



# **Revised statutory guidance**

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## Section 1: INTRODUCTION

- 1.1. The Independent Police Complaints Commission (IPCC) has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales. This guidance has an important part to play in this. It is one of the ways in which the IPCC assists local policing bodies and forces to comply with their legal obligations and achieve high standards in the handling of complaints, conduct and death and serious injury matters.
- 1.2. The Police Reform and Social Responsibility Act 2011 introduced a number of changes to the police complaints system. These changes have been incorporated into this guidance.
- 1.3. This guidance also draws on good practice in complaints handling and in particular the Parliamentary and Health Ombudsman's *Principles of Good Complaints Handling*<sup>1</sup>. These are:
  - getting it right
  - being customer focused
  - being open and accountable
  - acting fairly and proportionately
  - putting things right
  - seeking continuous improvement.
- 1.4. These principles apply to the handling of complaints in many different situations and are very relevant to dealing with complaints against police officers, special constables and police staff members. The focus should not be solely on the process involved and the issue of whether anyone is to blame. It should instead be on understanding that a complaint is an expression of dissatisfaction with the way a person has been treated or the service he or she has received. Such dissatisfaction needs to be taken seriously and is an important part of feedback on performance.
- 1.5. The police complaints system is not straightforward or easy to understand, even for practitioners. It can be even more difficult for complainants. That is why everyone involved in administering the system has a responsibility for ensuring that complainants and other parties are not disadvantaged and that they can access the information they need in a straightforward way. Accessibility is a vital part of securing public confidence.

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<sup>1</sup> <http://www.ombudsman.org.uk>

## **Whom the guidance applies to**

- 1.6. The guidance is issued under Section 22 of the Police Reform Act 2002. It applies to local policing bodies and all 43 Home Office forces in England and Wales. Local policing bodies, police officers, police staff members and special constables working within those forces must all have regard to the guidance. It also applies to those agencies and non-Home Office forces that have entered into Section 26, Section 26A or Section 26B agreements with the IPCC, subject to any particular provisions contained within those agreements.
- 1.7. If the people listed above do not follow the guidance, they need to have a sound rationale for departing from it or risk legal challenge. A failure to have regard to the guidance is admissible in evidence in any disciplinary proceedings and any appeal proceedings following a disciplinary decision.
- 1.8. This guidance is written with the needs of professionals within the police service and local policing bodies in mind. It is also available to the public and other individuals and groups who have an interest in the system. In addition the IPCC has published a range of other material to assist different audiences.

## **How the guidance is arranged**

### **The law and IPCC guidance**

- 1.9. The guidance follows, so far as is possible, the chronological order of events in the police complaints system. Within the main body of the document, the law is highlighted in boxed text to differentiate it from IPCC guidance. The text in these boxes paraphrases or explains the law and is not a direct quotation from the legislation. A number of flow charts provide a visual representation of some of the more complex processes.

### **Legal definitions**

- 1.10. Rather than including legal definitions throughout the guidance itself, key terms and concepts are defined in section 15. As this guidance is primarily intended to be used electronically, these definitions are accessible through links to section 15. In the published version, the definitions can be found at the end of the document.

### **Dealing with allegations of discriminatory behaviour**

- 1.11. It is a matter of real concern to society when a person serving with the police is perceived to have acted in a discriminatory and partial way. Specific guidance on the handling of allegations of discriminatory behaviour is included in the guidance. In addition, the IPCC guidelines on dealing with allegations of

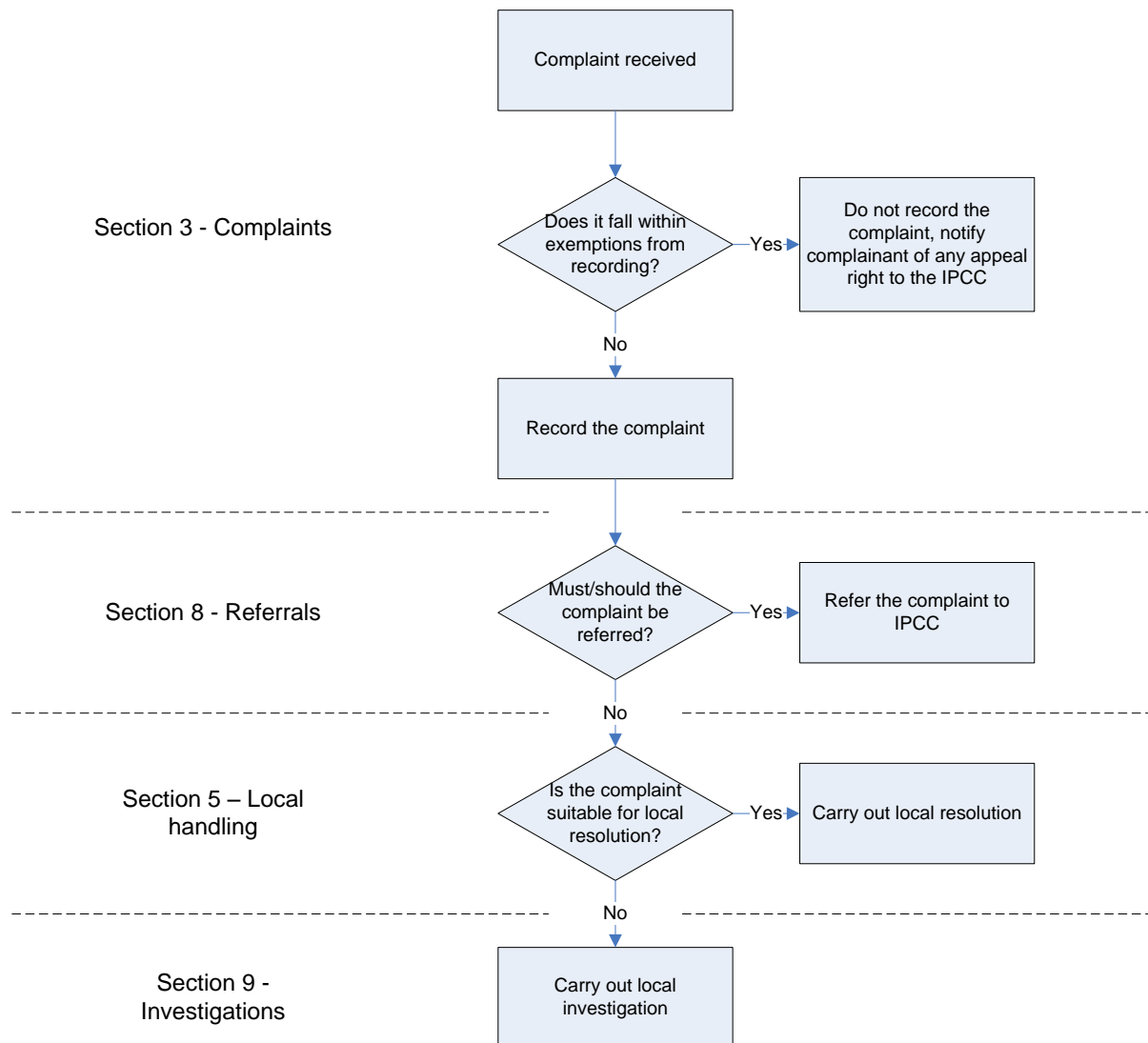
discriminatory behaviour are available as a separate document on the IPCC website. Local policing bodies and persons serving with the police should have regard to that guidance when dealing with cases involving allegations of discrimination.

## **Overview – the three ways into the system**

1.12. There are three ways into the system – complaints (see section 3), conduct matters (see section 6) and death and serious injury matters (see section 7). This guidance covers the initial handling of each of these elements separately as there are different considerations and decisions to be made. From the point of referral to the IPCC, the guidance converges, as the handling of a referral and the investigation process is broadly the same, regardless of its origin.

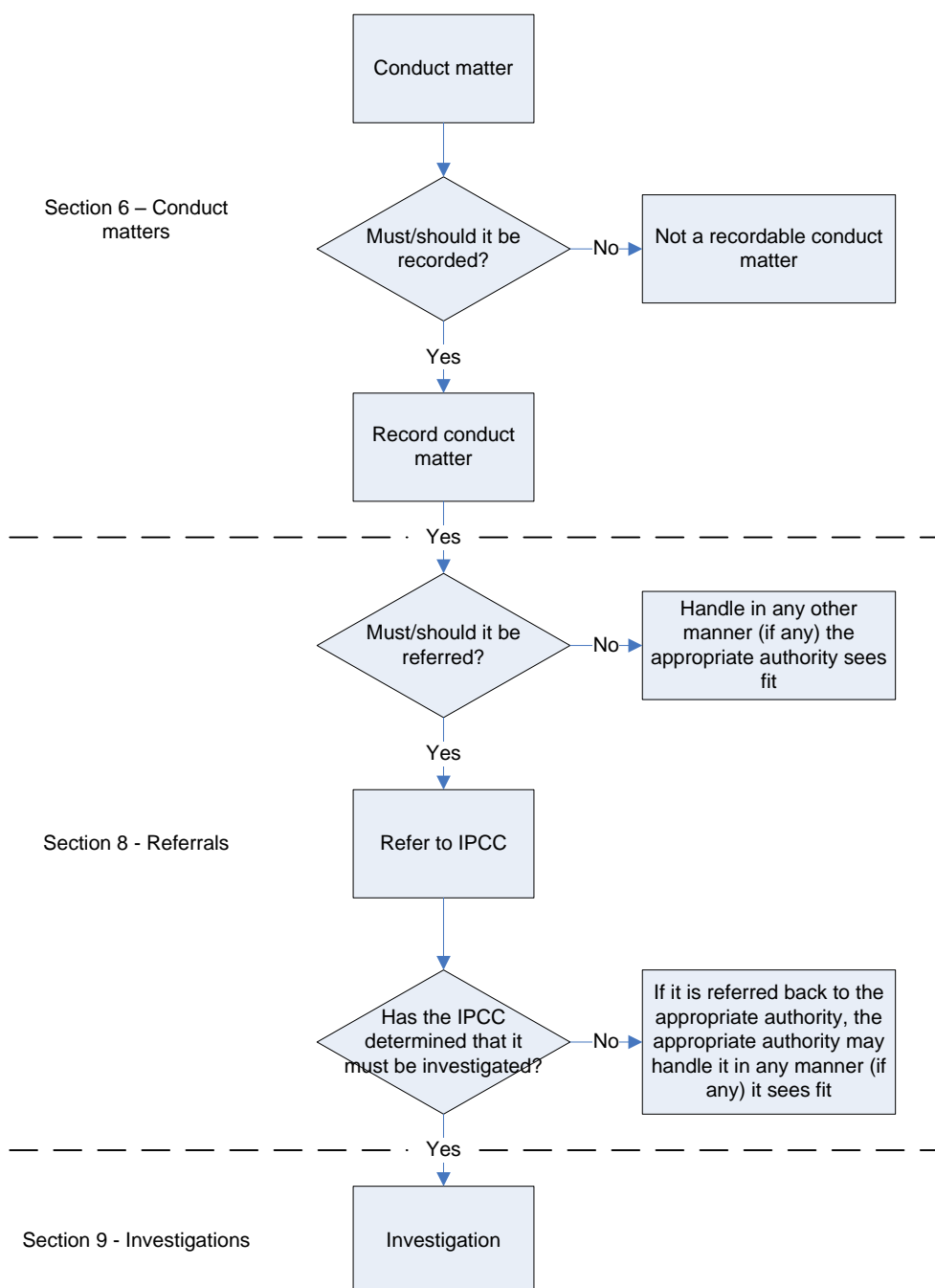
## Complaints

1.13. The following chart provides an overview of the various stages in handling a complaint, the decisions which need to be made and the relevant sections of this guidance.



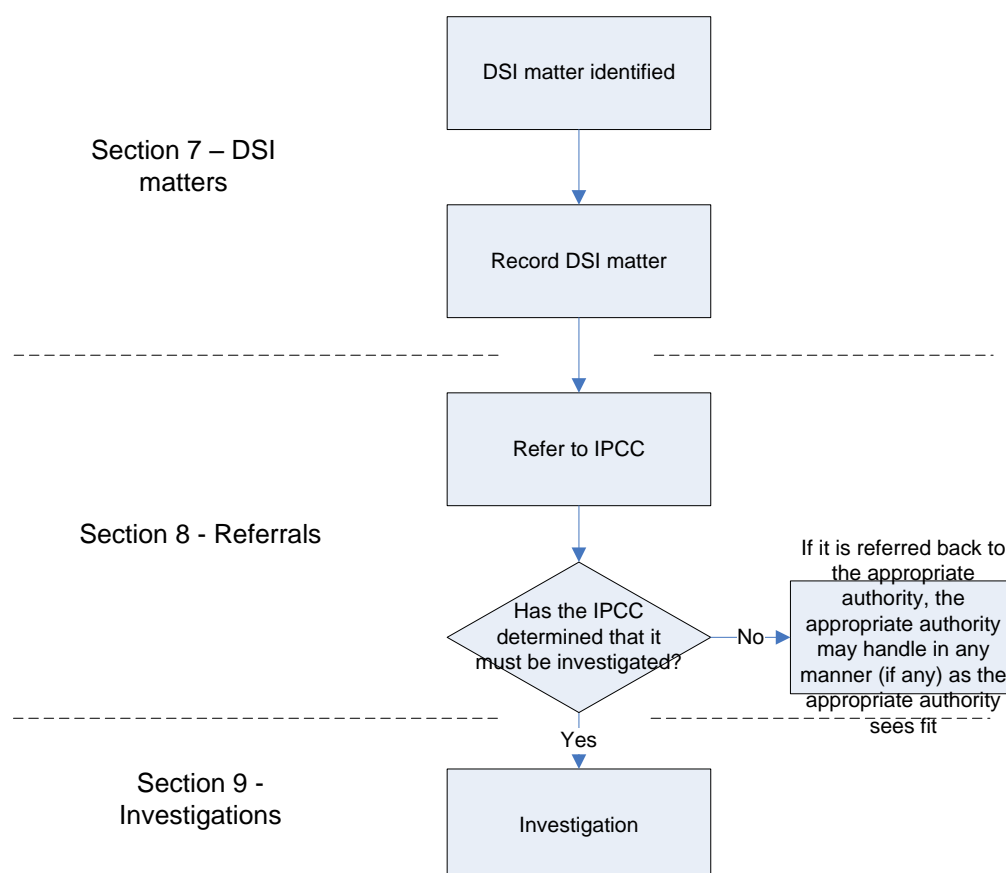
## Conduct matters

1.14. This chart provides an overview of the various stages in dealing with a conduct matter, the decisions which need to be made and the relevant sections of this guidance.



## Death or serious injury matters (DSI)

1.15. This chart provides an overview of the various stages in dealing with a death or serious injury matter and the relevant sections of this guidance.



## The Police Reform and Social Responsibility Act 2011: Changes to the police complaints system

1.16. The policing landscape and the police complaints system underwent major change in 2012. Amendments made to the police complaints system by the Government in the Police Reform and Social Responsibility Act 2011 were designed to streamline and remove unnecessary bureaucracy from the system, ensure that complaints are handled at the lowest appropriate level, and focus more on putting right the complaint made by a member of the public.

### Police accountability

1.17. Local policing bodies (for most areas of the country Police and Crime Commissioners) are responsible for holding to account the chief officer of their

force for how policing services are delivered in their force area. They should ensure that the chief officer has appropriate processes in place for dealing with complaints, conduct matters and death or serious injury matters.

- 1.18. Where it appears to a local policing body that the chief officer of the force he or she maintains has not complied with an obligation under Part 2 of the Police Reform Act 2002 or has contravened an obligation, the local policing body may direct the chief officer to take whatever steps the local policing body thinks appropriate. The chief officer must comply with any directions given in such circumstances by the local policing body.
- 1.19. The local policing body is also the appropriate authority for any complaints, conduct matters, or DSI matters involving the chief officer (or any acting chief officer) of the force that he or she oversees.
- 1.20. Chief officers are responsible for holding to account everyone in their force. This now includes responsibility as the appropriate authority for complaints and other matters concerning senior officers.

### **Recording complaints**

- 1.21. 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 good practice. All complaints must be recorded unless certain limited circumstances apply. These circumstances are defined in legislation.<sup>2</sup>
- 1.22. The definition of a 'complaint' now includes direction and control matters. These complaints must be recorded in the same way as complaints about police conduct. The distinction between complaints about conduct and complaints about direction and control is not important at the recording stage. It is, however, vital that complaints are classified correctly as either direction and control matters or conduct. This is because the right of appeal in relation to direction and control complaints is more limited than the right of appeal for conduct complaints. This guidance stresses that only a limited range of matters should be classified as direction and control.

### **Local handling**

- 1.23. The complainant's consent is no longer required in order to resolve a complaint locally. However, for local resolution to be successful it must remain a two-way dialogue. Complaints stand the best chance of being resolved to the complainant's satisfaction if he or she is taken seriously, and if the person handling the complaint works with the complainant to understand the reason for

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<sup>2</sup> The Police Reform Act 2002 and The Police (Complaints and Misconduct) Regulations 2012

his or her dissatisfaction and what he or she would consider an appropriate outcome.

1.24. The IPCC believes that when it is carried out effectively and is used appropriately, local resolution of less serious matters has a key part to play in the complaints system and in ensuring public confidence. Accordingly, this guidance places increased emphasis on local resolution.

### **Disapplication and discontinuance**

1.25. In certain limited circumstances local policing bodies and chief officers now have the discretion to disapply Schedule 3 of the Police Reform Act 2002 or to end an investigation early where specific grounds are met. This means that they may be able, in certain limited and specified circumstances, not to deal with the complaint in accordance with Schedule 3 of the Police Reform Act 2002 or to discontinue a local investigation without applying to the IPCC for permission. Where the local policing body or chief officer has used this discretion, the complainant may have a right to appeal the disapplication or discontinuance decision.

### **Outcomes**

1.26. Changes to the system have emphasised the importance of complaints and other matters resulting in a proper outcome. The nature of a proper outcome is entirely dependent on the facts and circumstances of any individual case, and so this guidance does not attempt to prescribe what proper outcomes should be. The IPCC considers however that any proper outcome will:

- take into account the initial complaint or allegation (where there is one)
- take into account the views of the complainant or interested person (where there is a complainant or interested person)
- be based upon the facts established
- be appropriate to the seriousness of the circumstances.

### **Appeals**

1.27. Chief officers now have responsibility for handling certain appeals. All appeals about the recording of complaints will continue to be dealt with by the IPCC. The IPCC will also deal with any appeal concerning a complaint about the conduct of a senior officer or complaints that have been or must be referred to the IPCC.

1.28. For any other type of appeal, a test is set out in the regulations to determine whether that appeal should be dealt with by the IPCC or by the relevant chief officer. This test should be applied to the substance of the complaint, not using hindsight and information which has been gathered during the handling of the complaint. If a complaint satisfies any of the criteria laid down in the test, then



the relevant appeal body is the IPCC. If not, the relevant appeal body is the chief officer. See section 13 for detailed guidance on appeals.

- 1.29. It is anticipated that chief officers will delegate many of their responsibilities for complaint handling and determining appeals. (References to chief officers in this guidance include those people who have delegated authority to act on the chief officer's behalf.) This is permitted by the regulations but chief officers should always be mindful of the need for public confidence in the arrangements they make. It is important that those who might be affected by decisions made under delegated powers can have confidence that the person to whom the power is delegated is able to act impartially.

