing internal practices. The IPCC is clear that the Report Line is supplementary to, and not a substitute for, existing force practices. Police officers and police staff should, in the first instance, consider raising their concerns within their own force.
39. Members of the police service can get contact details of the IPCC Report Line from their professional standards department, staff association or trade union.

### **Someone acting on his or her behalf**

40. Anyone can make a complaint on behalf of someone falling into the three categories described at paragraph 29 (page 24), provided that the person gives written permission for them to act on their behalf.<sup>15</sup> While this is clearly a legal requirement, the IPCC also regards obtaining written consent in these circumstances to be good practice. Written consent should be clear and unambiguous, but need not be in English.
41. An exception to this requirement for written consent applies in the case of a parent or guardian of someone under 16 years old. This is explained further in paragraphs 77-78 (page 37).

### ***Definition of a 'recordable conduct matter'*<sup>16</sup>**

42. A 'conduct matter' for the purposes of the Police Reform Act arises in any circumstances where there has not been a complaint (as defined at paragraphs 8-41, page 16), but where those circumstances indicate that an officer or member of police staff may have either committed a criminal offence or behaved in a way that would justify the bringing of disciplinary proceedings.<sup>17</sup>
43. If a chief officer or police authority is notified that civil proceedings are being brought, or it appears likely that civil proceedings will be brought, that identify a conduct matter, then that conduct matter should be recorded.<sup>18</sup> It becomes a 'recordable conduct matter'.
44. If a conduct matter that comes to light other than through civil proceedings meets any of the following criteria it must be recorded.<sup>19</sup> It becomes a 'recordable conduct matter' where:

<sup>15</sup> Section 12(6)(b), Police Reform Act 2002 (as amended)

<sup>16</sup> Section 12(2), Police Reform Act 2002 (as amended)

<sup>17</sup> The term disciplinary proceedings relates to the misconduct meeting or hearing or special case hearing which may follow a determination that a police officer has a case to answer for misconduct. In relation to matters which came to the attention of the appropriate authority prior to 1 December 2008 this refers to the process of determining whether allegations of misconduct of a police officer or police staff member have been substantiated and deciding any appropriate sanction.

<sup>18</sup> Schedule 3, Paragraph 10, Police Reform Act 2002 (as amended), but note the exceptions of paragraph 10(2)(b) and paragraph 10(5).

<sup>19</sup> Schedule 3, Paragraph 11, Police Reform Act 2002, for the first two bullet points, thereafter see Regulation 5, Police (Complaints and Misconduct) Regulations 2004.

- it resulted in the death or serious injury of any person;
- it had an adverse effect on a member of the public (see paragraph 29, page 24);
- it involved a serious assault, a serious sexual offence or serious corruption (these terms are defined in paragraphs 206-212, page 63);
- it involved a criminal offence or behaviour liable to result in disciplinary sanction that was aggravated by discriminatory behaviour (relevant forms of discrimination are outlined in Annex B, page 172);
- it constitutes a ‘relevant offence’<sup>20</sup> (further explained at paragraph 215, page 66);
- it took place during the same incident as other conduct caught by one of these criteria; or
- it otherwise, because of its gravity or other exceptional circumstances, merits recording.

45. Many of these criteria would mean that not only is the conduct in question recordable, but that it must be referred to the IPCC. For more on this see paragraphs 197-205 (page 62).

46. Forces and police authorities should be mindful that there are many ways in which a recordable conduct matter may come to light. It may, for example, arise:

- through the expectation that officers and police staff subject to their respective Standards of Professional Behaviour will report and challenge improper behaviour;
- from civil proceedings taken against the force (specific guidance on this is given in paragraphs 121-131, page 47);
- (exceptionally) from a complaint made directly to the IPCC where the complainant does not consent to have his or her details passed on to the police, but it is in the public interest for the substance of the complaint to be sent on and recorded;
- from a ‘complaint’ (in the most general sense) that does not fall within the Police Reform Act definition (for example because it has been made by someone disqualified from making a Police Reform Act complaint).

This list is not exhaustive.

## ***Definition of a DSI matter***

47. A DSI matter arises where there has been no complaint or recordable conduct matter but the circumstances are such that a person has died or sustained serious injury and the police are involved in one or more of the ways defined in the Police Reform Act. The statutory provisions are as follows:

(a) at or before the time of death or serious injury the person had contact (of

<sup>20</sup> Within the meaning of the Serious Organised Crime and Police Act 2005

- whatever kind, and whether direct or indirect) with a person serving with the police who was acting in the execution of his duties; and
- (b) there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the death or serious injury).<sup>21</sup>

The above wording means that a DSI matter can arise either during or after contact, which can be either direct or indirect. There must be an indication that the contact directly or indirectly caused or contributed to the death or serious injury. The definition is intended to be comprehensive and means that the following permutations of matters are therefore caught. In the case of the following, the DSI can occur during or after the contact:

- (i) there was direct contact which directly caused the DSI;
- (ii) there was direct contact which indirectly caused the DSI;
- (iii) there was indirect contact which directly caused the DSI;
- (iv) there was indirect contact which indirectly caused the DSI;
- (v) there was direct contact which contributed to the DSI;
- (vi) there was indirect contact which contributed to the DSI.



### **Examples**

- A woman is arrested for a public order offence and is taken to a local police station. While answering questions as a part of the booking-in process she collapses, suffering from a pre-existing heart condition. First aid is given and an ambulance immediately summoned. All required procedures are followed. The woman dies in the ambulance before reaching hospital. *No fault is indicated on the part of any officer or staff member, but the woman died while under arrest and in police custody. This is a DSI matter that must be recorded. Death occurs after direct contact which may have directly or indirectly contributed to it.*
- Police officers make forced entry to a third floor flat in order to execute an arrest warrant. The suspect they are looking for is not there but, without being observed by any of the officers present at the time, he returns home shortly afterwards. Seeing officers in and around his flat the suspect flees down a central stairwell, tripping and falling. He sustains a number of broken bones, serious concussion and other injuries consistent with the fall. *Again, no fault is apparent on the part of officers or staff involved. However, there is a clear link between the police presence and the injuries the man sustained; hence this should be recorded as a DSI matter. Serious injury occurs during indirect contact which may have indirectly contributed to it.*

<sup>21</sup> Section 12(2C), Police Reform Act 2002 (as amended)

### ***Examples (continued)***

- A member of the public calls two officers to an individual collapsed in a shopping centre who has stopped breathing by the time they arrive. The officers administer first aid and attempt to resuscitate him but he dies shortly afterwards. This is not recordable as a DSI. The person died during direct contact with the police but there is no indication that this contact may have caused or contributed to that death.
- An individual is in hospital and, as part of the illness he is being treated for, is suffering from confusion. He is later found to be missing from the hospital, which is reported to the police. A few days afterwards the police receive a report that a man fitting the patient's description is wandering in a confused manner. The police take no action at that time. The following day the man dies after a fall, not far from where he has been seen. Some months later his body is discovered. *This is a DSI matter as, although there had been no direct contact, the man had been reported missing to the police and it is possible that what the police did or did not do contributed at least indirectly to the death.*

### ***Providing effective means for the public to make complaints***

48. The public needs information about the complaints system: who can make a complaint, how they go about it and what complaints come within the scope of the system covered by this guidance.
49. The IPCC expects the police to get this information to the communities they serve in a positive way, telling people about their right to complain and being open to questions about the system.
50. Knowing how to complain and what will happen when a complaint is made are essential to public confidence. The police need to promote access to the complaints system, which may also make communities feel more confident about engaging with police forces.
51. The complaints system needs to work for everyone and needs to deliver results for complainants where things have gone wrong. Meeting needs may mean the police using diverse ways of communicating or working through existing local partnerships to promote awareness and understanding.
52. Research into public perceptions of the police complaints system has identified four types of barriers to people making complaints:

- There are different cultural expectations of what constitutes acceptable behaviour by persons serving with the police, which mean that people from different backgrounds are likely to complain about different types of behaviour.
- Some people are concerned about the reactions of the police if they were to make a complaint.
- Perception of the amount of bureaucracy people would have to deal with to make a complaint is a barrier to some, particularly those who have difficulties with English language or low literacy skills.
- Many respondents felt that it was not worth making a complaint because they believed there would be little potential for a positive outcome.

53. The police service and the IPCC need to address these barriers in order to encourage disengaged members of the public to engage with the complaints system.

## **Police forces**

54. Forces should have a public information strategy setting out how they will let potential complainants know how to make a complaint and what will happen when they do. Officers and police staff should be aware of this strategy, which should be based on the force's normal operating procedures for the handling of complaints:
- The best way of dealing with most complaints is to do so locally, where the complaint arises. Forces should ensure that the ways complaints can be made are adequately publicised at all their police stations or other places where members of the public might visit. The IPCC produces leaflets that explain the complaints system and the ways in which someone can make a complaint. These can be supplemented by material to explain local procedures.
  - Frontline police staff and officers should be aware of, and able to advise the public about, the means by which complaints can be made, even if they are not able to deal with them.
  - Force websites can be powerful tools for providing information on the complaints system to the public, and forces should take full advantage of them. Information on a website can serve a dual purpose as a useful resource for officers and police staff within a force, whether as somewhere to refer the public to or for their own knowledge. Forces should also consider providing an online facility through which members of the public can provide feedback on the provision of policing service and make complaints if they are not satisfied.

## **Police authorities**

55. Police authorities are responsible (as the appropriate authority) for dealing with

complaints and conduct matters that involve Association of Chief Police Officers (ACPO) rank officers. This means any officer at or above the rank of assistant chief constable, or the rank of commander in the Metropolitan Police Service or City of London Police.

56. Police authorities must ensure they have in place arrangements for members of the public to make complaints, and that the public can access them. As a minimum:
- the complaints process should be adequately signposted (for example, on the police authority website);
  - police authority staff who deal with members of the public should be aware of the complaint process.
57. Police authorities should be mindful that the general public may not be aware of the distinction between their role as an appropriate authority (in relation to ACPO rank officers) and that of the chief constable (in relation to other ranks and personnel under his or her direction and control). Accordingly, police authorities should have procedures in place to ensure that complaints (as opposed to complainants) are referred to the police force, where this is appropriate.<sup>22</sup> Similarly, a process should be in place for police forces to direct complaints to the police authority where the complaint relates to an ACPO rank officer.
58. Some complaints will be 'mixed' i.e. a single complaint may involve a combination of allegations directed at ACPO ranked officers and others directed at lower ranks or other personnel in the wider police force. The police authority and police force should therefore have procedures in place to direct the relevant parts of the complaint to the appropriate authority to deal with them, and thereafter to ensure that handling by each body is coordinated as necessary.

## The IPCC

59. The IPCC has a statutory obligation to notify to the appropriate force or police authority<sup>23</sup> complaints it receives directly from members of the public, provided the complainant consents (either in the initial correspondence or when asked). Complaints can be made via the IPCC website, in writing, by fax or using a dedicated telephone number. In exceptional circumstances, if there is sufficient public interest in the subject of the complaint, the matter will be passed to a force or police authority for recording as a conduct matter even where the complainant does not consent.
60. Aside from this statutory function, the IPCC will provide information to members of the public or the police service on the complaints system. In some

<sup>22</sup> Schedule 3, Paragraph 2(2), Police Reform Act 2002 (as amended)

<sup>23</sup> Schedule 3, Paragraph 2(1), Police Reform Act 2002 (as amended)



circumstances the IPCC will provide additional support to complainants to help them make or progress a complaint with a force or police authority, based upon individual needs or circumstances.

## ***Ensuring a diverse approach***

61. The police service and IPCC serve diverse communities, any member of which may have specific requirements that need to be recognised and adapted to, to ensure that they are able to access and use the complaints system effectively. Some groups in the community are known to be less likely to make use of the complaints system. Forces and police authorities should be aware of such groups, and proactively promote the complaints system with them.
62. The complaints system serves to increase public confidence and improve the service the police provide. The only way that this can happen comprehensively is if members of the public have broad opportunities to access the system. The key is to ensure a diversity of approach and communication, while consistently adhering to the principles contained in this guidance.
63. Forces and police authorities must ensure that all reasonable steps are taken to remove barriers that might prevent any part of the communities they serve from engaging with the complaints system. This applies throughout the process of handling complaints, conduct matters and DSI matters. This may mean, for example, making basic publicity and communications material available in more than one language, in Braille or as a voice recording. It will often be more pertinent to signpost access to a translation, sign language or other support service. The use of web technology can help meet these needs in a proportionate way. However, it is also important to ensure that diverse access is not limited to publicity and information provision; changes in regular practice and process might also be required. This could involve, for example, officers visiting a complainant in his or her home rather than the complainant attending a station or speaking over the phone. It might mean gaining an understanding of any other considerations, perhaps cultural or religious, that could, for example, impact on how someone should be addressed or greeted.
64. There can clearly be no 'one size fits all' solution; the makeup of the community being served will vary from force to force, and indeed from basic command unit (BCU) to BCU or station to station. Forces and police authorities should also recognise that the nature and composition of the communities they serve can change. Accordingly, the measures put in place to ensure comprehensive access to the complaint system should be regularly reviewed.
65. Forces and police authorities should consider explicitly recognising the role of

feedback received through the complaints system within their diversity strategy and using this diversity strategy to complement and support measures put in place to ensure broad access to the complaints system.

### ***Complainants requiring additional assistance***

66. Some people who might make complaints may require adjustments to be made to regular procedures in order that they are not obstructed from doing so. It might be, for example, that:
- the complainant has learning difficulties;
  - the complainant has – or is perceived to have – mental health difficulties;
  - the complainant is a young person under 16;
  - English is not the complainant’s first language;
  - effective communication is through the spoken not the written word;
  - the complainant’s effective means of communication is sign language.
67. This has implications both in terms of susceptibility to conduct that might give rise to complaint and how such a person is then able to access the complaints system. Additional steps should be taken in such cases to enable a person’s access to the complaints system. This may mean, for example, signposting or facilitating access to appropriate support services or getting help from a person’s relative or a representative.

### ***Complainants with mental health difficulties or learning disability***

68. It should always be presumed that a person who wishes to make a complaint possesses the requisite capacity to do so unless it is established that he or she does not.<sup>24</sup> The mere fact that a person has been diagnosed as having a mental illness or learning disability does not mean that he or she will lack capacity to make a complaint against police. In some cases, additional support may be required. However, the assistance of a relative, carer or other representative will usually enable someone to express the complainant’s wishes sufficiently for the complaint and intentions to be clear.<sup>25</sup>
69. Forces and police authorities may sometimes receive complaints which by their nature seem manifestly ill-founded or which report what it appears may be a person’s delusions or hallucinations about the police. For example, someone may write to a force or police authority alleging that an unidentified police officer is watching him or her through the television set whenever this is on. However, apart from the bizarre implausibility of this allegation, there is nothing to suggest that the person lacks capacity to express his or her complaint.

<sup>24</sup> Section 1(2), Mental Capacity Act 2005

<sup>25</sup> Section 1(3), Mental Capacity Act 2005 states that a person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

70. In preparing this guidance in 2009, the IPCC carefully consulted with the police and other relevant organisations about how complaints of this nature should best be dealt with. They should be dealt with in accordance with the law but proportionately so as to reduce the risk of bringing the system as a whole into disrepute by devoting resources to them that are not merited by the substance of the complaint.
71. As the law stands at the time of publishing this guidance, the Police Reform Act does not permit an appropriate authority to decline to record a complaint simply because it appears bizarre, implausible or intrinsically without foundation. An allegation such as this will therefore usually require recording, with subsequent action depending on the circumstances and facts of the case. Forces and police authorities may therefore decide that exploring the question of capacity in these situations is not appropriate, necessary or helpful.
72. In some cases it may be appropriate to seek to dispense with or discontinue an investigation into a complaint. In others, it may be appropriate to complete an investigation. Further guidance is given at paragraphs 176-181 (page 57) and 369-374 (page 99) on the grounds available to dispense with or discontinue the investigation into a complaint which appears to be vexatious or an abuse of the complaints system. Additionally, guidance is given at paragraphs 306-318 (page 85) on the minimum requirements for a proportionate complaint inquiry and what a force may need to do before it can conclude that a complaint is not upheld because it can be shown to be manifestly ill-founded.
73. In the rare circumstances where a person may properly and fairly be judged to lack capacity, any decision taken for that person must reflect his or her best interests.<sup>26</sup> A complaint can be made by someone on the person's behalf, such as a relative, social worker or health professional, if it is in his or her best interests. When a force or police authority decides not to record a complaint, against the wishes of a family or professional carer or representative, then that person should be informed of the decision and the reason for it so he or she can consider whether to make an appeal to the IPCC on the person's behalf.



### **Examples**

- A man detained in hospital for treatment under the Mental Health Act 1983 writes to a force to complain that police officers used unreasonable force against him when they detained him under Section 136 and brought him to hospital for assessment. The man's detained status on its own does not mean his complaint should not be recorded and responded to.

<sup>26</sup> See provisions of Code of Practice on Mental Capacity Act 2005 on making 'best interests' decisions.

**Examples (continued)**

- A learning disabled young man discloses to his social worker that when being taken into custody at a local police station he was humiliated by two officers who made him pour a bucket of cold water over himself in the station yard. The social worker, who believes the account to be credible, contacts the police wishing to make a complaint on the man's behalf to ensure the allegation is investigated. She states that her client would not be capable of pursuing a complaint in person due to his extreme terror of the police and his vulnerability. Since the man appears to lack capacity, a complaint should be made on his behalf by his social worker and be recorded and investigated.

**Complaints made by children and young people**

74. The police service, police authorities and the IPCC have a responsibility to ensure a young person understands the process and the potential outcomes when making a complaint. Police forces and police authorities also have a particular duty under the Children Act 2004<sup>27</sup> to safeguard and promote the welfare of children<sup>28</sup> when discharging their functions, including the handling of complaints. Where it is necessary, appropriate support should be provided to young people who make complaints. Specific safeguards already operate when a young person aged 17 or under is involved in the criminal justice system.
75. In many cases a child or young person who makes a complaint against a person serving with the police will be supported by a parent, guardian or other appropriate adult. If this is not the case, the force or police authority will need to consider whether a parent or guardian should be informed of the complaint and involved in the complaints process. The child or young person's wishes in this matter should be taken into account, having regard to the principle in the Fraser Guidelines<sup>29</sup> that children under the age of 16 years are able, under common law, to give valid consent (and refuse parental involvement) provided they have sufficient understanding and maturity to enable them to understand fully what is proposed.
76. Importantly, if a child or young person is not supported by an appropriate adult, this should not prevent him or her from making or pursuing a complaint, and the force or police authority should consider what appropriate support should reasonably be provided to assist him or her to make a complaint.

<sup>27</sup> Sections 11 and 28, Children Act 2004

<sup>28</sup> Section 65, Children Act 2004 – a 'child' is defined as someone under the age of 18

<sup>29</sup> Gillick v West Norfolk & Wisbech HA [1986] AC 112

### ***Parental complaints***

77. A parent, guardian or third party can make a complaint on behalf of a child or young person.
78. It is not normally possible for a person to make a complaint on someone else's behalf without the person they are acting for providing written consent (as discussed in paragraphs 40-41, page 27). However, it is the IPCC's view that a child under 16 should not normally need to provide written permission for a parent or other guardian to make a complaint on his or her behalf.<sup>30</sup> However, if it becomes apparent that the child or young person's views in respect of pursuing the complaint are at odds with those of his or her parent or guardian, the child or young person's views should be taken into account giving due weight to his or her age and maturity.

### ***Engaging with the community***

79. Forces and police authorities should use their existing links to local communities to promote the awareness of those communities about the complaints system and their rights within it. Even where complaints are not raised, these links can be a useful source of feedback on the policing service in the local area. Moreover, awareness within the community of an effective police complaints system and the responsiveness of the police service to feedback can bolster confidence in local policing.

<sup>30</sup> Section 12(6), Police Reform Act 2002 (as amended)

## Chapter 2: INITIAL HANDLING



### PRINCIPLES

80. Initial handling of a complaint should be informed by the following general principles:
- Complaints help a police organisation to improve.
  - During initial handling, take a complaint at face value.
  - Local and rapid handling is best for many complaints.
  - After initial handling and assessment, it should be clear what happens next.
  - Referral to the IPCC should comply with the Police Reform Act and regulations made under it, the Human Rights Act 1998 and, through it, the European Convention on Human Rights, IPCC statutory guidance and IPCC operational advice.

#### ***An aid to improvement***

81. Complaints and incidents requiring investigation provide a police force and its police authority with an opportunity:
- to provide the complainant with a resolution to his or her grievance;
  - to improve the service given to the public;
  - to identify scope for individual and organisational learning;
  - to understand the public's expectations;
  - to assess current standards of performance;
  - to discover and deal with misconduct or unsatisfactory performance.
82. Accurate and consistent recording practice plays a significant part in ensuring public confidence in the complaints system and contributes to a sound evidence base to inform the development of future policy and practice.
83. In their recording practice and initial handling, forces and police authorities demonstrate their willingness to deal with people who want to complain.

#### ***Take complaints at face value***

84. During initial handling, complaints should be taken at face value and a complainant who expresses dissatisfaction with the police should be treated as doing so in good faith.

### ***Local handling***

85. Many recorded complaints are relatively minor and straightforward, requiring a rapid response from managers responsible for the service complained about. It is often more appropriate for these to be handled by local management rather than by specialist professional standards department staff, to encourage timely handling and direct learning.

### ***Essential decisions***

86. Assessment of a complaint for recording purposes and the initial response to the complainant should be undertaken rapidly, with clear communication to the complainant (and police officers or police staff affected) about decisions taken and, if recorded, what happens next.
87. After initial handling, both the person dealing with the complaint and the complainant should have reached a clear, shared understanding of the main issues of concern raised with the force or police authority.

### ***Referrals***

88. In order for forces, police authorities and the IPCC to comply with their Human Rights Act 1998 obligations (particularly Articles 2 and 3 of the European Convention on Human Rights (ECHR)), certain incidents and complaints must be rapidly referred to the IPCC for it to decide the appropriate mode of investigation and, in some cases, undertake an independent investigation. Public confidence in the outcome of any later inquiry will often depend on the speed of such referral and the information and assistance provided to the IPCC to help it make its decision.
89. The IPCC has issued an operational model in relation to referrals in which Article 2 may be engaged, and forces must have regard to this in managing their initial response to an incident that has been or may be referred to the IPCC.

## PRACTICAL GUIDANCE

### ***Recording a complaint, a recordable conduct matter or a death or serious injury (DSI) matter***

90. Chief officers and police authorities have a duty under the Police Reform Act 2002 to record complaints, conduct matters and DSI matters that fall within the Act and for which they are the appropriate authority.<sup>31</sup> This is a legal and technical decision that either:
- an expression of dissatisfaction meets the definition of a complaint that should be handled under the Police Reform Act;
  - conduct has come to attention that meets the definition of a recordable conduct matter; or
  - an incident has occurred that meets the definition of a DSI matter.
91. The ‘appropriate authority’ for complaints or conduct matters in relation to police officers up to and including the rank of chief superintendent and for all levels of police staff is the chief police officer; for officers above that rank it is the police authority. If a chief officer or police authority is notified of a complaint, recordable conduct matter or DSI matter, but is not the appropriate authority, they have a duty to pass it to the relevant chief officer or police authority.
92. A chief officer may delegate many of his or her powers in relation to the police complaints system provided they are delegated to a suitably qualified person. Many of these functions are, in practice, delegated to the head of the professional standards department. Similarly, many of the functions of the police authority in relation to the police complaints system are delegated to the chief executive.

### ***Recording a complaint***

93. Recording practice is a measure of the police service’s willingness to deal with people who want to complain, not just a means of collecting statistical data on dissatisfaction. The recording of a complaint also gives a member of the public rights under the Police Reform Act 2002.
94. Forces and police authorities should start with the presumption that where a member of the public expresses dissatisfaction that, on the face of it, is a complaint about conduct, it is valid under the Police Reform Act 2002 and should be recorded. Refer to paragraphs 8-41 (page 16) for more on what constitutes a complaint under the Police Reform Act.

<sup>31</sup> Schedule 3, Paragraphs 2, 10, 11 and 14A, Police Reform Act 2002 (as amended), though see also paragraphs 8-47 above.



95. The force or police authority should be proactive at the recording stage in determining what the complainant is dissatisfied with and what he or she wants to happen.
96. If it is unclear whether a complaint is about conduct or direction and control of the force, record and proceed with a complaint about conduct until it does become clear. This is in accordance with Home Office guidance on direction and control complaints.
97. After a complaint has been recorded under the Police Reform Act it must continue to be dealt with in accordance with the Act (i.e. by completing an investigation or local resolution, dispensation or discontinuance). It is not possible to filter the complaint out of the police complaints system solely because it becomes apparent during its handling that the substance of the complaint is not about the conduct of a person serving with the police but about an underlying policy or management decision. This should instead form part of the explanation given to the complainant with the outcome of his or her complaint (see paragraphs 425-430, page 111).
98. Local procedures for the handling of direction and control complaints should include checks to ensure that a complaint that has been wrongly categorised as one concerning direction and control can be identified, recorded and handled under the Police Reform Act.
99. Guidance for practitioners on recording police complaints on software packages is included at Annex A (page 150).
100. The IPCC expects a recording decision to be made within 10 working days of a complaint being received.<sup>32</sup> This plays a part in the timely handling of the complaint overall and allows for the complainant to be advised quickly how his or her complaint will be dealt with. If a complaint is recorded it is also easier to track and respond to any follow up enquiries about progress from a complainant.
101. The decision may be that the complaint will or will not be recorded. Alternatively, it may be determined that the force or police authority which has received the complaint is not the appropriate authority to handle it and will forward the complaint to the correct authority. In any case, the decision should be made within 10 working days of the complaint being received and then conveyed to the complainant.
102. Where a decision is taken not to record a complaint about conduct, the reason should be explained to the complainant, who should be advised of the right of

<sup>32</sup> For information on the dates recorded for reporting purposes see Annex A, paragraph A11.

appeal to the IPCC. The complainant should be given a copy of the IPCC leaflet *Appealing against a complaint not being recorded*.

103. The expectation that a recording decision will be made within 10 working days is distinct from, and in addition to, any obligations created by the Policing Pledge or other local agreements, which may require the acknowledgement of public dissatisfaction within a different timescale.

### ***Recording a recordable conduct matter or a DSI matter***

104. Recordable conduct matters should be recorded as soon as practicable after they come to light, taking into account the covert nature of some investigations. Equally, DSI matters should be recorded as soon as practicable after they are first identified.

### ***Complaints against former police officers and police staff***

105. Where a complaint is made about a person who has ceased to serve with the police (i.e. has resigned, retired or been dismissed) since the incident complained about, the complaint must still be recorded and dealt with through the same processes as any other complaint<sup>33</sup> although the appropriate authority will not be required to determine whether disciplinary proceedings should be brought against the person. A local resolution or investigation may provide an opportunity for an explanation to be given to the complainant or for the force to learn lessons. While disciplinary proceedings will not result against someone who is no longer serving with the police, criminal proceedings could still be brought if appropriate. A proportionate response is required.
106. If the complaint relates to an incident that happened more than 12 months prior to the complaint being made, consideration can be given by the appropriate authority whether to submit an application for dispensation. For more information on this see paragraphs 163-196 (page 55).

### ***Complaints against police officers and police staff who have moved between forces***

107. A complaint may be made about a police officer or police staff member who has moved forces between the date of the incident and the date the complaint is received. The appropriate authority to record and handle such a complaint is the

<sup>33</sup> Regulation 21, The Police (Complaints and Misconduct) Regulations 2004

chief officer or police authority who has direction and control of the person subject to the complaint, at the time the complaint is received<sup>34</sup> (i.e. not at the time of the incident complained about).

108. However, for practical reasons it may be appropriate for the force or police authority where the incident occurred to carry out any investigation then pass the findings to the new force. This allows for the force or police authority where the incident occurred to deal with any service related issues or criminal matters arising from the complaint and rebuild the relationship between the force and the complainant. The chief officer of the force or the police authority where the police officer or staff member is serving at the time of the complaint can then deal with any related performance or misconduct matters.
109. Arrangements for this type of investigation should be agreed between both forces or police authorities involved, with reference to any existing collaborative working agreements.



### **Example**

A call handler working for force A deals with a report of a burglary over the telephone. Two weeks later the call handler moves jobs and goes to work for force B. One month later the person who made the call to report the burglary makes a complaint to force A about the handling of the report, saying that the call handler was rude and dismissive. *As the call handler now works for force B, force A should pass on the complaint so that force B can make a decision about recording. It may be agreed that force A will carry out the investigation and pass the findings to force B to make a decision about any potential performance or misconduct matters for the call handler.*

## **Complaints against police officers or police staff who have moved between organisations within the IPCC's jurisdiction**

110. Where a person has moved from a police force to another organisation which falls within the jurisdiction of the IPCC (for example the Serious Organised Crime Agency (SOCA), Her Majesty's Revenue and Customs (HMRC) or the UK Border Agency (UKBA) the appropriate authority to record and handle a complaint is the organisation for which the person served at the time of the incident complained about (i.e. not at the time the complaint is made). This is because, while both organisations fall within the remit set out within the Police Reform Act 2002, there are some variations in the regime as it applies to different organisations. In such circumstances a complaint should be recorded and dealt with through the

<sup>34</sup> Section 29(1), Police Reform Act 2002 (as amended)

normal processes. Although the appropriate authority no longer has direction and control of the person complained against and therefore would not be able to take any disciplinary action or action under the unsatisfactory performance procedures, the investigation will still consider whether criminal offences have been committed and, if appropriate, refer the matter to the Crown Prosecution Service (CPS). The complainant will also be notified of the outcome of the complaint. If the complaint is upheld the appropriate authority should consider whether it is appropriate to pass information about the findings to the other organisation.



### **Example**

A police officer moves from a post at force A to serve with SOCA. A complaint is made to force A that this officer subjected the complainant to excessive force during arrest, used racist language and that the arrest was unlawful. The arrest in question took place while the officer still served in force A. *Force A must record the complaint. Evidence may be available (for example from other officers, records and CCTV) about any tactics used and reasons for the arrest. This could be used to provide a response to the complaint; learning could also still be gained from the complaint. It is also possible that, although no disciplinary proceedings could result from the complaint, there could be a criminal prosecution. Force A should inform SOCA if the complaint is upheld.*

## **Complaints against police officers or police staff who are seconded to another organisation within the IPCC's jurisdiction**

111. A complaint may be made about a person serving with the police who is at that time seconded to another organisation within the IPCC's jurisdiction (for example SOCA, HMRC or UKBA). The appropriate authority to record such a complaint is the chief officer of the force or the police authority for which the person normally serves, not the organisation to which he or she is seconded. However it may be more practical for the appropriate authority and the other organisation to agree that any investigation will be carried out by the organisation to which the person is seconded. Any performance or disciplinary outcomes would be the responsibility of the chief officer of the force or the police authority for which the person seconded normally serves.

## **Complaints against professional standards department personnel**

112. Processes for dealing with complaints about members of a professional standards department should demonstrate fairness and impartiality. The

appropriate authority should ensure that the officer or member of police staff complained about is not involved in handling the complaint.

113. Where a complaint is made about the head of a professional standards department, the handling of the complaint within that person's professional standards department may give rise to public concern that the complaint will not be dealt with impartially. To avoid this perception, any person appointed to investigate such a complaint should therefore be an ACPO rank officer (or equivalent police staff grade) from outside the professional standards department. This does not prevent administrative matters (for example preparation of correspondence, monitoring key dates and actions or preparing documents such as an application for dispensation) being dealt with in the professional standards department as long as there is some oversight from an ACPO rank officer (or equivalent police staff grade).
114. When a complaint is made about a member of a professional standards department consideration should be given to whether the complaint is about the conduct of that individual or the outcome of an investigation in relation to a previous complaint. Where the complaint is about conduct (as outlined at paragraphs 14-21, page 18) this should be recorded and dealt with. A complaint about the outcome of a previous investigation should be dealt with through an appeal about the outcome of that investigation. The complainant should be advised of his or her rights in regard to this. The fresh complaint, or those parts of it that relate to the outcome of an investigation, should not be recorded. The complainant should be told both the reason(s) for this and about his or her right of appeal against non-recording.

### ***Recording repetitious complaints***

115. The appropriate authority may decline to record a complaint if it is satisfied that the subject matter of the complaint is being, or has been, dealt with by means of criminal or disciplinary proceedings against the person whose conduct it was.<sup>35</sup>
116. Appropriate authorities should be mindful of the distinction between an investigation into a complaint and the point at which disciplinary proceedings start following the investigation. Accordingly any complaint that appears to be similar to another complaint already being investigated should be recorded. It is only where the original complaint becomes subject to disciplinary proceedings that the appropriate authority should consider declining to record any new complaint(s) on the ground of it/them being repetitious.

<sup>35</sup> Schedule 3, Paragraph 2(7), Police Reform Act 2002 (as amended)

117. If a complaint is made during the course of an investigation, or following an investigation that did not lead to criminal or disciplinary proceedings, the appropriate authority should record the complaint but may apply for a dispensation. See paragraphs 163-196 (page 55) for more information on dispensations.
118. The exception to this is when a complaint has previously been dispensed with and the appropriate authority can satisfy itself that the same complaint is now again being made against the same police officer or member of police staff by the same complainant. In these circumstances the complaint does not need to be recorded again. When a dispensation is granted on a complaint, the appropriate authority is no longer required to comply with the requirements of Schedule 3 of the Police Reform Act, which sets out the procedure for handling complaint and conduct matters, in relation to it. Therefore if the same complaint is made again, the same discretion remains with the police as to how they deal with it. The appropriate authority must be entirely satisfied that the complaint is the same as the one made before and dispensed with before applying this provision.
119. The complainant should be advised of the right of appeal against the non-recording of his or her complaint.

### ***Exceptions to the duty to record***

120. A complaint, or a specific part of a complaint, against the police, within the meaning described at paragraphs 8-41 (page 16), does not have to be recorded under the Police Reform Act where it:
- has previously been made under the Police Act 1996;<sup>36</sup>
  - is already the subject of a complaint that is being or has been dealt with by criminal or disciplinary proceedings;<sup>37</sup>
  - is being made by a person serving with the police (unless the complainant was off duty at the time of the incident and the person being complained about is from a different force);
  - has previously been made, recorded, then subsequently withdrawn;<sup>38</sup>
  - is about direction and control;
  - does not fall within the provisions of the Act;
  - is about the outcome of a previous complaint investigation;
  - has been recorded previously and dispensed with (as outlined at paragraph 118, page 46).

<sup>36</sup> Paragraph 4, The Independent Police Complaints Commission (Transitional Provisions) Order 2004

<sup>37</sup> Schedule 3, Paragraph 2(7), Police Reform Act 2002 (as amended)

<sup>38</sup> Schedule 3, Paragraph 2(7), Police Reform Act 2002 (as amended)

### ***Identifying conduct matters from civil claims***

121. The IPCC wants to ensure robust links between civil claims and the complaints system and encourage a timely response to members of the public involved. Chief officers and police authorities have a duty to record any conduct matters raised in civil proceedings, or which they become aware are likely to be raised in civil proceedings.<sup>39</sup> This duty arises when a force or police authority becomes aware that civil proceedings are likely to be brought and continues until the conclusion of any proceedings. The IPCC expects chief officers and police authorities to be able to demonstrate that they take steps to identify, consider and record, where required, conduct matters arising from civil proceedings.
122. In some forces civil claims are handled in the same department as complaints and conduct matters. Where different departments are involved, good communication is key: this also needs to cover risk and insurance managers.
123. Chief officers and police authorities should ensure there is local guidance on who is responsible for identifying and recording conduct matters and ensure these matters are progressed in a timely manner. Information regarding any conduct matter should then be readily available to help deal with any civil claims arising, which should reduce the work involved.
124. Police authorities need to satisfy themselves that the arrangements in place for identifying and recording conduct matters in their respective forces are effective and efficient.
125. When a force or police authority receives a letter of claim it should make an initial assessment and consider what action would be appropriate. The force or police authority first needs to decide whether the case meets the usual criteria for referral to the IPCC. If it is unclear whether a complaint is being made, the force or police authority should write to the solicitors or claimant seeking clarification. Where there is a complaint it should be recorded accordingly. Where there is no complaint and no obligation to refer to the IPCC then any identified conduct matters should be recorded and dealt with in such manner (if any) as the force or police authority may determine.<sup>40</sup>
126. In many circumstances a claimant is happy for the complaint process to proceed before, or at the same time as, the civil claim; however the IPCC recognises that there can be practical difficulties dealing with some conduct matters and civil proceedings at the same time. Reasons for delaying the investigation of any complaint need to be explained clearly to the complainant, who should be given

<sup>39</sup> Schedule 3, Paragraph 10, Police Reform Act 2002 (as amended)

<sup>40</sup> Schedule 3, Paragraph 10(4), Police Reform Act 2002 (as amended)

the opportunity to respond. Similarly, a police officer or police staff member involved in the case should also be informed of the position.

127. In some instances, letters of claim are issued in which possible conduct matters are identified but the letters are non-specific in terms of the allegations made and the police officers and police staff involved. The complainant may then decide not to provide a complaint statement until the exchange of documents in the civil proceedings. This clearly has an impact on the timing of any investigation by the appropriate authority and on the ability to conduct a criminal prosecution.
128. This situation could leave the appropriate authority with a letter of claim as the only document upon which to base an investigation. In many cases the statement of claim will provide sufficient detail for an investigation to begin, and often the appropriate authority will have other helpful materials. In such cases the best investigation proportionate to the circumstances should be carried out. Its extent will depend on the amount of information provided by the solicitor or claimant and the existence of other lines of enquiry, for example pocket note books or case file in any associated criminal case. A witness statement signed by the complainant is not essential to begin an investigation.
129. If the IPCC receives an appeal against the outcome of the investigation in these circumstances, the decision of the complainant not to provide a complaint statement will be taken into consideration when reviewing the findings of the investigation.
130. If there is insufficient information available to carry out an investigation, the appropriate authority will need to seek a dispensation or discontinuance in the usual way and meet the criteria set out in the regulations.
131. There is no cut-off for recording a conduct matter arising from a civil claim, i.e. where the events took place some years previously. However, police forces can consider whether there are grounds to apply to the IPCC to discontinue an investigation into a conduct matter. The IPCC applies the criteria set out paragraphs 359-389 (page 97).

### ***Identifying recordable conduct matters from employment tribunal proceedings***

132. The complaints system is not intended to deal with employment matters. However, in some circumstances an employment tribunal or grievance procedure may bring to light recordable conduct matters that have not previously been dealt with. Chief officers and police authorities should ensure that there is a



system in place to identify and deal with recordable conduct matters in these circumstances.

### ***Appeals against non-recording***

133. There are three elements the IPCC will consider when looking at an appeal in relation to the non-recording of a complaint:
- failure of the appropriate authority to record a complaint or part of a complaint;
  - failure of the appropriate authority to make a decision (whether to record, or to determine which is the correct appropriate authority for the complaint and notify that authority of it);
  - where the complaint is received by a force or police authority other than the one whose officer or police staff member is being complained about, a failure to tell the correct force or police authority about the complaint.

In determining whether the force or police authority which is the subject of the appeal has failed to make a decision or to notify the appropriate authority, the IPCC will take into consideration its expectation that a decision about recording will be made within 10 working days of a complaint being received.

134. The IPCC can uphold an appeal on any of these three elements. If it upholds the appeal, it can determine what action should have been taken in the case in question and give directions to the chief officer or police authority as to the action to be taken for making a determination or for notifying or recording a complaint. As a matter of practice, when upholding on either of the last two elements the IPCC may form a view whether the matter should be recorded and (where relevant) ask that this be conveyed to the appropriate authority.
135. There is no statutory time limit on submitting an appeal where no decision to record or notify a complaint has been made. However, if the complainant has not heard from the appropriate authority what action has been taken after 15 working days from the date his or her complaint is received by the force or police authority (allowing 10 working days for the recording decision to be made and time to inform the complainant), he or she is entitled to assume there has been a failure to act and may reasonably decide to submit an appeal. In cases where the complainant is appealing against a decision not to record the complaint, the appeal must be made within 28 calendar days from the date on which notification that the complaint will not be recorded is made or sent to him or her. Where notification is in writing it should be dispatched by post on the date it bears. It is good practice to include the timescale for appeal in the notification sent to the complainant.

136. The IPCC may exercise discretion about accepting appeals after 28 calendar days have passed where the special circumstances of a case mean it is just to do so.<sup>41</sup> Where there is evidence that an appeal has been made out of time the IPCC will look at the complainant's reasons for the delay when deciding whether the appeal can be considered. The IPCC welcomes representations from a force or police authority, to accompany background papers, if it appears to the force or police authority that an appeal has been made out of time.

### ***Initial action upon recording a complaint***

137. The recorded complaint should be assessed, in line with local practice, to decide the appropriate response. In light of the available information, consider whether:
- the complaint involves serious allegations that come within the criteria for referral to the IPCC (see paragraph 203, page 63);
  - the complaint appears suitable for local resolution (or may be suitable following an application for local resolution to the IPCC – see paragraphs 260-291, page 76);
  - the recorded complaint requires investigation (see paragraphs 296-358, page 83);
  - the IPCC should be asked to dispense with the complaint (see paragraphs 163-196, page 55).
138. This should take account of:
- the nature of the complaint;
  - the information received from the complainant (or his or her representative), which could be in a statement, complaint form or a letter;
  - the complainant's expectations. It is important to determine what the complainant wants to happen as a result of his or her complaint. Some complaints contain an allegation of serious criminal behaviour. However the majority do not and the complainant may be looking for an explanation, an apology, action to be taken to prevent the same matter happening to someone else or action to address an individual's behaviour. The complainant should have the opportunity to explain his or her thoughts and feelings about the incident, in addition to the facts.
139. An assessment and clear communication at this stage will help the appropriate authority and complainant to have a shared understanding of the main issues and the next steps.
140. Police officers and members of police staff who are complained about should be notified of the complaint and the action being taken in relation to it, except

<sup>41</sup> Regulation 8, The Police (Complaints and Misconduct) Regulations 2004

where this would prejudice any subsequent investigation into the complaint or any other investigation.