### **Unsatisfactory performance procedures**

- 1.30. In addition to making recommendations and directions about misconduct proceedings, in certain circumstances the IPCC is now able to recommend and direct the use of unsatisfactory performance procedures (or equivalent procedures for police staff members). It is important that these procedures are used where appropriate in order to allow officers and police staff members to improve their performance, thereby improving the performance of the force as a whole. It is also vital that appropriate authorities inform the complainant or interested person of the outcome of unsatisfactory performance procedures as this is as relevant to him or her as the outcome of any misconduct proceedings. See paragraph 12.24-12.34 for more information about unsatisfactory performance procedures.

### **IPCC oversight of Relevant Office Holders**

- 1.31. The Police Reform and Social Responsibility Act 2011 introduced Police and Crime Commissioners and the Mayor's Office for Policing and Crime. Collectively, Police and Crime Commissioners, the Mayor's Office for Policing and Crime and their appointed Deputies are called 'relevant office holders'.
- 1.32. The IPCC will be responsible for deciding whether a complaint or any indication that a relevant office holder has committed a criminal offence should be investigated and, if so, how it will be investigated. This guidance does not apply to complaints about relevant office holders. It is likely that the IPCC will issue separate guidance about dealing with such matters once we have experience of these cases.



## Section 2: **PROMOTING ACCESS**

- 2.1 All those in the police service and those overseeing it share responsibility for increasing awareness of the police complaints system and promoting access to it. This section sets out the minimum standards for providing information about the system and making it accessible to those who need to use it.

### **The importance of an accessible system**

- 2.2 Easy access to the complaints system is a vital component of securing public confidence in the system itself. Complaints can provide valuable feedback about the service provided by the police and are an important source of learning to help forces improve the service they offer.
- 2.3 All organisations involved with the complaints system have a responsibility for ensuring that members of the public can easily and quickly find information about how to make a complaint and what to expect when their complaint is being dealt with.
- 2.4 IPCC research indicates that most people want to complain directly to their local police force. However, it also shows that many complainants who come to the IPCC do so because they have not succeeded in making a complaint direct to the police.<sup>3</sup> This underlines the need for forces and local policing bodies to have robust strategies for promoting access.

### **Providing information and access**

- 2.5 Chief officers and local policing bodies should ensure that information about how to complain is easily available. Forces and local policing bodies should provide their own information about the complaints system. Information needs to be easy to find, clear, accurate, comprehensible and up to date. Forces should publish information on their websites<sup>4</sup> as well as producing printed information, such as leaflets. Local policing bodies should provide information on their websites about how to make a complaint about the chief officer in addition to signposting complaints information on the force website. The IPCC expects forces and local policing bodies to include a link to information about the complaints system on the front page of their websites.

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<sup>3</sup> IPCC (2010) *Direct Complaints Survey: A survey seeking feedback from people who complain directly to the IPCC*. IPCC Research Note 3

<sup>4</sup> [www.ipcc.gov.uk](http://www.ipcc.gov.uk) has suggested structure and content for complaints information on force websites.

- 2.6 Information should be available when and where it may be needed, for example, in police stations or other places where members of the public may have contact with police. The information should tell people what they can and cannot expect from the complaints system. Posters that convey information about the complaints system should be displayed in public areas of police premises, particularly custody areas and front desks. It is also useful to disseminate information through non-police premises or organisations for example libraries, Citizens Advice Bureaux, schools or voluntary sector organisations.
- 2.7 Forces and local policing bodies should ensure that the information they provide gives prominence to information about how to make a complaint *direct* to the force (or local policing body where the complaint is about the conduct of a chief officer or acting chief officer) rather than to the IPCC. It should make clear when the force or local policing body is required to record complaints and that complaints made to the IPCC will automatically be passed to the force or local policing body for recording unless there are exceptional circumstances that justify not passing it on.
- 2.8 Forces and local policing bodies should also provide members of the public with information about appeals and to whom an appeal may be made in different circumstances. This information must always be provided to a complainant whenever a decision that carries a right of appeal is communicated to him or her. It is also best practice to advise the complainant of the precise date by which an appeal should be submitted.
- 2.9 Forces and local policing bodies should make a range of channels available for people who wish to make a complaint. These should include paper-based forms, online forms, an email address and telephone lines.
- 2.10 Forces and local policing bodies should take into account a complainant's or interested person's stated preference as to the method of communication (e.g. telephone call, email or letter) when providing him or her with information. However, this guidance requires certain information to be provided in writing. This may not only reflect a statutory requirement, but also ensures that a formal record exists of the information provided or action taken. Written communication avoids uncertainty in those situations where there is a dispute about what may have been said or have taken place.

## **Complainants who need additional assistance**

- 2.11 It is vital that the complaints system is available to all members of the public, including those with special access requirements – especially as these are often people whose confidence in the police complaints system is lower. Provision should also be made for people who wish to make a complaint or need information about the complaints system in another language, including

sign language, or who need information such as leaflets, letters and documents provided in other languages or formats such as Braille, audio or easy read.

- 2.12 Chief officers and local policing bodies must take into account their obligations under the Equality Act 2010.
- 2.13 Some people may require adjustments to be made to usual procedures in order to enable them to use the complaints system. It might be, for example, that:
- the complainant has learning difficulties;
  - the complainant has mental health difficulties;
  - the complainant is a child or young person under 16;
  - English is not the complainant's first language;
  - effective communication is through the spoken and not the written word;
  - the complainant's effective means of communication is sign language; or
  - the complainant is vulnerable or disadvantaged in some other way.
- 2.14 It should always be presumed that a person who wishes to make a complaint possesses the capacity to do so (i.e. the ability to make decisions) unless it is established that he or she does not.
- 2.15 The assistance of a relative, carer or other representative may be necessary to enable the complainant's wishes to be expressed sufficiently for the complainant's intentions to be clear. However, in some cases, additional support may be required. Forces and local policing bodies should always consider what adjustments may be appropriate in the circumstances.
- 2.16 Chief officers and local policing bodies should explicitly recognise the role of feedback received through the complaints system within their diversity strategy and use this diversity strategy to complement and support measures put in place to ensure broad access to the complaints system.

## **Complaints made by children and young people under 16**

- 2.17 A child under 16 should not normally need to provide written permission for a parent, guardian or advocate (e.g. a teacher or social worker) to make a complaint on his or her behalf. 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, this should not prevent him or her from making a complaint.
- 2.18 The appropriate authority will need to consider whether a parent or guardian should be informed of the complaint and involved in the complaints process or whether another form of support would be appropriate to assist the child or young person in navigating through the complaints system. The child or young person's wishes in relation to the involvement of a parent, guardian or advocate

should be taken into account, having regard to the principle in case law<sup>5</sup> that children under the age of 16 years are able to give valid consent (and refuse parental involvement) provided they have sufficient understanding and intelligence to enable them to understand fully what is proposed.

- 2.19 The appropriate authority has a responsibility to ensure a child or young person understands the process and the potential outcomes when making a complaint. Support should be provided to children and young people not only in their initial access to the police complaints system but throughout the handling of their complaint, for example ensuring that they understand the local resolution process or providing them with appropriate support should they need to give evidence at criminal or disciplinary proceedings.
- 2.20 When communicating with children and young people about complaints, the appropriate authority should bear in mind that the system is complex and that it might be necessary to take more steps to ensure that there is a proper explanation. The appropriate authority should also take into account the fact that they may find the idea of dealing with a formal complaints process intimidating or off-putting. Reassurance may be required about the framework for dealing with the complaint.

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<sup>5</sup> Gillick v West Norfolk & Wisbech Area Health Authority [1986] AC 112

## Section 3: **COMPLAINTS**

- 3.1 This section sets out the framework for the initial stages of dealing with a complaint. The way in which a complaint is dealt with at the outset can have a significant effect on the complainant's perceptions of the complaints system as a whole. It is, therefore, important that decisions are made and communicated in a timely manner and that they are explained clearly.
- 3.2 The section covers:
- the initial handling of a complaint
  - the definition of a complaint
  - direction and control
  - recording a complaint
  - deciding how to handle a complaint.

### **Initial handling**

- 3.3 The primary focus of the initial handling of a complaint should be to resolve it with the exception of certain serious complaints, which must be referred to the IPCC. The fact that someone has made a complaint means that he or she is dissatisfied with the way he or she has been treated or with the service that he or she has received. This needs to be taken seriously and the concerns of the complainant should be addressed as soon after receiving the complaint as possible. Speed is important as a complaint is more likely to be successfully resolved if the force is seen to respond promptly. This gives the complainant a clear message that his or her concerns are being taken seriously.
- 3.4 The police complaints system is not straightforward or easy to understand, particularly for complainants. Those receiving complaints should ensure that complainants are given the information they need to enable them to navigate through the system. This means that when a complaint is submitted, whether in writing, over the telephone or in person, the complainant should receive, as soon as possible, an explanation of the possible ways in which the complaint may be dealt with.
- 3.5 When a complaint is received, the complainant should be advised who is dealing with the complaint and given their contact details. The person dealing with the complaint should establish exactly what the complaint is about and what the complainant would regard as a satisfactory outcome. This should happen as soon as possible and, if possible, at the time the complaint is received i.e. during the initial phone call or over the counter. A personal approach is more likely to be successful than simply sending a letter, although a written record will always be required.

- 3.6 It is important to be realistic with the complainant about what may be a likely or achievable outcome to his or her complaint and the reasons for this. While it may not be possible to deliver the desired outcomes, a complainant who considers that his or her complaint was handled well and that his or her views were properly considered is less likely to remain dissatisfied at the conclusion of the process.
- 3.7 Chief officers are responsible for ensuring that all officers and police staff with public-facing duties are aware of, and able to advise the public about, how to make a complaint and what to expect if they do. Similarly local policing bodies should ensure that members of their staff are able to deal with complaints about the chief officer. If the officer or staff member is not able to deal with the complaint him or herself, he or she should take the contact details of the person and pass them to those responsible for dealing with complaints. Someone from that team should make contact with the member of the public as soon as possible and in any event within two working days. However earlier contact with the complainant may be required, for example, where the complaint is particularly serious, requires referral to the IPCC (see timescales for referral in text box on page 56) or the complainant is vulnerable.
- 3.8 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 appropriate experience or training. The person dealing with the complaint should act professionally and offer reassurance when taking details of any allegation.

## **Definition of a complaint**

- 3.9 A complaint is an expression of dissatisfaction by a member of the public about the conduct of a person serving with the police. This could, for example, be about the way the person has been treated or the service he or she has received. A complaint does not need to be communicated in writing nor does it need to say explicitly it is a complaint. It can simply be a statement of dissatisfaction.
- 3.10 The previous distinction between conduct and direction and control no longer applies to the definition of a complaint. However, the distinction does impact upon the complainant's right of appeal.



## Who can complain?

A complaint may be made by any of the following:

- a member of the public who claims that the conduct took place in relation to him or her
- a member of the public who claims to have been *adversely affected* by the conduct, even though it did not take place in relation to him or her
- a member of the public who claims to have *witnessed the conduct*
- a person acting on behalf of someone who falls within any of the three categories above.

A person can be considered as having been authorised to act on behalf of another for the purposes of making a complaint if he or she has, and is able to produce, written consent from that other person.

Section 12, Police Reform Act 2002

3.11 Written consent should be clear and unambiguous. It need not be in English.

The following persons cannot make a complaint under the Police Reform Act 2002:

- i. a person who at the time of the alleged conduct was under the direction and control of the same chief officer as the person whose conduct it was; or
- ii. a person serving with the police, a member of staff of the Serious Organised Crime Agency or the National Policing Improvement Agency or a person on relevant service (falling within the meaning of section 97(1)(a) or (d) of the Police Act 1996) if he or she was on duty at the time that:
  - the conduct took place in relation to him or her; or
  - he or she was adversely affected by it; or
  - he or she witnessed it.

Section 29, Police Reform Act 2002

3.12 This does not mean that a person serving with the police cannot raise concerns about the conduct of other people serving within their own force. However, the person serving with the police who raises the concern does not have any of the statutory rights of a complainant. Police forces and local policing bodies should ensure that there are adequate systems in place to support and protect people serving with the police who want to raise concerns about the conduct of their colleagues. This might include extending confidentiality to anyone raising such a concern, as far as this is possible and appropriate.

3.13 In the first instance, a person serving with the police should consider raising concerns within his or her own force however as a supplement to existing force practices the IPCC has a 'Report Line'. This is a dedicated phone line and email address for the use of people serving with the police 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. People serving with the police can get contact details of the IPCC report line from their professional standards department, staff association or trade union.

### **Partners and relatives**

- 3.14 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 if the exclusion discussed in the box above applies to the person who is serving or who has served with the police.
- 3.15 Forces should be open to the possibility that a partner or relative may make a complaint in an attempt to circumvent the exclusions from the complaints system. Where this is believed to be the case consideration should be given to whether the complaint falls within the exemptions from recording as a vexatious complaint or as an abuse of procedure (see paragraphs 3.17 to 3.20). For example, if a partner or relative of a person serving with the police complains about a disciplinary process in relation to their family member or the way he or she is being treated at work this may be considered to be an abuse of process as there are proper means by which the person serving with the police can raise such issues. The complaints system is not intended to deal with internal employment issues.
- 3.16 It should not automatically be assumed however that a complaint made by a partner or relative is either vexatious or an abuse of procedure as he or she might legitimately claim to have witnessed, or been adversely affected by, the conduct alleged and so may become a complainant in his or her own right.

### **Recording a complaint**

- 3.17 'Recording' in this context means that a record is made of the complaint giving it formal status as a complaint under the Police Reform Act 2002. This means that it has to be handled in accordance with this legislation and this guidance. Complaints should be recorded in some form of register which can be readily accessed and inspected by the IPCC if required.
- 3.18 Some complaints will be 'mixed' i.e. a single complaint may involve a combination of allegations directed at the chief officer and at other ranks or personnel in the wider police force. The local policing body and chief officer should, therefore, have procedures in place to direct the relevant parts of the complaint to the correct appropriate authority to deal with (there is no requirement for consent from the complainant to forward the complaint in these circumstances). Thereafter, they should ensure that handling by each authority is co-ordinated as necessary.
- 3.19 If a person's complaint can be dealt with there and then, to the satisfaction of the person making the complaint, there is no need to record it under the Police

Reform Act 2002, provided he or she confirms that he or she is withdrawing the complaint. However it may be valuable to keep a log of such issues as there may still be learning to be gained from them. In all other circumstances the complaint should be recorded unless it falls within the exemptions listed below.

The appropriate authority must record the complaint unless:

- i. it is satisfied that the subject matter of the complaint has been, or is being, dealt with by criminal or disciplinary proceedings against the person whose conduct it was;
- ii. the complaint has been withdrawn; or
- iii. the complaint falls within a description of complaints specified by the Police (Complaints and Misconduct) Regulations 2012

The complaints that are specified by the Police (Complaints and Misconduct) Regulations 2012 are those where the appropriate authority considers that:

- i. the matter is already the subject of a complaint made by or on behalf of the same complainant;
- ii. the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
- iii. the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
- iv. the complaint is repetitious; or
- v. the complaint is fanciful.

Paragraph 2, Schedule 3, Police Reform Act 2002

Regulation 3, Police (Complaints and Misconduct) Regulations 2012

3.20 If it is apparent at the time of making a recording decision that one of these exemptions applies to a complaint, the appropriate authority may decide not to record the complaint. If the complaint is recorded (because it is not apparent at the time of recording that an exemption applies) but the appropriate authority then decides that the complaint should not be dealt with under the Police Reform Act 2002, it may consider whether disapplication is appropriate (see section 4).

3.21 The IPCC expects a recording decision to be made within ten working days of receipt of a complaint or notification, but ideally it should happen as soon as possible after the complaint is received.

Where a complaint is recorded under the Police Reform Act 2002, the appropriate authority must supply:

- a copy of the record made of that complaint to the complainant; and
- subject to the matters below, a copy of the complaint to the person complained against.

The copy of the complaint provided may keep the complainant's or any other person's identity anonymous.

An appropriate authority may decide not to supply such a copy of a complaint if it considers that to do so:

- might prejudice any criminal investigation or pending proceedings, or
- would otherwise be contrary to the public interest.

If an appropriate authority decides not to supply such a copy, it must keep the decision under regular review

Regulation 15 (Complaints and Misconduct) Regulations 2012

3.22 If a decision is made not to record a complaint, there should be an audit trail which shows that recording has been considered, the reason why the complaint has not been recorded and what other action, if any, is to be taken.

3.23 Any complaint about direction and control should be recorded and handled in the same way as a complaint about conduct. It is, however, important that complaints are classified correctly as either direction and control or conduct as there is an important distinction between them in relation to appeal rights. This is because the right of appeal in relation to direction and control matters is much more limited than the right of appeal for conduct complaints. There is no requirement to inform the complainant of the classification at this stage.

3.24 A 'direction and control' matter means a matter that relates to the direction and control of a police force by the chief officer or someone carrying out the chief officer's functions for the time being. The IPCC considers the term direction and control to mean general decisions about how a force is run, as opposed to the day-to-day decisions or actions of persons serving with the police which affect individual members of the public – including those that affect more than one individual. 'Conduct' includes acts, omissions, statements and decisions.<sup>6</sup>

3.25 The table below shows some of the types of complaints that should be classified as direction and control and those that should be classified as conduct. There will be cases where it is not clear whether a matter is about direction and control. In such cases, the IPCC expects the matter not to be treated as direction and control.

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<sup>6</sup> Section 29, Police Reform Act 2002

<b>Direction and control</b>	<b>Conduct</b>
<p>Operational management decisions directed to the police force – including force-wide crime initiatives and the making of general strategic decisions about how certain police powers should be exercised.</p> <p>The drafting of operational policing policies and the process leading to their approval.</p> <p>Organisational decisions – including decisions about the configuration and organisation of policing resources, where officers or police staff should be located, how they should be managed, and what equipment should be procured for them.</p> <p>General policing standards in the force.</p>	<p>The making of a specific decision on the deployment of officers for a particular investigation or operation.</p> <p>The decision to (or not to) arrest and prosecute a particular suspect for a certain crime.</p> <p>Decisions about the deployment of a particular tactic on a particular occasion, and the use of that tactic.</p> <p>The application of force policies, in particular, circumstances where the application of the policy involves an officer exercising their discretion.</p> <p>Day-to-day operational decisions made in response to a particular set of circumstances that have arisen.</p>

### **Off duty conduct**

3.26 Depending on the circumstances, off duty conduct may fall within the Police Reform Act 2002. If the complaint is about conduct which, if proved, discredits the police service or undermines public confidence in it then it may be recorded under the Police Reform Act 2002.

### **Complaints about discriminatory behaviour**

3.27 It is important that the police service is seen to police a diverse society and community fairly. People may belong to one or more minority groups but this should not have a negative effect on the service they receive from the police.

3.28 People from minority groups may be reluctant to express their belief that a problem they have experienced is rooted in discriminatory attitudes. This may, for example, be because a complainant is reluctant to disclose his or her sexuality or to disclose a mental health problem for fear that this may affect the investigator's attitude to the merit of a complaint. To overcome this, people dealing with complaints should encourage complainants to explain why they think a person serving with the police behaved the way that he or she did and

demonstrate a willingness to accept and investigate this aspect of the allegation.