141. The appropriate authority should ensure that whatever route a complaint takes, whether inside or outside of the professional standards department, the police officer or police staff member complained about is not involved in handling the complaint.

### ***Power to suspend investigation or other procedure<sup>42</sup>***

142. The IPCC expects complaints to be recorded within 10 working days of receipt, as outlined at paragraph 100 (page 41), irrespective of whether there are any outstanding criminal investigations or proceedings linked to the complaint.
143. Once a complaint has been recorded, there is a power to suspend an investigation which would, if it were to continue, prejudice any criminal investigation or proceedings.<sup>43</sup>
144. As described above, the IPCC expects that all complaints are recorded within 10 working days of receipt regardless of whether the power to suspend may be exercised. The complaint can be recorded based on just a brief letter of complaint. As a minimum, complainants should be asked to provide their details, the details of the person serving with the police they wish to complain about and the nature of the allegation (e.g. excessive force). Full details can be sought once any suspension of an investigation ends.
145. The power to suspend has two main purposes: to avoid prejudice for the complainant/defendant and an overarching public interest to ensure proceedings are free from prejudice.

### **The power to suspend**

146. The power to suspend only arises when continuing the investigation of the complaint would prejudice other ongoing criminal investigation or proceedings. To determine whether such prejudice arises, it will be necessary to consider two issues:
147. (a) The extent to which the complaint raises issues which are the same as, or closely connected with, the issues in the ongoing criminal investigation or proceedings.

<sup>42</sup> Regulation 16, The Police (Complaints and Misconduct) Regulations 2004

<sup>43</sup> This power has in the past sometimes been referred to as the 'sub judice' rule.

**Examples**

- A person is arrested for theft and complains about the treatment received in the custody suite. The complaint will not impinge on the theft trial. Continuing the investigation of the complaint would not prejudice that trial, so there is no power to suspend the investigation.
- A woman is charged with assaulting a police officer. She complains that the officer had first assaulted her and therefore asserts that she was acting in self defence. The same issues arise in both the criminal proceedings and the police complaint, namely: was there an assault, who assaulted whom, and did the complainant or the officer act unlawfully. Here the power to suspend would arise if particular prejudice to the criminal trial was identified on the particular facts of the case.

148. (b) What particular prejudice (if any) would be caused to the ongoing criminal investigation or proceedings by the investigation of any such issues.

**Examples**

- The defendant to any ongoing criminal proceedings may need to be protected from self-incrimination through information provided for the purposes of the investigation into the complaint against the police.
- The investigation of the complaint matter may involve interviewing a defence or prosecution witness by the force investigator and the CPS advises that such an interview would lead to prejudice of the criminal trial.

**Appropriate use of the power**

149. When the power to suspend does arise, the appropriate authority should consider whether it is appropriate to use that power. This requires the appropriate authority to consider whether on balance the public interest favours, on the one hand, avoiding the risk of prejudice to the ongoing criminal matter or, on the other hand, the prompt investigation of a police complaint matter despite any risk of prejudice to such an ongoing criminal matter. The circumstances of the case should be considered including:
- the relative severity of the allegation against the person serving with the police and the allegation against the defendant in the ongoing criminal investigation or proceedings;

- the relative strength of evidence in support of each allegation;
- whether delay would lead to frustration of any potential criminal proceedings against the person serving with the police, in particular whether suspending the investigation would give rise to a risk of passing the six-month statutory time limit for prosecuting summary-only offences;
- whether delay would otherwise lead to injustice to the complainant or to the subject of the complaint.

150. If there is evidence to show that a person serving with the police has committed a more serious offence than the offence which is the subject of the criminal proceedings, which might be prejudiced, it may be in the public interest to prioritise the investigation of that person despite the risk of prejudice to the existing criminal proceedings in respect of the less serious offence.

151. The CPS will often be in a good position to advise on the risk of prejudice and to inform the decision on whether to suspend a complaint investigation. The appropriate authority is therefore encouraged to consult the CPS on this issue when it arises. Consulting the CPS will almost certainly be appropriate when the related criminal matter is with the CPS for advice or prosecution, both to consider the risk of prejudice and manage any disclosure issues.

152. The appropriate authority should document the reasons why a complaint investigation is being suspended.

### **Securing evidence when an investigation is suspended**

153. The police have a duty to ensure evidence is secured both before and while the investigation is suspended. Prior to deciding to suspend an investigation there may be an opportunity to obtain witness statements by those not involved in the ongoing criminal investigation or proceedings. There is also unlikely to be any reason why, if the relevant criteria are satisfied, the relevant person(s) serving with the police cannot or should not be served with a notice of investigation. In addition, consideration should be given to progressing the complaint investigation in ways that significantly lessen or remove the risk of prejudice.

### **Advising the complainant**

154. The complainant should be advised in writing if the appropriate authority decides to suspend a complaint investigation.

155. If on being notified of the appropriate authority's decision to suspend the investigation the complainant wishes to make a statement he or she should be advised to consider taking legal advice to be fully aware of any legal implications.

Where a complainant wishes the complaint not to be subject of suspension, the police, in consultation with the CPS, may still decide not to take a statement if they believe it would prejudice the criminal proceedings. The reasons should be explained to the complainant.

156. Complainants who object to the suspension of the complaint investigation should be advised of their option of drawing the matter to the attention of the IPCC for consideration of its power to direct the investigation to continue.<sup>44</sup>

### **Misconduct proceedings**

157. The Home Office has given separate guidance about the position in relation to misconduct proceedings where there are possible or ongoing criminal proceedings against a person serving with the police.<sup>45</sup>

### **Ongoing review**

158. The decision to suspend a complaints investigation should be subject to periodic review in case there are significant changes to the case that mean the suspension should cease.

### **Resumption of complaint handling after criminal proceedings<sup>46</sup>**

159. The period of suspension should cease when the complainant/defendant is convicted or acquitted in the ongoing criminal proceedings. There will not normally be any prejudice caused by continuing the investigation before sentencing.
160. If after any period of suspension has ceased, the complainant has not been in touch, the appropriate authority should take reasonable steps to contact the complainant (or if applicable, his or her solicitor or other representative), about starting or restarting the suspended investigation. If there is no response, the appropriate authority should write to the complainant, giving 21 days for reply. The IPCC expects the appropriate authority to check whether the complainant is in prison, as this may have a bearing on the speed, practicality and means of communication, and any delay may not be due to an unwillingness to cooperate. If the complainant does not reply, the appropriate authority should take a view on whether it is in the public interest to pursue the investigation anyway as a conduct matter. If not, the appropriate authority can close the case and the complainant should be notified to that effect.

<sup>44</sup> Regulation 16(3), The Police (Complaints and Misconduct) Regulations 2004

<sup>45</sup> Paragraphs 2.27 to 2.34 Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008)

<sup>46</sup> Regulation 17, The Police (Complaints and Misconduct) Regulations 2004

161. In the case of a complaint that was referred to the IPCC and which the IPCC chose to supervise before suspension, the responsible investigator should write to the IPCC staff member supervising, setting out the action taken to contact the complainant before proposing to close the case. This enables the IPCC to decide if further action needs to be taken before the complaint is closed. This would be dealt with as a 'reasonable requirement.'<sup>47</sup>
162. If the IPCC receives an application for dispensation in these circumstances, it will be returned to the force or police authority to deal with as set out above (paragraph 160, page 54).

### ***Dispensation***

163. When an appropriate authority considers, before an investigation has started,<sup>48</sup> that no further action should be taken in relation to a complaint it must get IPCC agreement for a dispensation. The appropriate authority must notify the complainant of such an application for dispensation.<sup>49</sup>
164. Recordable conduct matters cannot be considered for dispensation.
165. If an appropriate authority considers that no further action should be taken on a complaint, recordable conduct matter or death or serious injury (DSI) matter after an investigation has started, it should apply to the IPCC for a discontinuance. See paragraphs 359-389 (page 97) for further information on applications to discontinue an investigation.

### **Grounds for dispensation<sup>50</sup>**

166. The grounds for applying for dispensation relate broadly to whether it is practicable to continue work on the complaint or if any injustice would arise from dealing with it. The grounds are as follows.

#### **Out of time**

167. A complaint is considered to be out of time if more than 12 months have elapsed between the relevant incident (or the latest incident) giving rise to the complaint and the making of the complaint, and either:

<sup>47</sup> Regulation 6, The Police (Complaints and Misconduct) Regulations 2004

<sup>48</sup> When a complaint or conduct matter is recorded, the appropriate authority must decide what to do with it: locally resolve it, apply for a dispensation or investigate (as appropriate)

From the point where there is a decision to investigate (and, for example, an investigator is appointed), the investigation should be regarded as having begun. If someone is appointed to carry out a local resolution under the Police Reform Act then he or she may gather information in relation to the incident. This does not mean that an investigation has begun.

<sup>49</sup> Schedule 3, Paragraph 7(2), Police Reform Act 2002 (as amended)

<sup>50</sup> Regulation 3(2), The Police (Complaints and Misconduct) Regulations 2004

- no good reason for the delay has been shown; or
  - injustice would be likely to be caused by the delay.
168. The logic of this test is important. It means that if 12 months have passed between the relevant incident and the complaint, and no good reason for the delay can be shown, a dispensation can be granted on this ground even where the delay is not likely to result in injustice. It also means that if 12 months have passed between the relevant incident and the making of the complaint and injustice is likely to be caused by the delay, a dispensation can be granted even though the delay happened with good reason. In either case it is not sufficient simply that 12 months have passed between the relevant incident and a complaint about it for a dispensation to be granted on this ground.
169. Injustice may be caused by a delay in making a complaint because, for example, the lapse of time will affect people's recollection of events and the availability of evidence. It is therefore important that complaints are made at the earliest opportunity to aid the effectiveness of the investigation. Each case will however be considered on its merits and the IPCC will take into account the complainant's reasons for the delay and reasons given by the appropriate authority as to why injustice is likely to result from the complaint.

#### Matters already subject of a complaint

170. A matter is considered to be already subject of a complaint where a complaint is made against the same officer originally complained of, relating to the same subject and by the same complainant.
171. The appropriate authority must provide evidence to the IPCC of the previous complaint(s) and explain how the current one is already the subject of a complaint.
172. Refer also to paragraphs 115-119 (page 45), which contain provisions about the recording of repetitious complaints.

#### Anonymous complainants

173. An anonymous complaint is one that does not disclose the complainant's name and address, or that of any other interested person<sup>51</sup> and it is not reasonably practicable to ascertain such a name or address.
174. Where possible, the appropriate authority should show evidence of any attempts

51 Section 21 of the Police Reform Act 2002 defines certain categories of people who are entitled to be kept informed about the handling of a complaint, conduct matter or DSI matter without having made a complaint. These are known as 'interested persons'.



made to find the identity of, and contact, the person making the complaint. The appropriate authority should allow time for the complainant to make contact before making an application for dispensation. The time allowed should be judged on a case by case basis but should be reasonable, taking into account the circumstances and subject matter of the complaint.

175. Where a complaint is dispensed with on the ground that it has been made anonymously, consideration should be given to whether it is appropriate to treat the subject of the complaint as a recordable conduct matter.

The complaint is vexatious, oppressive or an abuse of procedure

176. It is important to note that it is the complaint itself that must be judged vexatious, oppressive or an abuse, not the complainant. Evidence to support an application for dispensation on this basis should therefore focus primarily on the current complaint. The complainant's past complaint history may however be included where it is relevant to show that the current complaint is vexatious, oppressive or an abuse. The complaint history may be relevant, for example to show whether there have been a series of like complaints that have been addressed, either directed at the person subject to this complaint or another person.

177. Some assessment of the complaint may be required if the IPCC is to be satisfied that the complaint does indeed lack any foundation or amounts to an abuse. Information and explanation should be provided to support the application.

178. 'Vexatious' and 'oppressive' should be given their usual dictionary meaning. So, a vexatious complaint will be one without foundation which is intended, or tends, to vex, worry, annoy or embarrass. For a complaint to be vexatious, it does not have to be repetitious.

179. An oppressive complaint is without foundation and is intended, or likely, to result in burdensome, harsh or wrongful treatment of the person complained against.

180. An abuse of the complaints system will occur where there has been manipulation or misuse in order to initiate or progress a complaint which, in all the circumstances of the particular case, should not have been made or should not be allowed to continue. An abuse of process may take many forms. If, for example, a member of the family of someone serving with the police makes a complaint about something that has happened to the family member, this may be considered misuse of the system to progress a complaint that the person serving with the police could not make. Each case must however be judged on its merits and no overall rule for these circumstances should be applied.

181. The IPCC recognises that there will be instances where the complaints system is abused because the nature of the allegation made or the way it is put shows it to be demonstrably fantastical. For example, a person may claim that police are doing something which is impossible or appears fanciful. To devote significant time and resources to investigating such matters will be disproportionate and the IPCC will rarely refuse a dispensation from the need to progress further any recorded complaint of this sort where, after preliminary inquiries, the force can show it to be manifestly fantastical and a misuse of the complaints system.

#### Repetitious complaints

182. Guidance on the recording of repetitious complaints is given at paragraphs 115-119 (page 45). This guidance on dispensations covers circumstances where a complaint must be recorded despite it being repetitious or where it was not apparent that a complaint is repetitious at the time of recording.

183. A repetitious complaint is one which:
- is substantially the same as a previous complaint, even if it is made by someone other than the original complainant, or concerns substantially the same conduct as a previous conduct matter;
  - contains no new allegations which significantly affect the case; and
  - contains no new evidence to support the complaint.

184. However, one or more of the following pre-conditions must be met in relation to the previous complaint or conduct matter for consideration to be given to dispensing with the new complaint under this ground:
- the appropriate authority must have already submitted a memorandum outlining its intended actions following a managed or independent investigation, or must have determined what action it will take in relation to matters contained within a local or supervised investigation;
  - the complaint has been subject to a local resolution;
  - the IPCC has granted a discontinuance;
  - the complaint has been withdrawn;
  - the IPCC has granted a dispensation.<sup>52</sup>

185. The appropriate authority must provide evidence to the IPCC of the previous complaint(s) and how the current one is repetitious.

It is not reasonably practicable to investigate the complaint

186. It is not reasonably practicable to investigate a complaint when:

<sup>52</sup> Regulation 3(3), The Police (Complaints and Misconduct) Regulations 2004

- it is not practicable to communicate with the complainant or person acting on his or her behalf in order to proceed;
- a satisfactory investigation could not be carried out because the complainant is refusing or failing to cooperate;
- the lapse of time since the incident complained about is such that a satisfactory investigation could not be carried out.

187. In considering applications for dispensations the IPCC will consider whether:

- reasonable efforts were made to contact the complainant (i.e. more than one attempt) and to gain his or her cooperation, using a range of appropriate methods, for example by letter, email or telephone;
- efforts were made to work through the complainant's representative;
- practical help in supporting a complainant with specific needs was made available;
- the impact of the refusal or failure is sufficient to justify not proceeding with an investigation.

188. There are many reasons why it may not be practicable to communicate with the complainant or person acting on his or her behalf. The focus should always be on trying to resolve the complaint. Where there is sufficient information to proceed with an investigation of the complaint this should be carried out. If it is not possible to proceed without further communication with the complainant, it may be appropriate to apply for a dispensation.

189. Where a case has been suspended until the conclusion of criminal proceedings (see paragraphs 142-162, page 51), the complainant has failed to attend at court and a warrant has been issued for his or her arrest it may not be possible to start or resume an investigation. This does not automatically equate to failure to cooperate and does not provide grounds for an immediate application for dispensation. However, it is not proportionate to allow a complaint investigation to remain outstanding indefinitely. In such circumstances time should be allowed for the warrant to be executed before an application for dispensation is made. If submitting such an application for dispensation, the appropriate authority should be able to demonstrate that the time allowed has been reasonable, given the circumstances of the case. Each application submitted in these circumstances will be assessed on its own merits.



### **Examples**

- A complaint of excessive force during arrest has been suspended until the conclusion of related criminal proceedings. The complainant is due to appear before local magistrates in answer to charges relating to this case.

**Examples (continued)**

He fails to appear and a warrant for his arrest is issued. The following day a letter is sent to the complainant advising him that he must contact the police within 21 days or the assumption will be made that he no longer wishes to pursue his complaint and an application for dispensation will be submitted. *This application would not be granted. The delay at this stage is relatively short and there may be a valid reason why the complainant was unable to appear at court. Sufficient time should be allowed for the complainant to present himself or be detained on the warrant.*

- A complaint regarding a police officer's conduct during a vehicle stop has been suspended until the conclusion of criminal proceedings. The complainant is charged with a criminal offence and subsequently fails to attend a court hearing. A warrant is issued for his arrest which, six months later, is still outstanding. An application to dispense with the complaint is made on the ground that a satisfactory investigation could not be carried out due to a failure to cooperate by the complainant. There is no response from the complainant to correspondence sent by the IPCC following the application. *This application would be granted. The application has been made a reasonable time following the issue of the warrant and there has been no communication from the complainant or his representatives in the intervening period.*

**Partial dispensations**

190. Where a complaint is made up of multiple parts, only some may be suitable for dispensation. For example, some aspects of a complaint may be repetitious while others are not. In such cases an application may be made to dispense with some of the complaint.

**How is a discontinuance different from a dispensation?**

191. There are a number of differences:
- A discontinuance relates to stopping an investigation which has already started, whereas a dispensation relates to stopping the complaints process before an investigation begins.
  - When applying for a discontinuance, the appropriate authority must send a copy of the application form to the complainant on the same day that it is sent to the IPCC.<sup>53</sup> For dispensations, the appropriate authority must tell the

<sup>53</sup> Regulation 7(5), The Police (Complaints and Misconduct) Regulations 2004

complainant about the application: the IPCC expects this to occur within five days of the application being made but it does not necessarily have to be on the same day that the application is sent to the IPCC.

- There are some different grounds where the appropriate authority can apply for a discontinuance rather than a dispensation, specifically those of ‘local resolution’ and ‘non cooperation’ for a discontinuance, and ‘out of time’, ‘anonymous’ and ‘already subject of a complaint’ for a dispensation.
- Discontinuances apply to both complaints and recordable conduct matters, whereas dispensations only apply to complaints.
- If necessary and relevant, it is possible to make more than one application to discontinue for the same investigation if the first fails, whereas there can only be one application to dispense with the need to take further action in relation to a complaint.

192. Guidance on discontinuances can be found at paragraphs 359-389 (page 97).

193. If an application for dispensation should have been made as an application for discontinuance, the application will be returned, with this explained.

#### **Dispensations: information checklist**

194. The application for dispensation must include:
- a copy of the complaint;
  - the reasons for making the application, including the ground under which it is made;
  - where the complaint is repetitious, a copy of the previous complaint and a copy of any record of any resolution, withdrawal or dispensation of that complaint;
  - copies of any other documents in the possession of the appropriate authority which is relevant to the complaint. This could include:
    - a) other evidence in support of the application;
    - b) evidence of any contact with the complainant (in the case of phone calls this could be in the form of a note of the conversation);
    - c) evidence that reasonable efforts have already been made to contact a complainant and look into the complaint;
    - d) evidence of responding to any special needs a complainant might have – for example around language, disability, age, illness – to enable an investigation to go ahead. For example, was an attempt made to engage an appropriate adult?;
    - e) evidence of attempts to meet any reasonable conditions set by a complainant for cooperation with the complaints process.

## **Repeat applications**

195. Only one application for dispensation may be made in relation to any complaint.

## **Action to be taken after an application for dispensation has been granted**

196. When the IPCC has granted an application for dispensation, the appropriate authority can either handle the complaint as it sees fit or take no further action in relation to the complaint. The appropriate authority may therefore take no further action, deal with it as a recordable conduct matter or choose to continue handling the matter as a complaint, for example if further information is received after the application has been granted.<sup>54</sup>

## ***Referrals to the IPCC***

197. Increasing public confidence in the independence, accountability and integrity of the police complaints system will depend on the public seeing an effective response to the most serious incidents. The appropriate authority must refer to the IPCC specified complaints or incidents that could damage public confidence in policing. Mandatory referrals, along with other cases that the appropriate authority may decide to refer to the IPCC, help the police to demonstrate openness. These arrangements ensure that the IPCC can oversee such investigations with the appropriate level of external involvement.

## **Information required and timescales**

198. Forces and police authorities must refer complaints or incidents as soon as practicable and in any case no later than the end of the day after the day when it becomes clear that a matter must be referred. The IPCC provides a 24-hour on-call facility for referrals.
199. Referrals to the IPCC must not delay any initial action by the police in terms of incident scene management or securing or preserving evidence.
200. The provision of information relevant to the referral at the time of making it is vital to help ensure a timely decision making process.
201. Forces and police authorities should ensure that they are aware of the operational model agreed between the IPCC and ACPO which sets out the timescales for referring matters in which Article 2 is or may be engaged.

<sup>54</sup> Schedule 3, Paragraph 7(5)(b), Police Reform Act 2002 (as amended)

**Mandatory referrals**

202. The appropriate authority must refer any complaint where there is an allegation that the conduct complained of has resulted in death or serious injury (DSI).<sup>55</sup> This includes any complaint that alleges that the police failed to take action which could have prevented someone's death. The appropriate authority also has a duty to refer a recordable conduct matter if it relates to an incident or circumstances in which any person has died or suffered serious injury,<sup>56</sup> for example lack of response to a missing person report or threats to someone's life.
203. The appropriate authority must also refer complaints and conduct matters that include the following allegations:<sup>57</sup>
- serious assault by a person serving with the police (see paragraphs 206-208, page 63);
  - serious sexual assault by a person serving with the police (see paragraphs 209-210, page 64);
  - serious corruption (see paragraphs 211-212, page 65);
  - criminal offence or behaviour which is liable to lead to a disciplinary sanction and which, in either case, is aggravated by discriminatory behaviour (see paragraphs 213-214, page 65);
  - that a 'relevant offence' has been committed (see paragraph 215, page 66);
  - complaints or conduct matters which are alleged to have arisen from the same incident as anything falling within these criteria.
204. An explanation of these categories is given in paragraphs 206-216 (page 63).
205. Where there is doubt about whether a complaint or incident falls within the mandatory criteria, the IPCC encourages referral. The appropriate authority can seek IPCC advice about general policy on referrals but not in relation to a particular case: it must be referred for decision. The general test is whether the failure of the IPCC to intervene will undermine public confidence in the complaints system.

**Definitions of referral criteria<sup>58</sup>**Serious assault<sup>59</sup>

206. The term 'serious assault' is interpreted in accordance with the charging guidelines agreed between the CPS and ACPO in relation to assault occasioning

<sup>55</sup> Schedule 3, Paragraph 4(1)(a), Police Reform Act 2002 (as amended)

<sup>56</sup> Schedule 3, Paragraph 13(1)(a), Police Reform Act 2002 (as amended)

<sup>57</sup> Regulation 2(2) and 5(1), Police (Complaints and Misconduct) Regulations 2004

<sup>58</sup> Schedule 3, Paragraphs 4 and 13, Police Reform Act 2002 (as amended)

<sup>59</sup> Regulation 2(2)(a)(i) and Regulation 5(1)(a), Police (Complaints and Misconduct) Regulations 2004

actual bodily harm contrary to Section 47 of the Offences Against the Person Act 1861, the terms of which are set out below:

1. The offence is committed when a person assaults another, thereby causing actual bodily harm to that other person.
2. It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment and/or an unlimited fine. Summarily, the maximum penalty is six months' imprisonment and/or a fine not exceeding the statutory maximum.
3. The only factor in law that distinguishes a charge under Section 39 (common assault) of the Criminal Justice Act 1988 from one under Section 47 is the degree of injury. By way of example, the following injuries should normally be prosecuted under Section 47:
  - loss or breaking of a tooth or teeth;
  - temporary loss of sensory functions (which may include loss of consciousness);
  - extensive or multiple bruising;
  - displaced broken nose;
  - minor fractures;
  - minor, but not merely superficial, cuts of a sort probably requiring medical attention (e.g. stitches);
  - psychiatric injury that is more than fear, distress or panic (such injury will be proved by appropriate expert advice).

207. Where a complaint alleges, or conduct results in, a serious injury that amounts to or is more serious than assault occasioning actual bodily harm as laid out above, this should be referred to the IPCC under the serious injury referral criteria.

208. Although any injury can be classified as actual bodily harm, where the injuries amount to no more than the following, as a general rule there is no need to refer to the IPCC:

- grazes;
- scratches;
- abrasions;
- minor bruising;
- swellings;
- reddening of the skin;
- superficial cuts;
- a black eye.

#### Serious sexual offences<sup>60</sup>

209. The term 'serious sexual offences' includes all offences under the Sexual Offences Acts 1956 to 2003 that are triable only on indictment and any other offences

<sup>60</sup> Regulation 2(2)(a)(ii) and Regulation 5(1)(b) Police (Complaints and Misconduct) Regulations 2004



under these Acts which appear, to an appropriate authority, to be an offence where a magistrates' court would be likely to decline jurisdiction.

210. Any attempt, incitement or conspiracy to commit any offence referred to above must be referred to the IPCC.

#### Serious corruption<sup>61</sup>

211. The term 'serious corruption' refers to conduct that includes:
- any attempt to pervert the course of justice or other conduct likely seriously to harm the administration of justice, in particular the criminal justice system;
  - payments or other benefits or favours received in connection with the performance of duties amounting to an offence in relation to which a magistrates' court would be likely to decline jurisdiction;
  - corrupt controller, handler or informer relationships;
  - provision of confidential information in return for payment or other benefits or favours where the conduct goes beyond a possible prosecution for an offence under Section 55 of the Data Protection Act 1998;
  - extraction and supply of seized controlled drugs, firearms or other material;
  - attempts or conspiracies to do any of the above.
212. Where necessary, referrals in relation to serious corruption should be made in line with the referral of corruption investigations protocol between the IPCC and ACPO. This protocol has been distributed to heads of professional standards departments, who can make it available to any suitably authorised person.

Criminal offences and behaviour liable to lead to a disciplinary sanction and which in either case is aggravated by discriminatory behaviour<sup>62</sup>

213. This refers to any criminal offence or other behaviour liable to lead to a disciplinary sanction that is aggravated by discrimination on the grounds of a person's:
- race;
  - gender;
  - religion;
  - actual or perceived sexual orientation;
  - disability, whether physical or mental;
  - age.
214. Further information relating to dealing with allegations of discriminatory behaviour can be found in Annex B (page 172).

<sup>61</sup> Regulation 2(2)(a)(iii) and Regulation 5(1)(c), Police (Complaints and Misconduct) Regulations 2004

<sup>62</sup> Regulation 2(2)(a)(iv) and Regulation 5(1)(d), Police (Complaints and Misconduct) Regulations 2004

### Relevant offence<sup>63</sup>

215. A 'relevant offence' is defined as any offence for which the sentence is fixed by law and any offence for which a person of 18 years and over (not previously convicted) may be sentenced to imprisonment for seven years or more (excluding any restrictions imposed by Section 33 of the Magistrates Court Act 1980).<sup>64</sup>

### Serious injury

216. The term 'serious injury' means a fracture, deep cut, deep laceration or injury causing damage to an internal organ or the impairment of any bodily function.

### DSI matter referrals

217. Where there is no complaint or recordable conduct matter the appropriate authority still has a duty to record and refer DSI matters. See definition and examples at paragraph 47 (page 28).
218. The definition of 'serious injury' to be employed when handling a possible DSI matter is set out in paragraph 216 (page 66).

### Voluntary referrals

219. The IPCC encourages appropriate authorities to refer complaints or incidents that do not come under the mandatory referral categories but where the gravity of the subject matter or exceptional circumstances justify referral. This may be, for example, because the complaint or incident could have a significant impact on public confidence, the appropriate authority has specific concerns about a matter or it is felt there is a need for independent involvement in the investigation.
220. In addition to police authorities' duty to refer serious complaints or conduct matters about ACPO rank officers as set out above, the IPCC encourages them to refer a complaint or conduct matter relating to any member of the police force they maintain if there are particular concerns about its seriousness or exceptional circumstances.<sup>65</sup>

<sup>63</sup> Regulation 2(2)(a)(v) and Regulation 5(1)(e), Police (Complaints and Misconduct) Regulations 2004

<sup>64</sup> Regulation 1(2), Police (Complaints and Misconduct) Regulations 2004

<sup>65</sup> Schedule 3, Paragraph 4(3), Police Reform Act 2002 (as amended)

## ***Other issues to consider in relation to the referral of cases to the IPCC***

### **Articles 2 and 3 of the European Convention on Human Rights**

221. When considering any complaint, conduct matter or DSI matter, forces and police authorities will need to be mindful of Articles 2 and 3 of the European Convention on Human Right (ECHR).

#### ***Article 2***

222. Article 2 of the ECHR sets out that everyone's right to life shall be protected by law. It places an obligation on the state not to take life, to protect life and to ensure there is an effective official investigation into deaths resulting from the activities of state bodies.

223. Cases when Article 2 may be engaged are those where there is:

- fatal use of force;
- potentially fatal use of force;
- a death in custody or while under arrest;
- attempted suicide while in custody or under arrest resulting in life threatening injury;
- a failure by the state to investigate adequately criminal use of force by a third person resulting in a death where the state knew or ought to have known that there was a real and immediate risk to the life of the deceased from the criminal actions of a third party and failed to take reasonable steps to prevent the death.

224. It may also be engaged in fatal road traffic incidents involving the police.

225. There is an obligation on the state to ensure that an effective official investigation is carried out where there is a death or (in certain circumstances) serious injury involving, or possibly involving, a breach of Article 2. The form of the investigation is flexible, but it must be prompt, independent and involve a degree of public scrutiny.

226. Any case which engages Article 2 of the ECHR must be referred to the IPCC.

#### ***Article 3***

227. Article 3 of the ECHR sets out that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. It places an obligation on the state not to inflict such treatment on any individual and to ensure there is an effective official investigation into any breach(es) of Article 3.

228. An effective investigation is required where there is an arguable breach of Article 3. When deciding whether there is an arguable breach the courts have to date taken the following into account:
- whether there is a credible claim;
  - whether the injury sustained (be it physical or psychological) attained a minimum level of severity;
  - whether the treatment was strictly necessary owing to the conduct of the person subject to it.
229. Each case will need to be considered on an individual basis. However, police forces and police authorities should be aware that case law suggests the minimum level of severity threshold for engagement of Article 3 is relatively low. Some examples of the Court's findings in respect of Article 3 matters are provided below, but forces and police authorities should ensure that they keep up to date with case law developments in this area.



### **Examples of case law relevant to Article 3 of the ECHR**

- In *Ribitsch v Austria* (1996) 21 EHRR 573 [38] the European Court of Human Rights held that any recourse to physical force against an individual in detention which is not made strictly necessary due to his own conduct diminishes his dignity and is in principle a breach of Article 3.
- In *Lewandowski v Poland App. 15562/02* the Court held that the above principle also applies to cases of alleged ill-treatment on arrest. It further held that when an individual is taken into custody in good health but is found to be injured on release, it is incumbent on the state to provide a plausible explanation of how his injuries were caused and that an inability or failure to do this will raise issues under Article 3.
- In the case of *Assenov v Bulgaria* (1999) 28 EHRR 652 the Court concluded that the degree of bruising which had been sustained by the claimant, who alleged that he had been assaulted by police following his arrest, was sufficiently serious to amount to ill treatment under Article 3. Similarly, in the case of *Saya v Turkey App. No. 4327/02* the Court found that the injuries of bruising, tenderness and scratches sustained by claimants who alleged excessive force had been used during arrest, amounted to a breach of Article 3.
- In *Rachwalski and Ferenc v Poland App. No. 47709/99* the Court held that treatment may be considered degrading if it arouses in an individual

***Examples of case law relevant to Article 3 of the ECHR (continued)***

feelings of fear, anguish and inferiority capable of humiliating and debasing that person. However, it held that to be considered degrading, the treatment had to attain a minimum level of severity. It further held that the minimum level of severity is relative and needs to be assessed having regard to the circumstances of the individual case.

230. A case that engages Article 3 may involve one or more of the mandatory referral criteria. Clearly in those circumstances the matter must be referred.

**Apparent suicides following release from custody**

231. An ‘apparent suicide’ is a case where a coroner’s verdict has not been made. It refers to cases where the circumstances suggest that death was the intended outcome of a self-inflicted act. The referral of apparent suicides following release from custody does not imply police culpability. It will contribute to learning and development of future policies and procedures for handling detainees, particularly those with mental health needs.
232. In order to check whether the contact caused or contributed to the death or serious injury, all suicides that occur within 48 hours of release from police custody should be referred to the IPCC. This excludes deaths that occur in a secure setting such as a prison, which need only be referred if any specific issues become apparent about the nature of contact between the police and deceased prior to the person’s death.
233. For apparent suicides that occur longer than 48 hours after release, including those following transfer to a prison or other secure setting, consideration should be given to whether there is a possible causal link between the apparent suicide and a period spent in police custody. Where there are concerns about any of the following areas, the IPCC expects the matter to be referred:
- the time spent in custody or the conduct of police officers or police staff;
  - mention of the period in custody in a suicide note;
  - adherence to policy and procedures during the time in custody;
  - transfer of information between agencies;
  - known risks, including previous suicide attempts or self-harm, and action taken in relation to these;
  - whether suitable medical treatment was provided;
  - whether any concerns raised about the individual’s mental state were addressed;
  - whether any issues about the individual’s safety were adequately addressed;

- evidence or likelihood of media or community interest or concern regarding the period of custody or circumstances of death;
- adherence to PACE Code C or other regulations or guidance;
- issues relating to police officer or police staff conduct or duty of care that need further investigation.

234. All deaths in prison custody fall within the jurisdiction of the Prison and Probation Ombudsman (PPO) for investigation. The police have an initial duty to inquire into the circumstances surrounding the death. If, at any point during their investigations or those of the PPO, any issues are raised about whether the contact between the police and the deceased prior to his or her death caused or contributed to the death, then the death must be referred to the IPCC.

## **Near misses**

235. A 'near miss' is a term commonly used to describe an incident where there was a risk of death or serious injury occurring (often where a person was detained in custody) but this was prevented or avoided. In the absence of death or any serious injury, and if there is no referable complaint or recorded conduct matter arising from the incident, the circumstances are not likely to be within the DSI definition. However, if a force is not certain that this is so, then the IPCC expects the matter to be referred.

## **Agreements to refer specific other matters**

236. From time to time, the IPCC has identified certain types of cases or characteristics of cases which are relevant for it to have referred by forces and police authorities as a matter of course even though the mandatory referral criteria may not apply. This may be because a particular type of complaint or incident is causing public concern or proving difficult for forces to investigate locally. Where it identifies such characteristics, the IPCC will consult with ACPO and agree specific operational advice to specify and govern such referrals.

## **IPCC called in matters**

237. The IPCC has the power to call in particular cases of concern or sensitivity that might not otherwise be referred to it.<sup>66</sup> The IPCC may call a case in at any time. This may occur where the IPCC is notified directly by a complainant or other person of a case which has not been referred to it, where concerns have arisen about a case which has previously been referred and sent back for the appropriate authority to deal with or where media coverage has drawn attention to a case.

<sup>66</sup> Schedule 3, Paragraph 4(1) and Paragraph 13(1), Police Reform Act 2002 (as amended)

## IPCC mode of investigation decisions

238. The IPCC assesses the seriousness of the case and the public interest and determines the form of investigation.<sup>67</sup>
239. The IPCC aims to decide the form of investigation within two working days. If the appropriate authority is able to provide full information at the time of referral it will help towards a faster decision. In some circumstances a mode of investigation decision may be made almost immediately, particularly where the IPCC needs to take control of the scene of an incident. Sometimes the decision will take longer than two days because of particular factors in a case.

### Independent investigations

240. IPCC staff conduct independent investigations into incidents that cause the greatest level of public concern, have the greatest potential to impact on communities or have serious implications for the reputation of the police service. In independent investigations, IPCC investigators have the powers of a police constable. There is no right of appeal to the IPCC against the outcome of an independent investigation.<sup>68</sup>

### Managed investigations

241. A managed investigation is conducted by the police under the direction and control of the IPCC when an incident or a complaint or allegation of misconduct is of such significance and probable public concern that the investigation needs to be under the direction and control of the IPCC but does not need an independent investigation. The IPCC is responsible for setting the terms of reference for the investigation in consultation with the force or police authority carrying it out. A Commissioner agrees the terms of reference and approves the choice of investigator, who is nominated by the appropriate authority. IPCC staff manage the investigation and receive regular progress reports. Overall responsibility for the investigation lies with the IPCC; however tasks such as completing the policy log and writing the final report will be carried out by the police investigator under the IPCC's direction. The IPCC manager will review policy books and the IPCC will sign off the final report to confirm the investigation has met the terms of reference. There is no right of appeal to the IPCC against the finding of a managed investigation.<sup>69</sup>

### Supervised investigations

242. A supervised investigation is conducted by the police when the IPCC decides that

<sup>67</sup> Schedule 3, Paragraph 15, Police Reform Act 2002 (as amended)

<sup>68</sup> Schedule 3, Paragraph 19, Police Reform Act 2002 (as amended)

<sup>69</sup> Schedule 3, Paragraph 18, Police Reform Act 2002 (as amended)

an incident or a complaint or allegation of misconduct is of less significance and probable public concern than for an independent or managed investigation, but oversight by the IPCC is appropriate. The IPCC approves the choice of investigator and agrees the terms of reference and investigation plan; both are drafted by the force or police authority responsible for the investigation. A process for regular review, including risk assessment, may be agreed at the outset, depending on the nature and scale of the investigation, and included in the terms of reference. In these cases any changes should be recorded. Responsibility for maintaining the record of decisions and for conducting a timely investigation rests with the force or police authority. The IPCC may impose any reasonable requirements relating to the conduct of an investigation it is supervising it feels are necessary.<sup>70</sup> A complainant also has the right of appeal to the IPCC against the findings of the investigation (among other grounds) at the end of the investigation.<sup>71</sup>

### Local investigations

243. A local investigation is appropriate where the IPCC concludes that none of the factors identified in terms of the seriousness of the case or public interest exist and that the appropriate authority has the necessary resources and experience to carry out an investigation without external assistance. A complainant has the right of appeal to the IPCC against the findings of the investigation (among other grounds) at the end of the investigation.<sup>72</sup> Where the IPCC has made the decision that a local investigation should be carried out, a complaint should not be locally resolved unless the IPCC has granted an application for discontinuance on the ground that the complainant agrees to local resolution (see paragraphs 365-368, page 99) and, where necessary, an application for local resolution (see paragraphs 288-291, page 81).

### Referral back to the appropriate authority

244. If the IPCC decides that there is no need for it to investigate a complaint or conduct matter, this will be referred back to the appropriate authority. In the case of a complaint this should be handled as though the complaint had not been referred, through either local resolution, local investigation or, if applicable, an application for dispensation.<sup>73</sup> A recordable conduct matter, when referred back, may be dealt with in whatever manner the appropriate authority sees fit.<sup>74</sup>

### Changes to the mode of investigation

245. The IPCC adopts a flexible approach to allow the mode of investigation to change

<sup>70</sup> Regulation 6, The Police (Complaints and Misconduct) Regulations 2004

<sup>71</sup> Schedule 3, Paragraph 25, Police Reform Act 2002 (as amended)

<sup>72</sup> Schedule 3, Paragraph 25, Police Reform Act 2002 (as amended)

<sup>73</sup> Schedule 3, Paragraph 5(2), Police Reform Act 2002 (as amended)

<sup>74</sup> Schedule 3, Paragraph 14(2), Police Reform Act 2002 (as amended)



as appropriate,<sup>75</sup> therefore the mode of investigation could be subject to change as new information comes to light during the course of an investigation. Where new information is found during the course of an investigation by the appropriate authority that raises additional concerns, the appropriate authority should consider whether re-referral to the IPCC is appropriate. An ongoing investigation may also be discontinued.<sup>76</sup> For more information in relation to discontinuances see paragraphs 359-389 (page 97).

## **Right of appeal**

246. Many matters referred to the IPCC by the appropriate authority involve no complaint. Where a decision is made to hold a supervised or local investigation, a right of appeal following that investigation exists only for someone who has made a complaint. In these cases the IPCC will inform people who would be entitled to make a complaint related to the incident being investigated of that right so that, should they wish to do so, they can make a complaint and obtain the rights of a complainant, including a right of appeal. No inference should be drawn in these circumstances about the IPCC's view of the incident.
247. There is no right of appeal against the outcome of a managed or independent investigation.

<sup>75</sup> Schedule 3, Paragraph 15(5), Police Reform Act 2002 (as amended)

<sup>76</sup> Schedule 3, Paragraph 21, Police Reform Act 2002 (as amended)

## Chapter 3: **RESOLVING**



### **PRINCIPLES**

248. Resolving a complaint should be informed by the following general principles:
- Deal with the reason for someone's dissatisfaction, not just who may be to blame.
  - Try, where possible, to be restorative in approach, putting things right when these are shown to have gone wrong.
  - Be and be seen to be fair and impartial when dealing with a complainant and the person complained against.
  - Be proportionate in handling the complaint and when reaching conclusions and recommendations.
  - When a complaint is upheld, identify responsibility and, where justified, hold to account.
  - Respond to a complaint efficiently and in a timely manner.
  - Be as open and transparent as possible.
  - Identify and disseminate learning for national and local policing.

#### ***Deal with the dissatisfaction***

249. Attempts at resolving a complaint should try to find the reason for the person's dissatisfaction and what the police need to do in order to put that right. In order to achieve this, some allegations may need to be investigated in order to establish what happened and why and whether there are any grounds for complaint.

#### ***A restorative approach***

250. If the complaint is found to be justified, a restorative approach should be pursued which is proportionate to what is alleged to have gone wrong. If something remains to be done to put it right, try to do this as soon as possible. Expectations should have been carefully managed. An early apology explaining how lessons have been learned when things have gone wrong or could have been done better will often be enough to restore the complainant's confidence. The complaints system is not able to provide a complainant with financial compensation but anyone seeking this should be told to whom a claim should be made and where they may obtain help when doing so.

### ***Fair procedures***

251. An investigation must be and be seen to be even-handed and impartial between the complainant and police officer(s) or police staff complained against. Practice should be as consistent as possible between similar cases and be non-discriminatory. The complainant should end his or her contact with the complaints system feeling he or she has been listened to and given a clear explanation of what happened and why, and that all the complaints have been addressed in a fair and impartial way. Those complained against should feel that they have been listened to with their concerns properly considered.

### ***Be proportionate in approach and judgement***

252. The resources and time devoted to responding to a complaint should be proportionate to its seriousness, the available evidence and public interest in the case. When reaching conclusions and proposing recommendations consideration should be given to what amounts to a proportionate response.

### ***Hold to account***

253. The public expects an effective complaints system to hold to account those justifiably complained against (and by implication their employing organisation) for the way in which they deal with the public.

### ***Efficient, timely case management***

254. Efficiency is an important factor that influences a complainant's perception of how carefully his or her complaint has been handled and whether it was worth the trouble involved in making it. It will also affect the perceptions held by police officers and police staff subject to investigation.

### ***Transparency and openness***

255. The IPCC believes that making the police complaints system as open and transparent as possible will encourage the public to have confidence that complaints will be handled fairly and misconduct or unsatisfactory performance dealt with effectively. There is a compelling public interest in demonstrating how those serving with the police are accountable to the public, even where disclosure may publicise failures in policing or poor conduct by police personnel.

- 256. Openness, when put into practice, will also demonstrate the integrity and thoroughness of an inquiry to police officers and police staff who are subject to investigation, misconduct proceedings or action to tackle unsatisfactory performance.
- 257. The IPCC adopts a working principle that information should be made available unless there is a valid restriction or constraint on doing so, such as the real risk of harm that might result. It expects the police to employ the same principle when determining whether information should be disclosed.
- 258. People have differing communication needs and care should be taken to identify these and, where practicable, respond to them.

### ***Learning for national and/or local policing***

- 259. Where a complaint is shown to be justified, feedback and learning is essential to help ensure that a future situation will be dealt with differently. Visible and effective systems for passing back lessons will have a positive impact on the wider public reputation and standing of the force and the wider police service.

## **PRACTICAL GUIDANCE**

### ***Local resolution***

#### **The importance of local resolution**

- 260. Local resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant.
- 261. Local resolution can be a proportionate, timely and effective way of resolving many complaints. It is a simple and flexible way for people to tell the police what happened and find out why it happened. The complainant's acceptance of the outcome should be the objective of any local resolution process.
- 262. Local resolution is not a disciplinary process. It will not lead to any disciplinary proceedings against a police officer or member of police staff and the complaint will be closed after the process has been completed. This does not however prevent a manager from taking management action if appropriate.

### **Complaints suitable for local resolution**

263. A complaint is only suitable for local resolution in the first instance if the conduct which is being complained about (even if it were proved) would not justify bringing any criminal or disciplinary proceedings.<sup>77</sup>
264. If a complaint does not meet these conditions there are circumstances in which the appropriate authority may apply to the IPCC for permission to carry out local resolution. Further information on applications for local resolution can be found in paragraphs 288-291 (page 81).

### **Informed consent**

265. The complainant's consent is required in order to proceed with a local resolution process.<sup>78</sup> A recommended way of ensuring that a complainant is fully informed about local resolution before gaining his or her consent is by giving the complainant a copy of the IPCC's local resolution leaflet and discussing its salient points, including the right of appeal. The complainant should not feel under pressure to consent to local resolution.
266. The IPCC expects additional efforts to be made to ensure that consent is informed where there are particular difficulties due to, for example, complainant disability, mental health problems or differences of language.
267. An important aspect of the complainant making an informed decision to participate is about understanding what outcome is not possible from local resolution, i.e. that it is not a route to disciplinary proceedings against a police officer or police staff member.
268. Once consent has been given and the local resolution process started, the consent cannot be withdrawn.

### **Communication**

269. During a local resolution process, the person complained against should be given the opportunity, as soon as practicable, to give his or her comments about the complaint.<sup>79</sup> He or she should also be given a copy of the written record of the result of the local resolution process as soon as practicable following the conclusion of the process.<sup>80</sup>

<sup>77</sup> Schedule 3, Paragraph 6(3), Police Reform Act 2002 (as amended)

<sup>78</sup> Schedule 3, Paragraph 6(3), Police Reform Act 2002 (as amended)

<sup>79</sup> Regulation 4(3), Police (Complaints and Misconduct) Regulations 2004

<sup>80</sup> Regulation 4(6), Police (Complaints and Misconduct) Regulations 2004

## Statements

270. A statement made by any person in local resolution is not admissible in any subsequent criminal, civil or disciplinary proceedings (except where it is an admission to a matter that was not part of the local resolution).<sup>81</sup> As this is not an investigation process there is no need to issue notification of investigation to the person complained against.

## General principles

271. The skills needed for dealing with complaints through local resolution are different to those required for criminal investigations and include problem-solving and customer service. Many complaints will be handled at a local managerial level rather than within professional standards departments. First and second line managers and supervisors should be given an appropriate level of training and support to enable them to deal with complaints confidently and professionally.

272. Successful use of local resolution depends on voluntary participation by the complainant, which will rest on the complainant and the person dealing with the complaint arriving at a shared understanding of:

- the complainant's expectations;
- what action by the appropriate authority would be proportionate in response to the complaint;
- what practical action can and cannot be taken about an individual's behaviour or broader force practice;
- what process will be followed, and by whom, in resolving the complaint;
- the means and frequency of communication during the local resolution process.

273. Wherever possible the appropriate authority should outline for the complainant what practical action or force learning may come out of the complaint. It is important that appropriate authorities can demonstrate to complainants and communities that local resolution feeds back into improved police practice.

274. The IPCC expects a performance management approach to local resolution that tackles capability issues and focuses on lessons for improved policing.

275. In order to encourage participation by police officers and police staff, appropriate authorities should send clear messages to them that local resolution is about:

- dealing with complaints at a local managerial level to improve services expected by the public;

<sup>81</sup> Schedule 3, Paragraph 8(3), Police Reform Act 2002 (as amended)

- being willing to acknowledge when something could have been done differently or handled better;
- listening to the concerns of police officers and members of police staff;
- accepting that being the subject of a legitimate complaint is a risk in a high visibility, high response public service;
- following up public concerns;
- talking to communities at a local level about what forces have learned from complaints;
- individual learning and development; but
- NOT about discipline.

276. Where a pattern of behaviour is identified in an officer or staff member, the person making the initial assessment of the complaint should consider carefully whether local resolution is appropriate. Local resolution would be the proportionate response, for example, to a complaint of incivility but if there have been similar or previous complaints that have also been locally resolved the IPCC encourages the appropriate authority to consider whether there are underlying reasons for the pattern of behaviour. This may be about supervision as well as the individual's behaviour, and learning from the complaint could be used to improve performance and reduce risk of recurrence.
277. Where a local resolution brings to light a separate matter that justifies criminal or disciplinary proceedings, as long as this matter was not subjected to local resolution it should follow the same process as any other conduct matter.
278. Where it becomes apparent during the course of a local resolution that it is not possible to resolve the complaint in that way, or the complaint is not suitable for local resolution, arrangements should be made for the complaint to be investigated.

## Methods

279. Local resolution is a flexible process that may be adapted to the needs of the complainant and the individual complaint. The important point is that a complainant is clear how it will work for him or her and is in agreement with the steps to be taken to resolve the complaint. Local resolution may include:
- resolution over the counter or by telephone after the complaint has been recorded;
  - providing information;
  - an apology on behalf of the appropriate authority (see paragraphs 450-453, page 119, for more information on apologies);
  - concluding the matter through correspondence explaining the circumstances

of a case and action taken;

- individual communication between the complainant and the person complained about, via the manager handling the complaint;
- an apology made by the manager or the professional standards department on behalf of an individual (who has to have admitted the conduct and agreed to make an apology)<sup>82</sup> (see paragraphs 450-453 on page 119 for more information on apologies);
- a face to face meeting between the complainant and the person complained about, mediated by the manager handling the complaint or by another person agreed by all parties.

280. The detail of how a specific complaint will be locally resolved is best documented in an action plan that outlines the agreed steps. The aim of local resolution is the complainant's acceptance of the outcome, and this must be the clear intent behind any action plan. To this end any step in an action plan must be both effective and achievable. For example, a commitment that 'the person you complained about will be spoken to' is not sufficiently specific to be effective in achieving the resolution of a complaint. Likewise, a commitment that an officer or police staff member will apologise is not necessarily achievable and it should not be assumed that he or she will be willing to provide an apology when writing the action plan.
281. All steps in an agreed action plan should be completed before a local resolution concludes, unless the complainant agrees to a revision of the plan.
282. Communicating the outcome of a local resolution to the complainant is a necessary part of the local resolution process. A copy of the completed action plan should be included and the complainant should be informed of the action taken.
283. While local resolution should not become unduly bureaucratic, there must be a minimum level of auditable record with respect to the process followed. In many circumstances this may mean a complainant's signature against:
- informed consent to the process;
  - the proposed action plan;
  - completion of the action plan.
284. It is recognised that signed documentation will be neither necessary nor desirable in every circumstance. For example, local resolution may be conducted verbally. Verbal agreements should be documented for the file and a copy sent to the complainant to give him or her an opportunity to respond to what has been recorded. Email correspondence may also provide an auditable record of

<sup>82</sup> Regulation 4, The Police (Complaints and Misconduct) Regulations 2004



agreement. However, it should be noted that where there is a dispute over the complainant having given consent, a lack of evidence of agreement could lead to an appeal against local resolution being upheld on this basis.

285. Although the consent of the officer or member of police staff against whom the complaint is made is not required, he or she should at a minimum be informed at the earliest possible opportunity that a complaint has been made against him or her, that it is being dealt with by local resolution and, at the end of the process, how the matter was eventually resolved. This information may be conveyed in writing or verbally with an appropriate note made.

### **Timescales**

286. It is important to carry out local resolution in a timely manner. However, resolution is more important than timescale and some cases may take longer to resolve than others because of the individual circumstances. The likely timescale should be part of the explanation of what is going to happen about the complaint.
287. To ensure a consistent approach to recording time taken in individual cases, appropriate authorities should follow the guidance on recording standards in Annex A (page 150).

### ***Applications for local resolution***

288. In any case where the complaint does not meet the test for local resolution as described above, an application may be made to the IPCC for permission to resolve the complaint locally. The IPCC may approve the use of local resolution for any complaint as long as it is satisfied that:
- criminal proceedings would not be justified and any misconduct proceedings that would be justified would be unlikely to result in the person complained against being dismissed or given a final written warning; or
  - it would not be practicable to bring criminal proceedings that would be likely to result in a conviction or misconduct proceedings likely to result in the person complained against being dismissed or given a final written warning.<sup>83 84</sup>

<sup>83</sup> Schedule 3, Paragraph 6(4), Police Reform Act 2002 (as amended)

<sup>84</sup> In a case where the complaint was made prior to 1 December 2008, the test is that either:

(a) the conduct complained of (even if proved) would not justify the bringing of criminal proceedings and that any disciplinary proceedings brought in relation to the conduct would be unlikely to result in a dismissal, requirement to resign or retire, a reduction in rank or other demotion or the imposition of a fine; or

(b) that it will not be practicable to bring either criminal proceedings in relation to the conduct that would be likely to result in a conviction or disciplinary proceedings in relation to the conduct that would be likely to result in a dismissal, requirement to resign or retire, a reduction in rank or other demotion or the imposition of a fine.

289. This is essentially a test of how serious the conduct is and the probability that it would lead to significant criminal or disciplinary outcomes. A rationale from the appropriate authority making the application for local resolution as to why the case meets the above test will help the IPCC in judging the application.
290. Where an application for local resolution is required, the complainant's consent is still needed to proceed with locally resolving the complaint. Where the complainant's consent to local resolution is obtained prior to the application being made to the IPCC, the complainant should be informed of the possibility that the application will not be granted. Where an application for local resolution is granted prior to obtaining the complainant's consent, his or her consent must be obtained before starting the local resolution process.
291. No more than one application for local resolution may be made to the IPCC in respect of the same complaint.<sup>85</sup>

### ***Appeals following local resolution***

292. A complainant has the right to appeal to the IPCC against the conduct of the local resolution process within 28 days of the date on which he or she thinks the police did not follow the agreed process.<sup>86</sup> In many situations the complainant may not become aware that the police have not complied with the procedural requirements until he or she is notified of the conclusion of the local resolution. A written notification should be dispatched by post on the date which it bears. The IPCC may exercise discretion about accepting appeals later in special circumstances where it is just to do so.
293. Where there is evidence that an appeal has been made out of time the IPCC will look at the complainant's reasons for the delay when deciding whether the appeal can be considered. The IPCC welcomes representations from the appropriate authority, to accompany background papers, if it appears to the authority that an appeal has been made out of time.
294. The right of appeal relates only to the process followed. There is no right of appeal about the outcome of local resolution. This means, for example, that if an action plan states that a complainant will receive an explanation of a police officer's actions, the complainant could appeal if he or she did not receive an explanation but could not appeal if he or she was unhappy with the explanation received. While there is no right of appeal about the outcome, informing the complainant of the outcome of the local resolution process, including any action

<sup>85</sup> Schedule 3, Paragraph 6(5), Police Reform Act 2002 (as amended)

<sup>86</sup> Regulation 9, The Police (Complaints and Misconduct) Regulations 2004 (as amended)

taken, is an essential part of the process and an appeal would be likely to be upheld where this information was not provided.

295. Where any of the requirements of a local resolution are missing or not well enough evidenced, the IPCC may consider this sufficient to uphold an appeal against local resolution. However, each appeal will continue to be assessed on a case by case basis.

## ***Investigations***

296. Investigations under the Police Reform Act differ according to their purpose, complexity and risks. The vast majority consider allegations arising from complaints by members of the public. A much smaller proportion look into internally recorded conduct matters and an even smaller number are investigations into incidents of death or serious injury (DSI).
297. Complaints investigations look into the circumstances that have given rise to a member of the public expressing dissatisfaction with how someone serving with the police has conducted him or herself towards the complainant. To provide a sufficient and effective response, an investigation needs to explain the reason or reasons for what has happened and, where appropriate, propose what may be done to put it right or any other learning. The investigation will only focus on any potential evidence of misconduct or unsatisfactory performance where the circumstances warrant it and to do so would be consistent with the overall purpose of the inquiry. Further guidance on the findings and outcomes of a complaint investigation is at paragraphs 423-453 (page 110).
298. An investigation into a conduct matter must focus on establishing whether there is a case to answer in respect of misconduct or gross misconduct, though what is discovered may also yield important findings and lessons for the police service.
299. Investigations into incidents of death or serious injury do not focus on allegations. Instead they inquire into all the relevant circumstances leading to the fatality or injury. The investigation must reach conclusions as to the police's contribution, if any, to the incident. Although not initiated by a complaint or allegation of any criminal offence or misconduct, these investigations must be rigorously and impartially conducted to establish the facts. They must be so conducted that in the event of any criminal offence, misconduct or organisational learning being revealed the response will be prompt and effective.
300. The following guidance provides specific advice for particular situations or practice. Although the IPCC will be involved in undertaking, managing or supervising only a

small minority of the total number of investigations, under its much wider appeal remit the IPCC may need to assess the adequacy of any police-led investigation into a public complaint and will use this guidance when doing so.

301. If the IPCC has chosen to conduct its own investigation or to manage a police investigation, then it will finalise the report and its recommendations. The following guidance and the principles on which it is based should also be reflected in decisions and investigations for which the IPCC is directly responsible.

## **Proportionality**

302. The IPCC expects every investigator to adopt a proportionate approach to investigating a complaint. To use the term 'proportionate' is not another way of necessarily describing an investigation as limited or small scale. This is because every investigation needs to be proportionate to:
- the seriousness of the complaint;
  - the prospects of a criminal trial or misconduct proceedings resulting;
  - the prospects of the complaint being upheld;
  - the investigation producing learning.

This is to ensure that, in the public interest, investigative resources are focused and employed efficiently and fairly. Anyone investigating a conduct matter or DSI matter must also have regard to this proportionality principle and to any of the factors set out below that are relevant to the case.

303. Investigators will use their professional judgement in determining the scope of an investigation and the methods it will use. The IPCC expects them to take the following factors into account when doing so:
- the need to establish the facts in all cases;
  - the seriousness of the allegation;
  - whether Articles 2 or 3 of the European Convention on Human Rights (ECHR) are engaged;
  - any more general cause of the complainant's dissatisfaction;
  - whether the facts are in dispute;
  - whether the investigation is subject to special requirements and if so the result of the severity assessment (see also paragraphs 332-336, page 92);
  - the availability of relevant evidence, for example, independent witnesses, CCTV footage, medical or forensic evidence;
  - how long ago the incident took place, whether evidence is still likely to be available and whether evidence has already been secured;
  - the prospects of gaining evidence for criminal prosecution, misconduct proceedings and for upholding the complaint;
  - the learning the investigation might yield for local or national policing;

- whether it is necessary to get an account from officers and police staff or whether sufficient other evidence is available;
- actual or potential public knowledge of, and concern about, the case.

304. An investigation into an incident of death or serious injury will be necessary whether or not there has been a public complaint or allegation of misconduct. A similar approach to assessing proportionality is required, supplemented by the following additional factors:

- Such investigations are triggered by an event, not an allegation.
- The starting point is to search for the facts about that incident, not to assume that any person is to blame. It may be that as the investigation progresses it needs to change its status and focus on an individual's performance or conduct. If this is justified on the evidence, he or she should then be held to account.
- Article 2 and/or 3 of the ECHR may be engaged. If so the investigation process must comply with Convention requirements for independence and effectiveness.
- The investigation process must be open and must establish and maintain communication with those who are interested persons or members of the police service (see paragraphs 390-396, page 103).

305. Where an investigation is no longer proportionate to the likely outcome (e.g. because no further evidence is likely to emerge or there are practical problems such as lack of cooperation) it should be concluded and findings reported to the appropriate authority (or IPCC in independent or managed investigations). In local and supervised investigations, unless the matter is discontinued rather than finalised, the complainant will have the opportunity to appeal this outcome to the IPCC if he or she disagrees with it.

### **Complaint investigations without special requirements**

306. The minimum legal requirements for every investigation into a complaint are (1) the appointment of an investigator to investigate that complaint, who must (2) submit a report on it to the appropriate authority (or the IPCC in the case of an IPCC independent, managed or supervised investigation).

307. Where an inquiry into a complaint is not subject to special requirements (see paragraph 332, page 92), then its focus should be on establishing the circumstances which led to the complaint rather than necessarily on the conduct of any individual.

308. The Police Reform Act 2002 (as amended) still requires such cases to be

investigated in such a way that a report can be prepared. The legislation does not define what a report should be and the IPCC supports a proportionate approach which, in these cases, should concentrate on learning and development.

309. While serious incidents and allegations (if they remain without special requirements) will require more thorough inquiry, some complaint allegations should result in a quick and very short investigation – even one carried out on the spot by the relevant manager. The manager would be dealing with the complaint as a staff management issue as this would be the proportionate response to the complaint.
310. In these circumstances, how the investigation is planned and carried out should be tailored to the limited scope and relative simplicity of the inquiry. Deciding what evidence and/or information should be sought and how this is done are primarily matters of judgement for the investigator.
311. Thus, the IPCC does not require the investigator to use written terms of reference, though a complex or unusual investigation, even without special requirements, may need such terms to ensure focus and clarity. As a minimum, if there is or could be doubt or confusion as to what needs to be investigated, then the investigator should ensure that there is a written record to show what the investigation will or will not address. It is good practice to provide the complainant with this information.



### **Examples**

- A detainee is kept in custody for 10 hours and does not receive a meal during this time. The detainee is released and makes a complaint about this, which is recorded as a complaint. The custody record is checked and this confirms that the detainee was not given a meal. The manager discusses this with the custody officer, telling him to ensure that all detainees receive a meal when required. The manager then explains to the complainant what he has established and done. These findings and the outcome are conveyed to the complainant in a short written report.
- In the course of a conversation on the street, an officer is asked her name by a member of the public and, instead of telling him, she makes a joke about who she is. The member of the public makes a complaint that the officer did not provide her details as required, and this is recorded. There is no suggestion that the officer did this to try to avoid responsibility for misconduct towards the complainant. The officer's manager speaks to her to ask what happened and the officer accepts that when asked to give her details she made a joke about this instead. The manager tells the

## ***Examples (continued)***

officer that she must provide the correct details to any member of the public who requests them. These findings and outcome are conveyed to the complainant in a short written report.

312. The IPCC provides guidance on the following significant practice points:
- obtaining the complainant's account;
  - obtaining the officer/staff member's account;
  - recording the investigation.

## **Obtaining the complainant's account**

313. The investigation report needs to demonstrate that steps were taken to understand the complaint, what the complainant wanted and his or her thoughts and feelings. The key is that there should be effective communication between the investigator and the complainant. The following are examples of steps that may be taken to achieve this:
- If the investigation is based on a letter, the investigator should check with the complainant that this is a full account of everything that the person wants to complain about and that he or she does not have anything to add.
  - Sometimes, when a letter of complaint has been received from a solicitor, the facts as alleged may be set out but not the complainant's thoughts and feelings. The IPCC considers it even more important in these cases that the complainant is offered the opportunity to provide any further information or clarification.
  - If the complainant has expressed a wish to make a statement then the investigator should not refuse this. It may not have to be taken from the person in a formal sense, but he or she should have an opportunity to provide a statement or written account in his or her own words, either by writing it him or herself, providing it through a solicitor or making it to the investigator.
  - If the complaint has been based on an account written by the investigator, for example, notes taken during a telephone conversation, a copy of the account should be provided to the complainant at an early stage. The complainant should then be asked to confirm his or her agreement that it is an accurate record of the complaint he or she wants to have addressed.
314. Where no statement is taken, whether or not an appeal about the findings of an investigation is upheld or not will be informed by whether the lack of a statement or written account has made any material difference to the investigation. For example, an appeal may be upheld where:

- it appears the investigation was based on a misunderstanding or misinterpretation of the complaint;
- the complainant can show that there were further aspects of the complaint which have not been considered by the investigation and should have been;
- the complainant had further information or evidence but did not have an opportunity to provide this because there was no communication between the investigator and the complainant.

## **Obtaining an account from an officer or member of police staff**

315. Although the IPCC cannot give specific guidance on what must be done in each case, given the possible range of such accounts the following general approach can be followed. It may not be necessary to seek any account from the person subject to investigation if other evidence, e.g. CCTV footage, shows clearly what happened, or if the person has already made a full account which addresses all aspects of the complaint e.g. in a pocket note book entry (PNB) or other written account then no further account from the police officer/police staff member may be needed. The person subject to the complaint will be informed of the complaint and should always have the opportunity to comment on it.
316. Where the investigator seeks an account, there must be some minimum practice. Where a verbal account is obtained there must be an auditable record of it. The officer could be invited to sign handwritten notes or a PNB entry to confirm the accuracy of a record of conversation. However, this is the minimum: in many cases, more would be required, such as an account by email, letter, statement or interview.

## **Recording the investigation**

317. Every investigation, however short and quick, requires basic file recording to show what was done and why, together with the careful collation, annotation and preservation of any documents or other evidence seen or created as part of the inquiry.
318. The IPCC recognises that a complaint investigation without special requirements may result in a short written document reporting to the complainant with the findings and outcome(s) rather than a full investigation report.

## **Terms of reference**

319. Every investigation with special requirements should have written terms of reference that include clear particulars of the complaint(s) or conduct allegation(s). For an investigation into a DSI matter, which should also have written terms, these



should include particulars of the incident from which the referral has arisen and any significant concerns (not amounting to complaints) expressed by the interested person(s) that the investigation should address. Terms should be clear, unambiguous and tightly drawn to provide focus and direction, with no open ended phrases. It is good practice to ensure a complainant (or interested person if there is one) clearly understands the scope of the investigation by providing him or her with a copy of the terms of reference and any later revisions made to them. In cases where the investigation is with special requirements, the officer or police staff member subject of those requirements should be provided with a copy of the terms of reference on request.

320. The IPCC, police service and the Learning the Lessons Committee<sup>87</sup> have developed standard terms of reference to define essential practices to capture learning for the local and national police service from investigations. These will now be used in independent, managed and supervised investigations. For local investigations, the IPCC expects police forces and police authorities to adopt the same or a similar approach, linked to standard terms of reference or other operating procedures that should encourage consistent and regular reporting of learning from investigations. They should provide for circumstances where rapid reporting to senior managers in the force or beyond is needed, before an investigation has been completed and a final report prepared. Where relevant learning has been identified, investigations should produce lessons that can be publicised to the local police service and, where suitable, reported through ACPO to the Learning the Lessons Committee for possible inclusion in its bulletin.

### **Parallel investigations**

321. Care should be taken in drawing up terms of reference where there is a parallel police investigation being carried out. Examples include an investigation into a criminal offence occurring at the same time as the events covered by the Police Reform Act investigation or a cause of death investigation for a coroner where a DSI inquiry is examining the extent of police contact with the person who died. The terms should spell out the relationship between the two inquiries. It may be necessary to reflect key points in a written memorandum of understanding covering such topics as liaison between investigators and with interested persons, mutual updating on investigation progress, evidence and information disclosure and the allocation of any shared costs.

### **Complaint statements**

322. Guidance has been given at paragraphs 313-314 (page 87) on the circumstances

<sup>87</sup> The Learning the Lessons Committee is a multi-agency committee that has been established to disseminate and promote learning across the police service. Its members are ACPO, Association of Police Authorities (APA), Home Office, IPCC, Her Majesty's Inspectorate of Constabulary (HMIC) and the National Policing Improvement Agency (NPIA).

in which a statement is or is not necessary in an investigation without special requirements. A statement must always be sought from the complainant if his or her evidence may be used in criminal proceedings. Any oral evidence that is obtained during an investigation into misconduct must be recorded in writing, agreed and signed. It should make clear what specific allegations are to be investigated and the IPCC considers it helpful for any complaint statement to end with a summary of the specific complaint allegations and the reasons for the person's dissatisfaction. This will help to remove any possible doubt at a later stage as to the matters needing investigation and resolution.

### Ancillary matters

323. An ancillary matter is a concern or allegation which comes to light during a complaint investigation and which, it is decided, needs investigation. It may relate to the same person(s) complained about or different ones and the facts may be closely connected to the matter complained about or wholly unconnected. Rather than mount a separate investigation into the matter, it is often convenient to look into it and report on it at the same time as the complaint. If the investigation is being undertaken with terms of reference then these must be modified to include the new matter(s) being investigated.
324. Under the Police Reform Act, the matter may be a conduct matter<sup>88</sup> and may be recordable and referable to the IPCC, which may or may not be aware of the principal investigation. If the matter is not referred then the appropriate authority may deal with it as it may determine. If it decides to investigate the matter, or the IPCC, following referral, directs that it should be investigated, then the investigator should be mindful that the complainant may be an interested person if he or she has a sufficient interest in the handling of the matter.
325. A complainant who is an interested person should be updated on progress and told about the results of the ancillary investigation once concluded. Where an ancillary matter is not recorded as a conduct matter under the Police Reform Act but is investigated, the IPCC expects an appropriate authority to adopt a similar approach i.e. informing a complainant of any matter sufficiently connected to the circumstances of the complaint and then reporting to the complainant on the investigation.



#### **Example**

A driver involved in a hit and run collision complains that the police officer who attended failed to conduct a satisfactory investigation to trace the other driver responsible, who did not stop. The investigator discovers that

<sup>88</sup> Section 12(2) Police Reform Act 2002 (as amended)

**Example (continued)**

the officer entered false details on an internal report form to cover up his neglect. This is a recordable conduct matter and is recorded and the investigation linked to the complaint investigation. The complainant should be informed of this development and may wish to make an additional complaint about the officer's conduct. If not, the complainant should be treated as an interested person and receive information on the progress and results of this part of the investigation.

**Investigation planning and risk assessment**

326. Investigation planning is important to ensure a proportionate and timely investigation. Where there is a written plan this may address the action required to meet the terms of reference and include risk assessment, indicative timescales, resources required and the scope of the evidence to be identified and recovered, including any specific forensic examination.
327. Sharing the main points of the investigation plan with the complainant or interested person, subject to the 'harm test' (see Annex C, page 214), will often provide appropriate reassurance about how the investigation will be undertaken and the likely timescale and complexity.
328. The plan should set out the lines of enquiry required to meet the terms of reference. It should also include, where appropriate, arrangements for:
- keeping the complainant/interested person informed;
  - exhibit handling;
  - forensic strategy;
  - assessing community impact and engaging with local community;
  - organisations to address concerns and help maintain confidence in the investigation;
  - handling the media.
329. The IPCC expects that policy decisions in relation to an investigation will be recorded. The format will vary according to the nature and the scale of investigation. Specific guidance on this has been given above (at paragraphs 317-318, page 88) for investigations without special requirements.
330. Good planning involves an appreciation of risks and how they are to be managed. Assessing risks associated with the investigation is therefore crucial whatever the nature of the allegation or incident. Sometimes cases go wrong because risks were not identified and managed at the outset. Risk assessment has to be a

dynamic process as the case progresses. It will depend upon the complexity of the case, for example:

- the number of officers or police staff involved;
- the number of witnesses;
- the identity or potential vulnerability of the complainant;
- public or community awareness and concerns about the case.

### **Suspended investigations**

331. The power to suspend an investigation and its potential impact on the time when an investigation can start has been explained in detail above at paragraphs 142-162 (page 51).

### **Investigations into police officer/police staff misconduct**

332. Special procedures govern investigations into criminal allegations and misconduct. For police officers, there should be both an initial and an ongoing assessment of the conduct complained about to establish whether what is known about it means that the investigation should be subject to 'special requirements'.<sup>89</sup> An investigation must be declared subject to special requirements where there is an indication that a person to whose conduct the investigation relates may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings.
333. The procedural requirements are found in the Police Reform Act 2002 (as amended), the Police (Conduct) Regulations 2008, the Police (Complaints and Misconduct) Regulations 2004 (as amended) and detailed Home Office guidance.<sup>90</sup> They provide for an assessment of the seriousness of the misconduct subject to investigation and the issuing of a notification to the officer(s) involved.
334. For an investigation into possible misconduct by a member of police staff an equivalent approach is needed, so that a formal notification is only given where the potential for criminal or disciplinary proceedings is indicated.
335. Where an allegation is recorded as recordable conduct under the Police Reform Act 2002,<sup>91</sup> it will always be subject to special requirements.
336. Once an inquiry is declared subject to special requirements, a severity assessment will need to be carried out and the apparent conduct categorised as either misconduct or gross misconduct. The person making the assessment should (if

<sup>89</sup> Schedule 3, Paragraph 19A, Police Reform Act 2002 (as amended)

<sup>90</sup> Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008)

<sup>91</sup> See paragraphs 42-46, page 32.

not the appropriate authority itself) consult the appropriate authority when making a severity assessment. The person making the assessment (whether the appropriate authority or investigator) should also consult the IPCC when making a severity assessment in the course of a supervised investigation.

337. 'Special case' procedures provide a fast track misconduct procedure.<sup>92</sup> They can only be used if the appropriate authority certifies (or the IPCC directs) the case as a special case i.e. one where the conduct is assessed as gross misconduct, there is sufficient evidence to prove, on the balance of probabilities, that the conduct alleged constitutes gross misconduct and that it is in the public interest for the officer to cease to be a police officer without delay. In a case involving gross misconduct, an investigator will therefore need to keep under review the possibility of proposing the use of the special case procedure as the investigation proceeds and the evidence is obtained.

### **Suspension of officers**

338. An officer subject to an investigation with special requirements may be suspended from service by the appropriate authority, subject to certain conditions.<sup>93</sup> The IPCC recognises that the decision whether to suspend an officer will always lie with the appropriate authority. Where the IPCC is supervising, managing or independently investigating a matter, however, the appropriate authority must consult with the IPCC before making such a decision to suspend an officer. Similarly the IPCC must be consulted regarding any decision to cease the suspension of an officer, unless this is at the conclusion of misconduct proceedings or a special case hearing.
339. In any case where an officer has been suspended, the investigator must ensure that the appropriate authority is provided with sufficient information to regularly review the appropriateness of that suspension.<sup>94</sup>

### **DSI matter investigations and misconduct**

340. If during an investigation of a DSI matter it appears to the investigator in a managed or independent investigation that a person serving with the police may have committed a criminal offence or behaved in a manner justifying disciplinary proceedings, then the investigator has to make a submission to that effect to the IPCC. This should be in writing and should set out the investigator's reasons for reaching this conclusion. If the IPCC agrees with the submission, it should notify the appropriate authority and send it a copy of the investigator's submission.

<sup>92</sup> Part 5, Police (Conduct) Regulations 2008

<sup>93</sup> Regulation 10(4), Police (Conduct) Regulations 2008

<sup>94</sup> In line with Regulation 10(8), Police (Conduct) Regulations 2008, such a review must take place no less frequently than every four weeks throughout the suspension.

Then the appropriate authority must record the matter as a conduct matter. Once the matter has been recorded it automatically becomes certified as subject to special requirements.

341. If the DSI matter is being locally investigated or is subject to the IPCC's supervision then the investigator makes a submission to the appropriate authority. If the appropriate authority agrees with the submission, it should notify the IPCC and send it a copy of the submission. It must also record the matter. The IPCC, if it chooses, may redetermine the mode in which the matter is being investigated but otherwise the investigator can continue to investigate the matter.

### **Covert investigation of an allegation of corrupt behaviour**

342. The IPCC has agreed with ACPO arrangements under which forces must identify and promptly refer allegations of corrupt behaviour. Specific practical guidance is given on when and how covert investigations should be referred. Forces must consider and apply the provisions of the current protocol when handling such matters. This protocol has been distributed to heads of professional standards departments and is available through them to any suitably authorised person.

### **Investigating complaints and allegations of discriminatory behaviour**

343. In May 2009 the IPCC published detailed guidelines for the police service and police authorities on investigating complaints or allegations of discriminatory behaviour under the Police Reform Act 2002. These are found at Annex B (page 172).
344. The guidelines:
- define what is meant by discriminatory behaviour;
  - explain the challenges involved in investigating it;
  - explain the six diversity strands;
  - provide detailed guidance on initial handling, locally resolving or investigating such complaints and allegations;
  - provide guidance on reaching conclusions and outcomes following investigation;
  - detail how the guidance should be implemented.
345. The IPCC expects investigators and appropriate authorities to have regard to the contents of these guidelines and to apply them where necessary. Their investigation reports should demonstrate that the concepts, principles and methodology have been employed in fact finding, analysis and conclusions relating to discrimination. If the guidance has not been applied an explanation must be given.

### **Resources in IPCC investigations**

346. The IPCC meets all the costs of its investigation staff in an independent investigation. Assistance may be required from the police with an IPCC investigation or from another force with a police investigation. The chief officer of the force under investigation should always be consulted about resource needs, which should be reviewed regularly. This will ensure that local resources are released as soon as practicable. Similarly, any assistance from another force in an investigation should be agreed between the chief officers and regularly reviewed.

### **Liaison with the Health and Safety Executive (HSE)**

347. The IPCC has agreed arrangements with the HSE for handling incidents resulting in death or serious injury which may require investigation under the Police Reform Act 2002 as well as consideration of an investigation under the Health and Safety at Work Act 1974. These arrangements determine respective roles and responsibilities, the timing of referral and liaison during investigations, including the sharing of information.
348. The IPCC expects forces investigating locally or when supervised by the IPCC to have regard to the need to involve the HSE and to develop similar working arrangements, either for a specific investigation, where the need arises, or by a protocol to govern all future DSI incidents.

### **Involving the CPS during the investigation**

349. Early involvement of the CPS should be automatic in serious cases and those in which there is a strict time limit for starting a prosecution. A case conference should involve other agencies as appropriate. This can help to clarify avenues of investigation where a criminal offence may be involved and minimise the risk of evidence being ruled inadmissible by not being obtained properly.
350. At the end of an investigation, CPS involvement will also help to decide whether the evidence in the investigation report is likely to meet the CPS charging standards necessary to bring criminal proceedings. Where the CPS is engaged at an early stage it nevertheless remains the responsibility of the appropriate authority (or the IPCC in an independent or managed investigation) to consider whether formally to refer the matter to the CPS at the conclusion of the investigation. See paragraphs 482-483 (page 125) for guidance on outcomes and the CPS.

### **Details of previous convictions on the Police National Computer**

351. Forces and police authorities need to be aware that it is the Information

Commissioner's view that routine enquiry of the Police National Computer (PNC) for any previous convictions of a complainant is a breach of the data protection principle that information should be used only for the purpose for which it is collected. Information on the PNC is held for the purpose of prevention and detection of crime. The IPCC considers this does not prevent the proper search for relevant data held on the PNC in the course of a risk assessment, for example, prior to a home visit.

### **Investigation reviews**

352. The IPCC encourages regular reviews to ensure that investigators are effectively managing individual investigations, that caseloads are manageable and that individual investigations are timely and proportionate.

### **The investigation report**

353. The investigation report is the main, if not only, source of information and explanation for the complainant. Decision makers such as the CPS, the appropriate authority and the IPCC will also rely on the report to summarise and guide them through the evidence. It should be unbiased, objective and include only relevant information. The IPCC expects such a report to achieve the following. The report should:
- explain what the complaint is about;
  - include the terms of reference, if any, for the investigation;
  - give a clear account of the investigation and the evidence received;
  - show that the investigation has met the objectives set for it in written terms of reference or otherwise;
  - set out clear reasoning, drawing out conclusions from the evidence;
  - recommend to the appropriate authority whether each aspect of the complaint is upheld or not and why;
  - where it is recommended that a complaint (or part of one) is upheld, recommend what should be done to put it right if action has not already been taken to achieve this;
  - where the investigation may lead to a referral to the CPS meet the standards required by the CPS for such a referral;
  - report on the findings and conclusions on any ancillary matters investigated;
  - set out any learning for the force, the police service, or possibly other public services, where appropriate;
  - where a complaint is not upheld, still consider potential learning;
  - be written in plain language free of technical jargon.

For an investigation with special requirements see paragraph 356.



354. Investigators should have in mind the detailed guidance on findings and outcomes (see paragraphs 423-509, page 110).
355. The investigator, in writing the report, should have regard to the different standards of proof in civil and criminal proceedings. Investigators are reminded that the civil standard, the balance of probabilities, is not a sliding scale. There is simply a requirement to give appropriately careful consideration to whether a matter has been established on the balance of probabilities i.e. it is concluded that it is more likely than not to have happened.<sup>95</sup>
356. Where the matter concerns police officers and is subject to special requirements, in addition to setting out the investigator's conclusions on the facts, the final report will need to determine whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer. This report should set out details of the behaviour considered to amount to misconduct or gross misconduct and the reasons it is thought to do so. It need not list which of the particular standards the conduct falls under.

### **Action on the report**

357. In a local investigation the investigator provides the report to the appropriate authority. In a supervised or managed investigation the report is provided to the IPCC and copied to the appropriate authority. See paragraphs 460-466 (page 121) for detailed guidance on necessary actions.

### **Appeals to the IPCC about the outcome of a local or supervised investigation**

358. A complainant who is dissatisfied with the outcome of a local or supervised police investigation may appeal to the IPCC within 28 days of notification of the outcome.<sup>96</sup> For detailed guidance on such appeals see paragraphs 510-524 (page 130). A complainant has no right to appeal to the IPCC about any aspect of a managed or independent investigation.

### **Discontinuance**

359. An application for a discontinuance is a request from an appropriate authority to the IPCC to stop an ongoing investigation into a complaint or conduct matter which is either being conducted by that appropriate authority on its own behalf or being supervised or managed by the IPCC.<sup>97</sup> The IPCC may decide, in the

<sup>95</sup> IPCC, R(on the application of) v Hayman [2008] EWHC 2191 (Admin)

<sup>96</sup> Regulation 10, The Police (Complaints and Misconduct) Regulations 2004

<sup>97</sup> When a complaint or conduct matter is recorded, the appropriate authority must decide what to do with it: locally resolve it, apply for a dispensation or investigate (as appropriate). From the point where there is a decision to investigate (and, for example, an investigator is appointed), the investigation should be regarded as having begun. If someone is appointed to carry out a local resolution under the Police Reform Act then that person may gather information in relation to the incident. This does not mean that an investigation has begun.

absence of an application from the appropriate authority, that such an investigation should be discontinued. It may also discontinue an independent investigation under similar provisions.<sup>98</sup>

360. When making an application for discontinuance the appropriate authority must send the complainant a copy of the application for the discontinuance on the same day that the application is sent to the IPCC.<sup>99</sup>

### **Grounds for discontinuance<sup>100</sup>**

361. When an appropriate authority considers it should no longer proceed with an investigation it can apply to the IPCC for discontinuance on the following grounds.