- 3.29 In addition to training on processes, people dealing with complaints should receive specific formal and informal training to develop their ability to identify discrimination. This training should stress that discrimination is not always overt, and that it can be necessary to look at all the circumstances of a particular case in order to see if discrimination can rightly be inferred from the surrounding facts. Such an exploration of the surrounding circumstances should include, as a matter of course, consideration of the standard practice and guidelines in relation to the particular activity complained of, and the historic patterns of behaviour of the officer(s) or staff member(s) to whose conduct the investigation relates. Investigators should be alert to the need to undertake this level of enquiry.
- 3.30 If a statement of complaint is taken this should cover what happened and what was seen, heard, felt and thought. It is essential that allegations of discrimination are given in sufficient detail to identify why the complainant believes discrimination was a factor. In particular, the following information should be recorded:
- what was it that made the complainant believe the person serving with the police'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 person serving with the police behaved compared with other persons serving with the police (either on this or previous occasions)?
  - was there anything about the person serving with the police'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?

## **Who can be complained about?**

- 3.31 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. Volunteers (other than special constables) are not covered by this definition.
- 3.32 The Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2012 apply to contracted out staff who are designated as a detention officer or escort officer by a chief officer insofar as the complaint relates to (or other instance of misconduct involves) the carrying out of these functions for the purposes of any power or duty imposed or conferred by the designation.

## **Complaints about people who no longer work for the police**

Complaints relating to the conduct of a person who since the time of the conduct has stopped serving with the police must be handled in the same way under the Police Reform Act 2002 as any other complaint. However, the appropriate authority will not be required to determine whether disciplinary proceedings should be brought against that person whose conduct is the subject matter of a report.

Regulation 27, Police (Complaints and Misconduct) Regulations 2012

3.33 It is recommended that in such circumstances, the investigator should seek to obtain an explanation or statement from an individual who has left the force although may not be possible to compel him or her to co-operate.

3.34 The local resolution or investigation of the matter may provide an opportunity for an explanation to be given to the complainant or where relevant the interested person. It may also enable the police to learn lessons. Although disciplinary proceedings will not result against someone who is no longer serving with the police, criminal proceedings could be brought if appropriate.

## **Decisions not to notify or record a complaint**

Where a chief officer or a local policing body decides not to notify or record the whole or any part of a complaint that has been received, he or she must notify the complainant in writing of:

- the decision to take no action and, where applicable, to what part of the complaint this decision relates;
- the grounds for that decision;
- the complainant's right of appeal, where applicable (see section 13) and;
- that the right of appeal is to the IPCC; and
- the time limit for making an appeal.

Paragraph 3, Schedule 3, Police Reform Act 2002  
Regulation 11, Police (Complaints and Misconduct) Regulations 2012

## **Deciding how to handle a complaint**

### **Referral**

3.35 People who receive complaints should have an understanding of which complaints or types of complaints need to be referred to the IPCC and which do not. For information about referrals see section 8.

### **Local resolution**

3.36 If a complaint does not need to be referred to the IPCC (and is unlikely to result in voluntary referral), the appropriate authority must decide whether it is suitable for local resolution. For information about local resolution see section 5.

### **Local investigation**

3.37 Where a complaint is not suitable for local resolution it must be investigated. For information about investigating a complaint see section 9.

### **Disapplication**

3.38 If the appropriate authority believes a complaint should not be dealt with in line with Schedule 3 of the Police Reform Act 2002 and it meets one of the disapplication grounds, he or she may consider disapplication. For information about disapplication see section 4.



## Section 4: **DISAPPLICATION**

- 4.1 There are certain limited circumstances in which a recorded complaint does not have to be dealt with under the Police Reform Act 2002. This is called disapplication and means that an appropriate authority may disapply the requirements of Schedule 3 of the Police Reform Act 2002 in relation to a complaint. The appropriate authority may instead handle a recorded complaint in whatever manner it thinks fit, including taking no action on it. A disapplication may only take place if the complaint fits one or more of the grounds described at paragraphs 4.7 to 4.19.
- 4.2 Disapplication should only happen in relation to a small proportion of complaints. It is available so that a complaint which falls within one of the grounds listed at paragraphs 4.7 to 4.19 does not create an unnecessary burden on the force involved. Disapplication should never be used simply because the complaint will be difficult to deal with or because of a problematic relationship with the complainant.

### **When can disapplication be carried out by the appropriate authority?**

Disapplication can only be used for recorded complaints that:

- have been referred to the IPCC and it has referred the complaint back to the appropriate authority;
- have been referred to the IPCC and it has determined the form of investigation; or
- are not required to be referred to the IPCC.

Before deciding to carry out a disapplication or making an application to the IPCC for permission to disapply, the appropriate authority must write to the complainant at his or her last known address inviting him or her to make representations. The letter must state that the complainant has 28 days from the day following the date of the letter to make any representations. Any representations that are made must be taken into account before a final decision to disapply or submit an application for permission to the IPCC is taken as they may affect the appropriate authority's decision.

Paragraphs 6 and 7, Schedule 3, Police Reform Act 2002  
Regulation 5, Police (Complaints and Misconduct) Regulations 2012

## **When the IPCC's permission needs to be obtained**

Where a complaint has been referred to the IPCC and has either been referred back to the appropriate authority or the IPCC has determined the form of an investigation, the IPCC's permission must be obtained to disapply Schedule 3 of the Police Reform Act 2002.

The appropriate authority must notify the complainant about the making of such an application.

Paragraph 7, Schedule 3, Police Reform Act 2002

- 4.3 In practice, an application to disapply is usually only likely to occur when a complaint has been referred back or on a local or supervised investigation, and unlikely to occur on a managed or independent one.

While the application to disapply is being considered, the appropriate authority must not take any action in relation to that complaint (other than those to obtain and preserve evidence relating to it).

Paragraph 7, Schedule 3, Police Reform Act 2002

## **Information to be sent to the IPCC**

Any application to the IPCC to disapply Schedule 3 of the Police Reform Act 2002 must be in writing. The appropriate authority must provide:

- the application;
- a copy of the complaint;
- an explanation of the reasons for making the application;
- copies of any other relevant documents or materials held by it.

The appropriate authority must provide any other information required by the IPCC to determine any application to disapply.

Regulation 5, Police (Complaints and Misconduct) Regulations 2012

- 4.4 Information provided to the IPCC with the application must include any evidence of representations being sought from the complainant, any representations received and how these were taken into account when deciding to make the application.
- 4.5 This information must be provided as soon as is reasonably practicable, unless the IPCC notifies the appropriate authority that it requires the information by a specified deadline.

## **If the IPCC does not grant permission to disapply**

If the IPCC does not grant permission for the appropriate authority to disapply, then the complaint will be passed back to the appropriate authority to determine whether it should locally resolve it and, if not, to investigate it.

Paragraph 7, Schedule 3, Police Reform Act 2002

- 4.6 When making this determination the appropriate authority should take into account any decisions or directions made by the IPCC when the complaint was originally referred.

The appropriate authority cannot make more than one application for permission from the IPCC in respect of the same complaint.

Paragraph 7, Schedule 3, Police Reform Act 2002

## **Grounds for disapplication**

**More than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay**

Disapplication may occur where more than 12 months have elapsed between the incident (or the latest incident) giving rise to the complaint and the making of the complaint, and either:

- no good reason for the delay has been shown; or
- injustice would be likely to be caused by the delay.

Regulation 5, Police (Complaints and Misconduct) Regulations 2012

- 4.7 A 12-month delay is not enough on its own for this ground to apply. One or other of these two criteria must be met as well. They are, however, separate. This means that if 12 months have passed between the incident (or the latest incident in a chain of events) and the making of the complaint, and no good reason for the delay has been shown, disapplication may be possible. Disapplication can take place on this ground even though the delay is not likely to result in injustice. It also means that if 12 months have passed between the incident (or the latest incident in a chain of events) and the making of the complaint and injustice is likely to be caused by the delay, disapplication may be possible even though good reason for the delay has been shown.
- 4.8 When deciding whether injustice is likely to be caused by the delay, the appropriate authority should consider the need to balance this against any injustice potentially caused by not investigating the complaint.

4.9 Each case should be considered on its merits and the complainant's reasons for the delay should be taken into account when making a decision about disapplication. This is why it is important that appropriate authorities seek the complainant's representations about the delay, its reasons and whether any injustice is likely to be caused.

**The matter is already the subject of a complaint made by or on behalf of the same complainant**

4.10 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 matter and by (or on behalf of) the same complainant.

4.11 Any representations from the complainant may explain whether or how the new complaint differs from the original complaint.

4.12 In practice, this ground applies where the handling of the original complaint is still ongoing. If the original complaint has been dealt with, the appropriate authority should consider whether the 'repetitious' disapplication ground applies (see paragraph 4.17).

4.13 The appropriate authority should be able to provide evidence of the previous complaint(s) and how the current one is already the subject of a complaint before either deciding to disapply or making an application to the IPCC.

**The complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address**

4.14 Where possible, the appropriate authority should attempt to discover the identity and address of, and contact, the person making the complaint, or any other interested person. There should be more than one attempt and various methods of communication should be used. The appropriate authority should allow time for the complainant or interested person to make contact before disapplying or making an application to the IPCC. The time allowed should be determined on a case-by-case basis, but should be reasonable, taking into account the circumstances and subject matter of the complaint.

**The complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints**

4.15 It is important to note that it is the complaint itself that must be judged vexatious, oppressive or an abuse, not the complainant. Consideration of this ground should therefore focus primarily on the current complaint. The complainant's past complaint history may, however, be taken into account

where it is relevant to show that the *current* complaint is vexatious, oppressive or an abuse.

- 4.16 The appropriate authority should be able to demonstrate with evidence a reasonable belief that the complaint is vexatious, oppressive or an abuse of process before deciding to disapply or making an application to the IPCC. Some assessment of the complaint will be required in order to demonstrate this.

### **The complaint is repetitious**

- 4.17 Any representations from the complainant may explain whether or how the new complaint differs from the original complaint or conduct matter.

### **It is not reasonably practicable to complete the investigation of the complaint or any other procedures under Schedule 3 to the Police Reform Act 2002**

- 4.18 Before considering a disapplication on this ground the appropriate authority should ensure that:
- reasonable efforts have been made to contact the complainant (i.e. more than one attempt) and to gain his or her co-operation, using a range of appropriate methods, for example, letter, email or telephone;
  - efforts were made to work through the complainant's representative;
  - practical help was made available to support a complainant with specific needs;
  - reasonable efforts have been made to overcome any obstacle preventing completion of the investigation or any other procedure;
  - reasonable efforts have been made to overcome any obstacle preventing the complaint being dealt with; and
  - the impact of the refusal or failure is sufficient to justify not completing an investigation or any other procedure under Schedule 3.

- 4.19 There are many reasons why it may not be practicable to communicate with the complainant or person acting on his or her behalf. Where there is sufficient information to proceed with an investigation of the complaint or any other procedure this should be carried out. If it is not possible to proceed without further communication with the complainant, disapplication may be appropriate.

### **Partial disapplication**

- 4.20 Where a complaint is made up of multiple allegations, only some may be suitable for disapplication. For example, some aspects of a complaint may be repetitious while others are not. In such cases disapplication may be carried out, or applied for, in respect of those parts of the complaint.

## **Appeals against the decision to subject the complaint to disapplication**

4.21 There is a right of appeal against any decision by the appropriate authority to disapply (except where the complaint relates to a direction and control matter or where the IPCC gave permission for the disapplication). For further information about this see paragraphs 13.43 to 13.60.

## Section 5: LOCAL HANDLING

- 5.1 The great majority of complaints will not need to be referred to the IPCC and will be handled, at least initially, by the appropriate authority (usually forces themselves). Local handling covers a wide range of activity. Some can be dealt with through local resolution. This is a process which focuses on resolving the complaint in the most appropriate way, and which therefore allows the appropriate authority to work with a complainant to take the necessary action (see below for more detail). However, local resolution cannot be used for complaints that reach a certain threshold of seriousness. Those complaints must be dealt with by a formal local investigation, which may result in disciplinary or criminal sanctions, and carry a right of appeal to the IPCC if the complainant is dissatisfied with the outcome.
- 5.2 It is important that appropriate authorities understand which complaints can be dealt with by local resolution and which require investigation. This section describes the process of local resolution and the threshold test to be applied in using it. Section 9 describes the process of local investigation.
- 5.3 The primary focus of the person handling a complaint, regardless of the process followed, should be to resolve the complaint.
- 5.4 When a complaint is made, the person dealing with it should establish exactly what the complaint is about and what the complainant would regard as a satisfactory outcome. A personal approach to this is more likely to be successful than sending a letter as a conversation will allow for any issues or concerns to be explored in more detail.
- 5.5 It is important to be clear with the complainant about what may be a realistic outcome to his or her complaint and the reasons for this. While it may not be possible to deliver the desired outcome, an explanation to the complainant at an early stage will help them to understand what is likely to happen as a result of their complaint.
- 5.6 The person handling the complaint should discuss with the complainant the actions which may be taken to deal with their complaint. The aim should be to engage in a dialogue about how the complaint will be dealt with. An effective relationship with the complainant from the outset should assist in the handling of the complaint and reduce the likelihood of an eventual appeal. It is also important when speaking to the complainant that the focus is on the actions to be taken in order to achieve a satisfactory outcome, rather than on the process to be followed (i.e. local resolution or investigation).
- 5.7 The complainant should be informed of what practical action or learning may result from their complaint. It is important that appropriate authorities demonstrate to complainants and communities their willingness to learn from

the complaints made against them and demonstrate that the complaints process does lead to improved police practice.

## **Local resolution**

5.8 Local resolution is a flexible process that can be adapted to the needs of the complainant. The complaint will be handled in the main at a local managerial level, not within professional standards departments.

5.9 Although local resolution will not result in disciplinary proceedings, the manager of the person complained about may take management action or formal action under the unsatisfactory performance procedures (for police officers) or capability procedures (for police staff members) during, or as a result of, the complaints process.

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

5.10 When a complaint has been recorded and there is no requirement to refer it to the IPCC and it is not being referred voluntarily, the appropriate authority must decide whether the complaint is suitable for local resolution.

When a complaint has been recorded and there is no requirement to refer it to the IPCC and it is not being referred voluntarily, the appropriate authority must decide whether the complaint is suitable for local resolution.

A complaint must meet both of the following conditions to be suitable for local resolution:

- the appropriate authority is satisfied that the conduct which is being complained about (even if it were proved) would not justify bringing criminal or disciplinary proceedings against the person whose conduct is complained about; and
- the appropriate authority is satisfied that the conduct complained about (even if it were proved) would not involve the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights.

If a complaint does not meet these conditions, it is not suitable for local resolution and must be investigated by the appropriate authority.

Paragraph 6, Schedule 3, Police Reform Act 2002

5.11 This assessment should be made taking the complaint at face value. If a complaint meets these conditions, it may be dealt with by way of local resolution, and the expectation is that it will be locally resolved unless there is a reason why this is not possible. If there is doubt whether a complaint satisfies either of the conditions, it is advisable to err on the side of caution and not treat it as suitable for local resolution.

5.12 Where a pattern of behaviour is identified in a person serving with the police, the person determining whether the complaint is suitable for local resolution



should consider carefully whether local resolution is appropriate. Local resolution may be the proportionate response, for example to a complaint of incivility. However, if there have been similar or previous complaints that have also been resolved locally the IPCC encourages the appropriate authority to consider whether there are underlying reasons for the pattern of behaviour which may justify the bringing of disciplinary proceedings in respect of the latest conduct complained about.

### **Local resolution following referral**

5.13 An appropriate authority may consider local resolution of a complaint which has been referred to the IPCC if the IPCC has determined that an investigation is not necessary and referred the complaint back to the appropriate authority.

5.14 If the IPCC has determined that an investigation is necessary and how the complaint should be investigated but the appropriate authority wishes to resolve the complaint locally, an application for local resolution must be submitted to the IPCC. However, this should not be a routine occurrence. Applications should only be made where there is new information or evidence, which was not reasonably available at the time of the referral, to suggest that local resolution would be appropriate.

The appropriate authority cannot make more than one application for the IPCC's approval to the determination that a complaint is suitable for local resolution in respect of the same complaint.

Paragraph 6, Schedule 3, Police Reform Act 2002

### **Ways of resolving the complaint**

5.15 Local resolution is a flexible process that may be adapted to the needs of the complainant and the individual complaint. The actions taken to resolve a complaint locally will depend on the substance of the complaint and the discussion which has taken place with the complainant. Possible actions which could be taken include:

- resolution over the counter or by telephone
- providing information and explanation
- an apology on behalf of the appropriate authority or an apology from the person complained about (if that person has agreed to an apology)
- a written explanation of the circumstances and any action taken
- mediation between the complainant and the person complained about, either directly or indirectly
- a change to policy or procedures
- learning shared within the force
- taking some investigative steps to establish further information.

5.16 Mediation can be a productive way to deal with complaints which are suitable for local resolution. A mediation process, which will usually involve a third party to mediate between the complainant and the officer complained against, is

more likely to increase satisfaction for both parties as it allows for both the complainant and the person complained against each to describe their experiences.

### **Action plans**

5.17 The details of how a specific complaint will be resolved locally are best documented in an action plan that outlines the steps to be taken. The action plan should be discussed with the complainant and he or she should have an opportunity to comment on it. This will help reach a shared understanding of the actions to be taken and will be a useful record of any agreements reached. Any step in an action plan should be both effective and achievable; an action plan that unduly raises a complainant's expectations and fails to deliver will negatively affect the complainant's confidence in the police. If a step in an action plan cannot be completed, the reasons for this should be recorded and explained to the complainant.

5.18 The complainant should be provided with a copy of the agreed action plan.

### **Communication**

During a local resolution process, the complainant and person complained against must be given the opportunity, as soon as practicable, to make comments about the complaint.

Regulation 6, Police (Complaints and Misconduct) Regulations 2012

5.19 Participation by the person complained about should be actively encouraged. Local resolution is not seeking to establish blame or wrongdoing, but is aiming to resolve the complaint. It should generally be expected that the person complained about will comment upon the complaint.

A record must be made as soon as practicable of the outcome of the local resolution procedure. A copy of this record must be given to the person complained against and the complainant.

Regulation 6, Police (Complaints and Misconduct) Regulations 2012

### **Statements**

A statement made by any person for the purposes of a local resolution is not admissible in any subsequent criminal, civil or disciplinary proceedings (except where it is an admission to a matter that has not been subjected to local resolution).

Paragraph 8, Schedule 3, Police Reform Act 2002

5.20 There is no legal power or requirement to issue a notice of investigation to the person complained against as part of the local resolution process.

## **Appeal against local resolution**

5.21 Where a complaint has been resolved locally, the complainant will have a right of appeal about the outcome of the local resolution (unless the complaint relates to a direction and control matter).<sup>7</sup> See paragraphs 13.61 to 13.67 for more information on appeals.

5.22 At the conclusion of any local resolution process, the appropriate authority must ensure that the complainant is informed, in writing, of:

- the outcome of the local resolution (and sent a copy of the record of the outcome)
- the right of appeal
- the identity of the relevant appeal body (and, if it is the IPCC, the reason)
- that there is no further right of appeal to the IPCC (where the relevant appeal body is the chief officer)
- the timescale in which the appeal must be received (28 days).

## **It is not possible to locally resolve the complaint**

Where it becomes apparent to the appropriate authority during the course of an attempt at local resolution that it is not possible to resolve the complaint using local resolution or the complaint is, for any other reason, not suitable for local resolution, arrangements must be made for the complaint to be investigated by the appropriate authority.

In those circumstances, no-one who was involved in the attempt at local resolution can be appointed to investigate the complaint or to assist with the investigation.

Paragraph 8, Schedule 3, Police Reform Act 2002

5.23 There may be occasions, either because the relationship between the complainant and the force has irretrievably broken down, or because the complainant's desired outcome to the complaint is unachievable, where there is no possibility of engaging in a two-way resolution process. Additionally, it is unlikely to satisfy a complainant if he or she feels that local resolution has been imposed against his or her express wishes. In these instances a local investigation may be the most practical and satisfactory means of dealing with the complaint.

5.24 Detailed guidance on carrying out investigations can be found in section 9 of this guidance.

5.25 An investigation carried out in these circumstances will carry a right of appeal. The way in which a complaint is dealt with (i.e. whether it is locally resolved or investigated) has no bearing on who considers the appeal. This is based purely

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<sup>7</sup> Paragraph 8A, Schedule 3, Police Reform Act 2002

on the complaint(s) made at the beginning of the process (see paragraphs 13.11 to 13.17 for more information about the relevant appeal body).

## Section 6: **CONDUCT MATTERS**

- 6.1 This section sets out the framework for the initial stages of dealing with a conduct matter.
- 6.2 The section covers:
- the definition of a conduct matter
  - how a conduct matter should be recorded
  - which conduct matters must be referred to the IPCC.

### **Definition of a conduct matter**

Subject to some limited exceptions a conduct matter is any matter about which there is not or has not been a complaint, where there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings.

Section 12, Police Reform Act 2002

- 6.3 It is vital that conduct matters are recognised and dealt with, both to deal with the issues and as part of the learning and improvement process for the force and the individual.
- 6.4 Conduct matters may come to light where a person who is prevented from being a complainant by the Police Reform Act 2002 raises issues that satisfy the definition of a conduct matter. The person raising the issue may be treated as an interested person if the matter is treated as a recordable conduct matter.

### **Recording a conduct matter**

- 6.5 'Recording' in this context means that a record is made of the conduct matter giving it formal status under the Police Reform Act 2002. This means that it has to be handled formally in accordance with the Police Reform Act 2002 and this guidance.

### **Conduct matters arising in civil proceedings**

- 6.6 There is a duty on chief officers and local policing bodies to identify and deal with conduct matters that come to their attention as a result of civil proceedings. Where a chief officer or local policing body receives a notification that civil proceedings relating to any matter have been brought or are likely to be brought against him or her by a member of the public, he or she should make an initial assessment about whether any complaint has been made about the

same conduct. If so, he or she should deal with the complaint in accordance with the guidance on handling complaints.

If no complaint has been made, the chief officer or local policing body must assess whether those proceedings involve or would involve a conduct matter (see paragraphs 6.2 to 6.4). If so, then the chief officer or local policing body must first decide if he or she is the relevant appropriate authority.

If the chief officer or local policing body is not the relevant appropriate authority, he or she must notify the relevant appropriate authority of the proceedings and the circumstances that suggest it involves, or would involve, a conduct matter.

If the chief officer or local policing body is the appropriate authority then he or she must determine whether there is a requirement, or it would be appropriate, to refer the matter to the IPCC. If so, then the matter must be recorded, unless he or she is satisfied the matter has been or is already being dealt with by criminal or disciplinary proceedings against the person to whose conduct the matter relates.

In any other case, the appropriate authority must determine whether the matter is repetitious within the meaning of regulation 7(3) of the Police (Complaints and Misconduct) Regulations 2012. If the matter is not repetitious then the appropriate authority must record the matter unless it is satisfied the matter has been or is already being dealt with by criminal or disciplinary proceedings against the person to whose conduct the matter relates.

In any other case, the appropriate authority may record the matter, but is not obliged to do so.

Paragraph 10, Schedule 3, Police Reform Act 2002  
Regulation 7, Police (Complaints and Misconduct) Regulations 2012

6.7 Conduct matters should be recorded as soon as practicable after they have come to light and the decision has been made that they must be recorded.

Where a conduct matter is recorded, but there is no requirement to refer the matter to the IPCC and the matter is not being referred voluntarily, the appropriate authority may handle the matter in whatever other manner it may determine, including taking no action.

Paragraph 10, Schedule 3, Police Reform Act 2002

6.8 Appropriate authorities should ensure that there is clear local guidance about who is responsible for identifying conduct matters in civil proceedings and ensuring that they are handled effectively and efficiently.

6.9 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, appropriate authorities can consider whether there are grounds for discontinuing an investigation into a conduct matter (see section 10).

## Conduct matters in other cases

Where a conduct matter comes to the attention of a chief officer or local policing body (other than as a result of civil proceedings) and he or she is the relevant appropriate authority, an assessment must first be made to determine whether it involves conduct which, assuming it has taken place:

- appears to have resulted in the death or serious injury of any person;
- has had an adverse effect on a member of the public; or
- falls within a description specified in the Police (Complaints and Misconduct) Regulations 2012, namely:
  - i. a serious assault, as defined in paragraphs 8.6 to 8.9 of this guidance;
  - ii. a serious sexual offence, as defined in paragraphs 8.10 and 8.11 of this guidance;
  - iii. serious corruption, as defined in paragraphs 8.12 of this guidance;
  - iv. a criminal offence or behaviour which is liable to lead to misconduct proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in paragraph 8.14 of this guidance;
  - v. a relevant offence (see box under *Relevant offence* in section 8);
  - vi. conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved; or
  - vii. conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (i) to (v) is alleged.

If so, the appropriate authority must determine whether it is required, or it would be appropriate, to refer the matter to the IPCC. If the appropriate authority determines that it is required, or it would be appropriate, to refer the matter to the IPCC then it must record the matter, unless it is satisfied that it has been or is already being dealt with by criminal or disciplinary proceedings against the person to whose conduct the matter relates.

In any other case, the appropriate authority must determine whether the matter is repetitious within the meaning of regulation 7(3) of the Police (Complaints and Misconduct) Regulations 2012. If the matter is not repetitious then the appropriate authority must record the matter, unless it is satisfied that it has been or is already being dealt with by criminal or disciplinary proceedings against the person whose conduct the matter relates.

In any other case, the appropriate authority may record the matter, but is not obliged to do so.

Where a conduct matter is recorded, but there is no requirement to refer the matter to the IPCC and it is not being referred voluntarily, then the appropriate authority may handle the matter in whatever other manner it may determine, including taking no action.

The IPCC may direct the appropriate authority to record a matter that has come to the IPCC's attention which is a recordable conduct matter but has not been recorded. The appropriate authority must comply with that direction.

Paragraph 11, Schedule 3, Police Reform Act 2002  
Regulation 7, Police (Complaints and Misconduct) Regulations 2012

6.10 Conduct matters should be recorded as soon as practicable after they have come to light and the decision has been made that they must be recorded.

### **Conduct matters involving allegations of discrimination**

6.11 Paragraphs 3.27 to 3.30 of this guidance in relation to complaints will also be relevant to dealing with interested persons in relation to such conduct matters.

### **Conduct matters relating to people who no longer work for the police**

Conduct matters relating to the conduct of a person who since the time of the conduct has stopped being a person serving with the police must be handled in the same way under the Police Reform Act 2002 as any other conduct matter. However, the appropriate authority will not be required to determine whether disciplinary proceedings should be brought against that person whose conduct is the subject matter of a report.

Regulation 27, Police (Complaints and Misconduct) Regulations 2012

6.12 The investigation of the conduct matter may provide an opportunity for an explanation to be given to an interested person. It may also enable the police to learn lessons. Although disciplinary proceedings will not result against someone who is no longer serving with the police, criminal proceedings could be brought if appropriate.

### **Referral of conduct matters to the IPCC**

6.13 For information about referring conduct matters to the IPCC see section 8 of this guidance.



## Section 7: DEATH OR SERIOUS INJURY MATTERS

7.1 This section sets out the framework for the initial stages of dealing with a death or serious injury (DSI) matter.

7.2 The section covers:

- the definition of a DSI matter
- how a DSI matter should be recorded
- the referral of DSI matters to the IPCC.

### Definition of a DSI matter

A DSI matter means any circumstances (unless the circumstances are or have been the subject of a complaint or amount to a conduct matter) in, or as a result of which, a person has died or sustained serious injury and:

- at the time of death or serious injury the person had been arrested by a person serving with the police and had not been released or was otherwise detained in the custody of a person serving with the police; or
- at or before the time of death or serious injury the person had contact of any kind – whether direct or indirect – with a person serving with the police who was acting in the execution of his or her duties and there is an indication that the contact may have caused – whether directly or indirectly – or contributed to the death or serious injury. However, this sub-category excludes contact that a person who suffered the death or serious injury had whilst he or she was acting in the execution of his or her duties as a person serving with the police.

Section 12, Police Reform Act 2002

“Serious injury” means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function.

Section 29, Police Reform Act 2002

### Recording a DSI matter

Where a DSI matter comes to the attention of a chief officer or local policing body, and he or she is the relevant appropriate authority, he or she must record that matter.

Paragraph 14A, Schedule 3, Police Reform Act 2002

7.3 DSI matters should be recorded as soon as practicable after they are identified bearing in mind the timescales for referral set out in the text box on page 56.

The IPCC may direct the appropriate authority to record a DSI matter that has come to the IPCC's attention, but has not been recorded. The appropriate authority must comply with that direction

Paragraph 14A, Schedule 3, Police Reform Act 2002

## **Referral of DSI matters**

7.4 For information about referrals see section 8 of this guidance.

## Section 8: **REFERRALS**

8.1 Referral to the IPCC is an important part of ensuring public confidence in the independence, accountability and integrity of the police complaints system.

8.2 This section explains:

- what must be referred to the IPCC
- the IPCC's decision when it receives a referral
- the types of investigation which may follow.

### **Complaints that must be referred to the IPCC**

Appropriate authorities must refer to the IPCC:

- complaints alleging that the conduct complained of has resulted in death or serious injury;
- complaints which fall within the mandatory referral criteria (see below);or
- complaints which the IPCC notifies the appropriate authority that it requires to be referred regardless of whether the complaint is already being investigated by any person or the IPCC has considered it.

However, a complaint that has already been referred to the IPCC is not required to be referred again unless the IPCC so directs.

Paragraph 4, Schedule 3, Police Reform Act 2002

8.3 Appropriate authorities should notify the IPCC where concerns or issues arise later which indicate that the matter should be referred again.

### **Conduct matters that must be referred to the IPCC**

Appropriate authorities must refer to the IPCC recordable conduct matters which:

- relate to any incident or circumstances in or in consequence of which a person has died or suffered serious injury;
- fall within the mandatory referral criteria (see below);or
- the IPCC notifies the appropriate authority that it requires the matter to be referred regardless of whether the conduct matter is already being investigated by any person or the IPCC has considered it previously.

However, a conduct matter that has already been referred to the IPCC does not have to be referred again unless the IPCC so directs.

Paragraph 13, Schedule 3, Police Reform Act 2002

8.4 Appropriate authorities should notify the IPCC where concerns or issues arise later which indicate that the matter should be referred again.

## **Referral of Death or Serious Injury (DSI) matters**

All DSI matters must be referred to the IPCC.

However, a DSI matter that has already been referred to the IPCC does not have to be referred again unless the IPCC so directs.

Paragraph 14C, Schedule 3, Police Reform Act 2002

## **Mandatory referral criteria**

The appropriate authority must refer complaints and recordable conduct matters that include allegations of conduct which constitutes:

- serious assault
- serious sexual offence
- serious corruption
- criminal offence or behaviour which is liable to lead to misconduct proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a persons race, sex, religion or other status identified in paragraph 8.14 of this guidance
- a relevant offence, or
- complaints or conduct matters which are alleged to have arisen from the same incident as anything falling within these criteria.

An appropriate authority must also refer complaints which arise from the same incident about which there is a complaint alleging that the conduct complained of resulted in death or serious injury.

Regulation 4 and 7, Police (Complaints and Misconduct) Regulations 2012

- 8.5 Where there is doubt about whether a complaint or recordable conduct matter must be referred, the IPCC encourages referral. The appropriate authority can seek the IPCC's advice about general policy on referrals or about whether to refer a specific incident or allegation.
- 8.6 If further evidence or information is obtained indicating that an incident was more serious than first thought and if it meets the criteria for referral, the matter should be referred to the IPCC. Similarly, further evidence or information might prompt consideration about re-referral so that the mode of investigation can be reviewed. 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.

## **Definitions of referral criteria**

### **Serious assault**

- 8.7 'Serious assault' is conduct that results in an injury that amounts to actual bodily harm or a more serious injury.
- 8.8 'Serious assault' is interpreted in accordance with the law on what constitutes an assault occasioning actual bodily harm contrary to Section 47 of the Offences Against the Person Act 1861. The offence is committed when a person assaults another, thereby causing actual bodily harm to that other person. One factor in law that distinguishes a charge under Section 39 of the Criminal Justice Act 1988 (common assault) from one under Section 47 is the degree of injury. The Crown Prosecution Service legal guidance on the charging standards for the offence of assault occasioning actual bodily harm should be applied in determining whether an offence is one of assault occasioning actual bodily harm rather than common assault.
- 8.9 Any attempt, incitement or conspiracy to commit any offence referred to above must also be referred to the IPCC.
- 8.10 Where a person is injured as a result of the conduct of a person serving with the police, forces should first consider whether the injury is a serious injury or one which must be referred. If not, they should ask themselves whether there is anything about the conduct or the circumstances in which the injury was sustained which points to the need for a voluntary referral. For injuries occurring once a person is in custody, the threshold for force to be necessary or proportionate is higher.

### **Serious sexual offences**

- 8.11 The term 'serious sexual offences' includes:
- all offences under the Sexual Offences Acts 1956 to 2003 that must be tried in the Crown Court; or
  - any other offences under these Acts which appear, to an appropriate authority, to be an offence for which the individual concerned, if convicted, would be likely to receive a sentence of more than six months.
- 8.12 Any attempt, incitement or conspiracy to commit any offence referred to above must also be referred to the IPCC.

### **Serious corruption**

- 8.13 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 for which the individual concerned, if convicted, would be likely to receive a sentence of more than six months;
- abuse of authority;
- corrupt controller, handler or covert human intelligence source (CHIS) 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; or
- attempts or conspiracies to do any of the above.

8.14 The law requires that allegations of serious corruption are referred to the IPCC without delay. It is therefore not appropriate to wait until there is sufficient information to make an arrest.

8.15 Where an allegation of serious corruption is made or potential serious corruption is identified this may require covert investigation. This should not prevent or delay referral to the IPCC.

8.16 The IPCC expects covert cases to be referred if any of the following factors are present:

- reasonable suspicion that a criminal offence has been committed
- the investigation has moved to an operational phase
- covert intrusive tactics are about to be deployed
- the allegations are extremely sensitive or likely to have an adverse impact on public confidence.

8.17 If it is unclear whether any of these factors are present the case should be discussed with the IPCC to establish whether referral is necessary.

### **Criminal offences and behaviour liable to lead to misconduct proceedings and which in either case is aggravated by discriminatory behaviour**

8.18 This refers to any criminal offence or other behaviour liable to lead to misconduct proceedings that is aggravated by discrimination on the grounds of a person's:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;

- pregnancy and maternity;
- race;
- religion or belief;
- sex; or
- sexual orientation.

8.19 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 or interested person may allege that the criminal offence or behaviour was motivated by discrimination. He or she may allege treatment which amounts to discrimination by comparison with the treatment given to others. While it is not for the complainant to prove that the person serving with the police discriminated against him or her it is important that when raising allegations about the treatment he or she received that he or she is able to identify (where possible) how that treatment was discriminatory. The person dealing with the matter should encourage the complainant or interested person to provide as much information as possible as to why they consider they were discriminated against. It is equally possible that the complainant or interested person does not allege discrimination, but that the investigator believes discrimination is a factor (see paragraphs 3.27 to 3.30 and 9.17 to 9.23 for additional information on dealing with allegations of discrimination).

### **Relevant offence**

“A relevant offence” is defined as any offence for which the sentence is fixed by law or 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).

Regulation 1, Police (Complaints and Misconduct) Regulations 2012

### **Matters which the IPCC requires to be referred to it (“call in”)**

8.20 The IPCC may require any complaint or recordable conduct matter to be referred to it by the appropriate authority. This power of call in is exercisable irrespective of whether the matter is already being investigated or has previously been considered by the IPCC.

8.21 If the IPCC calls a matter in, the appropriate authority must provide all relevant information at, or as soon as practicable after, the time of referral.

## Deadlines for referral

A mandatory referral must be made without delay and in any case not later than the end of the day after the day it first becomes clear that it is a matter which must be referred.

Regulations 4, 7 and 8, Police (Complaints and Misconduct) Regulations 2012

8.22 If necessary referrals can be made via the IPCC's on call number.

Where the IPCC calls a matter in, it must be referred without delay and in any case by the end of the day after the day the IPCC notifies the appropriate authority that it must be referred.

Regulations 4 and 7, Police (Complaints and Misconduct) Regulations 2012

8.23 The process of referral must not delay any initial action by an appropriate authority to secure or preserve evidence especially in relation to incident scene management.

8.24 In any case, when referring a matter, an appropriate authority must provide to the IPCC as much relevant information as possible to ensure it makes informed decisions. The need to provide information should be balanced against the timeliness of making the referral but the following list gives some examples of information which, where available and relevant, will help the decision maker:

- a copy of the complaint
- use of force forms where there is an allegation of excessive force or an injury
- medical records relating to any injuries allegedly sustained
- the custody record where the referral relates to an issue which occurred in custody
- officer notes relating to the incident.

## Voluntary referrals

8.25 The IPCC encourages appropriate authorities to refer complaints or recordable conduct matters that do not have to be referred but where the gravity of the subject matter or exceptional circumstances justifies referral.<sup>8</sup> This may be, for example, because the complaint or recordable conduct matter could have a significant impact on public confidence, or it is felt there is a need for independent involvement in the investigation.

8.26 Relevant local policing bodies can also refer complaints or recordable conduct matters which either have not been referred or are required to be referred by the appropriate authority if the local policing body considers referral would be

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<sup>8</sup> Paragraph 4 and 13, Schedule 3, Police Reform Act 2002



appropriate because of the gravity of the subject matter or any other exceptional circumstances.<sup>9</sup>

## **Referral of complaints about direction and control**

Where a complaint relates to a direction and control matter but is not a complaint which must be referred to the IPCC, it may only be referred to the IPCC if the IPCC consents.

Paragraph 4, Schedule 3, Police Reform Act 2002

8.27 In cases where an appropriate authority wishes to refer a complaint about a direction and control matter it should contact the IPCC for its consent, giving as much information about the matter as possible including why it is considered to be a direction and control matter and the reasons why it should be referred to the IPCC.

## **Notification of referral**

Whenever a local policing body or chief officer refers a complaint or conduct matter to the IPCC, it must notify:

- the complainant (if there is one); and
- the person complained against or whose conduct it was, unless it would prejudice a possible future investigation of the complaint or matter.

Paragraph 4 and 13, Schedule 3, Police Reform Act 2002

The local resolution of any complaint must be discontinued if the IPCC calls the complaint in or it is otherwise referred to the IPCC.

Paragraph 8, Schedule 3, Police Reform Act 2002

## **Determining whether and how a matter should be investigated**

Once a referral is made to the IPCC it must determine whether the matter should be investigated. If it decides that the matter should be investigated then it must determine the mode of investigation, having regard to the seriousness of the case and the public interest.

Paragraph 5, 14, 14D and 15, Schedule 3, Police Reform Act 2002

8.28 It is therefore essential as much information is given at the time of referral or as soon as practicable thereafter to ensure the IPCC makes the right decision in respect of the matters referred to it.

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<sup>9</sup> Paragraph 4 and 13, Schedule 3, Police Reform Act 2002

### **When a matter does not need to be investigated**

If the IPCC decides that the matter does not need to be investigated then:

- in the case of a complaint, it may refer the complaint back to the appropriate authority for local resolution or local investigation or, if appropriate, to consider making an application for disapplication
- in the case of a recordable conduct or DSI matter, it may refer the matter to the appropriate authority to be dealt with in such a manner (if any) as the appropriate authority thinks fit.