#### ***Non cooperation by the complainant***

362. This is where the investigation cannot continue without the cooperation of the complainant. Before seeking a discontinuance the investigator must consider whether there is enough evidence to continue and conclude an investigation, irrespective of the lack of cooperation of the complainant.
363. Appropriate authorities undertaking investigations where there is sufficient evidence on which to make a judgement despite all anticipated action not being complete, should conclude the matter and notify the complainant of the investigation findings, proposed action and the right of appeal. No application for discontinuance should be made. In these circumstances, any appeal submitted would take into account the lack of cooperation and action taken by the appropriate authority to attempt to gain the complainant's cooperation.
364. In considering applications for discontinuance on this ground the IPCC will consider whether:
- reasonable efforts were made to contact the complainant (i.e. more than one attempt) and to gain their cooperation, using a range of appropriate methods, for example by letter, email or telephone;
  - efforts were made to work through the complainant's representative;
  - practical help in supporting a complainant with specific needs was made available;
  - the impact of the refusal to cooperate is sufficient to justify not continuing with the investigation.

<sup>98</sup> Schedule 3, Paragraph 21, Police Reform Act 2002 (as amended)

<sup>99</sup> Regulation 7(5)(a), Police (Complaints and Misconduct) Regulations 2004

<sup>100</sup> Regulation 7, Police (Complaints and Misconduct) Regulations 2004

***The complainant agrees to local resolution***

365. Any discontinuance applied for because of this ground will relate to a complaint, not a conduct matter.
366. If the matter complained about contains allegations that would justify criminal or disciplinary proceedings, it must be supported by an application for local resolution that has been considered and approved by the IPCC before the application for discontinuance is assessed. Alternatively, an application for local resolution may be submitted at the same time as the application for discontinuance. See paragraphs 288-291 (page 81) for more information about applications for local resolution. If an application for local resolution has not been submitted and agreed either prior to or alongside the application for discontinuance, the application for discontinuance will be returned to the appropriate authority with a letter explaining why.
367. The appropriate authority will be expected to provide enough information to the IPCC to demonstrate that the complainant has given informed consent to the complaint being locally resolved and understands that the evidence in the case cannot be used in any future disciplinary proceedings about an officer or police staff member.
368. Ideally, the appropriate authority should include a signed statement from the complainant that shows:
- how the process was explained (that is, when and where);
  - that he or she understands the process;
  - that he or she agrees to the complaint being processed locally instead of going through an investigation.

***The complaint or conduct matter is vexatious, oppressive or an abuse of procedure***

369. It is important to note that it is the complaint itself that must be judged vexatious, oppressive or an abuse, not the complainant. Evidence to support an application for discontinuance on this basis should therefore focus primarily on the current complaint. The complainant's past complaint history may, however, be included where it is relevant to show that the current complaint is vexatious, oppressive or an abuse. The complaint history may be relevant, for example to show whether there have been a series of like complaints that have been addressed, either directed at the person subject to this complaint or another person.
370. The investigation may have provided evidence to show that the complaint does indeed lack any foundation or amounts to an abuse, and information from the appropriate authority should be provided to support the application.

371. 'Vexatious' and 'oppressive' should be given their usual dictionary meaning. So, a vexatious complaint will be one without foundation that is intended, or tends, to vex, worry, annoy or embarrass. It should be noted, however, that for a complaint to be vexatious, it does not have to be repetitious.
372. An oppressive complaint is one that is without foundation and intended, or likely, to result in burdensome, harsh or wrongful treatment of the person complained against.
373. An abuse of the complaints system will occur where there has been manipulation or misuse in order to initiate or progress a complaint which, in all the circumstances of the particular case, should not have been made or should not be allowed to continue.
374. The IPCC recognises that there will be instances where the complaints system is abused because the nature of the allegation made or the way it is put shows it to be demonstrably fantastical. For example, a person may claim that police are doing something which is impossible or appears fanciful. To devote significant time and resources to investigating such matters will be disproportionate and the IPCC will rarely refuse a discontinuance from the need to investigate further any recorded complaint of this sort where after preliminary inquiries, the appropriate authority can show it to be manifestly fantastical and a misuse of the complaints system.

***The complaint or conduct matter is repetitious***

375. A repetitious complaint is one which:
- is substantially the same as a previous complaint or conduct matter, even if it is made by someone other than the original complainant, or concerns substantially the same conduct as a previous conduct matter;
  - contains no new allegations which significantly affect the case;
  - contains no new evidence to support the complaint.
376. However, one or more of the following pre-conditions must be met for consideration to be given to discontinuing an investigation under this ground:
- The appropriate authority must have already submitted a disciplinary memorandum following a managed or independent investigation, or have determined what action it shall take in relation to matters contained within a local or supervised investigation.
  - The complaint has been subject to a local resolution.
  - The IPCC has granted a discontinuance.
  - The complaint has been withdrawn.
  - The IPCC has granted a dispensation.<sup>101</sup>

<sup>101</sup> Regulation 3(3), The Police (Complaints and Misconduct) Regulations 2004

377. The appropriate authority must provide evidence to the IPCC of the previous complaint(s) and how the current one is repetitious.

***It is not reasonably practicable to proceed with the investigation***

378. An application to discontinue an investigation on the ground that it is not reasonably practicable may be made on whatever basis the appropriate authority feels that it would not be practicable to continue with the investigation. The evidence backing such an application for discontinuance on this ground must satisfy the IPCC that the investigation is no longer practicable to continue.

Examples of when this might be the case include:

- a crucial piece of evidence has been irretrievably lost or damaged;
- the cost of obtaining a crucial piece of evidence is not proportionate;
- non cooperation from crucial witness(es).

379. This differs from the ground of ‘not reasonably practicable’ for dispensations, which applies a specific set of criteria.

380. There are many reasons why it may not be practicable to proceed with an investigation. The focus should always be on trying to resolve the complaint. Where there is sufficient information available the investigation should be concluded. If it is not possible to conclude the investigation without further cooperation from the complainant, it may be appropriate to apply for discontinuance. Where such a decision is taken the needs of the individual should be taken into account and any constructive means of providing help outside the complaints system should be considered.

**Partial discontinuances**

381. Where a complaint is made up of multiple parts, only some may be suitable for discontinuance. For example, some parts of a complaint may be repetitious while others are not. In such cases an application may be made to discontinue some parts of the investigation while others proceed.

**How is a discontinuance different from a dispensation?**

382. There are a number of differences:
- A discontinuance relates to stopping an investigation which has started, whereas a dispensation relates to stopping the complaints process before an investigation begins.
  - When applying for a discontinuance, the appropriate authority must send a copy of the application form to the complainant on the same day that it is sent

to the IPCC.<sup>102</sup> For dispensations, the appropriate authority must tell the complainant about the application: this should be within five days of the application being made but it does not necessarily have to be on the same day that the application was sent to the IPCC.

- There are some different grounds where the appropriate authority can apply for a discontinuance rather than a dispensation, specifically those of ‘local resolution’ and ‘non cooperation’ for a discontinuance and ‘out of time’, ‘anonymous’ and ‘already subject of a complaint’, for a dispensation.
- Discontinuances apply to both complaints and recordable conduct matters, whereas dispensations only apply to complaints.
- If necessary and relevant, more than one application to discontinue can be made for the same investigation, whereas there can be only one application to dispense with the need to take further action in relation to a complaint.

383. Guidance on dispensations can be found at paragraphs 163-196 (page 55).

384. If an application for discontinuance should have been made as an application for dispensation, the application will be returned explaining this.

### **Discontinuances: information checklist**

385. An application for discontinuance of an investigation must be in writing and include:
- a copy of the complaint form (if it is a complaint);
  - a report of the investigation undertaken so far, explaining the reasons for the application to discontinue the investigation, with key supporting documents.

It should also include (where appropriate):

- evidence that a copy of the application for discontinuance is being sent to the complainant;
- evidence of responding to any special needs a complainant might have – for example around language, disability, age or illness – to enable an investigation to go ahead. For example, was an attempt made to engage an appropriate adult?;
- evidence of attempts to meet any reasonable conditions set by a complainant for cooperation with an investigation.

### **Repeat applications**

386. An application to discontinue an investigation can be submitted more than once on the same investigation, provided there is clear evidence that additional investigative activity took place between applications.

<sup>102</sup> Regulation 7(5), Police (Complaints and Misconduct) Regulations 2004

## **Applications for discontinuance on supervised and managed investigations**

387. When considered necessary on a supervised or managed investigation, the appropriate authority conducting the investigation should apply for a discontinuance. In the case of a managed investigation the appropriate authority should obtain the agreement of the IPCC manager before submitting an application. In the case of a supervised investigation it should first notify an appropriate contact in the IPCC of the intention to apply.
388. Where the IPCC decides to discontinue a supervised or managed investigation and there has been no application from the appropriate authority, the IPCC will not do so until after it has consulted that authority.

## **Action to be taken after an application for discontinuance has been granted**

389. When an application for discontinuance is granted, the IPCC may make certain directions to the appropriate authority which must be followed.<sup>103</sup>

## **COMMUNICATION**

390. One mark of a quality investigation is effective communication between an investigator and those most affected by an investigation: be it complainant, interested person,<sup>104</sup> officer or police staff member investigated. When it is achieved, consistently with the law and agreed expectations, the public may be confident that the transparency principle is taken seriously.
391. Investigators and professional standards departments will need to manage the planned provision of information in the course of an investigation, explaining how it will be done, its progress and emerging findings. They will also need to be in a position to deal with requests for information and questions.
392. Firstly, the Police Reform Act requires the appropriate authority (or the IPCC in independent and managed cases) to keep the complainant or interested person informed about:
- the progress of an investigation;
  - its provisional findings;
  - whether an investigation report has been submitted;
  - the action to be taken (if any);
  - where action is taken, its outcome(s).

<sup>103</sup> Regulation 7(7), The Police (Complaints and Misconduct) Regulations 2004

<sup>104</sup> Section 21(2), (3) and (5), Police Reform Act 2002 (as amended)

Guidance on the last three of these topics is given in the next chapter (see paragraphs 528-543, page 133). Secondly, complainants, interested persons, officers and police staff members will ask questions needing early reply.

393. To guide its own practice in this area and to inform Police Reform Act decisions taken in independent and managed investigations, the IPCC has adopted and made publicly available a policy statement on disclosing information (*Making Information Available* (IPCC) 2008). This also covers the IPCC's responsibilities under the Data Protection Act 1998 and Freedom of Information Act 2000.
394. Under this policy statement, the following general principles apply:
- Making the police complaints system as open and transparent as possible helps to increase public confidence that complaints are handled fairly and that investigations are thorough and objective.
  - Information should be made available when it is sought unless there is a valid legal or practical constraint on doing so. This applies even if there is no statutory obligation to provide the information in question.
  - When responding to a request for information under one Act, account should be taken of the obligations of the information holder under all legislation to ensure the decision taken is consistent with its full obligations.
395. Detailed guidance is provided in Annex C (page 214) on the meaning and effect of the harm test which, under regulations, must be applied before certain information can be disclosed and which can delay such disclosure or prevent it altogether.
396. The IPCC expects professional standards departments and investigators to have regard to these working principles and the following detailed practice advice when deciding how and when to communicate information during an investigation.

### ***The duty of communication with the complainant or interested person***

397. The appointed investigator should aim to give the complainant an estimate of how long the investigation is likely to take. If the timescale is reviewed as the investigation progresses, updates should give any revised estimate.
398. It will usually be beneficial for the investigator to share with the complainant or interested person the written terms of reference, agreed for the investigation, if any, and supply a copy, to aid the complainant's or interested person's understanding of the investigation's defined scope and the approach to be adopted. A letter setting out what the investigation will cover and how it will be undertaken best communicates this information where there are no written terms of reference.



399. Once an investigation has started, the appropriate authority or the IPCC has a duty to keep the complainant or interested person informed of its progress. The frequency and method of the update will vary according to the nature of the case and the needs of the person. The investigator should agree with the complainant or interested person how he or she wishes to be kept informed of the progress of the investigation and this should be recorded. In the absence of any contrary agreement with the complainant or interested person, the investigator should write every 28 calendar days with an update.
400. The High Court has ruled on the scope of the duty and the meaning of ‘progress of the investigation’.<sup>105</sup> It decided that the term did not just mean information about the stage reached in the investigation, what had been done and what remained. The judge ruled that: “The Commission [or police if applicable] should be as open as is reasonably practical in the communication of information to interested persons”. One way in which this may be done is to provide a summary of the significant evidence obtained. Prior to doing so, the harm test will need to be applied to what is planned to be disclosed.
401. Throughout the investigation the appropriate authority should regularly review whether further information can be given to the complainant, subject to assessing the risk of any prejudice to the investigation.
402. Provision of information is a continuing duty and consideration needs to be given, in appropriate cases, to its early disclosure: this could be before completion of the investigation report, where the harm test allows. A signed undertaking as to confidentiality can act as a restraint on further disclosure and confirm that receipt is on a confidential basis.
403. Where either Article 2 or 3 of the ECHR is engaged, the investigation may be indirectly affected by a number of procedural obligations upon the state – which require a sufficient element of public scrutiny and that the next of kin must be involved to ‘an appropriate extent’ – and this guidance should be interpreted in the light of them. However, the courts have recognised there are limits on these obligations.<sup>106</sup>

### ***Communicating with officers and police staff under investigation***

404. It will usually be beneficial for the investigator to give those subject to investigation a copy of the agreed terms of reference, to aid their understanding of its defined scope and the approach to be adopted, subject to the harm test.

<sup>105</sup> R (on the application of Saunders) v IPCC [2008] EWHC 2372 (Admin)

<sup>106</sup> Ramsahai and others v The Netherlands ECLHR 52391/99

405. Appropriate authorities (or the IPCC in an independent or managed investigation) must also keep the police officer(s) or police staff member(s) who are the subject of the complaint regularly informed of the investigation's progress. Such updates must be at least every 28 calendar days from the first working day after the investigation starts, even where there is no progress to report since the last update. Updates should include the likely timescale for completing the investigation and any revisions to this. If no progress is reported then the update should provide the reason(s) for this. At the start of the investigation, an investigator can agree with officers or police staff members or their representative(s), an alternative timescale for update reporting, the preferred method for giving the update (e.g. letter, email or telephone call) and to whom they should be given.
406. The IPCC has a written policy and procedure to govern pre-interview disclosure practice in IPCC independent investigations.<sup>107</sup> In local and supervised investigations, the IPCC expects forces to have a similar written policy in place, to ensure clarity and consistency of decisions and practice.

### ***Communicating with the appropriate authority and/or police authority***

407. The IPCC expects that detailed and comprehensive liaison arrangements between investigators, the professional standards department and, in some cases, the police authority, will be agreed where the IPCC or an external force is to investigate the circumstances of a critical incident or where the complaint or allegation has a high profile in media or community terms. These should be guided by the provisions of the ACPO/IPCC media protocol and need to cover:
- how emerging findings and recommendations for rapid learning, if any, will be communicated;
  - how progress reports will be delivered and what they will cover;
  - the provision of information if the suspension of a police officer or police staff member is to be considered.
408. The appropriate authority has a legitimate interest in knowing how the investigation is developing, especially from the point of view of managing community and force concerns. The IPCC will therefore, in each case, consider what information, subject to the harm test, should be provided during the course of the investigation and at what intervals. In doing so, it must take into account the need to preserve the independence of the investigation where Article 2 or 3 of the ECHR is engaged.

<sup>107</sup> [www.ipcc.gov.uk](http://www.ipcc.gov.uk)

### ***Communicating with the CPS***

409. The IPCC expects investigators to establish early contact with the CPS in the course of specific inquiries, such as fatal shootings and deaths in custody, and otherwise where the circumstances warrant this.
410. The Code of Practice issued under Section 23(1) Criminal Procedure and Investigations Act 1996 governs disclosure to the CPS by the IPCC (independent and managed investigations) and the police (supervised and local investigations). With the former, the IPCC will comply with its legal obligations to provide information that it holds to the CPS; the IPCC will provide the CPS with its view as to whether anything and, if so what, needs to be redacted and whether the CPS should apply for public interest immunity (PII) in respect of that information or any part of it.

### ***Communicating with the coroner***

411. Investigators will need to communicate with the coroner during an investigation under the Police Reform Act into a fatality and establish clear agreement as to what information will be supplied and at what intervals. In order to brief the coroner on the emerging findings, an investigator may provide copy evidence or interim reports and may be called to give key evidence at the inquest as required by the coroner.

### ***Communication with public: publication of interim report***

412. Independent and managed investigations are generally into incidents which have the potential to attract considerable media attention, both in the region where they are being undertaken and, for some, nationally and internationally. In such cases, the IPCC is responsible for media strategy and it will consider the drafting and early publication of a report containing initial findings of the investigation where:
- significant media interest and public awareness of the incident or complaint leading to the investigation has already been demonstrated: and
  - initial investigation has yielded evidence which can be the basis for clear and incontrovertible statements as to relevant facts.
413. There will be a pressing need to consider such an interim report where there is misinformation already in the public domain or likely to reach it and which needs to be corrected in the public interest.

414. The IPCC will consult any complainant and/or interested person(s), the coroner, the CPS and the appropriate authority before publishing such a report and will apply the harm test when deciding on its contents.

### **Statements**

415. In the interests of justice, it is vital that people should be willing to make statements in the course of an investigation. This will not normally be a consideration for police officers or police staff acting in a professional capacity, but members of the public may be less willing to make a statement if it is likely to become available to another member of the general public.
416. Where any legal proceedings, such as a criminal trial, inquest or disciplinary proceedings, will potentially result from the investigation then anyone invited to provide a statement should be told that his or her evidence could be used in the course of those proceedings.
417. A person providing a statement should also be informed that, subject to special provisions which may provide anonymity in some legal proceedings, his or her statement or the gist of it may be disclosed to the complainant or to an interested person who requests this. In deciding whether it is appropriate to disclose the statement in accordance with its duty to inform the claimant of the findings of the report, the IPCC or appropriate authority will apply the harm test. Once the statement is given to the investigation, the person who made it cannot prevent its disclosure but his or her views should be sought and taken into consideration when the harm test is applied. It is therefore good practice to ask a statement giver to state whether subsequent disclosure would disadvantage or put him or her at risk in any way. This information will then be relevant to applying the harm test if disclosure is proactively planned by the investigator or requested by the complainant or interested person.

## Chapter 4: **OUTCOMES**



### **PRINCIPLES**

418. Finalising the response to a complaint, allegation or death or serious injury (DSI) matter inquiry should reflect the following general principles:
- Invest time and care in ensuring a good quality outcome.
  - Uphold a complaint that is justified, even where there is no misconduct or unsatisfactory performance.
  - A DSI matter investigation is primarily a fact-finding investigation but questions and concerns of interested persons must be answered.
  - Identify and disseminate organisational learning at every opportunity, following the IPCC model approach where there is an investigation.

#### ***Good quality outcomes***

419. Confidence in the rigour and fairness of the complaints system relies as much on the results and how these are presented as on how a local resolution or an investigation has been conducted. Forces and police authorities should therefore invest time and care in how they finalise their response to a complaint or the results of a DSI or recordable conduct matter investigation and communicate this to the complainant or other interested person(s) and, if needed, the public. This will be particularly important where a case is prolonged, for example because of an inquest, misconduct proceedings or a criminal trial.

#### ***Uphold the justified complaint***

420. A principal purpose of the complaints system is to deal effectively with complaints, not just to identify failures in individual conduct or performance. There may therefore be instances where it is right and proper for a force or police authority to uphold a complaint because the conclusion is that there has been an unreasonable breakdown or failure in service which has adversely affected the complainant, although there may not be sufficient evidence or reason to show misconduct or unsatisfactory performance by a specific police officer or member of police staff (see paragraphs 431 to 442, page 113).

***A death or serious injury inquiry***

421. Unless a complaint is subsequently made or misconduct action initiated, a DSI matter investigation will focus on revealing how the DSI occurred and how any action or omission by the police caused or contributed to this. Interested persons often express concerns or questions about the circumstances and these should be directly answered by the investigation, where possible.

***Capturing learning for the organisation***

422. The IPCC and the Learning the Lessons Committee have developed new methods for identifying and disseminating learning from investigations and improving the way in which necessary changes are agreed, implemented and monitored. Forces and police authorities should model their own approach and practice on these procedures, taking note of the precautionary reports published regularly in Learning the Lessons bulletins and recommending learning reports for publication.

**PRACTICAL GUIDANCE*****Complaint findings and outcomes***<sup>108</sup>

423. When reaching conclusions and findings on a complaint allegation and reporting these and the outcome of an investigation, the IPCC expects forces and police authorities to have in mind the following key questions:
- What reasons for dissatisfaction with the police prompted the complaint?
  - What explanation should be offered for what happened to the complainant?
  - Do the police accept that what happened to the complainant was unreasonable and should be avoided in the future?
  - If so, what action is intended or has been taken to prevent its recurrence?
  - Is an apology to the complainant appropriate?
424. The required approach should not concentrate on 'misconduct'. There will be investigations that, properly, examine this and use procedures appropriate to doing so. However, in many cases the focus of the investigator will be on giving the answer to the complainant and not on asking whether there is a case to answer in relation to misconduct. Home Office<sup>109</sup> guidance on the new law

<sup>108</sup> In this chapter the term 'outcomes' is used in its general sense to mean the result of the investigation, not to refer to the statutory term found e.g. in Section 21(9) Police Reform Act 2002 (as amended).

<sup>109</sup> "An investigation into a complaint is not automatically an investigation into whether a police officer or special constable has breached the Standards of Professional Behaviour but rather an investigation into the circumstances that led to the dissatisfaction being expressed by the complainant of the actions of one or more persons serving with the police." Paragraph 2.47 Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008).

stresses that misconduct may not be relevant to the investigation of a public complaint: the IPCC expects a broader approach to be adopted when reaching findings and reporting these to the complainant and person(s) investigated.

## Explanation

425. A person whose complaint against the police is investigated should receive a clear narrative explanation for what has happened, based on the facts established, which describes the context for any behaviour complained about. The intention to do this should have been communicated during initial contact with the complainant. Investigations that conclude that a complaint is justified will explain this in a variety of ways. For example:
- Was the performance of police officers or police staff less effective because of inadequate training, or was this caused, for example, by unusual demands on resources, which reduced capacity at the time the service was needed?
  - Did what happened result from poor planning, supervision or coordination?
  - Was the complainant's cause for complaint due to the relative inexperience of junior officers or police staff?
  - Was there some misunderstanding or genuine mistake which prompted the complaint?
  - Was the conduct complained about potentially in breach of the Standards of Professional Behaviour for police officers?
  - Was the conduct complained about potentially in breach of the Standards of Professional Behaviour for police staff (or contractual equivalent)?
  - Has a person serving with the police deliberately acted outside his or her lawful authority?
426. The IPCC considers it essential that the whole picture is given to the complainant. Most complaints arise from causes unrelated to misconduct. The system will fail if it does not reflect this and does not provide the person who complains with a frank explanation for what has happened.
427. Although to be recorded a complaint has to be about conduct, its context may be about the standards of policing service or response. Thus, an investigation may show that a person's grievance arises not because of any individual failing but because, in the circumstances, the force could not at the time of the incident being complained about meet the standard expected by the complainant. The investigation process should have discovered the reason(s) for this, which the investigation findings should provide.
428. If the complaint is found to be justified and is upheld (see paragraphs 431-442, page 113), then these findings must also explain whether any conduct by the person complained about caused or contributed to what happened and, if so, to

what extent. This is necessary because a complaint can now be upheld even if there is no evidence to show that individual misconduct has occurred.

429. The IPCC recognises that clear explanation requires firm conclusions about what has happened. Some complaints involve a conflict of accounts that cannot be reconciled. The complainant may assert a person serving with the police has acted in a certain way or ways. Where there are conflicting accounts and no other witness evidence, the investigator should use his or her professional judgement to consider whether there are any other factors which make one account more credible than the other and so whether the complaint is proven on the balance of probabilities.
430. An inconclusive outcome has the potential to damage the credibility of the complaints system in the eyes of the public and is unsatisfactory. Investigators and appropriate authorities should recognise this and, wherever possible, strive to reach a proper conclusion on the evidence available, correctly applying the standard of proof.



### **Examples**

- A pregnant woman reports to the police that her boyfriend has assaulted her and threatened to kill her. The patrol officer and her sergeant supervisor conducting the necessary risk assessment together determine that the risk is low. They do not appreciate that the woman's pregnancy should be treated as a high risk factor since neither officer has been trained on the National Policing Improvement Agency (NPIA) Domestic Violence Investigation Manual, which requires this. Modular training on the NPIA practice guidance had not been made available to patrol officers in the force and was certainly not compulsory. When the woman is, shortly afterwards, murdered by the boyfriend, her mother complains that the police response was inadequate and they failed to protect her. *In addition to any other outcomes, the complainant should receive an explanation of the NPIA guidance, why the patrol officers did not know about and apply its contents and its likely impact if they had done.*
- A former soldier was arrested and taken into custody by an officer investigating a report made two months previously from a woman who said she had been bitten by his dog. After interview, he was cautioned for an offence and released. He complains, claiming that he was not properly treated in custody. He was vulnerable due to (diagnosed) post traumatic stress disorder which he reported to arresting and custody officers. Although it was accepted that he would need to see a doctor and an



**Examples (continued)**

appropriate adult, he was interviewed without an appropriate adult present and was not seen by a doctor, though one was in the police station. Building works in the police station were extremely noisy, which added to his unusually stressful reaction to being in custody and caused him to feel suicidal after release. *An explanation in this case will need to show how this man's declared and acknowledged mental vulnerability did not lead to better planning for, and provision of, a PACE compliant interview in suitable facilities. It will need to show if medical and appropriate adult resources were inadequate or poorly organised or coordinated.*

**Upholding/not upholding a complaint**

431. An essential stage when finalising a complaint is to determine whether it is upheld or not. This provides clarity for the complainant, for the person complained about and for the public. This should complement the narrative findings and explanation described at paragraphs 425-430 (page 111).
432. The investigator, in submitting his or her final report, should recommend to the appropriate authority (in a local or supervised investigation) or IPCC (in a managed or independent investigation) whether a complaint should be upheld or not. The decision as to whether to uphold a complaint is for the appropriate authority (in a local or supervised investigation) or the IPCC (for independent or managed investigations or when determining an appeal from a relevant finding of a local or supervised investigation). *Where there is a difference between the recommendation made by the investigator and the decision reached by the appropriate authority or IPCC, the reasons for this should be noted in the rationale for the final decision. The decision(s) of the appropriate authority or IPCC in this regard should be clearly communicated to the complainant and any interested parties.*

**Upheld complaints**

433. A complaint should be upheld where the findings show that the service provided by or through the conduct of those serving with the police did not reach the standard a reasonable person could expect. Any facts on which the judgement to uphold the complaint is based must be proven on the balance of probabilities. For example, this test will be met where it is found that there is a case to answer against an officer in respect of misconduct or gross misconduct or, in the case of a member of police staff, that there are grounds for disciplinary action in relation

to the matter and the matter is not an ancillary matter. This test will also be met when it is not found that there is a case to answer against an officer or, in the case of a member of police staff, that there are grounds for disciplinary action, but the service provided by or through the conduct of a person serving with the police did not reach the standard a reasonable person could expect.

434. In deciding what standard of service a person could reasonably expect, the investigator, IPCC and appropriate authority should apply an objective standard of a reasonable person in possession of the available facts. They should have regard to the Standards of Professional Behaviour (or equivalent for police staff), any agreed service standards and any national guidance that applies to the matter.
435. The decision to uphold a complaint should not be seen as in any way prejudicing the outcome of a subsequent misconduct meeting or hearing (and possible later appeal) for police officers or misconduct procedure for police staff. The decision to uphold is always and only a judgement on the service provided to the complainant by the force as a whole and should not be seen as a judgement against the person subject to the complaint.
436. This means that an investigation without special requirements can result in an upheld complaint. For example, it will be appropriate where the officer or police staff member complained about has limited experience or skill and acts in a well intentioned but ill judged way, giving good grounds for complaint but not so as to warrant a special requirements investigation.

### *Examples of instances where complaints will not be upheld*

437. A complaint will not be upheld where the facts are clearly established and it is determined that what the complainant claims happened did not occur.
438. A complaint will also not be upheld where there is insufficient evidence to conclude, on the balance of probabilities, that the complainant's allegation is true. Commonly, this will arise where there is a conflict of accounts that cannot be reconciled on the evidence available and the investigator cannot establish the facts.

### *Other considerations*

439. An investigation which is into more than one complaint may recommend upholding separate complaints but on different bases.

**Example**

A rape victim complains that an identified patrol officer was grossly rude to her in the course of a rape inquiry and that the investigation was generally sub-standard. The investigation concludes there is a case to answer against the patrol officer and upholds that complaint. It also judges the overall force response to have been below acceptable standards and upholds the second complaint on this basis, not because of the case to answer against the patrol officer.

440. Sometimes an investigation will uncover evidence which, if it was subject to complaint, would give grounds for upholding but does not form part of any allegation made by the person who has complained. This will probably be because it is not known to the complainant, and is usually termed an ‘ancillary’ matter (see earlier guidance on ancillary matters at 323-325, page 90). Some ancillary matters will be recordable conduct matters. They will be recorded and, where appropriate, the complainant treated as an interested person for the purposes of the second investigation and the duty to keep that person informed. If this has not been required but the facts are causally linked with the subject of the complaint they must form part of the explanation provided to the complainant, and the full facts found should be disclosed.
441. However, if the facts are not connected in any way with what is alleged by the complainant, they will not form part of the basis for the conclusions reached on the complaint, will not cause the complaint to be upheld and there is no duty to report them to the complainant although the appropriate authority may decide to do so.
442. The key points in the guidance at paragraphs 423-441 (page 110) are as follows:
- A broad approach to explanation is usually required: issues to do with misconduct may not be relevant.
  - Findings should explain what happened and why, and the context for this.
  - Is the complaint upheld? A decision on this must be taken and reported to the complainant and any interested parties.
  - A complaint can still be upheld even where there is no evidence of misconduct (police officer) or grounds for disciplinary action (member of police staff).

**Examples**

- A man complains of unlawful arrest by a traffic patrol police officer. Two more officers in another police vehicle arrive at the scene and witness

**Examples (continued)**

the arrest, which is also filmed and recorded on the video system in their car. No complaint is made about these officers. When the video recording is viewed investigators discover its audio has captured a conversation between the second and third officers that is clearly racist and derogatory about several car drivers they have passed. This is an ancillary matter and a recordable conduct matter for which an investigation is undertaken with special requirements, resulting in both officers facing misconduct action for gross misconduct. After an investigation into the arrest, without special requirements, the investigator concludes the arrest by the traffic officer was lawful and justified. *The appropriate authority is not under any duty to refer to the 'ancillary matter' concerning the other two officers when finalising and reporting to the complainant their conclusions on his complaint.*

- A man is stopped in his car when on his way to a funeral for not wearing a seat belt. In the course of an ensuing argument he is detained and arrested. He later complains that his being stopped and arrested was unlawful, discriminatory and disrespectful. The investigation is conducted without special requirements. Although the investigator concludes the arrest was lawful and not discriminatory, he upholds the complaint of lack of respect since he judges the arresting officer did not attempt to defuse the complainant's reaction to his arrest, nor try to understand the reason for it. In order to improve the officer's future behaviour, management action is taken. *The complainant is given a full explanation for what happened and why. The upheld complaint reflects a poorly handled and ill judged response to the circumstances for which the findings state the officer was personally responsible.*
- When driving his car home late at night a 40-year-old man is stopped by two police officers. He asks the police the reason for being stopped. The officers refuse to provide him with any reason, claiming that the law does not require them to do so. The man is issued with a HORT/1 notice to produce his driving documents and permitted to drive away. He then complains to the force that he was stopped because he is black and was driving a BMW, and that he should have been told why he was stopped. When asked for their account the officers claim that they stopped the car under Section 163, Road Traffic Act 1988, which does not require officers to have reasonable suspicion before it is used. They say they stopped the man because he looked too young to be driving the vehicle. *The investigator concludes that there is insufficient evidence to support a finding that the man was stopped due to his race but finds that the*

**Examples (continued)**

*officers could and should have provided the man with the reason why his car was stopped, as a matter of good service, even if the law does not require this. He upholds the complaint on this basis.*

- A man is arrested and detained in police custody. Before being put in a cell, an officer gives him a 'pat down' search. After his release, the man complains that the searching officer indecently assaulted him by touching his testicles when conducting the search. The custody CCTV evidence shows the complete search being carried out and disproves the complaint. *This complaint is clearly ill founded. If, after seeing the video, the complainant does not agree to withdrawal, the proper outcome should be 'complaint not upheld'.*
- A team of police officers is deployed using ANPR<sup>110</sup> technology to stop and seize cars being driven by uninsured drivers. The force has not formulated a policy to define exceptions to this approach. An officer stops a car with four occupants: the driver, his wife and her elderly parents who are in poor health and on their way to hospital. Although the driver is not insured to drive, his wife does have insurance and could lawfully drive the car. An officer seizes the car, explaining that he will not allow an insured passenger to take over driving because he fears that as soon as the police are out of sight the uninsured driver will resume the driving. The woman complains that she was not allowed to drive the car and that she and her parents have been greatly inconvenienced by what happened.

The investigator conducts an investigation without special requirements and concludes that the team's approach was too inflexible and that the exercise of discretion to permit a substitute driver in certain situations could have been justified without compromising the enforcement campaign. She intends to recommend that officers undertaking this role in the future are briefed on the circumstances in which they should consider using their discretion not to seize a vehicle. *The investigator should recommend this complaint be upheld.*

- A young man, while detained in psychiatric hospital under the Mental Health Act, leaves without permission. He is reported to the police as a missing person. After some days he is found dead from hypothermia and his mother complains that she is dissatisfied with the police response, alleging they did not do enough to trace and save him. The investigator

<sup>110</sup> Automated Number Plate Recognition

**Examples (continued)**

finds that the force policy and guidance does not reflect current ACPO standards. He concludes that the response was a little slow, because of a control room operator being very inexperienced, a new IT system having just been installed and resources being drawn away to a major incident elsewhere in the force area. There are few, if any, examples of specific failure in performance. The investigator concludes that the response could have been more prompt and that more resources should have been put into the search. He recommends a review of force policy and a facilitated debrief with staff to enable them to learn how the incident could have been handled better. *This complaint should be upheld due to the standard of response provided.*

**Action following complaint**

443. Where a complaint is shown to be justified, the person initiating it, and the general public, need to be reassured that all necessary and effective action has been taken to put things right and to prevent a recurrence. Forces and police authorities need to be able to demonstrate that where a complaint is shown to be justified, its outcome feeds back into improved police practice.
444. Remedial action may relate to individual officers or police staff, to the local service or to national policing. How well such action is communicated to the complainant will often determine his or her confidence that the force has learned the necessary lessons to prevent a repeat of poor service or conduct.
445. Any planned action to deal with misconduct, unsatisfactory performance or disciplinary action (police staff) should be set out in a letter to the complainant, who should also later be informed of the outcome(s) of any action. The complainant, who is normally entitled to attend misconduct proceedings resulting from an investigation with special requirements, should be informed of the time and place fixed for any misconduct proceedings if these are taken.<sup>111</sup> See paragraphs 454-483 (page 120) for further guidance concerning criminal prosecution and misconduct action.
446. An inquiry may identify non-conduct matters requiring attention, for example:
- a review of, or revision to, policy or guidance;
  - changes to equipment or physical facilities;
  - training or communications initiatives;
  - a review of the deployment of local resources.

<sup>111</sup> Regulation 31(2), Police (Conduct) Regulations 2008

447. If such a matter features in the explanation provided to the complainant, the force or police authority should report to the complainant summarising what action is intended and why and within what timescale. In the case of action in response to a supervised, managed or independent investigation, this information should include how implementation will be monitored for its effectiveness. A force or police authority should provide further information on progress made where a complainant wishes to be updated on this.
448. In a small number of cases, the investigation may have identified suggestions for national policy or practice to be reviewed and/or changed. Proposals and action on such matters should also be reported to the complainant. Where the complainant has stated he or she wishes to be so informed, a proposal should be followed up so that the complainant learns whether or not it is implemented and its effect.
449. See paragraphs 487-505 (page 126) for specific guidance about reporting and disseminating learning from investigations.

### **Apologies**

450. The IPCC expects forces and police authorities to give appropriate apologies where a complaint is found to be justified. A sincere and timely apology can have a significant effect for both parties in defusing emotion and enabling resolution. An apology can also demonstrate a willingness to learn after something has gone wrong. Anyone considering an apology should therefore be mindful of the necessary relationship this will have to the guidance given above (paragraphs 425-430, page 111) regarding explanations, and the guidance in paragraphs 487-505 (page 126) relating to learning outcomes.
451. Forces and police authorities should give careful consideration to the timing of any apology. Clearly, if an apology is to be delivered, a force or police authority should do so at the earliest appropriate time or its value can be diminished.
452. An officer or police staff member found to be the cause of the complaint and who is willing to apologise should be supported and enabled to provide a personal apology. It may be appropriate for a manager or supervisor to convey a personal apology on the officer or police staff member's behalf, if he or she is unable to meet or speak to the complainant. A manager or supervisor will need to convey an apology if it relates to failings of a force rather than of an individual. The IPCC expects a chief officer to deliver any apology given by a force in relation to police actions or omissions that have caused or contributed to a fatality.

453. While an apology is presented here as a potential outcome of a complaint, this guidance is equally relevant in the case of recordable conduct and death or serious injury (DSI) matters, where there has been an adverse effect on a member of the public.

### ***Conduct outcomes***

454. The Home Office has issued detailed guidance on dealing with misconduct and unsatisfactory performance by police officers.<sup>112</sup> The following provisions complement that guidance by describing conduct outcomes for police officers and police staff following investigation in the context of the complaints system. Where action is taken against a police officer or member of staff arising from a public complaint the process of resolution continues throughout the misconduct proceedings and does not end when the investigation is concluded and intended outcomes are reported.

### **Action following an investigation: recommendations**

455. If, after an investigation, the investigator concludes (for both police officers and police staff) that there is no case to answer in respect of either misconduct or gross misconduct, the only outcome that can be recommended is either no further action or management action in respect of the conduct.
456. Management action<sup>113</sup> can, for example, include that the person:
- receives operational advice about his or her actions or omissions from his or her line manager or a more senior officer/manager;
  - undergoes specific training, retraining or assessment;
  - participates in a restorative conference with the complainant.
457. Alternatively, for police officers only, if the investigator finds that the matter is one of poor performance rather than misconduct, action can be recommended under the Unsatisfactory Performance Procedures set out in the Police (Performance) Regulations 2008. For police staff, the recommendation will be under appropriate local capability procedures.
458. For a police officer, if the investigation concludes that there is a case to answer for misconduct then either management action or misconduct proceedings can be recommended. In this case, 'proceedings' means a misconduct meeting or hearing, unless the officer has a live final written warning, in which case a

<sup>112</sup> Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008)

<sup>113</sup> For police staff, management action available will be governed by local force procedures.



misconduct hearing must follow.<sup>115</sup>

459. If the investigation concludes there is a case to answer for gross misconduct, this may only be heard at a misconduct hearing or special case hearing.<sup>116</sup> The latter type of hearing is further explained at paragraph 337 (page 93).

### **Handling after a local or supervised investigation**

460. Following a local investigation into a complaint or conduct matter, the investigator will provide the report to the appropriate authority, which will then consider referral to the CPS (see paragraphs 482-483, page 125) for the consideration of any criminal offences.<sup>117</sup> If the report is not referred, the appropriate authority will determine its findings and outcomes and, in the case of a complaint investigation, inform the complainant.<sup>118</sup> A complainant has a right to appeal against a decision not to refer the case to the CPS. For this reason, an appropriate authority should record its reason(s) for a decision not to refer the case to the CPS.

461. In a supervised investigation, the investigator's responsibility is to submit the report to the IPCC, sending a copy to the appropriate authority.<sup>119</sup> On receipt of the report, the IPCC's role is to assess whether the approved terms of reference and any requirements set by the IPCC for the investigation have been met. It is not, at this stage, to determine if the IPCC agrees with the findings and conclusions and recommended outcomes, since the matter may be the subject of an appeal.

462. In performing this role the IPCC may seek further information, evidence and explanation from the investigator. When the IPCC determines that the terms of reference and any requirements have been fulfilled it will inform the appropriate authority and investigator. On being so notified, the appropriate authority, as above, must consider possible referral to the CPS and, in the light of this, finalise the matter and report the outcomes to those entitled to be informed.

463. Appropriate authorities should note the limited role of the IPCC in relation to the findings and conclusions of a supervised complaint(s) investigation. They should ensure its function at this stage is not misrepresented to the complainant when notified of the result of the investigation by, for example, permitting any suggestion that the IPCC has agreed the findings or conclusions. Further guidance is given below with respect to appeals (see paragraphs 510-524, page

<sup>115</sup> Regulation 19(9), Police (Conduct) Regulations 2008

<sup>116</sup> Regulations 19(4) and 41(4), Police (Conduct) Regulations 2008

<sup>117</sup> Schedule 3, Paragraph 24(2), Police Reform Act 2002 (as amended)

<sup>118</sup> Schedule 3, Paragraph 24(7) and (8), Police Reform Act 2002 (as amended)

<sup>119</sup> Schedule 3, Paragraph 22(1) and (3), Police Reform Act 2002 (as amended)

130 ), including the right for complainants to appeal against a decision by the appropriate authority not to refer a matter to the CPS.

464. Where the supervised investigation is solely into a conduct matter, not a public complaint, the appropriate authority is not required to obtain the IPCC's formal agreement to its findings and conclusions. However, it may be asked to report these to the IPCC in its guardianship role,<sup>120</sup> together with the results of any misconduct action or action in response to learning recommendations.
465. The IPCC has to review any decision by the appropriate authority not to refer a recordable conduct matter to the CPS where the IPCC has supervised the investigation.<sup>121</sup> The IPCC expects that in supervised investigations into conduct matters, the appropriate authority will notify the IPCC as soon as practicable of its decision regarding referral to the CPS. The IPCC will then review any decision not to refer and make its own determination as soon as practicable. If the IPCC decides that the matter should have been referred, it will direct the appropriate authority to make such a referral.<sup>122</sup>
466. When disciplinary proceedings are initiated following a complaint, it is essential that the appropriate authority arranges effective liaison with the complainant until those proceedings are concluded.