Paragraph 5, 14 and 14D Schedule 3, Police Reform Act 2002

### **When the IPCC determines a matter should be investigated**

8.29 Having taken into account the seriousness of the case and the public interest, the IPCC must determine the mode of investigation. The mode of investigation may be:

- local investigation;
- supervised investigation;
- managed investigation; or
- independent investigation.

The IPCC can, at any time, re-determine the mode of investigation.

Paragraph 15, Schedule 3, Police Reform Act 2002

## Section 9: **INVESTIGATIONS**

9.1 Investigations under the Police Reform Act 2002 may vary greatly in their scope, purpose and complexity. This section covers:

- the IPCC's expectations in relation to issues such as terms of reference and keeping an audit trail
- some of the legislative requirements which apply to such an investigation such as:
  - special requirements and severity assessments
  - the power to suspend an investigation; and
  - duties with regard to the provision of information.
- best practice guidance.

### **Purpose of an investigation**

9.2 The purpose of an investigation is to establish the facts behind a complaint, conduct matter or DSI matter and reach conclusions. This includes, where applicable, whether, in respect of those subject to investigation, there is a case to answer for misconduct or gross misconduct or unsatisfactory performance. It is also an opportunity to ascertain whether there is any learning for the force arising from the incident itself or the way it was handled. An investigation should be fair, reasonable and objective and based on evidence. What is reasonable in each case will depend on the particular circumstances.

### **Appointment of a person to carry out the investigation**

The appropriate authority is responsible for appointing the investigating officer in a local, supervised or managed investigation. In the case of a supervised or managed investigation, the IPCC has the power to require any proposed appointment to be subject to its approval or, where a person has already been appointed, it may require another investigating officer to be selected.

Paragraph 16, 17 and 18, Schedule 3, Police Reform Act 2002

An appropriate authority may appoint:

- i. a person serving with the police
- ii. a member of staff of the Serious Organised Crime Agency, or
- iii. a member of staff of the National Policing Improvement Agency who is a constable

to investigate the complaint or matter

However, the appointment of an investigating officer is subject to a number of important qualifications. These are:

- i. where an investigation relates to the conduct of a chief officer, the investigating officer must not be under that chief officer's direction and control
- ii. where an investigation relates to the conduct of the Commissioner or Deputy Commissioner of Police of the Metropolis, the investigating officer must be nominated by the Secretary of State for the Home Department
- iii. the investigating officer must have an appropriate level of knowledge, skills and experience to plan and manage the investigation
- iv. the investigating officer must not work, directly or indirectly, under the management of the person being investigated (this qualification does not apply to the investigation of a complaint about a direction and control matter)
- v. where an investigation relates to a senior officer, the investigating officer must not be the chief officer or a member of the same force as the person to whose conduct the investigation relates (this qualification does not apply to the investigation of a complaint about a direction and control matter); and
- vi. the investigating officer must not be appointed if his involvement in that role could reasonably give rise to a concern whether he or she could act impartially (however, where an investigation relates to a complaint about a direction and control matter the fact that a person works, directly or indirectly, under the management of the person to whose conduct the investigation relates or is the chief officer or a member of the same force as the person to whose conduct the investigation relates are not enough in themselves to constitute reasonable grounds for concern that the investigating officer could not act impartially).

Paragraph 16, 17 and 18, Schedule 3, Police Reform Act 2002  
Regulation 24, Police (Complaints and Misconduct) Regulations 2012

- 9.3 The appointment of an investigator should be recorded in writing. Where any concerns have been raised about the appointment of a particular investigator the appropriate authority should also record in writing any decision, together with its reasons, whether or not to replace the investigator.
- 9.4 At the start of each investigation, the investigator should make a written note in the investigation decision log to declare whether or not there is anything which could reasonably give rise to a concern about whether he or she or any member of the investigation team could act impartially.
- 9.5 If no such concern is identified, an entry in the investigation decision log should be made to that effect for the purposes of transparency. Where there is such concern the investigator should raise it with the appropriate authority (and the IPCC in a managed or supervised investigation), before he or she or any

member of the investigation team carries out any steps (other than preservation of evidence) in connection with the investigation.

- 9.6 The appropriate authority should then decide whether to replace the investigator or not. Any decision made, together with the reasons, should be recorded in writing. This decision will be subject to any power of the IPCC to require the appropriate authority to select another investigator.

## **Terms of reference**

- 9.7 Terms of reference will vary according to the complexity of an investigation. In straightforward investigations which are not subject to special requirements they may be as simple as a summary of the complaint being investigated. Investigations supervised or managed by the IPCC, as well as those which it carries out independently, will always have more detailed terms of reference.

- 9.8 Terms of reference should:

- provide focus and direction for the investigation
- be clear, unambiguous and tightly drawn
- describe the scope of the investigation that will be undertaken including the time period and/or what will not be investigated if appropriate
- include a summary of any concerns, complaints or allegations
- not list actions to be undertaken
- include the identification of organisational learning
- spell out, where there is a parallel investigation, the relationship between the two investigations.

- 9.9 Subject to the harm test, a copy of the terms of reference and any revisions to them should be sent to complainants, interested persons and any subjects of the investigation. It may also be useful to meet with the complainant and any interested person at an early stage to explain the investigation process.

## **Keeping an audit trail**

- 9.10 Every investigation, no matter how small or quick, requires some level of file recording to show what was done and why, together with the collation and preservation of any documents or other evidence seen or created as part of the inquiry.

- 9.11 The investigator should be able to demonstrate that steps were taken to understand the complaint and the views of 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;
  - if the complainant has expressed a wish to make a statement then the investigator should not refuse this and, whilst it may not always be

necessary, ordinarily a formal statement should be taken. If a statement is not taken, the basis for this decision should be recorded by the investigator; and

- if the complaint has been made verbally, this must be recorded in writing and a copy of the account provided to the complainant at an early stage. This gives the complainant an opportunity to confirm his or her agreement that it is an accurate record of the complaint he or she wants addressed.

9.12 A statement must always be sought from the complainant if his or her evidence may be used in criminal proceedings or disciplinary proceedings.

9.13 Where the investigator seeks an account from a person who is the subject of investigation, there must be an auditable record of it. The person could be invited to sign handwritten notes or a pocket notebook entry to confirm the accuracy of a record of a conversation. However, this is the minimum. In many cases, more would be required, such as an account by email, letter, statement or (recorded) interview. If an investigation is subject to special requirements (see paragraphs 9.29 to 9.34) or is an investigation into a recordable conduct matter, a notice of investigation will in most cases have been served (see paragraph 9.39) and a statement under an appropriate caution should be taken or requested from the person to whose conduct the investigation relates or he or she should be required to attend an interview, which will be recorded (see paragraphs 9.41 to 9.47 for more information on interviews).

## **The scope of the investigation**

9.14 Investigators should adopt a proportionate approach to any investigation in order to ensure that, in the public interest, investigative resources are focused and employed efficiently and fairly. However, to use the term 'proportionate' is not another way of describing an investigation as limited or small scale. It must be borne in mind that the adequacy of the investigation may be scrutinised when any appeal is considered either by the IPCC or the chief officer. In order to decide what is a proportionate approach to investigating a complaint it may be useful to discuss with the complainant what are his or her key points to ensure that these are covered. Every investigation needs to be proportionate to:

- the seriousness of the matter being investigated;
- the prospects of a criminal trial, misconduct proceedings or unsatisfactory performance proceedings resulting;
- the public interest; and
- the investigation producing learning for the individual or organisation.

9.15 Investigators should take the following factors into account when determining the scope of an investigation and the methods to be used:

- 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 are engaged;
- any more general cause of a complainant's dissatisfaction;
- whether the facts are in dispute;
- how long ago the incident took place and whether evidence is still likely to be available;
- the learning the investigation might yield for local or national policing and individual learning for persons serving with the police; and
- actual or potential public knowledge of, and concern about, the case.

9.16 Where further investigation is no longer proportionate to the likely outcome (e.g. because no additional evidence is likely to emerge) it should be concluded and findings reported to the appropriate authority (or the IPCC in independent, managed or supervised investigations). In local and supervised investigations into a complaint the complainant has a right of appeal in relation to the investigation.

### **Allegations involving discrimination**

9.17 Allegations of discrimination are not inevitably at the most serious end of the spectrum: all allegations must be assessed individually. Judgements made at the start of the investigation may well change in the light of the evidence. An allegation of discrimination could be more serious if, for example, 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.

9.18 The following factors can provide a guide to the scope of the investigation and the methods to be used (see also information on getting a complaint statement at paragraph 3.30). These factors should be revisited and re-assessed as more information becomes available. The list 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 or interested person?
- 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 an interested person, or reported by another person serving with the police?
- what does the complainant or interested person 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 person to whose conduct the investigation relates, police force or local police area that would impact on the degree of investigation required?
- does the allegation raise other issues that will impact on how it is dealt with?

9.19 Evidence which could be considered in investigating an allegation of discriminatory behaviour might include:

- whether intelligence reports exist about the person subject to investigation or whether there is anything recorded on his or her personal files. However any reference to personal data must be justifiable and lawful as there could be data protection issues.
- covert methods of gaining evidence (telephone logs, surveillance, integrity testing) may be considered if lawful in the circumstances
- if broader allegations of discrimination are indicated, it may be appropriate to extend considerations to a particular division or area in the police force. This may include consideration of local or national policies either in relation to a particular area or more generally on a community relations level.

9.20 It may also be useful to consider comparator evidence such as:

- how any other persons serving with the police 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 or interested person has been treated at other similar incidents
- how a reasonable person serving with the police with similar levels of training and experience would be expected to behave in these circumstances.

9.21 When assessing all of the evidence it is important to give appropriate weight to any explanation given by a person serving with the police in response to the allegation of discrimination, particularly where there is a difference in treatment which has resulted in detriment to the complainant. There may have been an obvious detriment such as loss of liberty. However, detriment can also include loss of dignity and hurt feelings. An investigator will have to make an assessment about whether the explanation provided is adequate, reasonable and justified in the circumstances. The allegation will be difficult to assess where the person subject of investigation 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.

9.22 Discrimination is not always overt, and it can be necessary to look at all the circumstances of a particular case in order to see if discrimination can rightly be inferred from the surrounding facts as explained at paragraph 3.29 above.



9.23 The relationship between the police and people from minority groups may be affected by local circumstances. Investigators should aim to ensure they have an awareness of local issues and experiences.

### **Death or serious injury matters turning into conduct matters**

9.24 If, during an investigation of a DSI matter, it appears to the investigator that there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner justifying disciplinary proceedings, the investigator must make a submission to that effect. This should be in writing and should set out the investigator's reasons for reaching this conclusion.

9.25 In a managed investigation, the submission must be sent to the IPCC. In a local or supervised investigation the submission must be sent to the appropriate authority.

9.26 In a managed investigation, if the IPCC Commissioner agrees that there is such an indication he or she will send a copy of the submission to the appropriate authority who must record the matter as a conduct matter and consider whether it should be referred to the IPCC. In a local or supervised investigation if the appropriate authority agrees with the submission, it must notify the relevant appropriate authority, (if it is not the relevant authority itself) and the IPCC and send them a copy of the investigator's submission. The relevant appropriate authority must then record the matter as a conduct matter and consider whether it should be referred to the IPCC. In any case, the IPCC may call the matter in and may re-determine the mode of investigation.

9.27 Once the matter has been recorded, the investigator must make a severity assessment in relation to the conduct of the person concerned (where that person is a member of a police force or a special constable).

9.28 This process may happen at any time during an investigation and any DSI investigation should be kept under review as to whether there is an indication of the matters set out in paragraph 9.24.

### **Special requirements**

9.29 Special requirements only apply to investigations of complaints against a member of a police force or a special constable. In the case of any other person, the investigator must adhere to the relevant policies and procedures for investigating allegations made against such persons.

If at any time during an investigation of a complaint, it appears to the investigator that there is an indication that a person to whose conduct the investigation relates may have:

- committed a criminal offence; or
- behaved in a manner which would justify the bringing of disciplinary proceedings then the investigator must certify the investigation as one subject to special requirements.

Paragraph 19B, Schedule 3, Police Reform Act 2002

9.30 This provision means that throughout the course of any investigation, the investigator must consider whether such an indication exists even if he or she initially decided it did not.

9.31 Disciplinary proceedings for the purposes of special requirements means any proceedings under the Police (Conduct) Regulations 2012.

9.32 The test has a low threshold - requiring only an indication. The investigator must think that there is an indication but must also be satisfied that a reasonable investigator with knowledge of the circumstances or evidence would consider that the circumstances or evidence indicate a police officer or special constable may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings.

9.33 The investigator must set out the reasoning behind his or her decision as to whether an investigation should be subject to special requirements.

9.34 In a managed investigation, the investigator must consult with the IPCC's managing investigator as to whether or not the investigation should be subject to special requirements.

## **Severity assessments**

9.35 Severity assessments only apply to investigations of complaints subject to special requirements or recordable conduct matters against a member of a police force or a special constable. Again, in the case of any other person, the investigator must adhere to the relevant policies and procedures for investigating allegations against such persons.

Severity assessments must be undertaken in respect of investigations of complaints subject to special requirements and all recordable conduct matters against a member of a police force or a special constable.

A severity assessment must be made as soon as reasonably practicable after:

- the investigator certifies the investigation as one subject to special requirements, in the case of a complaint; or
- the investigator is appointed in the case of a recordable conduct matter; or
- a matter is recorded as a conduct matter during or following an investigation of a DSI matter.

A severity assessment is an assessment as to:

- whether the conduct, if proved, would amount to misconduct or gross misconduct; and
- if the conduct were to become the subject of disciplinary proceedings, the form which those proceedings would be likely to take.

Paragraph 19B, Schedule 3, Police Reform Act 2002

9.36 The investigator must consult with the appropriate authority before the assessment is completed.<sup>10</sup> In a managed investigation, the investigator should also consult with the IPCC's managing investigator.

9.37 Any assessment must be fully reasoned and documented. The investigator should obtain a copy of the relevant officer's disciplinary history to ensure that the appropriate assessment is made.

9.38 The severity assessment may be revised if the investigator believes it is appropriate to do so.

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<sup>10</sup> Paragraph 19B, Schedule 3, Police Reform Act 2002

## Notices of investigation

On completing a severity assessment, the investigator must give a written notice to the person concerned, which complies with the requirements of paragraph 19B(7), Schedule 3 of the Police Reform Act 2002 and regulation 16 of the Police (Complaints & Misconduct) Regulations 2012.

A written notice need not be given for so long as the investigator considers the notification might prejudice:

- the investigation; or
- any other investigation, including a criminal investigation.

During an investigation, the investigator may revise the severity assessment and if they do so they must, as soon as practicable, serve a further written notice on the person concerned which complies with Paragraph 19B(7), Schedule 3 of the Police Reform Act 2002 and regulation 16 of the Police (Complaints & Misconduct) Regulations 2012.

Paragraph 19B, Schedule 3 Police Reform Act 2002

9.39 In a managed investigation, the investigator should consult with the IPCC's managing investigator as to the content of the notice, whether its service should be delayed or any revision of the severity assessment.

## Representations to the investigator

During the investigation of a complaint subject to special requirements or a recordable conduct matter, the investigator must consider any relevant statement or document provided by the person concerned (or document provided by a police friend) within ten working days (unless this period has been extended by the investigator) starting with the day after which the notice of investigation is given.

Paragraph 19C, Schedule 3, Police Reform Act 2002  
Regulation 18, Police (Complaints and Misconduct) Regulations 2012

9.40 Any oral statement should be recorded and the person concerned should be asked to sign the record as an accurate reflection of what has been said.

## Interviews

During an investigation which is subject to special requirements or in relation to a recordable conduct matter and where an investigator proposes to interview the person concerned (the interviewee), the investigator shall, if reasonably practicable, agree a date and time for the interview with the interviewee.

If a date and time is not agreed, the investigator shall specify a date and time. If the interviewee or their police friend is not available to attend but proposes an alternative time which is reasonable and falls within five working days beginning with the first working day after the day specified by the investigator, then the interview will be postponed to the time proposed. An interviewee must attend the interview.

Regulation 19, Police (Complaints and Misconduct) Regulations 2012

9.41 A failure to attend an interview may in itself be a breach of the Standards of Professional Behaviour.

9.42 The interviewee must be given written notice of the date, time and place of interview.<sup>11</sup> This should be given as soon as reasonably practicable after these are either agreed or, in the absence of agreement, specified by the investigator.

In advance of an interview, the investigator must provide the interviewee with such information as the investigator considers appropriate in the circumstances of the case to enable the interviewee to prepare for the interview.

Regulation 19, Police (Complaints and Misconduct) Regulations 2012

9.43 Decisions as to what should be disclosed should be documented and made in light of the circumstances of the case. The interviewee is not entitled to disclosure of every document but only those which the investigator considers appropriate in the circumstances of the case to enable them to prepare for interview.<sup>12</sup> Public confidence could be undermined if the extent of the disclosure given could be perceived to give the interviewee an unfair advantage.

9.44 Where a decision is made to interview a person serving with the police and if the allegation is at the more serious end of the spectrum, then consideration should be given to techniques such as video interviewing, cognitive interviewing and interviewing vulnerable and significant witnesses. Only investigators who have received the appropriate training should undertake such interviews.

9.45 At the beginning of the interview the interviewee should be reminded of the content of any written notice of investigation given to him or her and reminded of the warnings it contains.

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<sup>11</sup> Regulation 19, Police (Complaints & Misconduct) Regulations 2012

<sup>12</sup> Regulation 19, Police (Complaints and Misconduct) Regulations 2012

9.46 Where an interview is taking place in relation to an allegation of discriminatory behaviour the person being interviewed 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;
- reflect on the interaction with the complainant in light of the allegation.

9.47 These provisions apply to interviews which are held under the Police Reform Act 2002. Criminal interviews held under the Police and Criminal Evidence Act 1984 must comply with that Act and the relevant case law and codes of practice.

## **Power to suspend an investigation or other procedure**

An appropriate authority may suspend an investigation or other procedure which would, if it were to continue, prejudice any criminal investigation or proceedings. Having consulted with the appropriate authority, the IPCC may direct that the investigation or procedure shall continue if it is in the public interest.

Regulation 22, Police (Complaints and Misconduct) Regulations 2012

9.48 The power to suspend only arises where continuing the investigation or other procedure would prejudice a criminal investigation or criminal proceedings. Thus, there should be specific, identified prejudice (and that prejudice should be significant). In order to determine whether such prejudice arises, it will be necessary to consider the following:

- (a) the extent to which the matter raises issues which are the same as, or closely connected with, the issues in the ongoing criminal investigation or proceedings; and
- (b) what particular prejudice (if any) would be caused to the ongoing criminal investigation or proceedings by the investigation or any other procedure.

9.49 If the power to suspend arises, appropriate authorities should next consider whether it is appropriate to exercise that power in all the circumstances. When deciding whether to exercise the power to suspend, authorities should consider whether, if the investigation or other procedure were to continue, there would be prejudice to the criminal investigation or proceedings which is so significant that it is not outweighed by the public interest in ensuring:

- i. the prompt investigation of the matter; and
- ii. the prompt bringing of criminal or disciplinary proceedings against persons serving with the police where they are warranted.

9.50 In other words, a balancing exercise should be carried out. The following relevant factors should be considered:

- the relative severity of the allegation against the person serving with the police and the allegation against the suspect or defendant in the criminal investigation or proceedings;
- the relative strength of the evidence in support of each allegation;
- whether delay would lead to the frustration of any potential criminal or disciplinary proceedings against a person serving with the police;
- in particular, whether suspending the investigation would risk the expiration of the six month statutory time limit for the bringing of a prosecution of a summary-only offence before the conclusion of any investigation;
- whether delay would otherwise lead to injustice to the complainant, interested person or to the subject of the complaint; and
- the view of the Crown Prosecution Service as to whether continuing with the investigation or other procedure would prejudice any criminal investigation or proceedings, and if so, whether there are any steps short of suspension which can be taken to mitigate the risk of prejudice.

9.51 There will be many cases where the necessary balancing exercise comes down in favour of continuing with the investigation or other procedure even though the issues raised by the criminal investigation or proceedings and by the complaint are closely linked. That might be so, for example, where it is alleged that the police officer has committed a more serious offence than that with which the defendant to the related criminal proceedings is charged (because it might then be in the public interest to prioritise the investigation and prosecution of the more serious offence despite the risk of prejudice to the ongoing prosecution of the lesser offence).

9.52 Appropriate authorities should always seek, and consider, the views of the Crown Prosecution Service before exercising the power to suspend.

9.53 There are a number of steps which may be taken to reduce (or remove) the risk of prejudice to criminal proceedings while still allowing an investigation to proceed. These include,

- carrying out a single interview with each relevant witness covering both the subject matter of the criminal proceedings and the matter under investigation;
- interviewing witnesses to the matter in the presence of the solicitor for the defendant to the criminal proceedings.

9.54 Appropriate authorities should always consider whether measures of this kind can be put in place, and should only exercise the power to suspend where significant prejudice to the criminal proceedings, which is not outweighed by countervailing public interest considerations, would remain even if any appropriate measures of this type were taken.



9.55 Even though an investigation or other procedure is suspended, there may still be an opportunity to obtain witness statements by those not involved in a criminal investigation or trial. There is also unlikely to be any reason why, if the criteria are satisfied, the relevant persons cannot or should not be served with a notice of investigation. Furthermore, it may well be the case that after receiving legal advice, the complainant decides that they still wish to provide a statement of complaint. Other aspects of the investigation may still be subject to suspension if the appropriate authority in consultation with the Crown Prosecution Service deems this appropriate.

9.56 In any instance where an investigation or other procedure is suspended, the complainant must be notified in writing and be provided with a rationale for the decision. Where a complainant objects to the suspension, he or she should also be informed of their right to ask the IPCC to consider whether or not to direct that the investigation or other procedure continue.

### **Resumption of a complaint after criminal proceedings**

Where the whole or part of a local or supervised investigation of a complaint has been suspended until the conclusion of criminal proceedings, unless the complainant has indicated that he or she wishes for the investigation to start or be resumed, the appropriate authority must take all reasonable steps to contact the complainant (or if applicable, their solicitor or other representative), to ascertain whether the investigation should be started or resumed. In a managed or independent investigation this will be the responsibility of the IPCC.

The investigation must be started or resumed if the complainant indicates he or she does want this.

If the complainant indicates he or she does not want the investigation started or resumed or fails to reply within 28 days starting on the day after the date of the letter sent to him or her, then the appropriate authority must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

Regulation 23, Police (Complaints and Misconduct) Regulations 2012

9.57 If the appropriate authority decides it is in the public interest for the complaint to be treated as a recordable conduct matter then it should be dealt with as a recordable conduct matter. If it decides it is not in the public interest, the appropriate authority can close the case and should notify the complainant to that effect. The appropriate authority must also notify the person complained against whether it will treat the matter as a recordable conduct matter or not, unless it might prejudice any criminal investigation, pending proceedings or would not be in the public interest.

9.58 The IPCC expects the appropriate authority to have checked 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 co-operate.

9.59 Where a complaint is subject to a supervised investigation, the 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' for the purposes of the supervised investigation.<sup>13</sup>

## **Suspension of officers and special constables**

The Police (Conduct) Regulations 2012 allow the appropriate authority to suspend a police officer or special constable in certain circumstances.

In the case of a supervised, managed or independent investigation the appropriate authority must consult with the IPCC in deciding whether or not to suspend an officer or special constable. It must also consult the IPCC before a suspension is brought to an end (because the suspension conditions are no longer satisfied).

Regulation 10, Police (Conduct) Regulations 2012

9.60 In consulting the IPCC, the appropriate authority should inform the IPCC of its preliminary view and rationale for that view including which suspension conditions are satisfied.

## **Providing information / communication**

9.61 Investigators and appropriate authorities need to manage the provision of information to complainants, interested persons and those to whose conduct the investigation relates in the course of an investigation. They also need to be in a position to deal with requests for information and questions.

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<sup>13</sup> Regulation 9, Police (Complaints and Misconduct) Regulations 2012

The Police Reform Act 2002 requires the appropriate authority (or the IPCC in independent and managed cases) to keep the complainant and/or interested person informed about:

- the progress of an investigation
- any provisional findings of the person carrying out the investigation
- where applicable whether the appropriate authority (or the IPCC) has made a determination under paragraph 21A, Schedule 3 of the Police Reform Act 2002
- whether an investigation report has been submitted to the IPCC or the appropriate authority
- the action to be taken (if any); and
- where action is taken, its outcome(s).

Sections 20 and 21, Police Reform Act 2002

9.62 Once an investigation has started, the appropriate authority in a local or supervised investigation, or the IPCC in an independent or managed investigation, has a duty to keep the complainant or interested person informed of its progress.

The first update must be provided promptly and within 28 calendar days of the start of the investigation. Subsequent updates must be provided at least every 28 calendar days after that.

Regulation 12, Police (Complaints and Misconduct) Regulations 2012

9.63 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 (i.e. by telephone, in writing, or in person). Where a notification is given which is not in writing, it must be confirmed in writing as soon as reasonably practicable.

9.64 Updates on the progress of the investigation may include, for example, information about the stage reached in the investigation, what has been done, what remains to be done and, where applicable, a summary of any significant evidence obtained. Updates should also include the likely timescale for completing the investigation and any revisions to this.

9.65 It is also good practice, where it will not prejudice the investigation, to keep the person who is the subject of the investigation regularly informed of the investigation's progress, taking into account the exceptions described below. At the start of the investigation, an investigator should agree with him or her or his or her representative(s), the preferred method for giving the updates and to whom they should be given.

9.66 Appropriate authorities and investigators should take into account any further guidance issued by the IPCC concerning disclosure of information.

## Exceptions to the duty to provide information

The duty to keep the complainant and interested persons informed does not apply in circumstances where non-disclosure is:

- i. necessary to prevent premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings
- ii. necessary to prevent the disclosure of information in any circumstances in which its non-disclosure is:
  - in the interest of national security
  - for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders
  - required on proportionality grounds; or
  - otherwise necessary in the public interest.

The appropriate authority must consider whether the non-disclosure of information is justified under any of the above grounds where:

- i. that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings
- ii. the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings
- iii. the disclosure of that information may prejudice the welfare or safety of any third party
- iii. that information constitutes criminal intelligence.

Regulation 13, Police (Complaints and Misconduct) Regulations 2012

9.67 Information must not be withheld on one of these grounds unless the appropriate authority concludes that there is a real risk of the disclosure of the information causing a significant adverse effect.<sup>14</sup> 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 identify him or her from the context when several documents are considered together.

9.68 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.

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<sup>14</sup> Regulation 13, Police (Complaints and Misconduct) Regulations 2012



## Section 10: **DISCONTINUANCES**

- 10.1 A discontinuance ends an ongoing investigation into a complaint, conduct matter or DSI matter. It can only take place in certain limited circumstances set out in the Police (Complaints and Misconduct) Regulations 2012 and described in paragraphs 10.5 to 10.15 below. Appropriate authorities must satisfy themselves that one of the grounds applies before discontinuing an investigation or applying to discontinue.

### **When can an investigation be discontinued by the appropriate authority?**

The appropriate authority may discontinue a local investigation into a complaint which did not require to be referred to the IPCC or a local investigation into a conduct or DSI matter.

Paragraph 21, Schedule 3, Police Reform Act 2002

### **When the IPCC's permission needs to be obtained**

The appropriate authority must obtain the IPCC's permission to discontinue an investigation if:

- the investigation it wishes to discontinue is a local investigation into a complaint which required referral to the IPCC; or
- the investigation it wishes to discontinue is being carried out under the supervision or management of the IPCC.

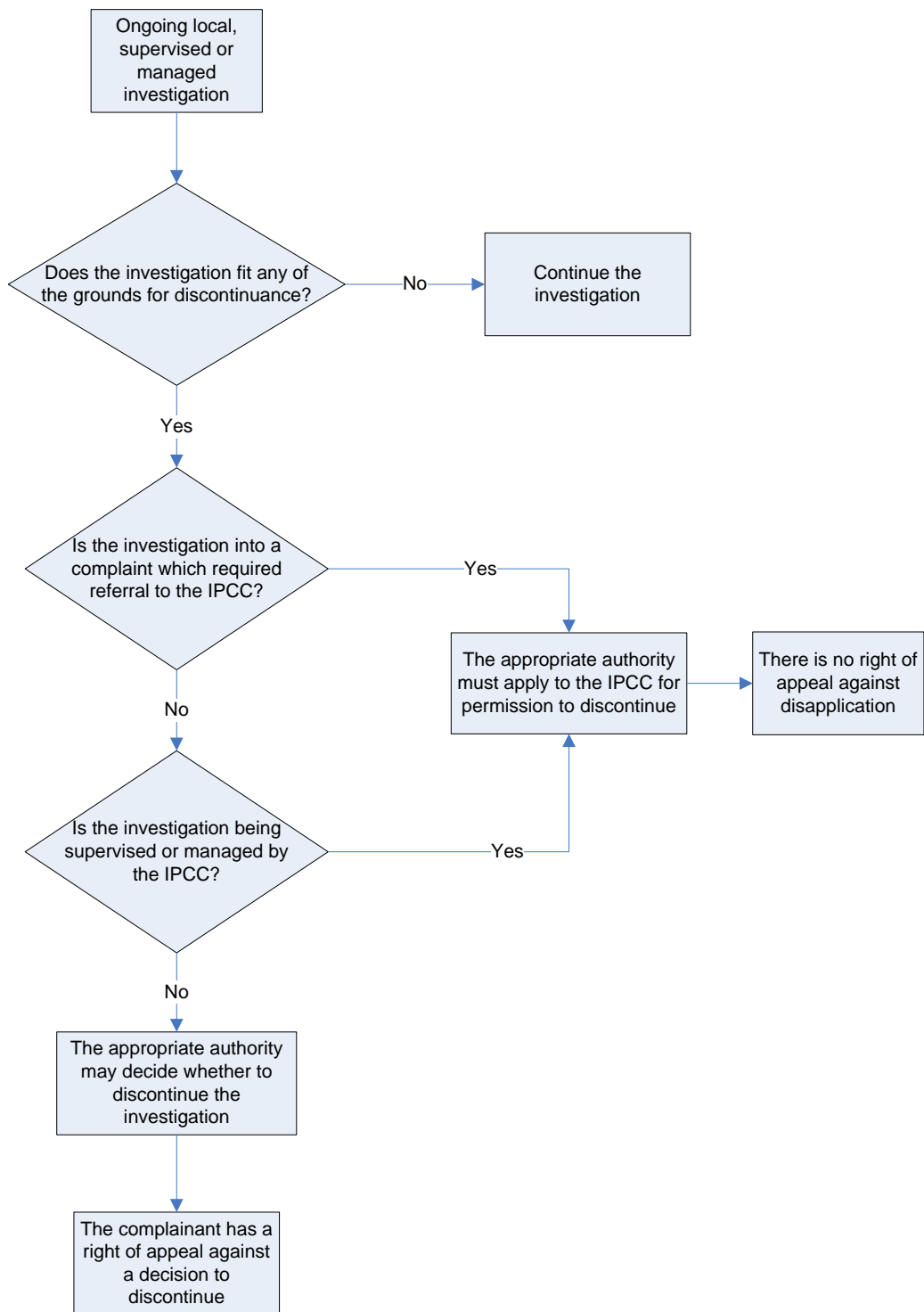
Paragraph 21, Schedule 3, Police Reform Act 2002

- 10.2 The IPCC may decide, in the absence of an application from the appropriate authority, that an investigation should be discontinued (provided that discontinuance is within its power). It may also discontinue an independent investigation.
- 10.3 While an appropriate authority may make an application to the IPCC for permission to discontinue an investigation more than once on the same investigation, a second application should only be made where there is new evidence or information to support the later application which was not available at the time the first application was made.

### **Information to be sent to the IPCC**

Any application by an appropriate authority to the IPCC for permission to discontinue an investigation shall be in writing and shall be accompanied by a copy of the complaint and a memorandum from the appropriate authority containing a summary of the investigation undertaken so far and explaining the reasons for the application to discontinue.

Regulation 10, Police (Complaints and Misconduct) Regulations 2012



## **Requirement to obtain representations from the complainant**

Before discontinuing an investigation or applying to the IPCC for permission to discontinue, the appropriate authority must write to the complainant at his or her last known address inviting him or her to make representations. The letter must state that the complainant has 28 days from the day after the date of the letter to make any representations. Any representations which are made must be taken into account before a final decision to discontinue or make an application to the IPCC is made as they may affect the appropriate authority's decision.

Regulation 10, Police (Complaints and Misconduct) Regulations 2012

- 10.4 The appropriate authority should make reasonable efforts to contact the complainant in order to seek his or her representations.

## **Grounds for discontinuance**

### **The complainant refuses to co-operate to the extent that it is not reasonably practicable to continue the investigation**

- 10.5 Before deciding to discontinue an investigation or applying to the IPCC for permission to discontinue, the appropriate authority must consider whether it is reasonably practicable to continue and conclude the investigation, irrespective of the lack of co-operation from the complainant. If possible, the investigation should be concluded and the complainant advised of the investigation findings, proposed action and right of appeal (if applicable).
- 10.6 Before deciding that this ground applies, the appropriate authority should ensure that:
- reasonable efforts have been made to contact the complainant (i.e. more than one attempt) and to gain their co-operation, using a range of methods, for example, by letter, email or telephone;
  - efforts have been made to work through the complainant's representative (where applicable);
  - practical help has been made available to support a complainant with specific needs.
- 10.7 Where a complainant has provided a statement or a letter of complaint, this ground is unlikely to be appropriate except where further information is necessary to continue the investigation and the complainant refuses to co-operate. The appropriate authority should consider whether, in light of the information already provided, the complainant's refusal to co-operate means that it is not reasonably practicable to complete the investigation.



### **Where the appropriate authority has determined the complaint is suitable for local resolution**

- 10.8 In order to meet this ground, the complaint should pass the suitability test for local resolution set out in paragraphs 5.10 to 5.12. Before making a decision to discontinue an investigation on this ground, or applying to the IPCC for permission to discontinue, the appropriate authority should speak to the complainant about the local resolution process and ascertain his or her views on the complaint being dealt with in that way. This could be done as part of the process of gaining representations or more informally before making a decision whether to discontinue or applying to the IPCC.
- 10.9 If the complaint is one which was referred to the IPCC and a mode of investigation has been determined, the IPCC's approval is needed before a determination can be reached that the complaint is suitable for local resolution. In such cases an application for local resolution and application for discontinuance may be submitted as a combined application to the IPCC.

### **The complaint or matter is vexatious, oppressive or otherwise an abuse of procedures for dealing with complaints, conduct matters or DSI matters**

- 10.10 It is important to note that it is the complaint itself that must be judged vexatious, oppressive or an abuse, not the complainant. Consideration of this ground 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 similar complaints that have been addressed, either directed at the person subject to this complaint or another person.
- 10.11 The investigation may have provided evidence to show that the complaint is vexatious, oppressive or amounts to an abuse which could be used to support a decision to discontinue an investigation or an application to the IPCC to do so.
- 10.12 The appropriate authority should be able to demonstrate with evidence a reasonable belief that the complaint is vexatious, oppressive or an abuse of process before deciding to discontinue or making an application to the IPCC.

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

- 10.13 Any representations from the complainant may explain whether or how the new complaint differs from the original complaint.

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

- 10.14 This ground offers discretion for the appropriate authority to consider why it is not reasonably practicable to proceed with the investigation.

- 10.15 The evidence supporting such an application or decision on this ground must be sufficient to demonstrate that the investigation is no longer reasonably practicable to continue.

## **Notification**

When an application is made to the IPCC for permission to discontinue an investigation, the appropriate authority must send a copy of the application to the complainant on the same day it is sent to the IPCC.

Regulation 10, Police (Complaints and Misconduct) Regulations 2012

When the IPCC decides that an investigation should be discontinued, it must notify the appropriate authority, the complainant (where applicable) and any interested persons.

Where the appropriate authority discontinues an investigation itself where it is not necessary to apply to the IPCC, it must notify the complainant (where applicable) and any interested persons. Where the discontinuance relates to a complaint investigation, the appropriate authority must also advise the complainant of any right of appeal against the decision to discontinue.

Paragraph 21, Schedule 3, Police Reform Act 2002

## **Action to be taken following a discontinuance**

Where the IPCC has given the appropriate authority permission to discontinue an investigation, the IPCC may issue the following directions to the appropriate authority.

- require the appropriate authority to produce an investigation report and to take any subsequent steps under Schedule 3 of the Police Reform Act 2002;
- where the investigation concerned a complaint, require the appropriate authority to disapply the requirements of Schedule 3 of the Police Reform Act 2002;
- where the investigation concerned a complaint which the appropriate authority determined was suitable for local resolution, require the appropriate authority to resolve locally the complaint; or
- direct the appropriate authority to handle the matter in whatever manner (if any) that authority thinks fit.

Regulation 10, Police (Complaints and Misconduct) Regulations 2012

- 10.16 The appropriate authority must comply with any direction given.

Where the appropriate authority discontinues an investigation without the involvement of the IPCC, the appropriate authority may:

- produce an investigation report on the discontinued investigation and take any subsequent steps under Schedule 3 of the Police Reform Act 2002
- where the investigation concerned a complaint, disapply the requirements of Schedule 3 of the Police Reform Act 2002 in relation to that complaint
- locally resolve the complaint
- handle the matter in whatever manner the appropriate authority thinks fit.

Regulation 10, Police (Complaints and Misconduct) Regulations 2012

10.17 Other than complying with any directions given by the IPCC or carrying out any of the actions listed in the box above, the appropriate authority should not take any further action under Schedule 3 of the Police Reform Act 2002 in relation to the complaint or matter.

### **Appeal against the decision to discontinue**

10.18 The complainant has a right of appeal against any decision by the appropriate authority to discontinue an investigation into a complaint (except where the complaint relates to a direction and control matter or where the IPCC's permission is needed to discontinue the investigation). See paragraphs 13.68 to 13.79 for information about appeals against the decision to discontinue.



## Section 11: **CONCLUDING THE INVESTIGATION**

- 11.1 This section deals with the investigation report. It covers:
- what the report should contain
  - how the report should be written
  - the action that an appropriate authority should take once a report has been received.

### **The investigation report**

- 11.2 The investigation report is an important document as it is the primary record of the investigation, the evidence and its conclusions. Subject to the harm test it will usually be sent to the complainant and any interested persons and so needs to be written in clear and unambiguous terms. It may be subject to extensive scrutiny possibly even by a court so it is important that it is factually correct and that the conclusions which are drawn are coherent and based on the evidence gathered in the course of the investigation.