### Handling following a managed or independent investigation

467. In managed and independent investigations the IPCC, not the appropriate authority, reports to the complainant or interested person with the results of the investigation.<sup>123</sup> Where the investigation was into a complaint, the complainant has no right of appeal against the IPCC's decisions.
468. At the conclusion of the investigation, the police investigator (managed) or IPCC investigator (independent) should provide the IPCC with the report and supporting evidence and in the case of a managed investigation must also send a copy to the appropriate authority.<sup>124</sup> The IPCC will send a copy of an independent investigation report to the appropriate authority once it is satisfied that the investigation has been satisfactorily completed. The appropriate authority will be invited to forward its memorandum under Paragraph 23(7), Schedule 3 Police Reform Act 2002 to the IPCC.<sup>125</sup>

<sup>120</sup> The IPCC has a duty under the Police Reform Act 2002 to increase confidence in the police complaints system in England and Wales and in so doing, to contribute to increasing confidence in policing as a whole. As well as direct oversight of individual cases, the IPCC provides general oversight of the system as a whole. There are four key elements to this general oversight:

- Setting, improving, reviewing, monitoring and inspecting standards for the operations of the police complaints system.
- Promoting confidence in the complaints system as a whole amongst the public and police.
- Ensuring the accessibility of the complaints system.
- Promoting policing excellence by drawing out and feeding back learning.

<sup>121</sup> Schedule 3, Paragraph 24(5B), Police Reform Act 2002 (as amended)

<sup>122</sup> Schedule 3, Paragraph 24(5B)(b), Police Reform Act 2002 (as amended)

<sup>123</sup> Schedule 3, Paragraph 23, Police Reform Act 2002 (as amended)

<sup>124</sup> Schedule 3, Paragraph 22(3), Police Reform Act 2002 (as amended)

<sup>125</sup> See paragraph 470 for further explanation.

469. If the IPCC determines that the report should be referred to the CPS it will arrange this at this stage: the appropriate authority should still supply the memorandum even though the CPS decision may not have yet been made.
470. In the memorandum the appropriate authority needs to set out whether any person has a case to answer in respect of misconduct or gross misconduct and what, if any, action it proposes to take in respect of the matters dealt with in the report. Where someone's conduct has been investigated and the appropriate authority proposes that no misconduct proceedings should be brought against this person, the memorandum needs to set out the reasons for this decision. The IPCC also requires the appropriate authority to provide in the memorandum details of its response to organisational recommendations, if any, contained in the report.
471. Accordingly, the information the IPCC expects the memorandum to provide includes the following:
- in a complaint case, whether the appropriate authority accepts the findings and conclusions of the investigator on the complaint(s) i.e. whether upheld or not and whether it accepts the recommendation(s), if any, for putting right any upheld complaint;
  - whether the appropriate authority accepts the findings and conclusions of the investigator as to whether there is a case to answer<sup>126</sup> or no case to answer in respect of misconduct or gross misconduct and, if it disagrees, then the reason(s) for disagreement;
  - if any disciplinary proceedings are proposed for any person, the specific allegations it is recommended that person faces and at what level;
  - relevant details from the complaints, discipline and performance record of the officer or member of staff in question;
  - details of any local policy, practice or settled approach to dealing with the type of conduct in issue;
  - whether the appropriate authority accepts the findings and conclusions of the investigator, if any, as to non-conduct (i.e. organisational) matters and, if not, the reasons for disagreement;
  - what, if any, action will be taken in light of any findings, conclusions and recommendations by the investigator as to non-conduct matters and when.
472. In response to a memorandum, the IPCC will indicate if it is in agreement with the proposals and, if not, it will make recommendations, giving its reasons and inviting the appropriate authority's observations.
473. The IPCC may make a recommendation and, if this is not accepted, a direction<sup>127</sup>

<sup>126</sup> Or, for pre-2008 cases, whether an allegation is substantiated.

<sup>127</sup> Schedule 3, Paragraph 27, Police Reform Act 2002 (as amended)

that disciplinary proceedings are brought against a police officer or police staff member.<sup>128</sup>

474. The IPCC may recommend (and, if necessary and appropriate, direct) that:
- there is no case to answer;
  - there is a case to answer in respect of misconduct or gross misconduct;
  - some form of disciplinary proceedings should be brought;
  - any disciplinary proceedings which are brought should deal with particular aspects of conduct.<sup>129</sup>
475. Where disciplinary action has been recommended or directed, the IPCC will require confirmation from the appropriate authority that steps have been taken to give effect to the recommendation or direction.
476. When disciplinary proceedings are initiated following a complaint, it is essential that the appropriate authority puts in place and maintains effective liaison with the complainant until those proceedings are concluded.

#### **IPCC representations to misconduct proceedings<sup>130</sup>**

477. When the IPCC has managed or independently carried out an investigation which leads to misconduct proceedings, made a recommendation under Schedule 3, paragraph 27, Police Reform Act 2002 that has been accepted by the appropriate authority, or made a direction under the same paragraph, the IPCC can attend those proceedings in order to make representations to the panel or the person conducting the meeting.<sup>131</sup>
478. The person conducting a misconduct meeting or the chair of a misconduct hearing can request the attendance of either the lead investigator or another person with sufficient knowledge of the case to answer questions. When the IPCC is to attend a misconduct hearing, it may instruct counsel or a solicitor to represent it.<sup>132</sup>

#### **Public misconduct hearing following IPCC independent investigation**

479. Where a misconduct hearing (not a special case hearing) arises from a case where the IPCC has conducted an independent investigation and it considers that, because of its gravity or other exceptional circumstances, it would be in the

128 For pre-2008 cases, the IPCC may recommend and, if necessary and appropriate, direct that disciplinary proceedings are brought or that proposed proceedings are modified by, for example, additional or different allegations being put.

129 Schedule 3, Paragraph 27, Police Reform Act 2002 (as amended)

130 The guidance at paragraphs 477-481 does not apply to police staff disciplinary proceedings.

131 Regulations 30 and 51, Police (Conduct) Regulations 2008. For pre-2008 cases the IPCC has the power to present the case at a hearing that it has directed take place.

132 Regulations 30 and 51, Police (Conduct) Regulations 2008

public interest to do so, the IPCC may direct that the whole or part of the misconduct hearing be held in public.<sup>133</sup> This power is not available for staff discipline hearings.

480. In accordance with its legal duty<sup>134</sup> to do so and its own published policy for such cases,<sup>135</sup> the IPCC will consult the appropriate authority, the police officer concerned, the complainant, any interested person and any witnesses before making such a direction.
481. Before finalising how it will comply with any such direction, the appropriate authority should consult the IPCC as to the intended location for the hearing, its planned arrangements for enabling the attendance of the complainant(s) or interested person(s), if any, other members of the public and the press. It should also consult about any modifications to its normal procedure proposed by the person presiding at the hearing to take account of the hearing's public nature and the anticipated interest of the general public in the proceedings and their outcome. Any additional cost resulting from the public status of the hearing will be met by the force.

### ***Crime outcomes***

482. The IPCC and an appropriate authority now have greater discretion than under previous legislation when determining whether to refer a report to the CPS for it to consider criminal proceedings.<sup>136</sup> When a report indicates a criminal offence may have been committed and the IPCC (for managed and independent investigations) or appropriate authority (for local and supervised ones) considers it to be appropriate, the case may be referred to the CPS. The reason(s) for a decision not to refer to the CPS should be clearly documented.
483. Where a case is referred to the CPS then the person referring the matter should ensure that the CPS is given relevant information to enable it to initiate effective liaison with the complainant. Similar practice should apply where there is an identified interested person or persons.

### ***Death or serious injury investigation outcomes***

484. The outcomes of a DSI matter investigation (and the structure of its final report) will reflect the fact that it is not an inquiry into any criminal, conduct or

133 Regulation 30(5) Police (Conduct) Regulations 2004 and Regs 32(5) Police (Conduct) Regulations 2008

134 Regulations 30(5) or 32(5) Police (Conduct) Regulations 2008

135 The IPCC's policy on disciplinary hearings in public is available from [www.ipcc.gov.uk](http://www.ipcc.gov.uk).

136 The Police Reform Act 2002, as amended by the Criminal Justice and Immigration Act 2008

complaint allegation against any identified police officer or police staff member.<sup>137</sup> Its purpose is to establish facts and the cause of events and their consequences. Its role is to investigate how and to what extent, if any, the person who has died or been seriously injured had contact with the police and the degree to which this caused or contributed to the death or injury.<sup>138</sup>

### **Articles 2 and 3 of the European Convention on Human Rights (ECHR)**

485. There must be an effective official investigation where Article 2 and/or 3 of the European Convention on Human Rights (ECHR) is arguably engaged. The form of the investigation is flexible, but must be prompt and independent and involve a degree of public scrutiny.<sup>139</sup>

### **Concerns and questions raised by interested persons**

486. It is likely that in the course of a DSI matter inquiry the interested person(s) will communicate questions or concerns to the investigator or IPCC that do not amount to a complaint. The investigation should nevertheless address these questions and concerns when reporting final findings and conclusions if they have not already been fully answered or addressed. The European Court of Human Rights has recognised there are certain limits to this duty.

### ***Learning outcomes***

487. The overall purpose of learning recommendations and the publication of precautionary reports on cases in the Learning the Lessons bulletin<sup>140</sup> is to improve policing. When conducted in accordance with guidance above (see paragraph 320, page 89) many investigations will yield significant learning outcomes for local and/or national policing. In conjunction with the Learning the Lessons Committee and after piloting with several police forces, the IPCC has developed working practices designed to aid in the identification, collation, reporting and dissemination of such outcomes.<sup>141</sup>

488. The IPCC requires these practices to be followed in its own, and in managed and supervised, investigations. It expects police forces and police authorities to adopt the same or similar procedures when concluding local investigations and when identifying and communicating the lessons they prompt for national and local policing.

<sup>137</sup> A DSI investigation can become a complaint or conduct investigation if an allegation is made during the course of it.

<sup>138</sup> See definition of death or serious injury matter in Section 12, Police Reform Act 2002 (as amended).

<sup>139</sup> *Ramsahai and others v The Netherlands* ECHR 52391/99

<sup>140</sup> Three bulletins are published each year on [www.learningthelessons.org.uk](http://www.learningthelessons.org.uk).

<sup>141</sup> Practice advice is available on the IPCC website – [www.ipcc.gov.uk](http://www.ipcc.gov.uk).

489. Guidance has been given above (see paragraph 320, page 89) on the use of standard terms of reference and on the reporting of lessons where this needs to be done rapidly and before any final report is prepared.
490. The essential elements for the final stages of an investigation where learning has been identified are:
- the learning report;
  - well-drawn recommendations and/or suggestions;
  - effective implementation of recommendations;
  - local reporting of lessons;
  - reporting of lessons to the Learning the Lessons Committee.

### **The learning report**

491. Where an investigation has concluded that there is ‘non-conduct’ learning, i.e. for the organisation and its management or national police bodies rather than individual officers or staff, this should be set out in a separate part of the investigation report. In its own or managed investigations, the IPCC requires a template<sup>142</sup> to be used in completing such a learning report. This provides an overview of the key facts found and their context, and sets out the conclusions and corresponding recommendations and suggestions for the local force or national policing organisations and actions taken to implement those that are agreed.
492. Forces and police authorities should have regard to practice advice issued by the IPCC on the completion of a learning report.<sup>143</sup> The report’s size and scope will depend on the nature of the investigation, its complexity and the specific lessons found.
493. It is important that what is in fact an individual’s misconduct is not unduly attributed to organisational failings. It is equally important that an individual is not blamed for organisational failings. Learning and misconduct are not always mutually exclusive, however. An officer or police staff member might reasonably have been expected to act differently without, for example, specific training, even if that training would have helped him or her to act in that way. Where an investigation uncovers both organisational learning and misconduct, it is important to explain in the section of the final report that deals with misconduct why those organisational failings do not wholly excuse the conduct. If this is not done, the organisational failings may be available as a defence in any misconduct proceedings.

### **Drafting recommendations and/or suggestions**

494. To be useful, the learning that results from an investigation needs to be:

<sup>142</sup> See guidance at [www.ipcc.gov.uk/guidance\\_on\\_writing\\_learning\\_reports.pdf](http://www.ipcc.gov.uk/guidance_on_writing_learning_reports.pdf).

<sup>143</sup> Practice advice is available on the IPCC website – [www.ipcc.gov.uk](http://www.ipcc.gov.uk).

- evidence-based;
- consistent;
- reasoned and specific;
- as practical as possible;
- focused.

495. The IPCC has provided practice advice on formulating learning that explains each of these elements.<sup>144</sup> Investigators are now expected to have regard to it when drafting final reports.
496. In managed investigations, investigators will recognise that where recommendations affect national policing policy or legislation, the IPCC must ensure these are consistent with its own policy and previous recommendations. Agreed procedures require the necessary consultation with, and approval of, the IPCC to achieve this. In local and supervised investigations, forces will need to adopt similar approaches to encourage consistency within the force.

## **Effective implementation**

497. Finalisation of an investigation under the Police Reform Act provides the IPCC and police service with opportunities to further the learning it may have produced.
498. For independent and managed investigations, the IPCC must ask<sup>145</sup> the appropriate authority what action it intends to take in respect of (among other things) any local learning recommendations made, and the force or police authority must respond to the IPCC accordingly with an action plan.
499. Where changes are to be initiated, this plan should detail the changes planned, the timescale(s) for implementation, the managers identified as responsible for putting these changes into action, and how the impact of the changes will be monitored. The IPCC will notify the appropriate authority of its response to this plan, if necessary discussing details prior to doing so.
500. For supervised and local investigations, the IPCC is not involved in finalisation in the same way unless the case arises from a complaint and leads to an appeal to the IPCC. The IPCC expects practice in supervised and local investigations to mirror the arrangements in independent and managed investigations, with an action plan being written setting out the information mentioned. In a complaint case, the appropriate authority may disclose this to the complainant and in a supervised investigation it may decide to copy the plan to the IPCC for its information, given its knowledge of the matter.

<sup>144</sup> Practice advice is available on the IPCC website – [www.ipcc.gov.uk](http://www.ipcc.gov.uk)

<sup>145</sup> Schedule 3, Paragraph 23(6), Police Reform Act 2002 (as amended)



### **Local and national reporting of lessons from investigations**

501. Many professional standards departments report the learning from investigations to their respective forces in a regular bulletin or e-communication, particularly following public complaints. The IPCC encourages all forces and police authorities to consider ways in which learning from investigation outcomes can be regularly reported to those who would benefit.
502. Local recommendations, their corresponding findings and the events from which they arise may appear to have only local significance. However, the Learning the Lessons bulletin now regularly publishes such accounts. They have been shown to provide important learning across the police service. They highlight systemic or practical risks for strategic and operation managers and supervisors to be aware of so that they can reduce or avoid them.
503. Examples of good practice identified by the investigation may also merit consideration by the police service as a whole.
504. Investigators in supervised and local investigations are therefore asked to consider and, if appropriate, propose reporting to the Learning the Lessons Committee details of the incident and inquiry outcomes (preferably in the form of a learning report) for the Committee to consider wider dissemination to the police service by inclusion in the bulletin. Reports should initially be forwarded to the ACPO Complaints and Misconduct Working Group in accordance with arrangements it has established.
505. The IPCC will continue its established practice of reporting suitable cases to the Learning the Lessons Committee arising from independent or managed investigations.

### ***Inquests***

506. An investigation into a fatality will usually result in an inquest hearing. This has the potential to prolong the process of finalising conduct outcomes if decisions on these are deferred until after the hearing. In most cases, an investigation will be completed before the inquest is held. If this is so, then the appropriate authority (and the IPCC where it is involved) must determine as soon as practicable if there is a case to answer in relation to misconduct or gross misconduct. Furthermore, the appropriate authority must conclude any proceedings resulting from that determination in accordance with the timescale prescribed in regulations. If proceedings occur, they are likely to be conducted

before the inquest takes place<sup>146</sup> and the coroner should be informed of the date for any hearing and its result.

507. Exceptionally, it may be necessary to postpone completing an investigation into the conduct of a police officer or police staff member until after the inquest is concluded, where there are genuine prospects that the evidence heard and/or the verdict may affect the investigation's findings. If the investigator decides to do this, the coroner should be informed.
508. Where an inquest follows an independent investigation into the circumstances of the death, the IPCC is responsible for supplying the coroner with the report and evidence and for any further liaison and assistance needed by the coroner prior to and during the course of the proceedings.
509. Where an inquest follows a managed investigation into the circumstances of the death, lead responsibility for liaison for the investigation with the coroner rests with the IPCC. However, the police investigator will be asked to assist the coroner during the hearing with statements, documents and other evidence, in the usual manner.

### ***Appeals to the IPCC against investigation outcomes***

#### **Handling**

510. This applies to all complaints investigated by the appropriate authority itself or where the investigation has been supervised by the IPCC. There is no avenue of appeal from independent or managed investigations.
511. A complainant who is dissatisfied with the outcome(s) of a local or supervised investigation may appeal to the IPCC within 28 days of the date on which the appropriate authority sends him or her notification of its determination of the outcome(s).<sup>147</sup> This period starts on the date on which the notification is sent, not the date it is received.<sup>148</sup> A notification should be dispatched by post on the date which it bears. The police should make the complainant aware when notification is due as part of the duty to keep the complainant informed so that, for example, if the complainant is going to be away, a representative can be nominated to receive information.
512. The IPCC may exercise discretion about accepting appeals later in special circumstances where it is just to do so.<sup>149</sup>

<sup>146</sup> Misconduct proceedings can only be postponed to await the conclusion of a criminal trial, not an inquest hearing (Regulation 9, Police (Conduct) Regulations 2008).

<sup>147</sup> Schedule 3, Paragraph 25, Police Reform Act 2002 (as amended)

<sup>148</sup> Regulation 10, Police (Complaints and Misconduct) Regulations 2004

<sup>149</sup> Regulation 10(8), The Police (Complaints and Misconduct) Regulations 2004

513. The IPCC and ACPO have agreed that an appropriate authority may regard an investigation as finalised and withdraw a Regulation 14A notice<sup>150</sup> (and its equivalent for police staff) if they have not been notified of an appeal by the end of two working days following the expiry of the 28-day time for making an appeal.
514. When the IPCC receives an appeal it will:
- notify the appropriate authority;
  - ask the appropriate authority to provide any information which it considers necessary in relation to that complaint within seven working days;
  - ask that any views on the validity or merit of the appeal be submitted in writing within seven working days;
  - ask that any Regulation 14A notice<sup>151</sup> which has been served upon an officer (and any equivalent notice served on police staff) is not withdrawn by the appropriate authority;
  - ensure that the person or people subject to the investigation are notified that an appeal has been made;
  - provide a copy of the appeal to the appropriate authority.
515. The IPCC will contact the appropriate authority if background papers have not been received within seven days, in order to prompt their receipt.
516. The IPCC will examine appeals received for evidence that they have been made out of time. If it appears on the face of an appeal that it is made out of time then background papers will not be sought. The complainant will be asked to provide any representations he or she wishes to make as to the reason for the lateness of the appeal. A determination will then be made as to its validity. If it is not immediately apparent that an appeal is being made out of time, background papers will be sought and the question determined in the light of them.

## **Grounds of appeal to the IPCC<sup>152</sup>**

517. A complainant may appeal on grounds that he or she:
- has not been adequately informed about the findings of the investigation or any proposals resulting from the report;
  - disagrees with the findings of the investigation including whether a person has a case to answer for misconduct or gross misconduct;
  - disagrees with the police proposals for action – or lack of them – in light of the report;
  - disagrees with the decision not to refer the report to the CPS.

150 A Regulation 9 notice in the case of a pre-2008 case

151 A Regulation 9 notice in the case of a pre-2008 case

152 Schedule 3, Paragraph 25, Police Reform Act 2002 (as amended)

**How the IPCC will consider the appeal**

518. The IPCC is no longer required<sup>153</sup> by law to consider and determine whether each of the available grounds of appeal apply, only such as it considers appropriate in the circumstances.<sup>154</sup> In practice this means the IPCC does not have to consider a ground of appeal not mentioned by the complainant, but can do so.

519. In considering the appeal, the IPCC may look at:

- whether this guidance has been followed;
- whether the complainant has been given the final report of the investigation by the appropriate authority and, if not, what information has been withheld and on what grounds;
- in relation to the investigation, whether it was carried out in a proportionate manner consistent with guidance at paragraphs 302-305 (page 84);
- in relation to the findings, whether sufficient evidence was gathered and whether the conclusions reached were reasonable in light of that evidence;
- whether any proposed action by the appropriate authority in relation to misconduct proceedings is based on a sound assessment of the evidence;
- information setting out the appropriate authority's proposals, if any, and the reasons for them or the appropriate authority's reason for not bringing misconduct proceedings against any person.

520. The IPCC expects this information and responsibility for relevant decisions to be recorded and readily available, for example in the investigation log or file record.

521. In deciding an appeal the IPCC may:

- direct the appropriate authority to release information (subject to the harm test, see Annex C, page 214);<sup>155</sup>
- review the findings, without further investigation, which may result in the IPCC upholding the findings in whole or in part or substituting its own findings;
- direct the appropriate authority to reinvestigate the complaint, subject to the nature of the original complaint, the evidence available and how the investigation has been handled;<sup>156</sup>
- recommend and, if this is resisted direct, the appropriate authority to take misconduct or disciplinary action;<sup>157</sup>
- recommend the appropriate authority take other action.

522. Where the IPCC directs a reinvestigation, it may require that the original complaint is revisited in whole or in part. At the same time as directing a new investigation, the IPCC will determine its mode of investigation under the Police

<sup>153</sup> As is still the case with pre-2008 cases

<sup>154</sup> Schedule 3, Paragraph 25(5), Police Reform Act 2002 (as amended)

<sup>155</sup> Schedule 3, Paragraph 25(6), Police Reform Act 2002 (as amended)

<sup>156</sup> Schedule 3, Paragraph 25(8), Police Reform Act 2002 (as amended)

<sup>157</sup> Schedule 3, Paragraph 25(9), Police Reform Act 2002 (as amended)

Reform Act: local, supervised, managed or independent.

523. Irrespective of the decision whether to uphold the appeal, the IPCC will ensure that its decision is notified to the person or persons subject to the investigation except where it might prejudice a reinvestigation.
524. Where the appeal is against a decision not to refer a report to the CPS, this will be handled in the same way as review decisions for conduct matter investigations. If the IPCC determines that the appropriate authority should have referred the report to the CPS it will direct the appropriate authority to do so.<sup>158</sup>

## COMMUNICATION

525. Guidance has been given (see paragraphs 390-396, page 103 and Annex C, page 214) on applying the harm test to certain decisions to disclose information, including supplying the final investigation report and any supporting evidence.
526. Under the Police Reform Act, the IPCC has a major responsibility for determining how much information on outcomes is communicated to complainants and interested persons.
527. Accordingly, the IPCC encourages forces and police authorities to adopt the following approach to communicating information to increase public confidence in the transparency of the system.

### ***What information on outcomes should be communicated?***

#### **The final investigation report**

528. The IPCC believes that making the final investigation report available to the complainant or interested person is the most transparent way of showing what the investigation has found, and so it should usually be provided to the complainant or interested person, subject to the harm test and any necessary redactions. There will be very rare occasions when a reasonable application of the harm test will prevent this and redaction cannot remove the risk of harm. See paragraphs 544-548 (page 136) on disclosure where there are criminal or disciplinary proceedings. In some circumstances, where there is a difference between the recommendation made by the investigator and the decision reached by the appropriate authority or IPCC, it will be necessary to provide the investigation report accompanied by the final decision and rationale for it.

<sup>158</sup> Schedule 3, Paragraph 25(9)(a), Police Reform Act 2002 (as amended)

529. The practical needs of the complainant or interested person relating to language or the need for other support, should be taken into account when communicating the findings of the investigation. If the findings are set out in a letter, the complainant or interested person should be given the opportunity to request a copy of the report.
530. However the appropriate authority communicates the findings of the investigation, it should inform the complainant of his or her right to appeal to the IPCC in those cases where this is available. This could be achieved by supplying a copy of the IPCC's appeal leaflet.
531. The same general principles apply to the person subject to the complaint, though see guidance at paragraphs 549-556 (page 137), where disciplinary proceedings are to take place.
532. The IPCC recommends that investigators should therefore make a working presumption that the reports they write may be disclosed to the complainant or interested person and to the relevant police officer or police staff member at some stage. Investigators should carry out risk assessments as they are compiling evidence as to whether information should go in the main body of the report, which will be disclosed, or in an annex of material that may not be disclosed because of the risk of harm.
533. Transparency should not lead to a dilution of the contents or language of the report, which should continue to be robust and evidence-based. Investigators should be aware that their reports may need to be disclosed under the Freedom of Information Act or otherwise.

### **The evidence: statements, documents, photographs, video**

534. The investigation report should clearly set out the evidence gathered in the course of the investigation before drawing conclusions from it, and the investigator should normally explain the findings in the report to the complainant or interested person and answer any questions about it. A key component of the evidence on which the investigation report is based will usually be the statements made by relevant witnesses and the report should include a schedule of such statements and other underlying evidence. Copies need not be provided with the investigation report as a matter of course.
535. If, after receipt of the report, the complainant or interested person requests a copy of any of the statements or other underlying evidence then, subject to the harm test and with redactions where appropriate, a copy should be provided if this can be done without incurring unreasonable expense. In deciding what is

‘unreasonable expense’, an appropriate authority should have regard to the following factors:

- the ‘appropriate limit’ applicable to the appropriate authority for the purposes of responding to requests for information under the Data Protection Act 1998 (DPA) and Freedom of Information Act 2000 (FOI);<sup>159</sup>
- whether or not the complainant or interested person will obtain the information in due course by virtue of other proceedings, e.g. civil proceedings;
- whether or not the complainant or interested person would be entitled to the information under the FOI or DPA were application to be made for it.

If the information requested is difficult or unreasonably expensive to copy, because of its bulk or the nature of the medium in which it is held, the person requesting the copy should be invited to inspect the information.

536. Where appropriate (whether or not the complaint is upheld) the investigator should assist the complainant, preferably in person, to understand the decision made, taking him or her through the report and any statements or evidence being disclosed.
537. In the vast majority of cases, reports and statements will be short. Where they are being disclosed they can easily be copied and supplied to the complainant or interested person.
538. If information has been withheld under the harm test, changed circumstances may mean that it is no longer appropriate to withhold it. For example, if it is withheld because a criminal trial is in progress, it should be supplied once that trial is concluded (subject to ensuring that at that point there still is no reason under the harm test to withhold it).
539. The same principles apply to video recorded evidence, CCTV footage, digital recordings and other electronically recorded evidence. However, there may be legal considerations such as copyright infringement or potential harm specific to evidence of this nature. For example, the angle of recording may be likely to reveal the whereabouts of a police tactical observation point or a concealed camera, or the footage may show other persons with DPA rights who have not consented to disclosure.

## **Outcomes of any criminal proceedings**

540. If a local or supervised investigation results in a person serving with the police being charged with a criminal offence or offences then the appropriate authority is responsible for informing the complainant or interested person of the

<sup>159</sup> The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

outcome(s) of those criminal proceedings. In the case of a managed or independent investigation the IPCC will be responsible for providing this information.

### **Reasons for decisions on conduct**

541. In local and supervised investigations it is the appropriate authority's responsibility to communicate and explain the reasons for its conduct decisions. For independent and managed investigation cases, the IPCC must explain its decisions on conduct and the reasons for them.

### **Learning outcomes**

542. As stated above (see paragraphs 487-505, page 126) it is essential for the appropriate authority to consider the need to communicate details of learning outcomes to the complainant or interested person (if any). Details of the full response to recommendations and suggestions should be provided, together with the timetable for any resulting changes. The complainant or interested person should be informed if the learning report has been recommended for inclusion in the Learning the Lessons bulletin.
543. Officers or police staff subject to investigation should also be told about the learning outcomes.

### ***Prosecution decisions and criminal trials***

544. Any disclosure of the investigation report in advance of a trial of a police officer or police staff member who is the subject of a complaint may prejudice the trial. It is also necessary to consider prejudice to any other criminal proceedings arising out of a complaint or conduct investigation, even if the trial does not relate to the person initially subject to the investigation.
545. The extent of the information provided to the complainant or interested person will depend in part on whether he or she is a witness or whether it is likely that material disclosed to the complainant or interested person will reach other witnesses or the media. When the investigation report or statements are made available in advance of the criminal trial of a police officer or police staff member this may cause a serious problem. The officer or police staff member may argue that those who give evidence against him or her may have altered their own evidence as a result of seeing other people's evidence.
546. This problem will be particularly acute when the complainant or interested



person is to be a witness at the trial. Furthermore, jurors may be influenced or biased by information that appears in the media. For this reason making the investigation report and statements and other underlying evidence available in advance of such a criminal trial should not be automatic.

547. The prospect of a criminal trial will not necessarily be a reason for withholding the investigation report (or a redacted version of it) from the complainant prior to trial if, for example, it does not set out evidence which is likely to taint witnesses or prejudice a jury. There may also be exceptional circumstances where full provision of information, including statements and underlying evidence, in advance of a criminal trial can go ahead because there is no real prospect of these difficulties arising (see Annex C, page 214), for example, in a death in custody case where none of the relatives or friends of the deceased are to be witnesses of fact and their evidence cannot be 'tainted' by the disclosure.
548. Once the trial has concluded, there will not normally be any reason to delay provision of information because of an appeal to the Crown Court or the Court of Appeal (Criminal Division) as the relevant evidence is likely to have been aired at the trial. However, in some circumstances an appeal may involve witnesses giving new evidence and if that is the case, it will be necessary to consider what, if any, material should be withheld to avoid contaminating those witnesses' evidence.

### ***Disclosure where misconduct proceedings are in prospect***

549. If disclosure is to occur before misconduct decisions are finalised and put into effect, the IPCC and forces will also have to consider whether disclosure could prejudice any subsequent misconduct proceedings and/or outcomes.
550. The IPCC's view is that the balance between the public interest in disclosure and the nature and possibility of prejudice is different once criminal prosecution issues are out of the way, for a number of reasons:
- professional decision-making bodies involved in misconduct proceedings are less likely to be influenced by disclosure;
  - misconduct proceedings that do not involve complainants as witnesses giving evidence are less likely to be tainted by disclosure;
  - the public interest in disclosure needs to be weighed against the public interest in ensuring a misconduct hearing is properly and fairly concluded.
551. A decision on disclosure will depend on risk assessment in individual cases and should take account of whether the people who are to receive the information have already signed witness statements, making disclosure less problematic.

552. Decisions about disclosure in cases where misconduct outcomes are in prospect and both police officers and police staff are involved will also need to take account of the processes and timing required by employment law and police staff contracts. These latter procedures vary according to local agreements and differ from the regulated system for police officers.
553. If the complainant or interested person and his or her friends and family will not be witnesses at the misconduct hearing or where their evidence is not central or challenged there should not normally be any difficulty with providing the complainant or interested person with the investigation report and, where requested, any of the statements and underlying evidence.
554. Where a death is under investigation, the inquest may have been held before the misconduct meeting or hearing, so the report and most of the statements and other underlying evidence will have been made available to the complainant, interested person and officers or police staff members involved.
555. There should be no presumption against making information available simply because misconduct proceedings are outstanding. If however there is a real chance that the disclosed witness statements will be read by someone who will be giving important and contested evidence at the misconduct meeting or hearing, and it is likely that that person will alter his or her evidence or could be accused of doing so, then the witness statements in question should not be provided until after the misconduct process has been resolved. However, it may be possible to provide other evidence.
556. Where a complainant has a right of appeal to the IPCC, he or she will need to know the basis on which the complaint was decided in order to decide whether to appeal. However, misconduct action might follow if the appeal is upheld. Therefore, although there is no statutory obligation to do so the IPCC expects appropriate authorities to provide, subject to the harm test, the investigation report to the complainant at the same time as the decision on the complaint is communicated. Disclosure of any evidence requested will also be subject to the harm test and the impact that this may have upon any later disciplinary proceedings were these to be directed by the IPCC.

### ***Conditions for disclosure***

557. It is important to make clear to the complainant or interested person whether any disclosure is on a confidential basis, and to ensure that the risks and consequences of prejudicing any criminal trial are explained before disclosure occurs.

558. The complainant or interested person will understand the need to prevent the possibility of prejudicing proceedings and, where this is likely, may be willing to forego disclosure. He or she needs to be confident that any concerns he or she has raised with the police during the investigation or with the CPS in a meeting to discuss criminal proceedings have been answered.
559. It is important that the risks and consequences of contamination in any subsequent criminal, misconduct, disciplinary or inquest proceedings are explained to the complainant or interested person before information is provided and that any appropriate conditions relating to confidentiality are imposed. Information should usually be provided on a confidential basis. A signed undertaking about confidentiality should be obtained, both to act as a restraint on further disclosure and to confirm that its receipt was on a confidential basis.

### ***Inquests and disclosure***

560. Two issues arise in relation to inquests: what should be disclosed to the coroner and what should be disclosed to the complainant or interested person in advance of the inquest.
561. The coroner prepares for the inquest by obtaining statements from the available witnesses and other relevant documents from appropriate agencies and third parties. The IPCC in an independent or managed investigation and the force or police authority in a supervised or local investigation should supply to the coroner, for the purposes of the inquest, all the material in its possession concerning the cause and circumstances of the death.<sup>160</sup>
562. Material not included in the documents to be disclosed should be scheduled and the schedule included. Subject to the harm test, the material scheduled should be made available for inspection by the complainant or interested person and any other interested parties in the inquest if requested.
563. Where an investigation has made recommendations for improvements to policing practice in the course of an investigation into a death, these recommendations should be disclosed to the coroner so that he or she can consider whether a Rule 43 report<sup>161</sup> would be appropriate.
564. Disclosure before the inquest to anyone other than the coroner is a matter for the IPCC or the appropriate authority. However, decisions about disclosure in advance

<sup>160</sup> Except that if material is subject to Section 17 Regulation of Investigatory Powers Act 2000 it cannot be supplied to the coroner.

<sup>161</sup> Rule 43, Coroners Rules 1984 (as amended by Coroners (Amendment) Rules 2008)

of inquests should take into account the views of the coroner, who should be consulted in advance.

565. In accordance with Home Office guidance to the police on pre-inquest disclosure to the relatives of those who have died in police custody,<sup>162</sup> there is to be a presumption in favour of openness, providing reassurance that a full and open investigation has been conducted and that the next of kin's representatives will not be disadvantaged at the inquest. Procedural duties to hold a full and effective investigation into the death, involving the family of the deceased, will arise where there are concerns that agents of the state (e.g. the police) were responsible for causing a death. It should also be noted that a person whose act or omission (or that of their agent or servant) or whose conduct may have caused or contributed to the death has certain rights at inquest, and a failure to disclose to such a person might cause unfairness and result in legal challenge.
566. The Home Office Circular 31/2002 gives guidance on the disclosure of statements and other evidence, and this is the minimum that interested parties should expect. Thus, the investigation report should generally be disclosed if this has not already happened, subject to redaction where appropriate. It may be that disclosure can be made more quickly than set out in the Home Office Circular and, if so, that should happen.
567. In some cases a criminal trial will be in prospect before the inquest is held. In these cases, where disclosure to the next of kin or other interested persons is concerned, the disclosure must be considered in the light of the principles applying to criminal trials (see paragraphs 544-548, page 136).
568. Any doubt over disclosure where misconduct proceedings will follow the inquest should normally be considered in favour of providing interested persons with information for the inquest.
569. As a general rule, any documents disclosed to one properly interested person<sup>163</sup> for the inquest should be disclosed to all properly interested persons. However in some instances it may be against the law or the public interest to make information available to all properly interested persons. In some circumstances the IPCC may need to make disclosure to one properly interested person while prohibiting disclosure to another. For example, recommendations for prosecution or disciplinary proceedings made to the relevant appropriate authority should not always be disclosed to other properly interested persons. In some circumstances it may be appropriate for the IPCC (or a properly interested person) to make a public interest immunity application.

<sup>162</sup> Home Office Circular 31/2002. *Deaths in Custody: Guidance to the Police on Pre-inquest disclosure*

<sup>163</sup> See *Coroners Rules 1984* for definition of 'properly interested person'.

570. Disclosure should be made to the properly interested parties at least 28 days in advance of the inquest hearing.<sup>164</sup> The disclosure is made to them on a confidential basis (insofar as the information concerned is not in the public domain).

### ***Consultation with those affected by disclosure***

571. In rare cases, a report may criticise a person who has not participated in the investigation. Legal advice should be sought as to whether someone who is criticised in a report or other information should be given an opportunity to make representations on the criticisms made before the report is published to any third party.<sup>165</sup> It should not normally be necessary to seek such advice in the case of police officers or police staff as they will have been interviewed, or at least their accounts sought, in the course of the investigation. The person should have been given the opportunity to put his or her point of view in relation to the criticism made. If, on legal advice, anyone is to be given an opportunity to make representations on a draft report then he or she should be asked to keep the draft report or other information confidential and to sign a confidentiality agreement in suitable terms.
572. In all cases where there is a criminal trial in prospect, the CPS's advice must be sought on disclosure. Normally the CPS's wishes should be followed. There may be exceptional circumstances in which the IPCC or appropriate authority takes the view that the public interest in disclosure is great enough to outweigh any harm identified by the CPS; however, legal advice should be sought if disclosure against the advice of the CPS is being considered.
573. A police force, police authority or the IPCC cannot prohibit disclosure under the Police Reform Act simply by claiming to 'own' the material. Disclosure obligations under this Act fall on the IPCC in respect of independent or managed investigations and there will not normally be any need for the IPCC to consult the appropriate authority when dealing with a request for information from a complainant or an interested person. Sometimes consultation will be needed in order properly to apply the harm test and to determine what information may need to be redacted prior to disclosure. This will also be the case with a request for information from a person appealing in respect of a supervised or local investigation.
574. However, the IPCC and ACPO have agreed that the IPCC and police force will consult each other where the IPCC or a police force (including the Serious

<sup>164</sup> Home Office Circular 31/2002. *Deaths in Custody: Guidance to the Police on Pre-inquest disclosure*

<sup>165</sup> *Maxwell v DTI* [1974] QB 523

Organised Crime Agency (SOCA)) receives a request for information which:

- does not fall within the scope of keeping a complainant or interested person informed about the case; and
- originates from, relates to, or impacts upon, another case.

575. For the required process refer to the Information Request Working Practices Agreement obtainable from ACPO or the IPCC.

### ***Recording decisions not to disclose information***

576. A decision by a force, police authority or the IPCC not to disclose some or all of an investigation report to a complainant or interested person should be properly recorded. The record should include the reasons for the decision and these should be given to the complainant or interested person, unless this information itself may lead to harm. The record should set out the factual basis for the decision rather than merely repeating the provisions of the law.

577. If non-disclosure is challenged by a complainant as part of an appeal to the IPCC, the IPCC will consider the justification given and may require the appropriate authority to disclose the information (see paragraphs 518-524, page 132). There is no appeal in an IPCC independent or managed investigation: a decision of the IPCC, like any public body, is open to challenge by application for judicial review.

## Chapter 5: **MONITORING AND DEVELOPMENT**



### **PRINCIPLES**

578. The general duty to increase public confidence in the police complaints system is imposed on the IPCC. However, the IPCC expects forces and police authorities to employ strategies and resources to monitor and develop their own practice and systems in support of this aim.



### **PRACTICAL GUIDANCE**

579. The IPCC has a statutory duty to create and maintain public confidence in the police complaints system, a duty which is the basis of its 'guardianship' role. There are four elements to guardianship:
1. Setting, monitoring, inspecting and reviewing standards for the operation of the police complaints system.
  2. Promoting confidence in the complaints system as a whole among the public and the police.
  3. Ensuring the accessibility of the complaints system.
  4. Promoting policing excellence by drawing out and feeding back learning.
580. While the IPCC carries this duty, it requires cooperation among all the respective bodies that operate and oversee the complaints system – the IPCC, forces, police authorities, Her Majesty's Inspector of Constabulary (HMIC) and others – to achieve public confidence. There must be ongoing vigilance both as to the quality of work being undertaken and the quality of outcomes achieved (including learning). There must be a commitment to review and learn after the fact, whether from individual cases or from broader analysis of the complaints system. Finally, there must be an effective commitment from all bodies to share what is learned, both internally and externally, and to act upon it.
581. This chapter is about monitoring and development of the complaints system. It is about how forces, police authorities and the IPCC can, outside of the handling of individual cases, ensure that the complaints system carries public confidence. The chapter focuses on three main mechanisms that the IPCC has instigated or maintains to this end: the performance framework; data collection and reporting; and a means of ensuring that learning recommendations are

monitored and acted upon. It also gives further guidance on activities that complement these key mechanisms.

### ***The police complaints system performance framework***

582. Together with the Association of Chief Police Officers (ACPO), Association of Police Authorities (APA), HMIC, National Policing Improvement Agency (NPIA) and the Home Office, the IPCC has developed a performance framework for the police complaints system. The framework assesses the performance of forces (in the context of complaints handling) and the IPCC, in order to provide a comprehensive view of the performance of the system both as a whole and its constituent parts.
583. The aim of the framework is to provide a useful performance management tool for those who deliver the complaints system and those responsible for its oversight. As it develops, the complaints system performance framework will:
- create an agreed consensus view of what good performance looks like for the police complaints system, which is evidence based rather than intuitive;
  - enable accurate comparisons to be made about the performance of each constituent part of the complaints system;
  - increase clarity for the police service and the IPCC on expected performance and reduce the burden of reporting;
  - facilitate the identification and sharing of best practice across the system;
  - give access to timely, relevant, consistent performance data that supports decision making among those responsible for the complaints system;
  - demonstrate increased accountability to stakeholders and the public through publication of performance data.
584. As with any performance framework, the ultimate benefit of its introduction should be the improved and more consistent delivery of the outcomes that the complaints system seeks to achieve. By selecting appropriate performance indicators that tell us whether outcomes are being achieved, and by making this data available, those responsible for the complaints system will have the opportunity to take action and so improve future performance.