### **Whose report?**

- 11.3 In a local or supervised investigation, the report is written by the investigator appointed by the appropriate authority. The findings and conclusions contained in the report are therefore those of the investigator.
- 11.4 In a supervised investigation the IPCC has to confirm that the terms of reference and any requirements it imposed during the investigation have been met. The appropriate authority should confirm that the IPCC is so satisfied. The IPCC may seek further information, evidence and explanation from the investigator but its role is not to approve the report so it will not endorse the report's findings or recommendations. This is because the IPCC may have subsequently to consider an appeal from a complainant. Appropriate authorities should ensure that the IPCC's limited role in a supervised investigation is not misrepresented to the complainant and / or any interested person.
- 11.5 In a managed investigation, the report is written by the investigator appointed by the appropriate authority. However, the IPCC has direction and control of the investigation and so the investigator should consult the IPCC's managing investigator about the report's findings and conclusions. It must be borne in mind that, in the event of any dispute between the managing investigator and the force investigator, the IPCC's managing investigator may attach an addendum to the report setting out his or her findings and conclusions.

## The content of a report

- 11.6 The investigation report is the main source of information and explanation for the complainant or interested person. The Crown Prosecution Service, appropriate authority and the IPCC may also rely on the report to guide them through the evidence.

At the end of an investigation of a complaint subject to special requirements or a recordable conduct matter into the actions of a police officer or special constable, the investigator's report must:

- i. provide an accurate summary of the evidence
- ii. attach or refer to any relevant documents; and
- iii. indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

Regulation 20, Police (Complaints and Misconduct) Regulations 2012

- 11.7 At the end of an investigation of a complaint which is not subject to special requirements or a DSI matter, the investigator should also produce a report which includes an accurate summary of the evidence and attach or refer to any relevant documents.
- 11.8 The report in any complaint investigation should state whether the complaint should be upheld or not upheld (see paragraphs 11.18 to 11.24 for guidance on upholding).
- 11.9 The report in any DSI matter should address the matters set out in paragraph 11.39.
- 11.10 The IPCC expects all reports to be objective and evidence-based. In addition to the matters above, where they apply, reports should contain only relevant information and:
- explain what the complaint, conduct or DSI matter is about
  - include the terms of reference, if any, for the investigation
  - give a clear account of the evidence gathered
  - show that the investigation has met the objectives set for it in the terms of reference or otherwise
  - provide clearly reasoned conclusions based on the evidence
  - highlight any learning opportunities for either an individual or the organisation, where appropriate, even where no allegation is substantiated
  - be written in plain language free of technical jargon.
- 11.11 A report should provide a clear narrative explanation, based on the facts established, as to what has happened and the context of any conduct by a person to whose conduct the investigation relates. This should ensure that

the complainant or interested person is provided with as full an explanation as possible for what has happened.

- 11.12 If a complaint is upheld, the report must also explain whether, and to what extent, any conduct by the person to whom the investigation related caused or contributed to what happened. This is necessary because a complaint can be upheld even if there is no evidence to show that any misconduct or unsatisfactory performance has taken place. This should also be communicated to the complainant and / or any interested person.

## **Conclusions**

- 11.13 In reaching conclusions, an investigator must apply the civil standard of proof, that is 'the balance of probabilities' - whether it is more likely than not that the conduct alleged did, in fact, take place.
- 11.14 The standard of proof is unaffected by the severity of the allegation. However, in general, the more serious the allegation the greater the cogency of the evidence required to prove that it was more likely than not that the conduct took place. This does not mean that the civil standard of proof is a sliding scale, it is a fixed test.
- 11.15 Where there are conflicting accounts, the investigator should consider whether there are any other factors which make one account more credible than the other. The investigator should consider the conflicting witness evidence in light of any objective facts which can be proved independently of that evidence. This might, for example, include CCTV or documentary evidence.
- 11.16 In the case of an investigation into a complaint not subject to special requirements there will be no decision to make about whether there is a case to answer for misconduct or gross misconduct.
- 11.17 The investigation report (in any investigation) should also include the investigator's opinion whether the performance of the person to whose conduct the investigation relates was satisfactory or unsatisfactory. This should always be included where the performance is found to be unsatisfactory.

### *Upholding a complaint*

- 11.18 A complaint may be about direction and control, the standard of service or the response. It is important to remember that an investigation may conclude that a person's complaint should be upheld not because of the misconduct or a failing of any individual but because, in the circumstances, the force did not meet the standard expected.

- 11.19 An investigation report should indicate whether the complaint, if there is one, should be upheld. The standard of proof when deciding whether a complaint should be upheld is the balance of probabilities. It should also include the reasons for concluding that the person to whose conduct the investigation relates or, where relevant, the force, did not meet the standard expected.
- 11.20 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. In deciding what that standard of service is, the investigator and appropriate authority should apply an objective test: that 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.
- 11.21 A complaint should always be upheld where it is found that there is a case to answer against an officer, or grounds for disciplinary action in the case of a member of police staff, for the conduct complained about.
- 11.22 An investigation into more than one complaint may result in separate complaints being upheld but on different bases.

### The final decision

- 11.23 It is for the appropriate authority (in a local or supervised investigation) or the IPCC (in a managed investigation) to decide whether to uphold a complaint. Complaints may also be upheld as part of determining an appeal from a relevant finding of a local or supervised investigation – see section 13.
- 11.24 Where there is a difference between the conclusion of the investigator and the decision reached by the appropriate authority or the IPCC, the reasons for this should be noted in the rationale for the final decision. The decision(s) of the appropriate authority or the IPCC should, if possible, be communicated to the complainant and any interested person.

### *Recommending a case to answer*

- 11.25 In an investigation of a complaint subject to special requirements or a recordable conduct matter, if no allegations are upheld on the balance of probabilities, the investigator should conclude that there is no case to answer.
- 11.26 If, in an investigation of a complaint subject to special requirements or a recordable conduct matter, one or more allegations are upheld on the balance of probabilities, then the investigator must consider whether there is a case to answer for misconduct or for gross misconduct in respect of these allegations or whether there is no case to answer. Where there is more than one upheld allegation, the investigator may consider whether overall there is



a case to answer for misconduct or gross misconduct in respect of the officer's conduct or no case to answer.

The Police Reform Act 2002 defines misconduct as “a breach of the Standards of Professional Behaviour” and gross misconduct as “a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal.”

Paragraph 29, Schedule 3, Police Reform Act 2002

11.27 The information in the above box should therefore be included in the report.

11.28 The report should explain the reasons supporting the conclusions and why there is a case to answer. There is no requirement to indicate the precise breach of the Standards of Professional Behaviour for which there is a case to answer.

### *Recommendations*

11.29 The investigator may include recommendations in the report about action to be taken as a consequence of any complaint that is upheld. However, it is for the appropriate authority (or the IPCC in a managed or independent investigation), not the investigator, to determine what action should be taken.<sup>15</sup>

### **Criticism**

11.30 No criticism or adverse comment against an individual who is capable of being identified should appear in a report unless that individual has had an opportunity to respond to that criticism or adverse comment. This applies not only to persons serving with the police but to anyone identified in the report. Normally, criticism or adverse comments will be put to the individual during an interview but they can also be drawn to the individual's attention in other ways, such as by serving the notice of investigation on the person subject to investigation or providing a copy of the complaint to the person complained against.

11.31 When drafting the report, if it appears to the investigator that the person criticised or subject to comment has not had an opportunity to respond to it then either:

- i. the criticism or adverse comment should be removed from the report (unless to do so would undermine the findings or adequacy of the explanation); or
- ii. a letter should be sent to the relevant individual informing them of what the criticism is and the facts or evidence which support the criticism. The recipient must then be given a reasonable opportunity to respond to that criticism. The investigator should consider any response and decide

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<sup>15</sup> Paragraph 23 and 24, Schedule 3, Police Reform Act 2002

whether the criticism or adverse comment should be amended or removed from the report. It may also be appropriate to include the response in the report.

## **Who receives the report?**

The report in a local investigation must be submitted to the appropriate authority.

The report in a supervised and managed investigation must be submitted to the IPCC and a copy sent to the appropriate authority.

The report in a DSI investigation must be submitted to the IPCC and a copy sent to the appropriate authority.

Paragraphs 22 and 24A, Schedule 3, Police Reform Act 2002

## **What does the IPCC expect the appropriate authority to do with the report?**

### *Local and supervised investigations*

When it receives a report after a local or supervised investigation into a complaint or conduct matter, the appropriate authority must determine whether the report should be referred to the Director of Public Prosecutions (CPS) (see paragraphs 12.36 to 12.38).

In addition, the appropriate authority must determine:

- i. whether or not any person to whose conduct the investigation related has a case to answer in respect of misconduct, gross misconduct or no case to answer
- ii. whether or not any such person's performance is unsatisfactory
- iii. what action, if any, the authority will take in respect of the matters dealt with in the report; and
- iv. what other action (if any) the authority will take in respect of those matters.

Paragraph 24, Schedule 3, Police Reform Act 2002

11.32 These decisions are for the appropriate authority, not the investigator.

Once it has made these decisions, and subject to the harm test, the appropriate authority must notify the complainant (where there is one) and any interested person of:

- i. the findings of the report
- ii. its determinations; and
- iii. the complainant's right of appeal.

Paragraph 24, Schedule 3, Police Reform Act 2002

- 11.33 Appropriate authorities should ensure that a complainant or interested person receives a clear explanation of what has happened based on the facts established in the investigation. In most cases the investigation report will be sent to the complainant and any interested person unless there is a reason under the harm test not to do so.

### **Managed and independent investigations**

In a managed or independent investigation, the IPCC will determine whether to notify the CPS and send it a copy of the report. A copy of the report will be sent to the appropriate authority and the IPCC will notify the appropriate authority that it must determine:

- i. whether any person to whose conduct the investigation related has a case to answer in respect of misconduct, gross misconduct or has no case to answer
- ii. whether or not any such person's performance is unsatisfactory
- iii. what action, if any, the authority will take in respect of the matters dealt with in the report; and
- iv. what other action (if any) the authority will take in respect of those matters.

The appropriate authority must make those determinations and submit a memorandum to the IPCC setting out:

- i. its determinations
- ii. its reasons if it decides not to bring any disciplinary proceedings against that person.

Paragraph 23, Schedule 3, Police Reform Act 2002

- 11.34 The IPCC expects the appropriate authority's memorandum as soon as practicable having made its determinations and in any event, within 15 working days of the request. Its determinations should be clear and well reasoned so that the IPCC can consider the memorandum and decide whether to make recommendations. The IPCC may seek further information from the appropriate authority when considering the memorandum.
- 11.35 When it receives the memorandum, the IPCC will decide whether to accept the appropriate authority's determinations and whether to make any recommendations or directions under paragraph 27, Schedule 3 of the Police Reform Act 2002.

The IPCC may make a recommendation that:

- i. a person serving with the police has a case to answer for misconduct or gross misconduct or no case to answer
- ii. the person's performance is unsatisfactory or not
- iii. disciplinary proceedings of a form specified are brought against the person in respect of his or her conduct, efficiency or effectiveness; and/or
- iv. disciplinary proceedings are modified so as to deal with specified aspects of that person's conduct, efficiency or effectiveness.

If the appropriate authority does not take steps to give full effect to the IPCC's recommendation, then the IPCC may direct the appropriate authority to take such steps . The appropriate authority must comply with the IPCC's direction.

Paragraph 27, Schedule 3, Police Reform Act 2002

11.36 The IPCC will require confirmation from the appropriate authority of the steps that have been taken to give effect to the recommendation or direction.

The appropriate authority is under a duty to ensure that any disciplinary proceedings brought in accordance with an IPCC recommendation or direction are brought to a proper conclusion.

Paragraph 27, Schedule 3, Police Reform Act 2002

## **Death or serious injury (DSI) investigation outcomes**

11.37 The outcomes of a DSI investigation will reflect the fact that it is not an inquiry into any criminal, conduct or complaint allegation against any person serving with the police.

11.38 The purpose of a DSI investigation is to establish facts, the sequence 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.

At the end of a DSI investigation, the investigator must submit a report to the IPCC and send a copy to the appropriate authority. The IPCC must determine whether the report indicates that a person serving with the police may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings. If the IPCC decides that it does, it will notify the appropriate authority. The appropriate authority must then record the matter as a conduct matter and consider whether it should be referred to the IPCC. Subject to any decision by the IPCC to re-determine the form of the investigation, the investigator of the DSI matter must investigate the conduct matter.

Where there is no such indication, the IPCC may make recommendations or give advice under section 10(1) (e) of the Police Reform Act 2002 as it considers necessary or desirable.

Paragraphs 24A - 24C, Schedule 3, Police Reform Act 2002

11.39 The appropriate authority must respond to those recommendations indicating where it accepts them and where it does not, what action it will take as a result and its rationale for those decisions. The IPCC may also wish to follow up whether and how these changes have been implemented.

## **Publication**

11.40 The IPCC is responsible for publishing investigation reports in managed and independent investigations. Chief officers should consider whether it would enhance public confidence if they also published reports into local and supervised investigations. Publication may require some redaction.



## Section 12: ACTION AFTER THE INVESTIGATION

- 12.1 This section deals with the range of actions that may follow receipt of an investigation report. These include conduct outcomes, unsatisfactory performance procedures, and criminal and inquest proceedings. The section also covers other actions which may flow from the report's conclusions such as apologising and identifying learning.
- 12.2 Section 12 sets out what the IPCC expects an appropriate authority to do after it receives a report. The detail of the action to be taken will vary depending on whether the investigation was a local or supervised investigation.

### Communication with the complainant and interested persons after the conclusion of the investigation

In local and supervised investigations it is the appropriate authority's responsibility to communicate and explain the reasons for its decisions about its determinations and action it will take following receipt of the final report.

For independent and managed investigations, the IPCC must explain its decisions and reasons for its determinations about the action to be taken in respect of the matters dealt with in the report.

As already outlined in 11.32 to 11.33 onwards, after a local or supervised investigation, the appropriate authority must notify the complainant and/or any interested person of:

- i. the findings of the report
- ii. its own determinations; and
- iii. the complainant's right of appeal.

The information to be provided to the complainant and any interested person will be subject to the harm test.

Paragraph 23 and 24, Schedule 3, Police Reform Act 2002

- 12.3 The appropriate authority should ensure that a complainant and any interested person receives a clear explanation of what has happened based on the facts established in the investigation. In most cases the investigation report will be sent to the complainant and any interested person unless there is a reason under the harm test not to do so.
- 12.4 Appropriate authorities should take into account any further guidance issued by the IPCC concerning disclosure of information. They may discharge their

duty to inform complainants and interested persons of the findings of the investigation by sending them a copy of the investigation report.<sup>16</sup>

- 12.5 The IPCC believes that communication with complainants and interested persons should be based on a presumption of openness. Making the investigation report available to the complainant and/or interested person is the most transparent way of showing what the investigation has found. It should usually be provided to the complainant and any interested person, subject to the harm test<sup>17</sup> and any necessary redactions. In some circumstances, where there is a difference between the recommendation made by the investigator and the decision reached by the appropriate authority, it will be necessary to provide the investigation report together with the final decision and rationale for it.
- 12.6 Complainants, interested persons and their representatives sometimes ask for additional disclosure such as copies of statements or documentation collected during the investigation. The IPCC considers that disclosure of material generated by a complaint investigation should occur through the appropriate disclosure gateway (i.e. the Police Reform Act 2002; disclosure to other public bodies; disclosure for the purposes of civil proceedings; disclosure under the Freedom of Information Act 2000 or the Data Protection Act 1998). All this means is that the complainant, interested persons and their representatives should make it clear on what basis they are asking for this additional disclosure so that the appropriate authority can apply the relevant legal basis for disclosing it.
- 12.7 If, for example, a complainant, interested person or their representative wants to understand the report better, the request should be made and considered under the PRA gateway. The disclosure should then be aimed at providing the complainant with a better understanding of the findings of the investigation. The presumption of openness applies in favour of disclosure subject to the harm test, with appropriate redaction being made where necessary and providing disclosure does not incur unreasonable expense. Any non-disclosure must be necessary because there is a real risk of the disclosure causing a significant adverse effect. The risk must be real which is to be assessed on a case by case basis. Therefore, appropriate authorities should not adopt a blanket approach when considering whether disclosure should be made in any given case.
- 12.8 The IPCC believes that it would be disproportionate for disclosure to take place which burdens the investigating authorities with unreasonable expense and this is recognised by regulation.<sup>18</sup> It would reduce the time available for investigators to conduct other investigations thus having a negative impact on those other investigations. Where an appropriate authority decides that

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<sup>16</sup> Paragraph 24, Schedule 3, Police Reform Act 2002

<sup>17</sup> Paragraph 24, Schedule 3, Police Reform Act 2002 and Regulation 13, Police (Complaints & Misconduct) Regulations 2012.

<sup>18</sup> Regulation 13, Police (Complaints and Misconduct) Regulations 2012



disclosing documentation to the complainant, interested person or their representative would incur unreasonable expense, it should consider whether some disclosure could be made which is not unreasonably expensive or whether it is possible to satisfy the request by some other means, for example by inviting the complainant, interested person or their representative to inspect the documents sought. However, where disclosure of underlying evidence can take place in accordance with the harm test and without incurring unnecessary expense, the IPCC considers that the disclosure should take place.

- 12.9 The names of persons serving with the police who play a significant role in the matters under investigation should not normally be redacted. They may, however, be redacted if there is good reason under the harm test; for example, if their names have to be kept secret for operational reasons, such as, for example, surveillance officers. When interviewed or asked to give any form of account, persons serving with the police should raise with the investigator any reasons there may be for keeping their names confidential. Pseudonyms may be used where there are good reasons for keeping the person's identity confidential, but their real names and relevant pseudonyms must be recorded elsewhere. Where an inquest has been opened, the coroner should be consulted about the identification of such individuals in the report and in the inquest.

## **Apologies**

- 12.10 The IPCC expects appropriate authorities to apologise where a complaint is upheld. A sincere and timely apology can have a significant effect and also demonstrate a willingness to learn after something has gone wrong.
- 12.11 Careful consideration should be given to the timing of any apology. The earlier it is delivered, the more positive the outcome is likely to be. Delaying delivering an apology can diminish its value when it is finally received. If it becomes apparent that an apology is appropriate before the end of an investigation, it is not necessary to wait until the investigation is complete before issuing an apology.
- 12.12 Consideration also needs to be given to the most appropriate person to deliver an apology. 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 person's death or serious injury. In other cases, if the apology relates to an organisational failing rather than that of an individual, a manager or supervisor should deliver the apology.
- 12.13 If the complaint is upheld because of the behaviour of a person serving with the police and he or she is willing to apologise, appropriate authorities should facilitate this and support the individual concerned in making the apology. Alternatively, it may be appropriate for a manager or supervisor to convey a personal apology on the person's behalf, if he or she is unable to meet or speak to the complainant.

- 12.14 Appropriate authorities should also consider whether it would be appropriate to apologise to any interested person in respect of any recordable conduct or death or serious injury (DSI) matters.

## **Outcomes for individuals**

- 12.15 This guidance briefly describes conduct outcomes for police officers and police staff following investigation under the Police Reform Act 2002.

Subject to any IPCC recommendation, which the appropriate authority accepted, or a direction made under paragraph 27, Schedule 3 of the Police Reform Act 2002, if following receipt of the investigation report, the appropriate authority determines (either in the case of police officers or special constables) that there is no case to answer in respect of either misconduct or gross misconduct, the only outcomes that are available are:

- i. no further disciplinary action under the Police (Conduct) Regulations 2012
- ii. management action; or
- iii. for the matter to be dealt with under the Police (Performance) Regulations 2012.