### **Performance indicators**

585. A number of performance indicators have been developed for the framework. These have been based on the aims of the complaints system so that forces and the IPCC are measured against the outcomes they are required to deliver. These are:
- **confidence** – increase public, complainant, police and staff confidence in the complaints system;



- **learning** – use lessons learnt to improve the complaints system and policing;
- **engagement** – increase public, police and staff awareness of the complaints system;
- **proportionality** – balance the timeliness, quality and cost of resolution;
- **accountability** – organisations within the system are accountable for their performance and bring individuals to account for their conduct.

586. Performance indicators have been developed under each of these aims. A complete list of the indicators that make up the performance framework is available from the IPCC website.

587. When the data relating to all the performance indicators is collected, the result is a balanced view of the performance of the complaints system and its constituent parts. The results for each indicator give only limited insight when viewed alone, but collectively they provide a picture of how the system is performing and what drives that performance. It is therefore important to consider each indicator as part of the package that forms the overall performance framework rather than as a standalone view of performance.

### ***Data collection and research***

588. The IPCC is responsible for the collection and presentation of national statistics for complaints in England and Wales and will publish annual statistics on complaints. This information is also used in the complaints system performance framework. The IPCC, in consultation with police forces, the APA and the Home Office, has developed recording standards that ensure compliance with the Police Reform Act 2002 and facilitate consistent recording practice across police forces in England and Wales. These standards are set out in Annex A (page 150) and regard should be had to them by anyone entering complaints data onto recording systems. Police authorities also should satisfy themselves that their force is adhering to these recording standards.

589. The IPCC regularly produces research that informs and promotes good policing practice. Forces and police authorities should consider these occasional reports and, where appropriate, act upon their recommendations.

### ***Capturing, disseminating and acting upon learning***

590. The IPCC, police forces, police authorities, ACPO and policing partners all have a role to play in ensuring that learning is captured, disseminated and monitored.

591. Specific guidance has been given in chapters 3 and 4 in relation to how learning should be captured and disseminated in individual cases. This explains how individual case learning relates to the Learning the Lessons Committee. Having regard to that guidance, the IPCC expects chief officers and their respective police authorities to ensure that forces and police authorities have effective systems in place for capturing and disseminating learning and monitoring the implementation of changes that result.
592. The broad responsibilities that have been agreed between forces, police authorities, the IPCC, HMIC and NPIA in relation to the monitoring and implementation of learning are summarised below.

## **Responsibilities of forces**

593. Forces must ensure that a system (with appropriate recording) is in place in respect of:
- recommendations in investigation reports, appeal decisions and other operations of the complaints system;
  - learning published in the Learning the Lessons bulletin;
  - other internal learning.
594. This system should be designed to:
- decide what to do with a recommendation;
  - implement it (or not) in accordance with what is decided;
  - monitor the impact of learning;
  - make adjustments to recommended policy or practice as appropriate.
595. Forces should respond to the IPCC in respect of recommendations in IPCC investigation reports (managed and independent), appeal decisions and other operations of the complaints system. They should also report regularly to their police authority on progress in implementing recommendations that have been accepted. Finally, forces should provide information to the IPCC on learning in the relevant performance framework indicators (see the IPCC website).

## **Responsibilities of the IPCC**

596. The IPCC will ensure it receives a response from a force to recommendations it has made (where these are local recommendations relevant to the force or a part of the force) or relevant national body (where recommendations are applicable nationally). The IPCC will follow up the implementation of any national recommendations which have been accepted by the relevant national body. It will provide information on trends and research issues, where appropriate in coordination with NPIA and other relevant stakeholders.

### **Responsibilities of ACPO**

597. ACPO will respond to the IPCC in respect of any national recommendation directed to it. Where ACPO agrees to implement any national recommendation it will report its progress to the IPCC.
598. Alongside this, ACPO has undertaken to introduce an effective system for referral of significant learning from supervised or locally investigated cases to the Learning the Lessons Committee for dissemination to other forces through the Learning the Lessons bulletin.
599. ACPO will disseminate significant learning from the Learning the Lessons bulletin and from supervised and local cases to forces, through its ACPO policy leads.

### **Responsibilities of police authorities**

600. Police authorities will ensure that their force has in place the system outlined above, and on an ongoing basis will check whether their force is using this system appropriately. Police authorities will consistently check on progress their force is making with recommendations it has agreed to implement (whether from IPCC investigations, appeal decisions or its own local or supervised investigations).

### **Responsibilities of NPIA**

601. NPIA will research issues, where appropriate in coordination with IPCC, and ensure that national recommendations addressed to the police service and within NPIA's remit are implemented if they are agreed. NPIA will provide guidance and training where it is required to help the implementation of recommendations.

### ***The role of HMIC***

602. HMIC provides an inspection and assessment function to forces and police authorities, also carrying out inspections with other bodies such as the Audit Commission and Crown Prosecution (CPS) Inspectorate. HMIC also performs an advisory function to the Home Office, and has a statutory obligation to work in cooperation with the IPCC. HMIC is being asked to play a key role in measuring forces' performance overall. This will require HMIC to monitor forces using more tools than just its inspection role. Police forces and police authorities should work closely with HMIC to ensure they are provided with a full picture regarding a force's performance in relation to the complaints system.

### ***Ensuring quality***

603. Professional standards departments should make certain there is a systematic and proportionate process in place that helps to ensure the service they provide is delivered to the standards required. The changes to the police misconduct system in December 2008 make quality assurance even more vital, as some work that was previously undertaken by professional standards departments may now take place at basic command unit (or equivalent) level. The IPCC expects that professional standard departments will make clear to other parts of their force carrying out the practical handling of complaints what standards must be achieved. Chief officers should support their professional standards departments in setting and maintaining these quality standards across the force.
604. Police authorities should be asking their force about the processes in place to ensure ongoing quality across all aspects of complaints handling. A police authority's professional standards committee (or similar body) has a role to play in the exercise of the police authority's general oversight of complaints and conduct matters, and in particular satisfying the police authority (and the wider community) that its force has adequate quality assurance measures in place.
605. Police authorities may also use retrospective quality audit activities to provide important information about a force's performance. Among a number of methods that can serve the same purpose, dip sampling is one such activity that enables a police authority to scrutinise the performance of its force's complaints management process. It provides the means, through a formal structured process, to determine the extent to which proper procedures were followed and whether a force is taking appropriate and proportionate approaches to managing complaints.

### ***Measuring satisfaction***

606. Measuring satisfaction reaches far beyond counting complaints. Many forces use customer satisfaction surveys to understand complainants' experiences more fully and compare these results against performance for a more complete picture of how the force is delivering its services.
607. Police authorities have an important role to play in ensuring forces understand and monitor their performance. The IPCC expects that a force will provide information to the police authority about what those who use their service say about that service, and police authorities should ensure that this is the case. The police authority should use this information to inform its understanding of the

force's performance regarding complaints and help the authority work proactively in identifying problems or good practice within the force.

## ***Developing innovation and good practice***

608. The legislation and regulations that form the basis for this guidance provide appropriate authorities with a framework within which to deliver their service. The guidance should not hinder the development of innovation or good practice within this framework. Forces that have found innovative ways to get out key messages to frontline staff or improve training, or that have developed effective ways to engage with their local communities, should share this information with their police authority and across their regional force area.
609. Some examples of innovative practice are set out below:
- Training: forces have asked complainants to speak to new police officers about the impact a poorly delivered service has had on them.
  - Providing key messages: forces provide key messages with police officer and police staff pay slips as they are something to which most officers and police staff pay close attention.

## ***Maintaining links with local communities***

610. There is a community dimension to many high profile investigations and reports. Creating, supporting and liaising with standing or ad hoc independent advisory groups or community police consultative groups may offer the only means of winning public confidence and acceptance of a controversial and concerning inquiry. While these groups will be engaged primarily on a case by case basis, forces should ensure between times that an appropriate pool of people is available to call upon to form such groups as the need arises. The IPCC recognises that the nature and scale of these arrangements will differ from force to force, and indeed may differ between areas within a force. Any such arrangements should be adequately reflective of the communities that are being served.

## Annex A: **GUIDANCE ON THE RECORDING OF COMPLAINTS UNDER THE POLICE REFORM ACT 2002**

- A1. The police have a duty under the Police Reform Act 2002 to record complaints made by members of the public about the conduct of a person serving with the police.<sup>166</sup> The accurate and consistent recording of complaints plays a part in ensuring public confidence in the complaints system. It also contributes to a sound evidence base to inform development of future policy and practice at local and national levels. The information contained in this annex applies to all complaints as defined under the Police Reform Act 2002.
- A2. The aim of this annex is to support those recording police complaints and specifically to:
- improve the quality of recording within professional standards departments and ensure that this reflects the complaint being made and how it is subsequently handled;
  - promote a standard language in connection with these complaints and a standard set of measures which can be used across police forces and police authorities;
  - promote greater consistency in recording and allow better comparison between police forces and police authorities.
- A3. Forces are required to provide the IPCC with data relating to public complaints recorded on databases in their professional standards departments on a regular basis. The frequency will be stipulated by the IPCC.
- A4. This annex provides definitions for a range of terms used in relation to police complaints and outlines a number of measures of timeliness for complaint activity. As a complaint case may have one or more allegations attached, guidance is also provided on the recording of allegations. It deals with definitions of allegation categories and the number of allegations that should be recorded in various scenarios. This annex also provides further information on how to map the allegation categories to the respective Standards of Professional Behaviour for police officers and police staff.

### **DEFINITIONS**

The following definitions have been provided to promote a common language with regard to the recording of complaints and measures of timeliness.

<sup>166</sup> Schedule 3, Paragraph 2, Police Reform Act 2002 (as amended)

A5. **Allegation:** a complaint allegation concerns the conduct of a person serving with the police. It is made by someone defined as a complainant under the Police Reform Act 2002. An allegation may be made by one or more complainants about the conduct of one or more people serving with the police. An allegation will be recorded against an 'Allegation category' (see page 166, for example 'Serious non-sexual assault', 'Incivility, impoliteness and intolerance' and 'Corruption or malpractice').

A6. **Allegation results:** these are either upheld, not upheld, withdrawn,<sup>167</sup> discontinuance, or subject to local resolution or to dispensation. For those allegations that are upheld or not upheld, the decision is recorded against the allegation only and not against the person who is the subject of the allegation.

**Upheld:** A complaint should be upheld where the findings show that the service provided by or through the conduct of those serving with the police did not reach the standard a reasonable person could expect. Any facts on which the judgement to uphold the complaint is based must be proven on the balance of probabilities. For example, this test will be met where it is found that there is a case to answer against an officer in respect of misconduct or gross misconduct or, in the case of a member of police staff, that there are grounds for disciplinary action in relation to the matter and the matter is not an ancillary matter. This test will also be met when it is not found that there is a case to answer against an officer or, in the case of a member of police staff, that there are grounds for disciplinary action, but the service provided by or through the conduct of a person serving with the police did not reach the standard a reasonable person could expect.

In deciding what standard of service a person could reasonably expect, the investigator, IPCC and appropriate authority should apply an objective standard of a reasonable person in possession of the available facts. They should have regard to the Standards of Professional Behaviour (or equivalent for police staff), any agreed service standards and any national guidance that applies to the matter.

The decision to uphold a complaint should not be seen as in any way prejudicing the outcome of a subsequent misconduct meeting or hearing (and possible later appeal) for police officers or misconduct procedure for police staff. The decision to uphold is always and only a judgement on the service provided to the complainant by the force as a whole and should not be seen as a judgement against the person subject of the complaint.

This means that an investigation without special requirements can result in an upheld complaint. For example, it will be appropriate where the officer or

<sup>167</sup> Withdrawn includes those allegations which are 'not pursued' by a complainant.

police staff member complained about has limited experience or skill and acts in a well intentioned but ill judged way, giving good grounds for complaint but not so as to warrant a special requirements investigation.

For further information see paragraphs 431-442 (page 113).

**Not upheld:** Where the test outlined for upholding a complaint is not met, a complaint will not be upheld. For further information see paragraphs 431-442 (page 113).

A complaint will not be upheld where, on the balance of probabilities, the investigation findings show that the conduct of a person serving with the police, or the service provided through the conduct of that person, was reasonable. For example, this will be the proper finding in a case where the facts are clearly established and it is determined that what the complainant claims happened did not occur.

A complaint will also not be upheld where there is insufficient evidence to conclude, on the balance of probabilities, that the complainant's allegation is true. Commonly, this will arise where there is a conflict of accounts that cannot be reconciled on the evidence available and the investigator cannot establish the facts. For further information see paragraphs 431-442 (page 113).

**Local resolution:** A way of dealing with an allegation by solving, explaining, clearing up or settling the matter directly with the complainant. A formal investigation is not involved. It can be a proportionate, timely and effective way of resolving many allegations. It is a simple and flexible way for people to tell the police what happened and find out why it happened. Usually, this involves a local manager handling the allegation and agreeing with the complainant a way of dealing with it. This might be: an explanation or information to clear up a misunderstanding; an apology on behalf of the police force or police authority; and/or an outline of what actions are to be taken to prevent similar complaints occurring in the future.

**Withdrawn:** No further action may be taken with regard to an allegation if the complainant decides to withdraw the allegation(s). An exception to this is if the police force or police authority determines that it is in the public interest for the allegation to be treated as a recordable conduct matter. Alternatively, where a complaint has been referred to the IPCC and the IPCC has not referred it back to the appropriate authority, the IPCC also has the power to determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.<sup>168</sup>

<sup>168</sup> Regulation 15, The Police (Complaints and Misconduct) Regulations 2004



**Dispensation:** Can only be applied for where the investigation has not started (this does not include the initial evidence gathering). In respect of dispensation, an application to the IPCC can only be applied for on one occasion.<sup>169</sup>

**Discontinuance:** This is where the investigation has started and specified grounds for halting the investigation have been met.

- A7. **Complainant:** under Section 12 of the Police Reform Act 2002 a complainant is someone complaining about the conduct of a person serving with the police and who is either:
- a) a member of the public who claims to be the person in relation to whom the conduct took place;
  - b) any other member of the public claiming to have been adversely affected by the conduct. Being ‘adversely affected’ is further defined in the Police Reform Act 2002<sup>170</sup> and includes experiencing distress, inconvenience, loss or damage or being put in danger or at risk. This might apply, for example, to other people present at an incident mainly involving another party, or to the parent of a child arrested by the police. It does not include someone distressed by watching an incident on television; or
  - c) a member of the public who claims to have witnessed the conduct. The Police Reform Act 2002 defines ‘witness’ narrowly,<sup>171</sup> as someone who “acquired his knowledge of [the] conduct in a manner which would make him a competent witness capable of giving admissible evidence of [the] conduct in criminal proceedings” or has in his possession or under his control anything which would in any such proceedings constitute admissible evidence of that conduct. This will usually be an eyewitness present at the incident or meeting but will also include, for example, someone in control of CCTV cameras who views an event in real time.

Under the Police Reform Act 2002 anyone can make a complaint on behalf of someone falling into the three categories above, provided that the person gives written permission for his or her to act on his or her behalf.<sup>172</sup> This category of person is classed as an ‘agent’ or ‘representative’, not as a complainant in his or her own right. Examples include solicitors acting on behalf of clients, parents/guardians acting on behalf of their children/wards and members of ‘gateway’ organisations (e.g. citizens advice bureaux, racial equality councils) acting on behalf of members of the public who have approached them and requested that they do so. This list is not exhaustive. The IPCC considers an exception to the requirement for written consent applies in the case of a parent or guardian making a complaint on behalf of someone under 16-years-old.

<sup>169</sup> Regulation 3(2), The Police (Complaints and Misconduct) Regulations 2004

<sup>170</sup> Sections 12(3) and (4), Police Reform Act 2002 (as amended)

<sup>171</sup> Section 12(5), Police Reform Act 2002 (as amended)

<sup>172</sup> Section 12(6)(b), Police Reform Act 2002 (as amended)

A complainant, or his or her representative, may make one or more allegations in respect of an incident about the conduct of one or more persons serving with the police. One or more complainants may make the same allegation.

- A8. **Complaints against other police officers and police staff:** a complaint made by a police officer or a police staff member about other serving officers or staff in the same force will not be a complaint for the purposes of the Police Reform Act. Nor can the complaint be made under the Police Reform Act where the incident involves members of other forces while both parties are on duty. They should instead raise any such concerns through their management channels, and have a general responsibility to do so. Managers should then decide whether to record their concerns as a conduct matter. A former police officer or police staff member who has retired, resigned or been dismissed from a police force cannot make a complaint about someone in relation to an incident that happened during the time he or she worked in that force.<sup>173</sup>
- A9. **Complaint case:** each complaint case represents a single investigation and/or a local resolution. It may contain one or more linked allegations, brought by one or more complainants, against one or more persons serving with the police.
- A10. **Date allegation finalised:** is the date the police force or police authority sends a letter to the complainant or their representative informing him or her of the result of the allegation (which has been investigated, locally resolved, dispensed with, discontinued or withdrawn) and any planned action to deal with misconduct, unsatisfactory performance, disciplinary action (police staff) or learning outcomes (individual or organisational). It does not include any period during which a complainant may make an appeal. The appeal time starts on the date when the letter is sent.
- A11. **Date allegation received:** is the date when a complainant or his or her representative first contacts a police force or police authority to make an allegation. There can be a number of allegations attached to a complaint case and these may be made over a period. The date of the first allegation received will always be the same as 'date complaint case received' (see paragraph A16). Subsequent allegations may be made at a later date. This enables the measurement of timeliness for both cases and allegations.
- A12. **Date allegation recorded:** is the date that an allegation is recorded onto a database in a professional standards department. Several allegations can be recorded on a complaint case; only the date of the first allegation recorded has to be synonymous with the date complaint case recorded.

<sup>173</sup> Section 29(4), Police Reform Act 2002 (as amended)

- A13. **Date of appointment of an ‘appointed officer’:** is the date a person serving with the police is appointed to resolve an allegation via local resolution.
- A14. **Date of appointment of an ‘investigator’:** is the date a person serving with the police is appointed to investigate an allegation.
- A15. **Date complaint case finalised:** is the point at which all action by the police force or police authority relating to a complaint case has been concluded. The case should be closed on the database in the professional standards department at this time. Examples of date complaint case finalised are:
- the date on which a local resolution has been completed and the time during which an appeal could be lodged with the IPCC has elapsed or any resulting appeal has been concluded;
  - the date on which an investigation has been completed, but does not lead to criminal or misconduct proceedings, and any resulting appeal by the complainant has been concluded;
  - the date on which an investigation is completed and misconduct and/or criminal proceedings are finalised, any disciplinary action or criminal disposals are implemented and the complainant has been informed of these outcomes, and any appeal has been concluded;
  - the date on which an investigation has been discontinued;
  - the date on which a complaint case is dispensed with or withdrawn.

It does not include any time needed to undertake other longer-term actions arising from the complaint case, for example training for an individual.

The period in which a complainant may make an appeal is 28 calendar days from the date of the letter which is sent to the complainant, or his or her representative, giving notification of the outcome of the case. The IPCC will only accept appeals beyond this period if there are exceptional circumstances. The IPCC has a further two working days to inform the relevant police force or police authority of the receipt of an appeal.

- A16. **Date complaint case received:** is the date when a complainant or his or her representative first contacts a police force or police authority to make an allegation. Contact may be on a face to face basis or involve a telephone call, email, fax or letter. If time is needed to decide that an allegation concerns the conduct of a person serving with the police, this should still be the date when the complainant or his or her representative first contacted a police force or police authority about the matter.
- A17. **Date complaint case recorded:** is the date when the first allegation in a case is recorded onto a professional standards department database. The IPCC expects

the police force or police authority to record a complaint within 10 working days from receipt of the complaint. The IPCC expects communication of the recording decision to the complainant for all complaint cases within 15 working days from the date the complaint case is first received by a police force or police authority.

- A18. **Date investigation completed:** depends on the mode of investigation.
- a) In a local or supervised investigation it is when the complainant or his or her representative is notified of the findings of the investigation and any resulting proposals from the appropriate authority. It does not cover further stages such as prosecution, or any appeal that may be made by the complainant.
  - b) In IPCC independent or managed investigations it is when the appropriate authority is notified of the findings of the investigation. It does not cover further stages such as prosecution.
- A19. **Date local resolution completed:** is the date the police force or police authority dates and sends a letter to the complainant or his or her representative, informing him or her that the action plan to which he or she agreed has been completed.<sup>174</sup> It does not include any time needed to undertake other longer-term actions arising from a local resolution (e.g. an officer may undertake training) nor any period during which a complainant may make an appeal. For recording purposes, the 28 calendar day period during which a complainant may make an appeal starts on the date when the letter is dated and sent. The IPCC has a further two working days to inform the relevant police force or police authority of the receipt of an appeal..
- A20. **Incident:** an event or series of clearly connected events relating to the conduct of a person or persons serving with the police. An incident may give rise to one or more allegations.
- A21. **Incident date:** the first date the incident or alleged behaviour occurred.
- A22. **Means allegation received by police force or police authority:** there is a wide range of methods by which an allegation can be received by a police force or police authority. The most common methods should be standardised on a database in a professional standards department and used where possible. Only one means should be identified for each allegation. For example, if a member of the public made a complaint via email and followed up by making a telephone call regarding the same allegation, the means should be identified as 'email'. The means are:
- letter to police force or police authority;
  - telephone call to police force or police authority;
  - in person at a police station;
  - from IPCC (regardless of form of contact);

<sup>174</sup> The date on the letter and the date of posting should be the same.

- email to police force or police authority;
- using a form on a police force or police authority website.

This list is not exhaustive, it is intended to standardise the main methods recorded by police forces and police authorities. Allegations may be received by other methods, for example via a fax machine. These can be recorded as such in addition to the categories outlined above.

- A23. **Person serving with the police:** someone who is:
- a) a police officer, including a special constable who is under the direction and control of a chief officer; or
  - b) a member of police staff, including a police community support officer (PCSO), who is under the direction and control of the chief officer.

In a small number of forces, contracted out staff who are not under the direction and control of the chief officer undertake duties and provide elements of the policing service to members of the public, for example carrying out escort duties. Complaints about the acts or omissions of such staff cannot be recorded under the Police Reform Act 2002. A chief officer has power to 'designate' such staff under the Police Reform Act 2002, and the Secretary of State has the power<sup>175</sup> to make regulations creating a separate complaints investigation system for such designated staff.

- A24. **Recording outcomes:** forces and police authorities need to be able to demonstrate that the outcomes of allegations are recorded and can feed back into improved police practice. The outcomes of allegations should be recorded and communicated to the complainant. For example, the complainant should be notified of outcomes of allegations which have led to:
- outcomes from a misconduct meeting or hearing;
  - management action taken outside a meeting or hearing;
  - a verdict following criminal proceedings, including the disposals;
  - referral to formal performance management procedures (UPP);
  - any learning outcomes relating to the individual or to the police force or police authority.

## MEASURING TIMELINESS OF COMPLAINT ACTIVITY

- A25. The following measures are intended to build a picture of police activity and performance in response to complaint cases concerning police conduct. They have been agreed through consultation between the IPCC, police forces, police authorities and the Home Office and are used as measurements as part of the IPCC Performance Framework.

<sup>175</sup> Section 39(9), Police Reform Act 2002 (as amended)

- A26. **Time taken to record a complaint case:** the number of working days from date complaint case received to date complaint case recorded (when the first allegation is recorded).
- A27. **Time taken to resolve an allegation locally:** the number of working days from date allegation received to date the local resolution of this allegation is completed (i.e. the date the police force or police authority dates and sends a letter to the complainant).
- A28. **Time taken to investigate an allegation:** the number of working days from date allegation received to date the investigation of this allegation is completed (i.e. the date the complainant is informed by letter from the police force or police authority of the action it will take in relation to the matters investigated).
- A29. **Time taken to finalise a complaint case:** the number of working days from date the complaint case is recorded to date complaint case is finalised (i.e. the point at which all police action relating to a complaint case has been concluded). The clock stops during this period only if the investigation is suspended (for sub judice reasons).<sup>176</sup> It should stop on the date that the case is declared suspended. The clock should start again when the suspension ceases.

## COMMON ISSUES IN RECORDING

### *Recording allegations and complainants*

- A30. A complaint case may have one or more allegations attached. Where a complaint is couched in general terms but a subsequent investigation identifies a number of allegations, each should be recorded separately. Each complainant has a right of appeal against the findings of an investigation and it is important, therefore, that all complainants are recorded, even if their complaints are exactly the same as those made by other members of the public.

### *Same allegation made by different people*

- A31. Where several people make the same allegation relating to the same incident these should be recorded and counted as one allegation. For example, if an officer is alleged to have assaulted a person, and that person and a witness both raise their concerns about this conduct, this will be recorded as one allegation, involving two complainants and one person serving with the police.

<sup>176</sup> Regulation 16, The Police (Complaints and Misconduct) Regulations 2004

***Multiple allegations of different types resulting from the same incident***

A32. A person receiving or recording a complaint may identify one or more allegations of different types arising from a single incident.

***Examples***

- A complainant alleges that she was pushed and the officer swore at her. This should be recorded as two separate allegations, i.e. 'other assault' and 'incivility, impoliteness and intolerance'.
- A complainant alleges that an officer made a racist remark while swearing at him. This should be recorded as two separate allegations, i.e. 'discriminatory behaviour' and 'incivility, impoliteness and intolerance'.
- A complainant alleges that an officer pushed her and at the same time made a racist remark while swearing at her. This should be recorded as three separate allegations, i.e. 'other assault', 'discriminatory behaviour' and 'incivility, impoliteness and intolerance'.

***Multiple allegations of the same type involving one officer***

A33. If a complainant alleges a series of like actions involving one officer and these form one continuous incident, this should be recorded as a single allegation. Where a series of assaults has been alleged, the most serious should be recorded. This would be recorded as upheld if an investigation established that any one of the alleged actions took place.

***Examples***

- A detainee alleges that, while being booked into custody, he was refused access to legal advice, not allowed a telephone call and refused a copy of the PACE Codes of Practice. The booking-in procedure would be seen as one continuous incident; the matters raised by the complainant all relate to breaches of Code C PACE and should therefore be recorded as one allegation.
- A detainee alleges assault on arrest and again in the car on the way to the station, by the same officer. This should be recorded as one allegation.

- A34. However, if the matters occurred at different times, then these would not form one continuous incident and should be recorded as different allegations.

**Example**

- A detainee alleges that while in custody she was refused legal advice when booked in. Two hours later, during her detention, she alleges that she requested medical attention but this request was not actioned; later on during her detention she requested food but her request was refused. These are three separate incidents and therefore should be recorded as three separate allegations concerning breaches of PACE Code C.

***Multiple allegations of the same type involving more than one officer***

- A35. If a person alleges a series of like actions involving more than one officer, each of whose actions are clearly identified, they should be recorded as separate allegations.

**Example**

- A detainee alleges assault on arrest by officer A and again in the car on the way to the station by officer B. These are two separate allegations.

***Multiple allegations of different types against more than one officer***

- A36. If more than one officer is concerned and different actions are linked to each one, they should be recorded separately according to the nature of each allegation, and not by the most serious allegation made.

**Example**

- A professional standards department receives a letter from a member of the public alleging that during a stop one officer was rude to her and another officer assaulted her. Both allegations – against officer A and officer B – need to be recorded as part of the same case.

***Multiple complainants making similar allegations resulting from the same incident***

- A37. Where a group of people make similar allegations about the treatment they have received during a single incident, each person's allegation should be recorded and



counted separately, and each person treated as a complainant.



### **Example**

- In a mass demonstration, several people present subsequently complain that they were assaulted. These are separate allegations and should be recorded as such.

## ***Recording demographic information of complainants and those subject to a complaint***

A38. Monitoring demographic information of complainants has the potential to identify any disparities experienced by particular social groups in terms of negative contact with the police and the making of complaints. Likewise, collecting full demographic data on those who are subject to a complaint is an important means of identifying any possible inequalities and enables police forces and police authorities to formulate processes and policies which would remove any unfairness or disadvantage. It is important that demographic information is collected comprehensively by police forces and police authorities to ensure that records are as complete as possible.

## ***Officers of Association of Chief Police Officers (ACPO) ranks***

A39. Police authorities are responsible (as the appropriate authority) for dealing with complaints and conduct matters that involve ACPO rank officers. This means any officer at, or above, the rank of assistant chief constable, or the rank of commander in the Metropolitan Police Service or City of London Police. It is important that complaints against all people serving with the police in each force can be collected and presented. Therefore a record of complaints against ACPO rank officers and the resulting outcomes are required to be made on the professional standards department's database.<sup>177</sup> This will ensure that all complaints can be transferred to the IPCC for analysis purposes.

## ***Recording in error***

A40. Once a complaint has been recorded under the Police Reform Act 2002 it cannot be reallocated to a different system. However, data entry errors may occur, such as an incorrect person or allegation being recorded. In order to produce accurate data for statistical analysis there is scope for forces to rectify this in the following ways:

<sup>177</sup> Regulation 24 of the Police (Complaints and Misconduct) Regulations 2004 requires every police authority and chief officer to keep records, in such form as the Commission shall determine, of all complaints and purported complaints that are made to it or him.

**a) De-recording/deleting a subject**

If a subject has been entered due to a data entry error, it is preferable to de-record. However, it is permissible to delete a subject in such circumstances, so that it is not linked to the case and it does not show on the officer's or staff member's complaints and discipline history. For audit purposes a record should be made of the action and rationale.

**b) De-recording/deleting an allegation**

If an allegation has been entered due to a data entry error, it is preferable to de-record. However, it is permissible to delete an allegation in such circumstances, so that it is not linked to the case. For audit purposes a record should be made of the action and rationale.

**c) De-recording/deleting a complaint case**

If a complaint case has been entered due to a data entry error, it is not permissible to de-record/delete it. The case should remain recorded, but it should be closed when the allegations are handled as stated above in 'De-recording/deleting an allegation'. It is anticipated that such circumstances will be rare. For audit purposes a record should be made of the action and rationale.

***Investigator absent from force***

A41. The absence of an investigator from the force for any reason is not a ground for suspending the investigation. The clock does not stop.

***Complainant not available***

A42. The non-availability of a cooperative complainant is not a ground for suspending the investigation. The same applies to an uncooperative complainant; however, police forces or police authorities may wish to consider applying for a dispensation/discontinuance. See paragraphs A52-A56 (page 164).

***Officers or staff on sick leave***

A43. Absence owing to sickness of any personnel who are the subject of a complaint will not affect the recording of the investigation. The investigator should progress the investigation as far as is practicable. The clock will not stop.

***Officers or staff on maternity/paternity leave***

A44. Absence owing to maternity/paternity leave of any personnel who are the subject of a complaint will not affect the recording of the investigation. The investigator

should progress the investigation as far as is practicable. The clock will not stop. Welfare considerations are a separate issue. The mode and nature of the investigation and disposal will depend on the circumstances of the case.

### ***Officers or staff on secondment***

- A45. Absence owing to secondment, whether overseas or otherwise, of any personnel who are the subject of a complaint will not affect the recording of the investigation. The investigator should progress the investigation as far as is practicable. The clock will not stop. The mode and nature of the investigation and disposal will depend on the circumstances of the case.

### ***Officers and staff on career break***

- A46. Absence owing to career break of any personnel who are the subject of a complaint will not affect the recording of the investigation. The investigator should progress the investigation as far as is practicable. The clock will not stop. The mode and nature of the investigation and disposal will depend on the circumstances of the case.

### ***Complaints against former police officers and police staff***

- A47. Complaints against a person who has ceased to serve with the police must still be recorded, if the incident complained about relates to their service with the police.<sup>178</sup> The mode and nature of the investigation and disposal will depend on the circumstances of the case. While disciplinary proceedings will not result against someone who is no longer serving with the police, criminal proceedings could still be brought if appropriate. A proportionate response is required.

### ***Recording a complaint on the complaints register***

- A48. Recording of the case and allegation(s) should be within the complaints register. Recording in a holding register such as 'inbox' or 'miscellaneous' does not amount to 'recording'.

### ***Vexatious complaints***

- A49. Complaints considered to be vexatious should be recorded following usual procedures. Police forces or police authorities can then consider applying for a dispensation.

<sup>178</sup> Regulation 21, The Police (Complaints and Misconduct) Regulations 2004

### ***Vexatious complainants***

A50. The concept of a vexatious complainant does not exist within the legislation. Each complaint should be treated on its own merits.

### ***Historical complaints***

A51. If more than 12 months have elapsed between the incident giving rise to the complaint and the complaint being made, and either there is no good reason for the delay, or injustice would be caused by investigating the complaint, police forces or police authorities may consider applying for a dispensation.<sup>179</sup>

### ***Dispensation (granted by IPCC)***

A52. A police force or police authority may apply to the IPCC for a dispensation where it considers:

- more than 12 months have elapsed between the relevant incident (or the latest incident) giving rise to the complaint and the making of the complaint, and there is no good reason for the delay, or injustice would be likely to be caused by the delay;
- the matter is already the subject of a complaint;
- the complaint is anonymous and it is not reasonably practicable to ascertain the name or address of the complainant;
- the complaint is vexatious, oppressive or an abuse of the procedures for dealing with complaints;
- the complaint is repetitious;
- it is not reasonably practicable to investigate the complaint.<sup>180</sup>

### ***Partial dispensations***

A53. Where a complaint case is made up of multiple allegations, only some may be suitable for dispensation. For example, some aspects of a complaint may be repetitious while others are not. In such cases an application may be made to dispense with some allegations within the complaint case.

### ***Discontinuance (granted by IPCC)***

A54. A police force or police authority may apply to the IPCC to discontinue an investigation when it becomes apparent during the investigation that:

- the complainant does not cooperate to the extent that it is not reasonably practicable to continue the investigation;

<sup>179</sup> Regulation 3(2), The Police (Complaints and Misconduct) Regulations 2004

<sup>180</sup> Regulation 3, The Police (Complaints and Misconduct) Regulations 2004

- the complainant agrees to local resolution;
- a complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints or conduct matters;
- a complaint is repetitious;
- it is otherwise not reasonably practicable to proceed with the investigation.<sup>181</sup>

### ***Dispensation/discontinuance (by police force or police authority)***

- A55. The appropriate authority can dispense with the requirement to investigate a complaint further when:
- the matter has been suspended (sub judice);
  - criminal proceedings have concluded; and
  - despite reasonable efforts, the complainant has not responded to requests to cooperate in resuming the investigation.
- A56. However, following a matter being dispensed with, police forces or police authorities may still go on to record a conduct matter. This also applies to withdrawn complaints, so that police forces or police authorities may still investigate behaviour that appears to fall below the expected standard. For further information refer to Regulation 17, The Police (Complaints and Misconduct) Regulations 2004 and paragraph A52 (page 164).

### ***File to the IPCC***

- A57. Police forces and police authorities should record when a file has been sent to the IPCC at the conclusion of a supervised or managed investigation or when the IPCC takes responsibility in the form of an independent investigation.

### ***Power to suspend investigation or other procedure (sub judice) on a complaint case***

- A58. Police forces and police authorities are expected to record a complaint within 10 working days from receipt of the complaint, as outlined in A17 (page 155). This is irrespective of whether there are any outstanding criminal investigations or proceedings linked to the complaint. Once a complaint has been recorded, there is a power to suspend an investigation which would, if it were to continue, prejudice any criminal investigation or proceedings.<sup>182</sup> The justification for suspending an investigation will cease when the complainant/defendant is convicted or acquitted in the ongoing criminal proceedings or the case against him or her is not proceeded with. It does not generally include any period where the case is adjourned for sentencing. Even when the case is suspended, there may be an opportunity to gather evidence and undertake part of the investigation.

<sup>181</sup> Regulation 7, The Police (Complaints and Misconduct) Regulations 2004

<sup>182</sup> This power has in the past sometimes been referred to as the 'sub judice' rule.

**Definitions of allegation categories and link to Standards of Professional Behaviour**

A59. The following definitions have been provided to assist those recording allegations linked to complaint cases. Please note that any examples given in this section are simply a guide; they are not exhaustive.

A60. Where relevant a link to the appropriate Standard of Professional Behaviour is included for police officers. These links are simply a guide; they are not exhaustive. The links should be regarded as broadly indicative of the categories in the Standards of Professional Behaviour as agreed for staff in forces which are members of the Police Staff Council.

Category	Allegation	Definition	Standard(s) of Professional Behaviour
A	<b>Serious non-sexual assault</b>	<p>Inclusion in this category depends solely on the nature of the injuries.</p> <p>1. This includes Section 18 or 20 assaults contrary to the Offences Against the Person Act 1861, i.e. unlawfully or maliciously wounding or causing grievous bodily harm and homicide.</p> <p>Examples are: injury resulting in permanent disability or permanent loss of sensory function, fracture, deep cut or deep laceration and injury causing damage to an internal organ or the impairment of any bodily function.</p> <p>2. This includes Section 47 assaults, Offences Against the Person Act 1861.</p> <p>Examples are: loss or breaking of a tooth or teeth, temporary loss of sensory functions (which may include loss of consciousness), extensive or multiple bruising, displaced broken nose, minor fractures, minor (but not merely superficial) cuts of a sort probably requiring medical attention (e.g. stitches) and psychiatric injury that is more than fear, distress or panic.</p>	Use of force
B	<b>Sexual assault</b>	<p>This concerns rape, attempted rape and any assault surrounding or involving circumstances of indecency. This category relates to sexual matters only.</p>	Use of force

Category	Allegation	Definition	Standard(s) of Professional Behaviour
C	<b>Other assault</b>	<p>This concerns use of more force than is reasonable. Inclusion is solely dependent on the nature of the injuries. This includes common assault and battery. Injuries include: grazes, scratches, abrasions, minor bruising, swellings, reddening of the skin, superficial cuts and a 'black eye'.</p> <p>This category includes minor injuries resulting from the use of handcuffs. It also includes minor assaults resulting in no injury, such as pushing. A person serving with the police must never knowingly use more force than is reasonable, nor should he or she abuse his or her authority. This category includes any unjustified use of force or personal violence (but not assaults that cause no injury arising from unlawful arrest) and any incident involving police dogs or horses where the incident is attributable to the conduct of the person in control, unless the severity of injury puts them into Category A, above.</p>	Use of force
D	<b>Oppressive conduct or harassment</b>	<p>This includes unjustified interference, questioning or surveillance, for example, an improper request for driving documents. It may include allegations concerning unjustifiable examples of routine traffic checks, persistent police presence or persistently following. Allegations here do not relate to police detention or police interviews under PACE.</p>	<p>Authority, respect and courtesy</p> <p>Equality and diversity</p> <p>Use of force</p>
E	<b>Unlawful/ unnecessary arrest or detention</b>	<p>This concerns unlawful/unnecessary arrest or detention under Section 24 PACE (power of arrest without warrant) in respect of proportionality, reasonableness and necessity. 'Unlawful' should be interpreted as the officer having insufficient powers to make an arrest or to detain in the circumstances.</p>	<p>Authority, respect and courtesy.</p> <p>Equality and diversity</p> <p>Use of force</p>
F	<p><b>Discriminatory behaviour</b>  <i>Sub-categories</i>                      F1 Race                      F2 Disability                      F3 Gender                      F4 Sexual orientation                      F5 Religion and belief                      F6 Age</p>	<p>This includes any allegation that involves an element of discrimination or is perceived to do so at any stage. Discrimination should be thought of in terms of treating people differently without justification through prejudice or unfair treatment of one person or group.</p> <p>Discrimination may be committed on the grounds of race, disability, gender, religion and belief, sexual orientation or age. The specific grounds of discrimination should be identified and recorded for each allegation. When recording</p>	Equality and diversity

Category	Allegation	Definition	Standard(s) of Professional Behaviour
F	<b>Discriminatory behaviour (cont)</b>	<p>an allegation in this category, it is expected that a sub-category will be selected.</p> <p>If there are associated allegations (e.g. incivility or assault) these should be recorded separately. In addition, discriminatory behaviour may be identified by anyone receiving, recording or investigating a complaint.</p>	
G	<b>Irregularity in relation to evidence/perjury</b>	This includes perjury or allegations of falsehood, for example, allegations that an officer made a false statement or induced witnesses to give evidence falsely. Allegations may include taking evidence from witnesses but should not relate to breaches of PACE Codes of Practice.	Honesty and integrity
H	<b>Corruption or malpractice</b>	This includes allegations of corruption or malpractice. Corruption is the abuse of a role or position held, for personal gain or gain for others. This ranges from serious corruption (e.g. any attempt to pervert the course of justice, theft or criminal damage) to the less serious (e.g. misuse of warrant card).	Honesty and integrity
J	<b>Mishandling of property</b>	This includes all allegations relating to the mishandling of property. Reasonable care must be exercised in order to prevent loss or damage to property (excluding an officer's own personal property but including police property). A breach of this category includes: the loss of property including money; unreasonable retention of property; damage to property in police custody; failure to account for money or property; and improper disposal of property, but excludes those from Breach of Code B PACE (Category L) and property record-keeping in Code C PACE (Category M).	Honesty and integrity  Duties and responsibilities
K	<b>Breach of Code A PACE on stop and search</b>	This includes unjustified use of the relevant power, particularly where reasonable suspicion cannot be supported, and failure to act appropriately before or during a search, or to make the necessary record where practicable. Similar allegations from non-PACE stops and searches should also be recorded in this category (e.g. Section 44 Terrorism Act 2000 and Section 60 Criminal Justice and Public Order Act 1994). If there are associated allegations (e.g. incivility or assault) these should be recorded separately.	Orders and instructions  Duties and responsibilities



Category	Allegation	Definition	Standard(s) of Professional Behaviour
L	<b>Breach of Code B PACE on searching of premises and seizure of property</b>	This includes unauthorised entry on search; failure to provide information to the occupier; an improper or excessive search; failure to record searches properly; not securing premises where necessary; and breaches of rules on seizure or retention. This will include property seized and retained under this power.	Orders and instructions  Duties and responsibilities
M	<b>Breach of Code C PACE on detention, treatment and questioning</b>	This includes failure to inform detained persons of their rights and entitlements; unjustified obstruction of access to legal advice; holding persons incommunicado; not providing necessary support/advice to young/vulnerable detained persons; failure to maintain proper custody/property records; not providing mandatory physical conditions whenever practicable; not carrying out searches on detained people in accordance with the code; conducting review of detention improperly or at inappropriate intervals; failure to caution or charge when required; interviewing oppressively or in inappropriate circumstances; not making proper records of interviews nor allowing them to be checked by suspects where practicable; and not providing interpreters where necessary.	Orders and instructions  Duties and responsibilities
N	<b>Breach of Code D PACE on identification procedures</b>	This includes failure to provide suspects with information about identification procedures or offer them a choice between procedures where appropriate; not conducting or recording identification procedures properly; not obtaining necessary consent to the taking of fingerprints, photographs or body samples; and not providing suspects with the opportunity to witness destruction of fingerprints or photographs where appropriate.	Orders and instructions  Duties and responsibilities
P	<b>Breach of Code E PACE on tape recording</b>	This includes failure to tape record (without good reason), failure to handle tapes openly and in front of the suspect or to maintain adequate tape security; and not making a proper record of objections, complaints, breaks, etc.	Orders and instructions  Duties and responsibilities
Q	<b>Lack of fairness and impartiality</b>	An example of this would be a failure to treat all parties equally where there are allegations and counter-allegations. This category should not include allegations arising from any breach of PACE (categories K to P and R) or those related to 'Discriminatory behaviour'.	Equality and diversity

Category	Allegation	Definition	Standard(s) of Professional Behaviour
R	<b>Unspecified breaches of PACE which cannot be allocated to a specific code</b>	We would expect this category to be used very rarely. It should not be used in relation to multiple allegations of breaches of PACE. See guidance for advice on recording of multiple allegations (paragraphs A30-A37, page 158). This category may initially be used where unspecific allegations are made but should be revisited as the case is investigated and specific issues are identified.	Orders and instructions  Duties and responsibilities
S	<b>Other neglect or failure in duty</b>	This includes allegations with regard to a lack of conscientiousness and diligence concerning the performance of duties. This may include failure to record or investigate matters and keep interested parties informed. It includes failure to comply with orders, instructions or force policy.	Orders and instructions  Duties and responsibilities  Fitness for duty
T	<b>Other irregularity in procedure</b>	This includes other procedural irregularities not falling within Category S; for example, misleading a member of the public in order to achieve a course of action.	Orders and instructions  Duties and responsibilities
U	<b>Incivility, Impoliteness and intolerance</b>	This includes allegations of abusive, offensive or rude language or behaviour. It does not include harassment (see Category D). If there are associated allegations (e.g. 'Discriminatory behaviour') then these should be recorded separately.	Authority, respect and courtesy
V	<b>Traffic Irregularity</b>	This includes allegations only about the driving or use of vehicles in connection with police business. It does NOT relate to officers speaking to members of the public in relation to traffic offences.	Orders and instructions  Discreditable conduct
W	<b>Other</b>	This includes any allegations that do not fall into any of the other categories. This category should not be used as a 'catch all' but should be revisited as the case is investigated and specific issues are identified.	All or any
X	<b>Improper access and/or disclosure of information</b>	This concerns allegations relating to improper disclosure or use of information held for police purposes. This includes misuse of police computer systems; accessing information for personal reasons; requests for information made by family or friends; approaches by private investigators; and unauthorised disclosure to the media.	Orders and instructions  Confidentiality

Category	Allegation	Definition	Standard(s) of Professional Behaviour
Y	<b>Other sexual conduct</b>	This includes allegations of sexual conduct not amounting to sexual assault and including sexual harassment or soliciting of prostitutes, including allegations of paedophilia (including child pornography).	Discreditable conduct

## Annex B: DEALING WITH ALLEGATIONS OF DISCRIMINATORY BEHAVIOUR

### SECTION 1: INTRODUCTION

- B1. Few complaints about police conduct are as controversial – or as complex to investigate – as those alleging discriminatory behaviour.
- B2. There have been significant changes to the police complaints system since 2003. The creation of the IPCC was one of those changes. The publication of three major reports and reviews of the police service have brought with them a shift in attitudes and ethos, along with changes to the high standards expected of the police service.<sup>183</sup>
- B3. The introduction of reforms to the police misconduct system on 1 December 2008 brought a cultural change to dealing with police complaints, with emphasis now placed firmly on learning and development. Where individual misconduct may be a factor, the processes for the handling of complaints are designed to be proportionate to the seriousness of the allegations and alleged behaviour.
- B4. Increasing public confidence in the police complaints system is a key responsibility for the IPCC. Compared with the number of police complaints recorded, those alleging discriminatory behaviour are relatively few. Yet public confidence surveys carried out by the IPCC in 2004 and 2007 indicate that discriminatory behaviour is perceived to be one of the top reasons for making a complaint.
- B5. Alleged discrimination by the police, real or perceived, has the potential to damage the reputation of the police service. It can also have a considerable impact on relations with communities. Research conducted by the IPCC identified a number of groups that are likely to have less confidence in the police complaints system – including lesbians and gay men, members of the travelling community, those for whom English is not their first language and minority ethnic groups. Research also indicated a perception among minority ethnic groups of discrimination on the part of police officers and police staff; a perception often shared by the wider community even where there had been no personal experience of incivility or abusive contact with the police.
- B6. For police officers and police staff who are the subject of an allegation of discriminatory behaviour, it is an extremely serious matter. Complainants, officers

183 *The Report of the Stephen Lawrence Inquiry*, William Macpherson (1999)  
*The Police Service in England and Wales: Final report of a formal investigation by the CRE* (2005)  
*The Bill Taylor Review of Police Disciplinary Arrangements* (2005)

and police staff all need to be assured that the handling of a complaint is professional, proportionate and fair. The IPCC recognises that police staff have a different discipline system to those of police officers. Where allegations against members of police staff are being dealt with, those who handle or investigate complaints should be aware of the terms and conditions of employment for that member of staff when assessing whether there are issues relating to individual conduct and when deciding on any subsequent action. Nevertheless, the IPCC expects any complaint involving police officers and police staff to be dealt with in a way that seeks to achieve similar outcomes regardless of the status of the person complained about.

- B7. These guidelines build on those published by the Police Complaints Authority (PCA) in 2003.<sup>184</sup> These revised guidelines cover allegations relating to age, religion and belief, disability, gender, race and sexual orientation. Each complaint, conduct or death or serious injury (DSI) matter should be assessed in light of its facts and the law that applies to it. The guidance contained in these guidelines should assist investigators to assess individual allegations and take a proportionate and professional approach to whatever process is applied. The same principles in reaching decisions on the handling and outcome of complaints will apply regardless of whether local resolution or investigation is used.
- B8. These guidelines have been developed to reflect general good practice for investigations. They take on board the principles applied within discrimination law. Employment tribunals have built up a body of case law on allegations of discrimination. Although this case law does not necessarily apply to the investigation of public complaints (whereas it will be relevant to the investigation of an internal dispute), it can be helpful as an aid when gathering relevant evidence and reaching conclusions. Actions taken in the civil courts also provide guidance that may be relevant. Unfortunately, these cases are not as widely reported.
- B9. The process for handling allegations of discriminatory behaviour should be proportionate and fair. Investigations that are demonstrably fair will, whatever the outcome, promote trust. Although the issue of whether disclosing material causes harm must be considered, experience shows that trust is further enhanced if investigations, especially those that may have an impact on wider communities, are carried out in a climate of openness and transparency.
- B10. The priority attached to matters of discrimination by the IPCC is shared by the police service. Yet, paradoxically, the stigma attached to discriminatory behaviour can serve as a barrier. An officer or police staff member is unlikely to make admissions if he or she fears dismissal will result. These guidelines place

<sup>184</sup> *Investigating Allegations of Racially Discriminatory Behaviour* (2003), Police Complaints Authority

particular emphasis on the need to look for evidence from which a conclusion may be drawn. It is rare that objective evidence of direct discrimination exists. In some investigations it may be reasonable, for example, to look at a pattern of behaviour and to consider whether this pattern supports an allegation of discriminatory behaviour.

- B11. The Standards of Professional Behaviour respectively for police officers and police staff, coupled with an emphasis on learning, should help to ensure a consistent approach throughout the police service. Now that managers at all levels will be dealing with public complaints, it has become even more important that there is a shared understanding of the issues throughout all levels of the police service. It is important that those who assess a matter as an opportunity for learning are confident that chief officers would support that assessment.
- B12. The IPCC is clear that, given all the facts of a case, it may be possible to retain an officer or police staff member and ensure that the behaviour is not repeated. Recognition should also be given to those circumstances where the facts of the case indicate that an officer or police staff member has behaved with evident integrity, but the outcome was unfair to the complainant. Indeed, an officer or police staff member who demonstrates a willingness to learn from a complaint should be better able to serve the public. On the other hand, proven allegations where there is significant detriment or evidence of a repeated discriminatory attitude or behaviour require a more serious misconduct consideration. Each allegation needs to be assessed according to the relevant facts.
- B13. These guidelines will enable people dealing with complaints, wherever they are within a police authority, police force or the IPCC, to review and develop current practice and expertise. The IPCC, along with the police service, will be looking for evidence that these standards have been met. We recommend that the summary given in section 6 of this annex should be copied and made available to all investigative staff.

## **SECTION 2: LEGAL AND DECISION-MAKING FRAMEWORK**

*“Public confidence in the police is crucial in a system that rests on the principle of policing by consent. Public confidence in the police depends on police officers demonstrating the highest level of personal and professional standards of behaviour.”*

Standards of Professional Behaviour for police officers

- B14. The new Standards of Professional Behaviour set out a framework for police officers and special constables. This framework explains what is, and is not, acceptable. These standards generally apply to matters that have come to the attention of the police force or police authority on or after 1 December 2008. The

Police Staff Council has also published and introduced similar Standards of Professional Behaviour for police staff in the forces that are members of it.

- B15. For the purposes of these guidelines, the Standards of Professional Behaviour for police officers set out in relation to equality and diversity that: “Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.”
- B16. The expected conduct includes these points:<sup>185</sup>
- Police officers and police staff carry out their duties with fairness and impartiality and in accordance with current equality legislation. In protecting others’ human rights, they act in accordance with Article 14 of the European Convention on Human Rights.
  - Police officers and police staff need to retain the confidence of all communities and therefore respect all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law. In particular, police officers do not discriminate unlawfully or unfairly when exercising any of their duties, discretion or authority.
  - Police officers and police staff pay due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups.
  - Police managers have a particular responsibility to support the promotion of equality and by their actions set a positive example.
  - Different treatment of individuals which has an objective justification may not amount to discrimination.
- B17. Current discrimination law provides a complex mix of protection against discrimination across the different strands. The law arguably provides the highest levels of protection with regard to gender, race and disability and, in these three areas, the law requires public bodies to take positive steps to promote equality.
- B18. The Standards of Professional Behaviour, whether for police officers or police staff, require persons serving with the police to act with fairness and impartiality and to respect all individuals and their traditions, beliefs and lifestyles (insofar as they are lawful). They must also report any behaviour that departs from the standards. In addition, the standards place a duty on managers to support the promotion of equality and to set a good example in their own behaviour. These standards also apply to off-duty conduct in the following circumstances:<sup>186</sup>
- off-duty behaviour which discredits the police service or undermines public confidence – the discredit being to the police service rather than the individual alone;

<sup>185</sup> Paragraphs 1.27 – 1.31, Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008)

<sup>186</sup> Paragraphs 1.70 – 1.76, Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (issued with Home Office Circular 026/2008)

- where an officer acts or is perceived to have acted in an official capacity when off duty and does not follow the standards;
- where approved business interests carried out off duty compromise, or are perceived to compromise, an officer's impartiality.

### ***Operational policing***

- B19. Police officers make judgements throughout their working day about who to stop, when to use force and when to arrest. Often these judgements are made in a split second, based on information available at the time. In addition, police officers and police staff have to deal with victims and witnesses of crime.
- B20. Home Office guidance supporting the Standards of Professional Behaviour for police officers explains that the standards do not restrict police officers' discretion, but define the parameters of conduct in which discretion should be exercised. Police officers should be able to reflect on the judgements they make and see what influences their decisions.
- B21. Significant operational policing issues arise in connection with each strand of discrimination, but it is those issues connected to race and religion that are the most frequently debated in the wider public arena. The debate is often prompted by concerns in some communities about the use of police powers to stop and search. Interestingly, although young black and/or Muslim men raise this issue frequently in public forums and in IPCC research,<sup>187</sup> stop and search complaints are rarely referred to the IPCC, although they are still a significant complaint issue.<sup>188</sup>
- B22. Nothing in this guidance should prevent police officers or police staff from carrying out their proper duties and using their discretion as they deal with individuals. The new standards require officers and police staff to be fair.

### ***Defining discrimination***

- B23. The new standards for police officers and police staff require police officers and police staff to "carry out their duties with fairness and impartiality". The standards require that officers and police staff "do not discriminate unlawfully or unfairly".
- B24. It is also important to note that some acts are capable of justification. More detailed information can be found on the Equality and Human Rights Commission website at [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

<sup>187</sup> Public Perceptions of the Police Complaints System (2007), IPCC  
<sup>188</sup> Police Complaints: Statistics for England and Wales 2007/08, IPCC



**Criminal law**

B25. The Crown Prosecution Service (CPS) produces specific guidance on the prosecution of hate crime and on how this is applied across the diversity strands. The CPS guidance currently covers racist and religious, homophobic and disability crime.<sup>189</sup>

**Civil law**

B26. Significant differences currently exist in the legislation covering each of the different strands of discrimination. However, there are some common factors. The definitions listed below are of a general nature and reference should be made to the specific provisions that apply to each situation:

- *Direct discrimination* occurs when a person treats another less favourably than they would treat someone else on the ground of, for example, disability.
- *Indirect discrimination* occurs when a term or condition that is imposed on everybody puts one of the groups covered by the legislation at a disadvantage.
- *Harassment* is unwanted conduct on a prohibited ground which has the purpose of (a) violating a person's dignity or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment.
- *Victimisation* is less favourable treatment by reason of a person having done certain prohibited acts.

B27. The Stephen Lawrence Inquiry report identified institutional racism as a significant factor in the service provided to Stephen Lawrence's family by the police. Police forces have properly responded by reviewing their policies and practices.

B28. As noted, the legislation applies to the different strands of discrimination in different ways. Some behaviour may also be capable of justification.

**The diversity strands**

B29. This guidance covers different strands of discrimination. Illustrations of complaints can be found at the websites listed in paragraph B45 (page 251).

B30. Positive duties placed on public bodies to eliminate discrimination refer only to race, gender and disability. Each of the other diversity strands applies to protection at work and all but age to the provision of goods and services.

**Examples of complaints**

B31. The following examples are illustrative of police complaints alleging discriminatory behaviour. They reflect the types of allegations made, not the

<sup>189</sup> [www.cps.gov.uk](http://www.cps.gov.uk)

proved findings. Allegations can cover more than one diversity strand, a factor often seen where allegations of religious and nationality bias have been raised.

- B32. The examples below illustrate the range of behaviours that are perceived to be discriminatory. It is for the investigation to determine if the allegation is well founded.

## **Race**

- B33. Race includes ethnic and national origins, colour and nationality affecting many groups including the treatment of Gypsies and Travellers.

*Allegation: An Asian CPS representative who regularly attended a police station alleged race discrimination by police officers and staff due to the high number of security checks he experienced when arriving at the police station, security checks he was aware his white colleagues from the CPS were not subjected to.*

## **Disability**

- B34. The Disability Discrimination Act 2005 (DDA) makes it unlawful to discriminate against a disabled person or a person who has had a disability. The legislation contains a list of capacities that form part of the definition. A disabled person may be someone with a learning disability, physical or sensory impairment(s) and/or mental health problems, including mental distress.
- B35. Assumptions about disabled people may lead to behaviour that is discriminatory. The symptoms of some illnesses may also present themselves in a way that may be misinterpreted, for example, an epileptic seizure being considered as drunken and disorderly behaviour, or the effects of some anti-psychotic medication, particularly slurring words, being wrongly interpreted as drunkenness. This could also apply where someone has a learning disability.

*Allegation: A complainant with Asperger's syndrome alleged that police officers did not take his allegation of criminal activity by a registered charity seriously. Having been given the opportunity to provide evidence against the charity and failing to do so, it was believed the police officer's decision to close the case was discriminatory.*

## **Gender**

- B36. Discrimination on the grounds of sex is based on biological differences; gender is sometimes described as the cultural expression of masculinity and femininity. Sex discrimination includes transgender issues.

*Allegation: A transgender complainant alleged discrimination when police officers completed a custody record and custody procedures using her gender at birth as opposed to her preferred gender status.*

### **Sexual orientation**

- B37. Discrimination can be on the grounds of an individual's sexual orientation towards persons of the same sex, the opposite sex or the same sex and opposite sex; victims of discrimination can be heterosexual as well as lesbian, gay or bisexual.

*Allegation: A complainant alleged that during enquiries made by the police about a number of burglaries, a neighbour told her that the police had been asking about her. The neighbour said that during the conversation the police mentioned that the complainant was a lesbian. The complainant considered this to be inappropriate. She felt that this disclosure could put her at risk in her neighbourhood – she had previously had to move home because of homophobic incidents.*

### **Religion and belief**

- B38. Discrimination on the grounds of religion could take the form of specific words or failure to account for practices relating to a religion or belief.

*Allegation: A Jewish complainant alleged that, following arrest, the custody sergeant was wearing a visible badge showing the Palestinian and Lebanese flags. The complainant found this offensive. Allegations were also made that the timing of the police interview coincided with the start of the Sabbath.*

- B39. What is often more difficult to assess is the impact that a particular policy or form of police action takes and the effect this can have on people of a specific religion or belief.

*Allegation: A detained complainant suffering from a medical condition alleged that his religious and cultural needs were not accommodated, having made custody staff aware that he was fasting for Ramadan.*

### **Age**

- B40. Being treated differently on the grounds of age could as easily refer to the treatment of young people as to older people.

*Allegation: An 88-year-old man alleged that officers should have taken his age into account when he reported young people causing annoyance by playing football*

*outside his window. The man alleged that the officers told him to deal with the matter himself.*

### **Protection at work**

- B41. It is currently illegal to discriminate against people at work on the grounds of:
- gender (including transgender people);
  - race (including ethnic and national origins, colour and nationality);
  - disability;
  - sexual orientation;
  - religion or belief, including lack of religion or belief;
  - age.
- B42. This law covers police officers and police staff. The chief officer is potentially liable for acts of discrimination by individuals employed by his or her police force. Where such allegations are made by one employee against another, this would amount to a conduct matter, not a complaint matter under the Police Reform Act.<sup>190</sup>
- B43. The DDA adds a further requirement: employers have a duty to make reasonable adjustments for disabled job applicants or staff when a policy or practice or something about their premises places the disabled person at a substantial disadvantage. This may have a bearing if, for example, a disabled officer is alleged to have neglected his or her duties, but offers in defence that no reasonable adjustment was made to enable him or her to carry out the duties properly. All the facts need to be considered.
- B44. Changes to legislation continue and the relevant organisations also change. More detail about the law can currently be found at the websites listed below. On 1 October 2007, the Equality and Human Rights Commission (EHRC) was set up as a single body with responsibility to oversee and enforce discrimination law. The creation of this single Commission incorporates the work previously covered by the Equal Opportunities Commission, the Disability Rights Commission and the Commission for Racial Equality.
- B45. Further information is available from the following national organisations and from local police staff associations:
- Equality and Human Rights Commission: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)
  - Acas: [www.acas.org.uk](http://www.acas.org.uk)
  - Stonewall (lesbian and gay rights): [www.stonewall.org.uk](http://www.stonewall.org.uk)
  - Age Positive: [www.agepositive.gov.uk](http://www.agepositive.gov.uk)
  - Human rights: [www.humanrights.gov.uk](http://www.humanrights.gov.uk)

<sup>190</sup> Section 29(4), Police Reform Act 2002

- National police staff associations and trade unions
- Home Office: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)
- Government Equalities Office: [www.equalities.gov.uk](http://www.equalities.gov.uk)
- Mind: [www.mind.org.uk](http://www.mind.org.uk)

## ***Provision of services***

- B46. The diversity strands currently covered by anti-discrimination law in the provision of services are: disability, race, gender, sexual orientation and religion and belief. Age is likely to be added in the forthcoming equality legislation. As a general rule, the law currently requires that, with regard to these strands, a service must not exclude, or offer less favourable, treatment.
- B47. There are additional *positive* requirements regarding race, gender and disability.
- B48. Disability is defined in the DDA as: “a physical or mental impairment which has a substantial and long-term adverse effect upon his ability to carry out normal day-to-day activities”.
- B49. Physical or mental impairment includes sensory impairments. Hidden impairments are also covered (for example, mental illness or mental health problems, learning disabilities and conditions such as diabetes or epilepsy). It is a matter for the courts to decide who has a disability within the meaning of the legislation.
- B50. As a general rule, it is unlawful to discriminate against disabled people by treating them less favourably in terms of the service provided and to fail to make reasonable adjustments to the physical features of the service premises or the way in which a service is provided. The requirement to make reasonable adjustments is specific to disability legislation.

## ***Public duties***

- B51. Following the publication of the Stephen Lawrence Inquiry report in 1999, the issue of racial discrimination within police forces became the subject of considerable public scrutiny. Largely as a result of this report, the government placed new, positive duties to tackle race discrimination on all public bodies, including police forces, through the Race Relations (Amendment) Act 2000 (RRAA). This was followed by similar legislation covering gender and disability. The law requires all police forces (and other public bodies) to produce equality schemes that set out their plans to meet the requirements of the legislation. Increasingly, public bodies are producing a single equality scheme that includes these three main equality strands.

**Human Rights Act 1998**

- B52. All public bodies must meet the requirements of the Human Rights Act (HRA). (Full details of the law can be found at [www.yourrights.org.uk/your-rights/the-human-rights-act/index.shtml](http://www.yourrights.org.uk/your-rights/the-human-rights-act/index.shtml))
- B53. In addition to conferring specific rights, the Act is underpinned by ideas of equality, fairness and dignity that public bodies should incorporate into all their activities. So police forces should provide their service fairly to everyone in the diverse communities they serve, as well as avoiding direct breaches of human rights law.
- B54. The Articles that are most immediately relevant to policing are:
- the right to life;
  - the prohibition of torture (no one shall be subject to inhuman or degrading treatment);
  - the right to liberty and security;
  - the right to respect for private and family life;
  - the prohibition of discrimination.
- B55. Article 14, relating to the prohibition of discrimination, reads:  
*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*
- B56. Article 14 can only come into play if one of the other articles of the Convention is ‘engaged’. A human rights article is engaged if it appears that an action or behaviour could fall within its remit: an example would be unlawfully imprisoning a person simply on the grounds of his or her race.

**Relevance to employment and civil law**

- B57. Investigators are looking for evidence that will show whether the conduct of an officer or police staff member has been consistent with the Standards of Professional Behaviour or terms and conditions of employment, as appropriate. This means establishing whether the officer has demonstrated respect for ‘all individuals and their traditions, beliefs and lifestyles’. In addition, investigators must consider whether the officer has behaved with fairness and impartiality.
- B58. The fundamental question to be posed is: “has the officer behaved in keeping with the standards?”

- B59. It is also worth noting that the standards include a requirement not to discriminate unlawfully or unfairly, and the approach taken by employment tribunals and civil courts can be helpful here.
- B60. Cases from the county courts are not widely reported. Information about high court judgments and appeals heard at the higher courts can be found at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk).
- B61. Cases heard by employment appeals tribunals are recorded and are important in the development of this area of law. They are reported at [www.employmentappeals.gov.uk](http://www.employmentappeals.gov.uk). Up-to-date information can be found at the Advisory, Conciliation and Arbitration Service (Acas) and EHRC websites: [www.acas.org.uk](http://www.acas.org.uk) and [www.equalityhumanrights.com](http://www.equalityhumanrights.com).
- B62. Developments in employment case law are worth bearing in mind, partly because they may become pertinent if a case is headed towards an employment tribunal, but also because they may assist investigators in gathering and weighing evidence. Updates can be found on the National Policing Improvement Agency (NPIA) website: [www.npia.police.uk](http://www.npia.police.uk).
- B63. Employment case law recognises that most employers would not admit discrimination, even to themselves, and direct evidence of discrimination will rarely exist. The outcome of employment cases will therefore usually depend on what conclusions it would be proper to draw from the facts that are found.
- B64. One well-known case considered by an employment appeal tribunal in 1991 used a formula, Dx3+E, to reach a conclusion: evidence of **D**ifference in race, etc; evidence of **D**ifference in treatment; evidence of **D**etriment; plus no **E**xplanation (King v The Great Britain-China Centre [1991] IRLR 513). This was subsequently adopted as a guide in certain cases. Later decisions have asked: “why did someone behave in this way?” Another useful question is: “would this incident or behaviour have happened *but* for the factor of one or more of the diversity strands?”

### ***Standard of proof***

- B65. All police officer and police staff misconduct matters are determined on the balance of probabilities.
- B66. People who are under investigation may decide not to answer questions. However, if there is evidence of discriminatory behaviour or of unfairness or a lack of impartiality, then a written or verbal response from an officer or police

staff member in response to the allegation is an opportunity for him or her to explain. Therefore, if evidence of discriminatory behaviour exists and the officer or police staff member chooses not to provide a credible explanation for his or her behaviour, this could lead to a conclusion that the behaviour was unfair or discriminatory. The evidence should be considered in the context of the positive responsibility to behave fairly and impartially. Under the misconduct system as it applies to police officers, if an officer does not mention something at different stages of the investigation or on referral of his or her case to misconduct proceedings which he or she then later raises in a misconduct meeting or hearing, then inferences may be drawn from the officer's earlier failure to mention this.

## **SECTION 3: HANDLING ALLEGATIONS OF DISCRIMINATORY BEHAVIOUR**

### ***Initial handling of the complaint***

- B67. The approach to public complaints now means that many matters will be dealt with outside of professional standards departments. Managers at all levels will be required to develop their skills, especially in matters of discrimination. In order to assist managers who may not be familiar with the investigation of public complaints, this guidance includes the first steps that need to be taken when dealing with a complaint alleging discrimination.
- B68. If it is decided that the matter should be investigated, the next step is to assign the investigator. Whenever there is an allegation of discrimination, the investigator should have the necessary skills and resources to respond effectively to the complainant and identify relevant evidence (see B69-B71).

### ***Recording the complaint***

- B69. The initial response to the complaint will inevitably affect the complainant's confidence in any subsequent investigation or local resolution. The impact of this first impression will be crucial. Openness and respect when taking details of the complaint will be required. Where it becomes apparent that those taking complaints are dealing with a vulnerable or intimidated complainant it may be more appropriate to take an initial account and make further arrangements to enable a fuller account to be taken by those with relevant experience or training.
- B70. People who believe that they have been discriminated against may be unwilling to express their opinion about the alleged discriminatory behaviour. It is therefore crucial that the person recording the complaint is able to evoke confidence and reassure the complainant in order that he or she feels able to



explain the reason for the complaint.

- B71. The person who records the complaint should take active steps to promote trust and confidence in a fair investigation.
- Show professionalism and reassurance when taking details of any allegation of discrimination is important.
  - Make no assumptions or judgements about the complainant. For example, where a complainant discloses he or she has, or is perceived to have, a mental health problem or learning disability do not make judgements about the information the complainant gives or his or her ability to make a complaint. Where support during the complaint process is requested, whether through a carer, family member or independent advocate, details should be noted. A further example would be where a complainant discloses that she or he is lesbian or gay.
  - If the complainant is clearly of a specific faith and you do not already know whether this means the person investigating should behave in certain ways (such as removing shoes if entering the complainant's home), make a note in the file of any information given or comments made by the complainant (so that he or she is not required to explain the same thing more than once).
  - The complainant may not speak English fluently and may require an interpreter or other assistance.
  - If the complainant has disclosed a disability, check how this may affect your future contact – for example, ease of travel to the police station, use of telephone, ease of reading. Record any preferences that the complainant has expressed.
- B72. If the complainant has not identified the officer or police staff member who is the subject of the complaint by name or personnel number, any detail that can help to identify the officer or police staff member at this early stage should be recorded. The Police Reform Act still applies, even where the identity of the officer is unknown.
- B73. Record the complaint in the person's own words. Take as much detail as possible about the alleged conduct and its impact. This will provide a common understanding of the exact complaint. A witness statement may not be required at this early stage. If the complainant has made specific requests about future contact or given details of other people who need to be involved, this information should be made prominent for any future investigator dealing with or involved in the complaint.

### ***Standards for recording complaints***

- B74. Each force should have appropriate systems for recording and monitoring all allegations of discrimination. Recording should be in accordance with IPCC statutory guidance. See Annex A, page 150.
- B75. The IPCC guidance mirrors the definition set out in the Association of Chief Police Officers (ACPO) Hate Crime Manual for the recording of a hate incident or crime: *“Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.”*
- B76. Any apparent lack of supporting evidence is not relevant.
- B77. Even if the complainant does not make an allegation of discriminatory behaviour, the investigator may nonetheless decide that discrimination could be a factor and this should be recorded and included in the investigation plan.
- B78. It will be necessary to review the recorded data as more information about the complaint is revealed.

### ***Monitoring of complaints***

- B79. The IPCC encourages the monitoring of complaints and allegations of discriminatory behaviour within police forces. This encourages the review of types of complaints being made and any emerging trends. Learning from complaints is an important element of the complaint system. Where trends and learning are identified, this can provide an important tool to aid understanding of why complaints are made and prevent further complaints from being made.
- B80. Police authorities have a statutory responsibility to keep themselves informed about the handling of complaints by the force they maintain.
- B81. In line with its guardianship function, the IPCC may conduct sampling exercises of discrimination complaints and allegations recorded within individual police forces.

### ***Assessing complaints and gravity factors***

- B82. An important element in the handling of all complaints is the ability to assess the gravity of the allegation, decide whether a complaint is suitable for local resolution or formal investigation, and the level of that investigation. Then the right investigator, who can respond effectively to the case, is assigned.

- B83. Allegations of discrimination are not inevitably at the most serious end of the spectrum: all allegations must be assessed individually. The process for handling allegations of discriminatory behaviour should be proportionate and fair. Complaints and conduct matters are subject to a number of tests to assess the level of handling required. For matters that are dealt with under the provisions of the Police Reform Act, there is a test that establishes whether the issue is suitable for local resolution. Where an investigation into a complaint is required, insofar as that complaint relates to police officers rather than police staff, consideration will need to be given as to whether the special requirements test has been met and, if indicated, a severity assessment must be carried out to establish whether the alleged conduct amounts to misconduct or gross misconduct. Misconduct means a breach of the Standards of Professional Behaviour. Gross misconduct means a breach of the standards serious enough to justify dismissal.
- B84. Of course, judgements made at this point may well change in the light of the evidence. An allegation of discrimination could be more serious if, for example, it could have sparked public disorder, the allegation has become the focus of public concern, or the incident may demonstrate that an officer's subsequent decision making may have been influenced by discriminatory attitudes.
- B85. Reference to gravity factors can provide a guide to ensure consistency in deciding how to proceed. Gravity factors should be revisited and reassessed as more information becomes available. The following list of factors to consider is not intended to be definitive or prescriptive:
- Does the alleged discriminatory behaviour involve words, attitude or actions?
  - What was the impact of the alleged behaviour on the complainant?
  - What is the nature of the evidence supporting the alleged behaviour and what other evidence is likely to be found in establishing what happened during the incident?
  - Was the alleged behaviour raised by the complainant, someone on his or her behalf or someone who observed the incident, or reported by another officer or police staff member?
  - What does the complainant expect as an outcome for dealing with the alleged discrimination?
  - Has the impact of the incident affected, or is it likely that the impact will affect, the wider community or have a negative impact on views about the police service?
  - Is anything relevant known about the police force or local police area that would impact on the degree of investigation required?
  - Is anything relevant known about the officer or police staff member that would impact on the degree of investigation required?
  - Is anything relevant known about the complainant that would impact on the degree of investigation required?

- Were there any delays in receiving details of the complaint, and will there be sub judice considerations that could have an impact on the progress of an investigation or the collection of evidence?
- Does the complaint raise other issues that will impact on how it is dealt with?

## ***IPCC referrals***

### **Mandatory referral**

- B86. Current legislation provides that an allegation of a criminal offence or behaviour which is liable to lead to a disciplinary sanction has to be referred to the IPCC if it appears to be aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status identified by the IPCC.<sup>191</sup>
- B87. The following considerations will apply when deciding whether mandatory referral is required:

#### ***Is the alleged criminal offence or behaviour aggravated by discrimination?***

- B88. The trigger for mandatory referral is that there is an alleged criminal offence or behaviour liable to lead to a disciplinary sanction aggravated by discrimination. Whether the aggravating discrimination is alleged or apparent, it does not need to be proved. The form of the alleged discrimination may be direct through language or behaviour, for example, the use of offensive and discriminatory words or use of stereotypes to describe individuals. The complainant may allege that the criminal offence or behaviour was motivated by discrimination. He or she may allege discriminatory treatment compared with others. It is equally possible that the complainant does not allege discrimination, but that the investigator believes discrimination is a factor.
- B89. For example, a complainant alleges he was stopped and perceives this was only because he was a member of a minority group. This would not be referable because what is stated is not underpinned by an allegation of a criminal offence or behaviour liable to lead to a 'disciplinary sanction'. However, had the allegation been that the stop resulted in an arrest that was an abuse of power and unlawful, and that unlawful action was motivated by discriminatory behaviour, then it would be referable.

<sup>191</sup> Regulation 2(2)(a)(iv) and Regulation 5(1)(d), Police (Complaints and Misconduct) Regulations 2004

*Is the conduct liable to lead to a disciplinary sanction?*

- B90. What is meant by ‘disciplinary sanction’ for these purposes is that the conduct is likely to result in one of the actions that can take place following a meeting or hearing for misconduct or gross misconduct.<sup>192</sup>
- B91. Mandatory referral to the IPCC is therefore only required if the assessment indicates that:
- a criminal offence is alleged, and that criminal offence is aggravated by the use of discriminatory language or other discriminatory conduct;
  - a behaviour is alleged, aggravated by the use of discriminatory language or other discriminatory conduct, which is likely to result in a disciplinary sanction (see B90 for an explanation).
- B92. The assessment should take account of what the complainant alleges was said or done that was discriminatory. However, the allegation will need to be specific about the behaviour that is discriminatory. Referral may not be mandatory if a complainant is unhappy with the treatment received but is unable to point to anything discriminatory said or done, unless there are other factors suggesting a discriminatory motivation.
- B93. If further evidence is later provided indicating that an incident was more serious than first thought and if it meets the criteria for referral under the above test, the matter should be referred to the IPCC. Similarly, further evidence might prompt re-referral so that the mode of investigation can be reconsidered if an earlier referral had resulted in an IPCC decision to refer back to the appropriate authority for local investigation. Where a referral is made some time after the original incident, an explanation should be given indicating the evidence that has come to light requiring referral (or re-referral) of the matter.

**Voluntary referral**

- B94. There may be allegations involving discrimination where there are no underlying criminal offences or behaviour liable to lead to a disciplinary sanction. In such cases, the police force/police authority may consider referring the matter to the IPCC voluntarily. Clear reasons for referring the matter should be explained when a voluntary referral is made. Relevant issues to be covered include not just the nature of the allegations, but any serious concerns or exceptional circumstances having an impact on the complainant and the community, and why independent oversight is needed.

<sup>192</sup> Regulation 35(2)(a) and (b), Police (Conduct) Regulations 2008

## USING LOCAL RESOLUTION

- B95. It is important to weigh up the advantages and disadvantages of the local resolution approach for dealing with discrimination allegations and to record the decision-making process (see paragraphs 263-264, page 77, for guidance on when local resolution is applicable). Reference to the gravity factors (see paragraphs B82-B85, page 187) will help to establish whether using local resolution is appropriate.
- B96. Allegations of discrimination may be locally resolved if the complainant consents to this. Complainants can only give meaningful consent if they understand what will happen during the local resolution process. They must also understand all the options available for dealing with their complaint.
- B97. Where allegations of discriminatory behaviour are dealt with by local resolution, the appropriate authority should be mindful of the opportunity to learn from any wider issues that the complaint reveals.
- B98. Record the decisions that are taken regarding local resolution and the reasons for them. If necessary, establish a review process to determine that local resolution remains the appropriate outcome.
- B99. If a decision is taken to proceed with local resolution, it is essential that the process has the confidence of the complainant and the officer or police staff member involved. The person who undertakes local resolution must have the necessary skills for dealing with complaints in this way, which include problem-solving and customer service.
- B100. Local resolution can include appropriate management action. Managers may decide, as a result of the complaint, that an officer or police staff member requires close supervision or further training. It may be appropriate to make a record of any further training or supervision in their personal file or personal development record (PDR).
- B101. If an officer or police staff member is to learn from the complaint or recordable conduct matter, then it is essential that any record of the action should be reviewed to ensure that his or her career is not determined by this single event. If an officer or police staff member can demonstrate an ability to learn and change his or her behaviour, this should be acknowledged as a real benefit to the force.

**Checklist before proceeding with local resolution**

- Does the complainant consent to local resolution, having been informed of all options for dealing with the complaint?
- Has the local resolution process been explained in terms of what will happen and when, and how this will be concluded?
- Does the complainant understand that an officer or police staff member cannot be obliged to apologise?
- Is there a clear understanding about the local resolution process and its outcomes?
- Have the expectations of the complainant and the concerns of any officer or police staff member involved been addressed?

B102. These considerations apply as much to the officer or police staff member against whom the allegations have been made as to the complainant. Officers and police staff may feel, because discrimination has been alleged, that they do not want to be involved in the local resolution process. To ensure confidence in the process, those conducting local resolution have a duty, both to the complainant and the officer or police staff member, to be absolutely clear about what is involved. It is appropriate to encourage participation where this approach could result in a quick and relatively straightforward way of providing an explanation and understanding of the complaint and of the actions that led to a complaint being made.

B103. There may be occasions where the complainant has opted for local resolution, but where a pattern of behaviour is identified for a particular officer or police staff member. The person responsible for making the initial assessment of the complaint should consider carefully whether local resolution remains appropriate in such a case. This does not exclude the use of local resolution, but there may need to be consideration of whether there are underlying reasons for the pattern of behaviour that local resolution will not address.

B104. The IPCC and the police authority each have duties to monitor local resolution. This is one of the duties that police authorities have in their police oversight role. Where the IPCC receives an appeal against the local resolution process and discrimination has been alleged, it will, when considering its decision on the appeal, be mindful of the information provided to the complainant, both prior to agreeing to local resolution and during the process.

## **AIMS OF AN INVESTIGATION**

B105. The aim of an investigation is to find out if anything has gone wrong. A fair

investigation should lead to conclusions and recommendations that are evidence based. An investigation may identify misconduct or criminal offences – equally, the evidence may show that the allegations are unfounded.

- B106. The investigation may also identify learning or operational lessons. Ultimately, the investigation should seek to understand why the complaint has been made and provide answers for the complainant that respond to and address the concerns raised and the allegations made.
- B107. There is considerable public interest and concern regarding allegations of discriminatory behaviour and those investigating should be in a position to justify their decisions, whether this is in the form of a decision log for the investigation or a record providing the rationale for the decisions taken.

## ***Terms of reference***

- B108. The terms of reference for any investigation into allegations of discriminatory behaviour should always include reference to this guidance. Examples of what this could cover might include use of the guidelines in the context of the interview plan for the officer or police staff member or, where comparator evidence will be used, to explore broader discrimination issues arising from the allegations. The investigating officer should consider whether there is any additional guidance that may be relevant, such as the *ACPO Hate Crime Manual*.
- B109. In the interests of transparency, and subject to applying the harm test, it is good practice to give the complainant a copy of the terms of reference.

## ***Investigation plan***

- B110. Some investigators will be very familiar with the framework for an investigation plan, but for those who are less experienced in the investigation of public complaints, the framework is included here.
- B111. The investigation process is a search for the truth – to establish what happened during an incident. Primary accounts from the complainant, witnesses and the officers or police staff members may not be sufficient where allegations of discrimination have been made.
- B112. These are some considerations that the investigation plan could cover:
- what needs to be done immediately;
  - which (senior) manager will review the investigation and at what stages;



- what documentary evidence is available to be recovered – everything should be considered and decisions should be recorded;
- forensic considerations;
- covert opportunities (in serious cases);
- comparison evidence required/relevant history of officer or police staff member or complainant;
- identifying officers or police staff members subject of complaint and those to be treated as witnesses;
- liaison with CPS, if relevant, to establish points to prove;
- establish appropriate welfare support for complainant and officer or police staff member;
- is advice required from police staff associations, trade unions or another group/individual?
- are there any media considerations?



### *A hypothetical example*

- B113. Mrs A has a mental health problem. She alleges that one of the officers who came to her home after complaints from her neighbours showed a lack of respect towards her and used excessive force in her arrest. She complains that the officer treated her in this way because she has a mental health problem.
- B114. If an investigation is required, the investigation plan will address the need to establish:
- what happened;
  - whether there was a lack of respect;
  - whether excessive force was used;
  - if there was a lack of respect or excessive use of force, was the breach of the standards on the grounds of the complainant's mental health – i.e. why did the officer or police staff member behave in this way?
- B115. In order to find out why the officer behaved as he or she did, the investigation may require comparator evidence. This could include comparisons with the behaviour of other officers or police staff members who attended this incident and comparisons with this officer's or police staff member's behaviour in similar situations (in this case, neighbour disputes).



### ***A hypothetical example (continued)***

- B116. Asking an officer or police staff member to recall how he or she behaved in similar circumstances does not mean that other incidents may become part of the investigation: the reflection provides insight into an officer's or police staff member's usual approach to such incidents and helps to determine if he or she behaved differently on the occasion under investigation.
- B117. Evidence will include witness statements from other officers or police staff members who attended this incident and any others who may have attended in the past. It will also be important to explore the officer's or police staff member's motivation in interview or statement.

## ***Complainant's statement***

- B118. A statement may not be required where a clear and sufficient account of the alleged behaviour and impact has already been provided by the complainant – for example, a letter or earlier account provided when the complaint was made. Where a statement will be taken from the complainant, the guidance provided in 'initial handling of the complaint' (see paragraphs B67-B68, page 184) applies equally to the investigator conducting the investigation. He or she must listen actively and demonstrate an open, non-judgemental attitude.
- B119. Where a solicitor is representing a complainant, or the complainant wishes to provide his or her account through a third party, the investigator should emphasise the importance of his or her own involvement in this process. The investigator will need to understand why the complaint has been made, and the impact, to determine the level and direction of the investigation and the evidence required. The investigator may have questions that have not been covered in any statement provided through a third party.
- B120. The basis for any effective investigation is a primary assumption of good faith on the part of the complainant. The primary assumption of good faith does not minimise an investigator's proper commitment to establishing the facts.
- B121. Some people will have experienced discrimination so often in their lives that they will, reasonably, anticipate it from people in authority. The investigator has a responsibility actively to overcome these fears and anxieties. The complainant may require support or may have asked for appropriate support when the statement is/was taken.

**Example of a complaint**

A complainant has alleged that the cumulative effect of being stopped and searched frequently over a period has resulted in the feeling that there can have been no other reason for being stopped other than discrimination. The personal impact is anxiety about leaving the house and a negative view of the police and their actions.

- B122. The statement or account taken from a complainant should explore the impact as well as the detail of the allegation, particularly where the alleged discrimination is about perceived behaviour of harassment and not overt discrimination.
- B123. People from minority groups are often reluctant to express their belief that a problem they have experienced is rooted in discriminatory attitudes. Complainants may fear that their perception will be dismissed out of hand. Lesbian and gay complainants may be reluctant to express their perception of discrimination because this requires them to disclose their sexuality. A complainant may be reluctant to disclose a mental health problem for fear that this could affect the investigator's attitude to the merit of a complaint.
- B124. The investigator should therefore be positive in enabling complainants to explain any concerns they may have about why an officer behaved the way that he or she did. Investigators need to be alert to clues or hints that provide an opportunity to demonstrate a readiness to accept and investigate this aspect of the allegation.
- B125. If a complaint does identify unlawful discrimination as a factor in the incident, the investigator needs to take time to explore what it was about the officer's or police staff member's behaviour that gave rise to this impression.
- B126. Investigators are properly reluctant to put words into a complainant's mouth, but open questions that demonstrate a willingness to record all aspects of the complaint will build trust. The statement should cover what happened and what was seen, heard, felt and thought. It may include hearsay and other issues that the investigator may consider not to be direct evidence, but the inclusion of such details will assist decision makers who perhaps do not have direct access to the complainant.
- B127. It is essential that allegations of discrimination are given in detail, noting exactly why the complainant believes that discrimination was a factor. In particular, the following information should be recorded:

- What was it that made the complainant believe the officer's or police staff member's words or actions were discriminatory?
- Did the complainant note any differences in the way he or she was treated compared with others?
- Did the complainant note any differences in the way that this officer or police staff member behaved compared with other officers or police staff (either on this or previous occasions)?
- Was there anything about the officer's or police staff member's language that the complainant noted?
- What was the impact on the complainant?
- Did anyone else witness the incident and were any comments or reactions expressed to the complainant at the time or since?
- Any background information that may be relevant to the impact on the complainant.
- Any other issue that the complainant considers to be relevant to the complaint.

B128. When the statement of complaint has been taken, the investigator should review the recorded allegations. He or she should also review the gravity factors and reconsider whether the matter should be referred to the IPCC.

### ***Language***

B129. The (alleged) use of specific words and phrases may indicate discriminatory behaviour, but must always be considered in context. There are terms that are commonly recognised as being offensive and officers and police staff members should be expected to avoid their use. However, there are other words and phrases which are inoffensive in themselves but, when heard in context, can reasonably be perceived as "violating a person's dignity and creating a hostile, degrading, humiliating or offensive environment" (the definition of harassment in discrimination law).

B130. For example, reference to a person's nationality may ordinarily be inoffensive, but the context in which it is used – for example, during an arrest – may reasonably lead a complainant to believe that his or her nationality affected the interaction or encounter in a negative way. Understanding why an allegation of discriminatory behaviour has been made is crucial to an investigation and to future learning for the police service or those against whom complaints have been made.

B131. The respective Standards of Professional Behaviour for officers and police staff require the promotion of good relations between people of different groups, so

there is an expectation that they will be mindful of the impact of careless comments.

### ***Regular communication***

- B132. The Victims' Code, *The Code of Practice for Victims of Crime*, is a set of obligations. The Code requires services to be given to any person who has made an allegation to the police, or had an allegation made on his or her behalf, that he or she has been subjected to criminal conduct. This will include cases where the person alleges he or she has, for example, been subjected to racist or homophobic insults.
- B133. The principal purpose of the Code is to ensure that victims receive appropriate support and are properly informed about the progress of their case. It states that enhanced services must be provided for vulnerable or intimidated victims.
- B134. Whether or not the Victims' Code must be applied, regular communication will help to build trust and confidence. Complainants, police officers and police staff alike will be reassured to know about the progress of the complaint.
- B135. When investigating a matter, consideration should be given to the duty to disclose information under the Police Reform Act.<sup>195</sup>

## **COLLECTING EVIDENCE**

- B136. One of the first requirements will involve the collection of evidence from named and identified witnesses. This will be in addition to documentary evidence associated with the incident from which the complaint has arisen.
- B137. Where comparator evidence is required, considerations that may assist in making comparisons that help to establish whether the alleged behaviour would have happened 'but for' the complainant's gender, for example, include:
- how any other officers or police staff members who were present behaved at the incident;
  - how other members of the public were treated at the same incident;
  - how this officer or police staff member has behaved in similar circumstances;
  - how this complainant has been treated at other similar incidents.
- B138. The investigator may also ask – how would a reasonable officer or police staff

<sup>195</sup> Sections 20 and 21, Police Reform Act 2002 (as amended) and Regulation 11, Police (Complaints and Misconduct) Regulations 2004

member with similar levels of training and experience have behaved in these circumstances? If most would usually have done something quite different in the same circumstances, then the need for a convincing explanation becomes more pressing.

B139. Allegations of discriminatory behaviour may sometimes require wider evidential considerations, particularly where broader allegations of discrimination are made against a police force or an area within a police force.

B140. Proportionality and the seriousness of the allegations will be key factors when deciding what evidence should be collected. Evidence that could be considered might include the following:

- The investigator should consider establishing whether intelligence reports exist about the officer(s) or police staff member(s) or whether there might be anything recorded on his or her personal files. (See 'Patterns of behaviour', paragraphs B141-143, page 198.) However, there are data protection issues here and the investigator must be able to justify any reference to this personal data (see Data Protection Act 1998 and the ACPO *Data Protection Code of Practice*). Reference should be made to force policy documents.
- Similarly, covert methods of gaining evidence (telephone logs, surveillance, integrity testing) should be considered, but only if this can be justified in the circumstances.
- There may be potential witnesses not immediately identified within the vicinity of an incident. Appeals for witnesses or house-to-house enquiries may be necessary.
- If broader allegations of discrimination are indicated, it may be appropriate to extend consideration to a particular division or area within the police force. This may include consideration of local or national policies adopted by that force either in relation to a particular area or more generally on a community relation level,
- The potential relevance of national guidance should be considered. For example, the ACPO *Hate Crime Manual* may apply to an allegation that officers did not respond appropriately to a reported hate incident or crime.
- Comparable evidence may have to be considered – for example, where an officer's or police staff member's behaviour has been alleged to have been discriminatory, how he or she dealt with other people as a comparison or other incidents similar to that from which the allegations have been made may be helpful. (As stated above, asking an officer or police staff member to recall how he or she behaved in similar circumstances does not mean that other incidents become part of the investigation: the reflection provides insight into an officer's or police staff member's usual approach to such incidents and helps to determine if he or she behaved differently on the occasion under investigation.)

### **Patterns of behaviour**

- B141. Employment tribunals consider patterns of behaviour; indeed the matter before the tribunal may rest on a number of instances. This is relevant for police managers and investigators when they deal with internal grievances that may result in tribunal proceedings.
- B142. Matters of public complaint specify an incident or a series of related incidents and consideration needs to be given to each part as appropriate.
- B143. It may be relevant to look at an officer's or police staff member's history. The history is relevant in considering management action with regard to an officer's or police staff member's behaviour. This is consistent with the expectation that officers and police staff members should learn from mistakes.

### ***Witness statements***

- B144. Primary accounts should fully reflect the perspectives of all those spoken to during an investigation. In cases concerning more serious allegations it may be appropriate to tape interviews with witnesses.
- B145. There may be sensitive issues of confidentiality – for example, if witnesses are lesbian or gay, but are not open about their sexuality; or where witnesses are sought in areas such as gay pubs, clubs or public sex environments. Assumptions should not be made that potential witnesses are either openly gay or identify as being gay.
- B146. Respecting confidentiality is crucial. It is vital to explain to witnesses the reason for seeking their evidence, how this will be used during the investigation and any subsequent proceedings, and what will be disclosed.

### ***Officers or police staff members who are witnesses***

- B147. Officers or police staff who have witnessed the incident under investigation should be reminded of the personal duty they may have to challenge wrongdoing (now included in the respective Standards of Professional Behaviour for police officers and police staff). They should also be reminded that the public duties imposed on police forces to promote equality of opportunity and eliminate discrimination are now reflected in the professional standards. It may be appropriate to acknowledge the value of officers and police staff who do assist with investigations by formally commending their honesty and integrity.

B148. On the other hand, if there is objective evidence to support an allegation and an officer or police staff member has witnessed the incident but has declined to come forward, the investigator should consider what action may need to be taken.

### ***Supporting witnesses***

B149. It is important to explore the reluctance of the witness, establish his or her concerns in relation to giving evidence, and assess how vital this evidence is to the investigation (whether the witness is an officer, police staff member or member of the public).

B150. Considerations will include:

- Does the witness understand why his or her evidence has been sought?
- Does the witness understand the complaint investigation process and how the information he or she provides as a witness will be used?
- Does the witness understand what information would have to be disclosed?
- How crucial is the witness's evidence to the investigation?
- Would the support of a local organisation, police staff association or trade union assist?

B151. A witness may initially be reluctant, but with support from local organisations or from police associations, he or she may come forward later. Making sure that the witness understands the police complaints system and how it works could help him or her to feel confident about coming forward.

B152. Reluctance to give evidence if there are particular sensitivities or confidential information may have a significant detrimental impact on the complaint process.

### ***Interviewing officers or police staff members***

B153. Where a decision is made to interview an officer or police staff member and if the allegation is at the more serious end of the spectrum, then the considerations set out in ACPO's strategy on *Investigative Interviewing Techniques* may be required. This strategy covers video interviewing, cognitive interviewing and interviewing vulnerable and significant witnesses. Only investigators who have received the appropriate training should undertake such interviews.

B154. All interviews should follow an interview plan that allows the officer or police staff member to explain what happened and focus on the points to prove. The investigator should be able to demonstrate in the interview plan the ways in which the officer's or police staff member's motivation will be explored and how



the evidence from the investigation will be tested.

- B155. This is ordinary good practice in line with PEACE<sup>194</sup> interviews. It is essential to identify probing questions, particularly in those complaints where the only evidence available is from the complainant and the officer or police staff member.
- B156. The plan should be clear about what needs to be established in order to conclude whether the officer or police staff member has behaved in accordance with the required standards. The interview plan should be developed in the context of the relevant standards. In the context of these guidelines, the investigator is aiming to establish whether the officer has:
- carried out his or her duties with fairness and impartiality and in accordance with current equality legislation;
  - shown respect for all individuals and their traditions, beliefs and lifestyles, provided that such are compatible with the rule of law;
  - not discriminated unlawfully or unfairly when exercising any of his or her duties, discretion or authority;
  - paid due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between people from different groups.
- B157. The interview should therefore establish the officer's or police staff member's account of what took place and why the officer or police staff member behaved in the way he or she did.
- B158. The officer or police staff member should be invited to:
- describe in detail what took place;
  - describe his or her perceptions of the complainant and the incident;
  - reflect on what may have prompted the complaint;
  - reflect on his or her behaviour in the light of the relevant professional standards;
  - describe his or her training and experience;
  - reflect on his or her understanding of his or her public duties to eliminate discrimination and promote equality;
  - provide a more detailed examination of the impact of the allegation of discrimination and examination of the interaction with the complainant from this perspective.

### ***Complainant's history***

- B159. An investigator may need to note relevant information about the complainant's history.

<sup>194</sup> Planning and preparation; Engage and explain; Account; Closure; Evaluation

- B160. A conviction for perjury might reasonably be taken into account when considering the credibility of the complainant's account, but a history of crime does not necessarily mean that the complaint is fabricated. Indeed, if someone has had a great deal of contact with the police and yet this is his or her first complaint, this might weigh in favour of his or her account. Nor should assumptions be made about complainants who have a history of making complaints. This may indicate a pattern of behaviour experienced by the complainant or may be a result of frequent interactions with the police, for example, experienced by someone with severe mental health problems who has been detained under Section 136 of the Mental Health Act. A great deal of care needs to be exercised when handling such information.
- B161. The investigator should be clear about what might be relevant to the complaint.

### ***Independent advice***

- B162. The relationship between the police and people from minority groups may be affected by local circumstances. Investigators who are carrying out an investigation in another police area should first inform themselves about local issues and experiences.
- B163. If the complaint is sufficiently serious, it may be appropriate to establish an independent advisory group (IAG).<sup>195</sup> The alleged discriminatory behaviour may have had a significant impact within the wider community or, more directly, on the complainant and his or her immediate family. The gravity of the matter should be assessed (see paragraphs B82-85, page 186) and the decision recorded in the log.
- B164. Consider the following list of factors when deciding whether independent scrutiny, advice or consultation with external agencies is required:
- Would a community reference group allay any lack of confidence that there will be an effective investigation?
  - Would such a group assist the investigation by providing advice on local community concerns or on specific areas of discrimination?
  - Is the appointment of a family liaison officer or manager an appropriate response? This may not be proportionate in many investigations, but may need to be considered where there is likely to be a significant impact on individuals and the community.
- B165. An IAG can bring the benefits of independent oversight. However, it is essential that the group's strategic role is not compromised by straying into involvement in

<sup>195</sup> A community reference group in the IPCC

operational processes and the running of the investigation. The investigator must be clear about the purpose of the IAG and record this in the decision log. It is equally important that the independent members of the group are clear about their purpose and the terms of reference. They should understand that they have a strategic role and that they will not be asked to contribute to the investigation plan.

- B166. It may be advantageous for a manager who is senior to the investigator to manage this process so that there is a gap between the investigation and the strategic issues.
- B167. The information that will be provided to the IAG should be assessed carefully. Evidence given to the Morris Inquiry<sup>196</sup> revealed that officers felt exposed by details of their case being provided to people in the local community through the IAG.
- B168. Early contact with police staff associations, trade unions and those supporting officers and police staff against whom allegations have been made may be beneficial. Their expertise and advice can cover issues such as the service of notices and interviewing of officers and police staff.
- B169. The investigator may seek expert advice from a range of sources. There may well be officers or staff within the force who are able to provide expert advice about the area of discrimination connected with the complaint.
- B170. Local organisations or support groups may assist with advice, but it is important to establish that there will be no conflict of interest and to clarify whether they will be advising or supporting the complainant throughout the complaint process.

## SECTION 4: REACHING CONCLUSIONS AND OUTCOMES

### *Reaching conclusions*

- B171. The investigator must establish his or her conclusions based on the balance of probability.
- B172. There are several aspects to the Professional Standard on equality and diversity and each should be addressed. The following questions need to be answered:
- Have officers and police staff carried out their duties with fairness and impartiality?
  - Have they shown respect to all individuals and their traditions, beliefs and lifestyles – provided that such are compatible with the rule of law?

196 *The Case for Change. People in the Metropolitan Police Service. The Report of the Morris Inquiry* (2004) – an independent inquiry commissioned by the Metropolitan Police Authority into professional standards and employment matters in the Metropolitan Police Service

- Have they discriminated unlawfully or unfairly when exercising any of their duties, discretion or authority?
- Have they paid due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups?

B173. It is possible for an officer or police staff member to have not discriminated against a member of the public but nonetheless to have acted unfairly.

B174. Equally, taken separately, the evidence on each aspect of a complaint may not indicate discriminatory behaviour; the matters should then be considered as a whole and the pattern of behaviour may reveal that the officer's or police staff member's explanation is inadequate.

### ***Using considerations from discrimination law***

B175. Although the 'King formula' (see below) is no longer the only authority setting out the principles that may apply in employment matters, it may be used as a tool to help in organising evidence. The context in which this formula was created related to race discrimination, but the questions can also be applied to the other strands of discrimination. However, it should not become a straightjacket that prevents investigators from making sensible decisions based on the evidence. Other questions such as 'why did the person behave in this way?' are pertinent, but the formula remains helpful in answering that question.

#### **King formula**

- Difference in identified diversity strand
- Difference in treatment
- Detriment for the complainant +
- No explanation for these differences is available from any source

### ***Difference in identified diversity strand***

B176. This is the difference between the treatment of a member of the public subject to the officer's or police staff member's behaviour and another member of the public in a similar situation. If no other member of the public was part of the incident, then the investigator can use a hypothetical person put in the same situation who is not, for example, black. The officer and the member of the public could be of the same race and there could still be a finding of discrimination.

### ***Difference in treatment***

- B177. There is a range of ways that difference in treatment may be identified:
- Were other members of the public present at the same incident treated differently?
  - Were other officers or police staff present who treated the complainant differently from the person who is complained about?
  - Has the complainant been in contact with the police previously and been treated differently from how he or she was treated on this occasion?
  - If there are no actual comparators, how would you expect a member of the public to be treated in the same circumstances?
- B178. This last consideration does not require the investigator to make a judgement ahead of the investigation; it is simply a means of establishing whether discrimination could possibly be a factor. The most important part is the explanation in response to the allegation of discrimination – the question ‘why?’.

### ***Detriment***

- B179. There may have been tangible detriment, such as loss of liberty. However, detriment can also include loss of dignity and hurt feelings. For example, if an officer were to use excessive or inappropriate precautions in the arrest of a person who was HIV+, this may have a demeaning and therefore detrimental impact on the arrested person. Each situation needs to be assessed.

### ***No explanation – making a judgement***

- B180. This is the most challenging aspect of the equation and requires considerable judgement on the part of investigators (and those holding a misconduct hearing or misconduct meeting). The focus of an enquiry should be on explaining the circumstances that led to the complaint, whatever the scale of the investigation.
- B181. An investigator will have to make an assessment about whether the evidence and explanation provided is adequate, reasonable and justified in the circumstances. The Home Office guidance states:
- “... The more serious the allegation of misconduct that is made or the more serious the consequences for the individual which flow from a finding against him or her, the more persuasive (cogent) the evidence will need to be in order to meet that standard.”*
- B182. If the explanation is that the officer or police staff member generally does things

this way, then he or she will need to show that this behaviour was not exceptional. For example, was it the case that the complainant received less favourable treatment than another person who was dealt with by the officer that day? Similarly, if the officer or police staff member accepts that he or she behaved inappropriately, why did he or she do so with this complainant?

- B183. The explanation will be more difficult for the investigator to assess where the officer or police staff member has provided no explanation for the alleged behaviour. Comparator evidence, in these circumstances, may be helpful to the investigator as a means of determining whether discrimination was a factor.

## ***Investigation report***

- B184. The report is open to scrutiny and should be written according to the IPCC statutory guidance, Home Office guidance and the legislation that applies to the matter subject to investigation, as appropriate.

## ***Proportionality***

- B185. The Stephen Lawrence Inquiry report stated that proven discriminatory words or acts should be dealt with at the more serious end of the spectrum in terms of disciplinary action.
- B186. Since this report was published, there has been far less tolerance of overt discrimination. In recent years, allegations of discriminatory behaviour have been more likely to rest on perceptions than on overtly discriminatory language or actions. Proving an allegation becomes commensurately harder. The impact on investigating these allegations has been that they are rarely proved. The difficulties are compounded if an officer or police staff member fears that any evidence of discrimination could result in the loss of his or her job; he or she will therefore inevitably respond defensively to the allegations.
- B187. On occasion, it will be entirely appropriate that an officer or police staff member should face disciplinary proceedings for complaints of discriminatory behaviour. But in cases where the behaviour is clearly unwitting and not motivated by lack of respect for specific groups of people, the response should focus on changing the behaviour or attitudes.
- B188. More recently, the report of the Morris Inquiry, the Commission for Racial Equality (CRE) formal report on the police service, and the Taylor review of the police misconduct system have each commented that a proportionate and considered

assessment of the evidence is required. Both expressed the view that there should not be a fixed penalty for discriminatory misconduct.

*"It is perhaps not entirely unsurprising that ... upward referral occurs when matters involving those important and sensitive issues can 'by definition' be classed as serious or aggravating factors that justify being handled as, in effect, gross misconduct. If discrimination is always serious to the extent that it is always gross misconduct then upward referral may be the regular but unintended consequence. Has not society and policing moved forward since such an approach was obviously necessary to get the matters 'on the radar screen' and for action to be taken? If the proposals in this review are to be adopted it will mean that the assessment is individual and proportionate in each case. Should not the classification of discrimination issues as always serious be revisited to reflect the reality of the individual incident?"*

The Taylor Review of Police Disciplinary Arrangements (2005)

- B189. The IPCC wants to see an increase in public and police confidence through the effective handling of allegations of discriminatory behaviour, whether by local resolution or through a more formal investigation. Police officers and police staff under investigation should want to cooperate with those investigating so that the allegations can be explored. The fear that any disclosure could lead to dismissal can prompt a vehement denial of discriminatory behaviour, with no further reasoning provided. This is not helpful in finding the reason for the behaviour. It can block an opportunity to provide the complainant with an explanation and represent a loss of opportunity to learn.
- B190. Bill Taylor stated in his *Review of Disciplinary Arrangements* that:  
*"Initial reports (whether from members of the public or internally generated) must be formally 'assessed' with the full range of options available for responding. (For example, crime investigation, misconduct, gross misconduct, unsatisfactory performance, grievance and mediation.) While initial reports need to be formally assessed, they need not necessarily be dealt with by way of formal procedures. In some cases a simple apology may suffice."*
- B191. These guidelines therefore recommend that, in cases of discriminatory behaviour, as in any other complaint matters, the outcomes should take account of the officer's or police staff member's attitude.

## **Outcomes**

- B192. The processes in the Police Reform Act (as amended) need to be followed. This is not an exhaustive guide, but it touches upon issues that may or may not be

relevant to the process adopted. In some cases, a matter may be subject to appeal to the IPCC, or the IPCC may make a recommendation or direction on certain matters and this should be remembered when communicating outcomes.

### ***Referral to the CPS***

- B193. Cases should be referred to the CPS where:
- the report indicates that a criminal offence may have been committed; and
  - in the opinion of the appropriate authority (or the IPCC in managed and independent investigations) it is appropriate for the matters in the report to be considered by the Director of Public Prosecutions.<sup>197</sup>

### ***Evidence presented to misconduct meetings and hearings***

- B194. In those instances where officers attend misconduct meetings or hearings under the new misconduct system, it is important that the person(s) conducting the meeting or hearing who hears the evidence fully understands the principles that are outlined here. Anyone who conducts meetings or hearings should receive these guidelines as part of any pre-hearing bundle to assist them in reaching a finding about allegations of discriminatory behaviour.

### ***Training***

- B195. Training may be appropriate, but it should not be an automatic response to proved allegations of discrimination. Did the officer or police staff member behave inappropriately because he or she did not know how to behave? Did the individual demonstrate a lack of skills that could be improved with training? Has the officer or police staff member recently received training that addressed the issues in the complaint? Consider these questions before recommending training as the best outcome.

### ***Supervision***

- B196. Close supervision may be needed for an officer or police staff member who has behaved, for example, with a lack of courtesy. In this case, it is important that the supervisor knows how the officer's or police staff member's behaviour can be managed. Any decision regarding supervision should be made with the explicit agreement of the supervisor. If the investigator's report recommends close

<sup>197</sup> Schedule 3, Paragraphs 23(2), 2(A) and 2(B) and Paragraphs 24(2), 2(A) and 2(B), Police Reform Act 2002 (as amended)



supervision for an officer or police staff member subject to complaint, does the supervisor have the skills necessary to provide the supervision?

## ***Learning lessons***

- B197. The IPCC welcomes a proactive approach to tackling discrimination. Investigators may find that an officer or police staff member has not failed to meet the required Standards of Professional Behaviour, but that nonetheless the complaint has raised important questions about the need for training or a review of practice. This is common practice in other, more technical areas of policing. The IPCC encourages the police service to extend this approach to the due regard to promote equality of opportunity and eliminate unlawful discrimination.
- B198. On some occasions, an officer or police staff member may be found to have behaved inappropriately, but the behaviour may have been fully in line with force practice. The lessons that can be learned and implemented from complaints where a force practice requires change is an equally important outcome and one that builds confidence in the police service. Complaints provide an important opportunity to review public services.
- B199. In those cases where the investigation leads to recommendations for changes to force policies and/or practice, there should be a clear process for review to ensure that the recommendations are carried out.
- B200. There will be occasions when an officer's or police staff member's attitude appears to reflect a similar attitude within the team or department. Investigators have a responsibility to explore these wider issues.

## ***Making a record***

- B201. It may also be appropriate to record the matter on the officer's or police staff member's PDR or personal file or to ensure that any intelligence is captured. (See paragraphs B100-B101, page 190, for further guidance on making a record.)
- B202. Keeping records of discrimination complaints at a professional standards department or local level also provides an opportunity to monitor complaints of discriminatory behaviour and a means to consider how, and whether, the number of complaints can be reduced.

### ***No misconduct***

- B203. An investigation might show that there were no failings in individual conduct, yet despite this there has been a general failure in service towards a complainant.
- B204. An investigator should consider the following questions:
- Does the force owe an apology to the complainant for failings in service?
  - Should certain practices within a team or division be reviewed?
  - Do any force policies have a disproportionate impact on a specific group (indirect discrimination)?

## **SECTION 5: IMPLEMENTING THESE GUIDELINES**

### ***Training***

- B205. Concern about discrimination is an issue that is familiar to all professional standards staff. However, it does not follow that investigators have a common understanding of how discrimination might be identified. It is essential that they, along with their supervisors, develop their knowledge and skills in this area. Put simply, they need to know and agree what they are looking for. Heads of professional standards departments (PSDs) have a pivotal leadership role in this development.
- B206. The IPCC expects the police service to employ its leadership and guidance role in explicitly challenging discriminatory behaviour at all levels, ensuring that officers and police staff are aware of the specific issues related to each of the diversity strands.
- B207. Police forces are delivering diversity training to all their officers and police staff, but this training might not meet the specific needs of those investigating complaints alleging discrimination. Developing a personal awareness and acceptance of different cultures and communities is not the same as identifying discrimination by individuals and institutions. The Stephen Lawrence Inquiry report draws a helpful distinction between awareness training and anti-racism training.
- B208. The IPCC recommends that those officers and police staff dealing with police complaints should, in addition to training on the processes for dealing with police complaints, receive specific formal and informal training to develop their ability to identify discrimination. This would supplement the cultural awareness and diversity training for all officers and police staff. The arrangements for this training as it relates to race, disability and gender must (under the public duty) be

set out in the force's equality schemes. This recommendation reflects the recommendations made by Her Majesty's Inspectorate of Constabulary (HMIC) in its report *Diversity Matters*.

- B209. The development of the PSD team should be undertaken in the context of force priorities and concerns on discrimination issues, and with an awareness of any specific initiatives to promote equality.
- B210. Community involvement is essential in this aspect of the department's development (also recommended by HMIC). Engaging with local people's perceptions of policing will help enormously to make the development effective. Race Action Net ([www.raceactionnet.org.uk](http://www.raceactionnet.org.uk)) is a network that links police forces and enables them to share experiences and good practice on race issues: this can be a particularly helpful resource.

## ***Appeals***

- B211. The majority of allegations of discriminatory behaviour are dealt with locally by the police service. The use of these guidelines will therefore be particularly relevant for the IPCC when considering appeals to the IPCC following a local or supervised investigation. Where an appeal is received and the investigation involved an allegation of discriminatory behaviour, the IPCC will review whether this guidance has been applied to the handling of the complaint.

## **SECTION 6: SUMMARY OF GUIDELINES**

### ***On receipt of a complaint***

- Ensure that the record of the complaint includes full details of the alleged discrimination and the impact of the alleged behaviour.
- Decide if this is a matter that should be referred to the IPCC.
- Establish whether the matter is suitable for local resolution.

### ***Local resolution***

- Consider whether the IPCC needs to approve the use of local resolution and make an application, as appropriate.
- Discuss the local resolution process and likely outcome with the complainant before obtaining consent.
- Record the actions taken during the local resolution process.
- Record, where appropriate, any decisions about learning or development for

the officer or police staff member.

- Record and monitor any action plan that arises for the individual or the police service.

### ***Investigating allegations***

- Establish whether the matter indicates that a criminal offence has been committed or that disciplinary proceedings are justified (for police officers, that the allegation meets special requirements).
- Determine whether the conduct amounts to misconduct or gross misconduct (for police officers, the severity assessment).
- Investigators should take active steps to enable complainants to express their thoughts and feelings about the alleged conduct and their perceptions of why an officer or police staff member behaved the way he or she did.
- First establish what happened and then, when considering the allegation of discriminatory behaviour, focus on the question ‘why did the officer or police staff member behave in that way?’.
- Based on the assessment of the alleged conduct, consider what evidence is required to investigate the allegation of discrimination.
- Determine whether comparator evidence is required. (How did other officers or police staff members behave at the same incident? How has this individual behaved at similar incidents?).
- Decide whether the investigation would benefit from independent oversight or advice from, for example, an independent advisory group, police staff association, trade union or support group.

### ***The officer’s or member of police staff’s account***

- Determine whether an interview is required or whether a written account is sufficient.
- Any interview plan should focus on what is needed to establish what took place and what motivated the officer or police staff member to behave as he or she did.
- An officer or police staff member may decide not to comment on the allegation, but an absence of explanation for behaviour, where there is other evidence to support the allegation, may reasonably lead to a conclusion that the behaviour was discriminatory.

### ***Making a decision***

- Remember that the standard of proof is the balance of probabilities.
- Determine whether anything at all went wrong.

- Decide whether the evidence indicates that the officer or police staff member unlawfully discriminated against the complainant.
- Decide whether the officer or police staff member behaved unfairly towards the complainant.
- Determine whether the complaint raises questions that require policy or practice to be reviewed.

## **Outcomes**

- Consider whether there are any lessons for the police service to learn.
- Investigators and managers should consider whether there is a need for training or supervision.
- People who may conduct misconduct meetings or hearings (for police officers) or police staff misconduct hearings should receive these guidelines to help them reach a decision on allegations of discrimination.
- The final decision may depend on aggravating and mitigating factors, for example, a lack of training may not serve as mitigation if the individual concerned should have known that the use of certain language was inappropriate.

## Annex C: THE HARM TEST

### GENERAL

- C1. The harm test is set out in Regulation 4 of the Police (Conduct) Regulations 2008. It must be applied to the disclosure of documents said to be subject to the harm test in those regulations. This guidance applies the harm test to the disclosure of other documents by the IPCC, police authority and police on the basis that where the IPCC or appropriate authority has discretion whether to disclose a document it assists in identifying circumstances when a document should not be disclosed. It also provides consistency of approach across the complaints and disciplinary system.
- C2. Responsibility for decisions about disclosure rests with the police force or police authority in local or supervised investigations and with the IPCC in respect of managed and independent investigations. It is important that a complainant or other interested person, such as the next of kin in the case of a death in custody or following contact with the police, understands that disclosure of information is subject to such a test. The concepts of harm and benefit are further explained below.
- C3. Information can be withheld on the grounds that preventing disclosure is:
- necessary to prevent premature or inappropriate disclosure of information relevant to, or that may be used in, actual or prospective criminal proceedings;
  - necessary in the interests of national security;
  - necessary to prevent or detect crime or apprehend or prosecute offenders;
  - necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
  - justified on the grounds that providing the information would involve disproportionate effort in comparison with the seriousness of the allegation;
  - necessary and proportionate for the protection of the welfare and safety of any informant or witness;
  - otherwise necessary in the public interest.<sup>198</sup>
- C4. In practice, the concept of harm justifying non-disclosure does not include the potential damage to a force's reputation or morale which might be caused by the disclosure or publication of information, such as the findings of an investigation, showing a criminal offence, misconduct or poor performance to have occurred (although in such a case it may be necessary to withhold the document on the ground that it would prejudice the criminal trial).

<sup>198</sup> Paragraph 12, The Police (Complaints and Misconduct) Regulations 2004

- C5. Information should not be withheld on the above grounds unless its provision would cause, directly or indirectly, a significant adverse effect, and that is not outweighed by the benefits of making the information available.
- C6. The harm test sets out cases where the information may cause more harm than good and so disclosure must be restricted. The decision will be about the substance of the information, the stage at which it may be released, to whom this is proposed and the medium chosen for its release.
- C7. The risk of harm must be a real and significant one and not merely fanciful or theoretical. In considering whether provision of information may have a significant adverse effect, it is necessary to bear in mind that the risk may not be explicit on the face of one document, but may be implicit when several documents are taken together. For example, an informant may not be explicitly named, but it may be possible to deduce his or her identity from the context when several documents are considered together.

### ***Examples of ‘harm’***

- C8. It is impossible to provide an exhaustive list of when it may be in the public interest to prevent disclosure. The issue of whether there is a risk of harm must be considered in each case on its facts.
- C9. Harm can be direct, for example:
- harm, including injury, from reprisals against someone who has provided confidential information or intelligence;
  - revelation of a surveillance post and consequent damage to property or harm to the occupier;
  - interference with the fairness and effectiveness of the criminal trial process by revealing evidence to eyewitnesses in advance of their giving their testimony, causing them to change their accounts;
- C10. Harm may also be incremental or cumulative:
- exposure of an intelligence source that does not lead to a risk of death or injury, or any reprisal, to that intelligence source, but which discourages others from giving information in the future because they lose faith in the system;
  - exposure of an investigative technique or security measure that makes criminals more aware and therefore better able to avoid detection or commit further crimes;
  - exposure of material given in confidence, or for intelligence purposes, that may make the source of the material, or others, reluctant to cooperate in the future (e.g. Crime Stoppers’ material or revelation of a surveillance post leading to reluctance among others to allow their premises to be used);

- an active denial that a source was used in the case, leading to the inability to deny it in future cases where one was used, thereby impliedly exposing the use of the source.

C11. Whether there is harm in providing information may depend on to whom it is provided and for what purpose, and the extent to which the recipient can be relied on to keep the information confidential.

C12. For example, restricted information is provided to the Learning the Lessons Committee on a confidential basis. This is because it needs to see cases in order to consider which are included in the bulletin and it comprises bodies that can be expected to observe the need for confidentiality. The same applies to police authorities, whose role in oversight of the police gives them a strong interest in receiving information from the IPCC. In both cases there is a high degree of public interest in such bodies receiving information and a low risk of it coming into the public domain.

C13. Information emerging during an investigation not already in the public domain that is given to a complainant or an interested person should usually be provided on a confidential basis. A signed undertaking as to confidence should be obtained, both to act as a restraint on further disclosure and to remove any potential for doubt that the information has been received on a confidential basis.

### ***Reducing harm by redaction***

C14. Potential harm can sometimes be avoided or minimised by redacting the material that is harmful from the document or information requested. What needs to be removed will depend on what information is requested and what harm may arise from its disclosure, but examples of the type of information likely to need redacting include the following:

- information that infringes privacy. This would include addresses, names, information of a personal and sensitive nature (e.g. information of a sexual nature, health problems, medical records) and images of someone engaged in a private act, such as undressing;
- information that would endanger an individual or property, for example details that would identify an informant or even his or her existence, the address of a house full of valuables, names of police officers engaged in anti-terrorist operations;
- information that it would be a breach of confidence to disclose, for example details of those parts of Association of Chief Police Officers (ACPO) guidance on use of firearms which are kept confidential to avoid police tactics becoming known to criminals;



- information that is potentially defamatory to a third party, for example reference to an unsubstantiated allegation.
- C15. The basic test for what needs to be redacted is:
- whether disclosure of the information in question is prohibited by law (e.g. under the Official Secrets Act, the Regulation of Investigatory Powers Act, Data Protection Act, Human Rights Act, breach of confidence); or
  - disclosure of the information would be prohibited under the harm test.
- C16. Redaction should not, however, be used if its effect is to misrepresent the information as it was before redaction or to make it difficult to understand the resulting material. In these cases, it may be necessary to rewrite the material after redaction to ensure it is comprehensible and accurately represents the relevant information before redaction.
- C17. The names of police officers and staff who play a significant role in the matters under investigation should not normally be redacted. Officers and police staff should not, however, be named if their names have to be kept secret for operational reasons, for example, surveillance officers. When interviewed, officers and police staff should be invited to give any reason there may be for keeping their names confidential. If a reason is given for keeping a name confidential and an inquest is in prospect, the name should be redacted until the coroner has had an opportunity to consider the question of anonymity.

## **PUBLIC BENEFIT IN COMMUNICATING INFORMATION**

- C18. Where there is a risk of harm that cannot be avoided by redaction and the last limb of the harm test is potentially relied on to prevent disclosure, those considering disclosure will need to decide whether the public interest in withholding the information outweighs any public interest there may be in making it available. The public interest in this context is to be construed as positive benefit to the community, not what interests the public.
- C19. A case by case approach is needed. However, the first step after ascertaining that there is a real risk of harm is to check whether the decision not to provide the information would itself result in significant harm. Any decision must also be in line with the overall purpose of Freedom of Information legislation to encourage public bodies to be more open and accountable and there must be a clear and justifiable reason for withholding information.
- C20. The clearest examples of public interests that may outweigh the risk of harm are the need to maintain public confidence in the police complaints system by

operating transparently and the need for the police to be held accountable. Both may outweigh the short-term harm to a police service or policing in general from publicising its failures.

- C21. Who receives the information may be a relevant factor in considering the public interest. For example, a police authority has an oversight role, which means there is a greater public interest in it receiving information than bodies without a comparable role.
- C22. Other examples of a public interest that might override identifiable harm are:
- the need to alert police forces to potentially dangerous equipment;
  - the need to prevent a crime or save someone from injury.
- C23. There is also significant public interest in the police service learning from complaints and investigations. It is one of the IPCC's functions to make recommendations as to policing policy and practice in the light of its experience of the police complaints system. In some cases these recommendations may contain learning that is so urgently necessary for the force that they need to be communicated even before the end of the investigation. If these urgent recommendations are likely to be of application to other forces or require a change in national policy or practice, they may also need to be sent to ACPO, to consider such change or to disseminate them to the police service as a whole.

## **APPLYING THE HARM TEST IN PRACTICE**

- C24. The sequence of questions to ask is as follows:
1. Is there a legal obligation to withhold the document or information concerned from the person requesting it (e.g. Official Secrets Act, Data Protection Act, Human Rights Act, breach of confidence)? If so, then disclosure cannot happen. If not, then:
  2. Would disclosure (even with redactions) be prohibited under the harm test? If not, it should be supplied but, where possible, appropriate terms should be agreed as to whether it can be disclosed to a third party and, if so, to whom, when and on what terms. Redaction should also be made where this is necessary to remove or minimise the risk of harm.
- C25. To summarise, if disclosure is lawful and does not arise in the context of legal proceedings, when special considerations apply, then the only grounds on which provision of information can and should be refused are where the harm test, even if the document is redacted, is satisfied.

- C26. Though this will be for the judgement of those making the decision at the time, the starting point should be a principle that information should be made available unless to do so would cause more harm than good. In independent and managed cases it will be for the IPCC to make that determination; in local and supervised cases, for the police.

## **DISCLOSURE IN THE COURSE OF PROCEEDINGS**

- C27. Where the question of whether to disclose arises in the context of criminal or civil proceedings or an inquest, special considerations apply.
- C28. The first step is to consider whether there is a legal duty to disclose. If there is a legal duty, it is important to consider whether it will be necessary in civil proceedings or an inquest to claim public interest immunity (PII) or, in the case of criminal proceedings, advise the Crown Prosecution Service (CPS) to claim PII, in respect of the document in question.
- C29. A claim for PII must relate to a specific document or documents. The court or coroner will decide whether the PII claim should be upheld. Where there is no such duty, it is necessary to consider the power the appropriate authority or IPCC has to disclose the information, whether the disclosure would be a breach of confidentiality and whether disclosure is in accordance with the Human Rights Act 1998 and Data Protection Act 1998. A PII claim may still be made in these cases.

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April 2010  
Reference POL/29