If the appropriate authority concludes that there *is* a case to answer for misconduct then either management action or misconduct proceedings may follow. Those proceedings will be a misconduct meeting, unless the officer or special constable has:

- i. a final written warning in force at the date of the severity assessment made in relation to the conduct; or
- ii. been reduced in rank under the Police (Conduct) Regulations 2004 less than 18 months before the severity assessment made in relation to the conduct. In such cases, the misconduct proceedings will be a misconduct hearing.

If the appropriate authority concludes there is a case to answer for gross misconduct, this may only be heard at a misconduct hearing.

Regulation 19, Police (Conduct) Regulations 2012

- 12.16 It may be relevant to look at an officer or special constable's history when deciding the most appropriate course of action. This is consistent with the expectation that officers and special constables should learn from mistakes.
- 12.17 In the case of members of police staff and contracted-out staff, the possible outcomes will depend on their contract of employment and the disciplinary and capability procedures and policies that apply.

## **Allegations involving discrimination**

- 12.18 Proven discriminatory words or acts should be dealt with at the more serious end of the spectrum in terms of disciplinary action, and in many cases it will be entirely appropriate that a person serving with the police should face disciplinary proceedings for complaints of discriminatory behaviour.

However, 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. There may also be circumstances where a person serving with the police has acted with evident integrity but the outcome was unfair to the complainant or interested person. In any case, the outcome should be based on the evidence, take account of the attitude of the person who is the subject of an investigation and the effect on the person discriminated against.

- 12.19 Where a person's attitude seems to reflect a similar negative attitude within the team or department, the appropriate authority also has a responsibility to consider whether any action is required to address these issues.
- 12.20 Close supervision may be needed for a person serving with the police who has behaved, for example, with a lack of courtesy. In this case it is important that the supervisor knows how the person's behaviour can be managed. Any decision regarding supervision should be made with the explicit agreement of the supervisor.

### **Special case procedures**

- 12.21 'Special case' procedures<sup>19</sup> provide a fast track misconduct procedure. They can only be used if the appropriate authority certifies the case as a special case or the IPCC recommends or directs such certification. Special case procedures can only take place in relation to an investigation of a complaint or recordable conduct matter before the completion of the investigation.
- 12.22 A special case is:
- one where there is sufficient evidence in the form of written statements or other documents to prove, on the balance of probabilities, that the conduct to which the investigation relates constitutes gross misconduct; and
  - that it is in the public interest for that police officer or special constable to cease to be a member of a police force or be a special constable without delay.<sup>20</sup>
- 12.23 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.
- 12.24 In a managed investigation, the investigator should consult with the IPCC's managing investigator before submitting any statement or report in a special case.

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<sup>19</sup> Paragraphs 20A-20H Schedule 3, Police Reform Act 2002

<sup>20</sup> Paragraph 20A, Schedule 3, Police Reform Act 2002

## **Unsatisfactory performance procedures (UPP)**

- 12.25 Action under the unsatisfactory performance procedures may also be an outcome of an investigation under the Police Reform Act either because the appropriate authority has made a decision that UPP is appropriate or because the IPCC has recommended or directed UPP.
- 12.26 In addition, investigating a complaint may bring to light underlying issues which may not have led directly to the complaint but still need to be dealt with. In many circumstances, these will be issues which can be dealt with through UPP.
- 12.27 The fundamental purpose of UPP is to improve performance. The use of UPP, where appropriate, is to improve the performance of an individual, the overall performance of the force, to respond to complaints, and to improve public confidence. The use of UPP also encourages individuals and managers to take responsibility for unsatisfactory behaviour.
- 12.28 The Police (Performance) Regulations 2012 apply to police officers (of the rank of chief superintendent or below) and special constables.
- 12.29 Unsatisfactory performance or attendance is quite different from misconduct and gross misconduct. Misconduct and gross misconduct involve a breach of the Standards of Professional Behaviour<sup>21</sup> whereas unsatisfactory performance or attendance concerns the officer or special constable's ability or failure to perform their role to a satisfactory level. His or her performance may be unsatisfactory but not breach the Standards of Professional Behaviour.
- 12.30 If the appropriate authority determines that there is a case to answer for misconduct or gross misconduct, then the case should not be dealt with under the Police (Performance) Regulations 2012.
- 12.31 It can be hard to distinguish precisely between unsatisfactory performance and misconduct. However, the following principles should be taken into account:
- a deliberate failure to perform the duties of a police officer or special constable satisfactorily would not normally be unsatisfactory performance
  - a failure to perform the role satisfactorily through lack of competence or capability on the officer or special constable's part, should generally be dealt with as unsatisfactory performance
  - unsatisfactory performance may be more readily identified by a pattern of behaviour, rather than a single incident (although a single incident may suffice).

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<sup>21</sup> Regulation 3, Police (Conduct) Regulations 2012

- 12.32 When reaching conclusions following any investigation, the appropriate authority should always consider whether it would be appropriate to use unsatisfactory performance proceedings to deal with failings by individuals.
- 12.33 When a decision is made to deal with the matter under the Police (Performance) Regulations 2012 or the Police (Conduct) Regulations 2012, the person making the determination should keep a clear record of the decision made and its rationale.
- 12.34 The Police (Performance) Regulations 2012 do not apply to senior officers, members of police staff, or contracted out staff. In the case of members of police staff or contracted out staff, the relevant contract of employment and their relevant disciplinary and capability procedures and policies apply.

### Public hearings

The IPCC may direct that the whole or part of a third stage meeting which has not been preceded by a first or second stage meeting (in the case of unsatisfactory performance) or a misconduct hearing (not a special case hearing) be held in public. This power to direct arises where the IPCC has conducted an independent investigation and it considers that, because of the gravity of the case or other exceptional circumstances, it would be in the public interest to so direct.

Police (Performance) Regulations 2012 and Regulation 31, Police (Conduct) Regulations 2012

- 12.35 Depending on the circumstances of the case, the IPCC may consult with other parties such as the CPS.
- 12.36 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 or interested person, if any, other members of the public, and representatives of the media. It should also consult the IPCC 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 appropriate authority.

### Communication of outcomes

An appropriate authority must inform the IPCC, the complainant and any interested person of the outcome of disciplinary proceedings, including the fact and outcome of any appeal, in respect of any matters dealt with in a report submitted under paragraph 22, Schedule 3 of the Police Reform Act 2002.

Regulation 12, Police (Complaints and Misconduct) Regulations 2012

## **Criminal proceedings**

If a report indicates a criminal offence may have been committed and the IPCC (for managed and independent investigations) or the appropriate authority (for local and supervised ones) considers it to be appropriate for the matters dealt with in the report to be considered by the CPS or they fall within a prescribed category, the report must be referred to the CPS.

Paragraph 23 and 24, Schedule 3, Police Reform Act 2002

- 12.37 The reason(s) for a decision not to refer to the CPS should be clearly documented.
- 12.38 In a local or supervised investigation, the complainant will have a right of appeal in respect of the appropriate authority's decision not to send the report to the CPS. There is no right of appeal in relation to a complaint relating to a direction and control matter.
- 12.39 Given that the information for summary criminal offences must be laid within six months of the date of their alleged commission,<sup>22</sup> the appropriate authority should ensure that any determination or notification it makes is done in time to avoid the offence being time barred.
- 12.40 In a managed or independent investigation, it is for the IPCC to make the determinations whether a report should be referred to the CPS.<sup>23</sup>
- 12.41 Where a case is referred to the CPS, the person referring the matter should ensure that the CPS is given relevant information to enable him or her to initiate effective liaison with the complainant and/or interested person.
- 12.42 Appropriate authorities and investigators should ensure a good working relationship with the CPS. In the event of any doubt about their roles and responsibilities, the investigator should consult with the CPS. In managed cases, the IPCC's managing investigator must be involved in the liaison between the CPS and the investigator for the purpose of any criminal proceedings.
- 12.43 If a local or supervised investigation results in a person serving with the police being charged with a criminal offence, then the appropriate authority is responsible for informing the complainant or interested person of the outcome(s) of those criminal proceedings. In the case of a managed or independent investigation, the IPCC will be responsible for providing this information.

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<sup>22</sup> Section 127, Magistrates' Courts Act 1980

<sup>23</sup> Paragraph 23, Schedule 3, Police Reform Act 2002



## Learning lessons

- 12.44 Investigations can provide valuable feedback about the service provided by the police and are an important source of learning to help forces improve the service they offer. Many investigations will reveal significant learning outcomes for local and/or national policing.
- 12.45 The IPCC expects appropriate authorities to consider whether there is any learning to be derived from each investigation. The IPCC and the police service have developed standard terms of reference to capture learning from investigations. These should be used in managed and supervised investigations. The IPCC also expects appropriate authorities to adopt the same or a similar approach in local investigations. They should develop standard terms of reference or other operating procedures to encourage consistent and regular reporting of learning from investigations. These should include mechanisms for rapid reporting of learning to senior managers in the force or beyond before an investigation has been completed and a final report prepared.
- 12.46 Where relevant learning has been identified, whether for the organisation and its management or for national police bodies, investigators should produce information that can be publicised to the local police service and, where appropriate, reported through ACPO to the IPCC for possible inclusion in its Learning the Lessons bulletin. The IPCC encourages appropriate authorities to extend this approach to learning that goes towards the duty to promote equality of opportunity and eliminate unlawful discrimination.
- 12.47 It may be appropriate to consider drafting a separate “learning report” or alternatively a separate part of the investigation report. The reason for this separation is to facilitate wider dissemination and learning as it may not be appropriate to share the full facts of the investigation widely.
- 12.48 In managed investigations, the IPCC requires investigators to use a template. This includes:
- an overview of the key facts found and their context
  - the conclusions and corresponding recommendations and suggestions for the local force or national policing organisations
  - actions taken to implement those recommendations that are agreed.
- 12.49 Appropriate authorities should have regard to practice advice issued by the IPCC on the completion of a learning report.<sup>24</sup> The report’s size and scope will depend on the nature of the investigation, its complexity and the specific lessons found.
- 12.50 It is important that what is in fact an individual’s misconduct or unsatisfactory performance is not unduly attributed to organisational failings. It is equally important that an individual is not blamed for organisational failings. However,

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<sup>24</sup> Practice advice is available on the IPCC website – [www.ipcc.gov.uk](http://www.ipcc.gov.uk)

learning and misconduct or unsatisfactory performance are not always mutually exclusive. A person serving with the police might reasonably have been expected to act differently without, for example, being given specific training.

- 12.51 Where an investigation uncovers both organisational learning and misconduct or unsatisfactory performance, it is important to explain, in the section of the investigation report that deals with any misconduct or unsatisfactory performance, why those organisational failings do not affect the conduct. If this is not done, the organisational failings may be used as a defence in any misconduct or unsatisfactory performance proceedings.
- 12.52 In managed investigations, the IPCC will ensure that recommendations which affect national policing policy or legislation are consistent with its own policy and previous recommendations. Procedures have been agreed to ensure consultation with, and the approval of, the IPCC to achieve this. Appropriate authorities should adopt similar approaches in local and supervised investigations to encourage consistency within the relevant police force.

### **Implementing recommendations**

- 12.53 The IPCC may ask an appropriate authority what action it intends to take in respect of (among other things) any learning recommendations made at the conclusion of an investigation. The appropriate authority should respond to the IPCC accordingly with an action plan as soon as reasonably practicable and, in any event, within 28 days of the request.
- 12.54 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 may have further comment on the proposed action plan and appropriate authorities should have regard to them before implementing any changes. The IPCC may also wish to follow up whether and how these changes have been implemented.
- 12.55 The IPCC expects practice in supervised and local investigations to mirror the arrangements in managed investigations, with an action plan setting out the actions to be taken. Following a supervised or local investigation of a complaint, the appropriate authority should consider sending this to the complainant and any interested person. In a supervised investigation it may decide to copy the plan to the IPCC for its information. Appropriate authorities should also consider providing a copy to the person or persons to whose conduct the investigation related.

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

- 12.56 Many professional standards departments report the learning from investigations to their respective forces in a regular bulletin or e-communication, particularly following complaints. The IPCC encourages chief



officers and local policing bodies to consider ways in which learning from investigations can be regularly reported to those who would benefit.

- 12.57 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 operational managers and supervisors to be aware of so that they can reduce or avoid them. Examples of good practice identified by the investigation may also merit consideration by the police service as a whole.
- 12.58 Investigators in supervised and local investigations should consider whether it would be appropriate to share a learning report with the police service nationally so that it can be considered for wider dissemination through the IPCC's Learning the Lessons bulletins.

## **Inquest proceedings**

- 12.59 Where an investigation is carried out in relation to a death of a person and an inquest is likely or has already been opened, this may delay any disciplinary proceedings until after the conclusion of the inquest. Delay is not a necessary consequence of the fact that there is an inquest and appropriate authorities should consider whether it is possible to conclude the disciplinary proceedings since this is likely to be in the interests of all those involved.
- 12.60 In most cases, an investigation will be completed before the inquest is held. If this is so, then the appropriate authority must make its determinations in respect of the final report as soon as practicable after receiving it. Furthermore, the appropriate authority should conclude any resulting misconduct proceedings or UPP resulting from that determination in accordance with the timescales prescribed in the relevant regulations. If proceedings occur before the inquest takes place, the coroner should be informed of the date for any meeting or hearing and its result unless there are good reasons not to provide this information.
- 12.61 Where an inquest follows a managed investigation into the circumstances of the death, lead responsibility for liaison with the coroner rests with the IPCC. Given that the police produce the final report under IPCC guidance, it may be more appropriate for a member of the police force to attend court should the coroner require someone to attend the hearing to assist with statements, documents and other evidence, or to give evidence about the investigation.
- 12.62 Where an inquest follows a local or supervised investigation into the circumstances of the death, lead responsibility for liaison with the coroner rests with the investigator.



## Section 13: **APPEALS**

13.1 This section explains the different rights of appeal that exist for a complainant and sets out the legislative framework. From 22nd November 2012, the responsibility for determining appeals is shared between the IPCC and the chief officer. This section provides guidance on how an appeal to the chief officer should be dealt with.

### **Principles of appeal handling**

13.2 An appeal offers a final opportunity to consider whether the complaint could have been handled better at a local level and where appropriate to put things right. If a complainant is still dissatisfied after an appeal he or she may seek to challenge the appropriate authority's decision through judicial review.

13.3 An appeal should be dealt with in good faith, fairly and in a timely manner.

13.4 Appeals should be handled consistently and proportionately.

13.5 Consideration of an appeal must involve a fresh consideration of the case. Although it is not a re-investigation it should not merely be a 'quality check' of what has happened before.

13.6 An appeal must be given impartial consideration. There needs to be clear separation between the original decision-maker and the person who decides the appeal.

13.7 The complainant's appeal contains their representations which must be given due consideration.

13.8 The person who made the decision which is being appealed should be allowed the opportunity to comment on the appeal so that this can be taken into account when determining it.

13.9 The right of appeal allows the complainant to challenge a decision or outcome. If the appeal is upheld, relevant action must be taken by the appropriate authority.

13.10 The complainant and, where applicable, the person complained about should be provided with a clear explanation of the outcome of the appeal and the reason for any decision made.

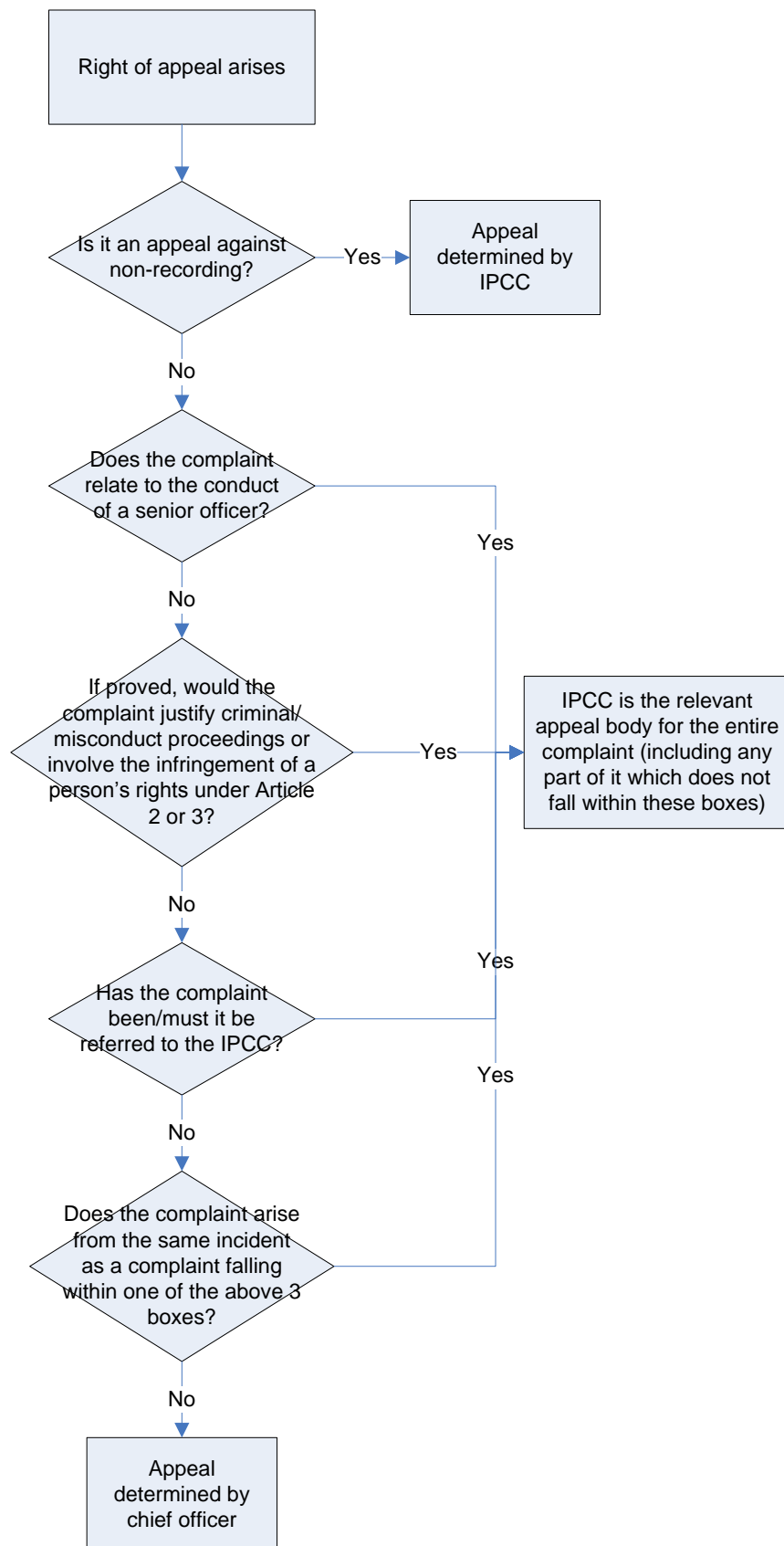
## Who considers the appeal?

The Police Reform Act 2002 provides a right of appeal in respect of certain decisions and outcomes made in relation to a complaint. These are:

- i. a decision not to record a complaint or not to notify the correct appropriate authority (or a failure to make a determination whether it is the appropriate authority or decide to record or notify)
- ii. a decision to disapply the requirements of Schedule 3 of the Police Reform Act 2002 in relation to a complaint
- iii. the outcome of the local resolution of a complaint
- iv. the outcome of a complaint handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002
- v. a decision to discontinue the investigation of a complaint; and
- vi. certain determinations and outcomes relating to a local or supervised investigation into a complaint.

Paragraphs 3, 7, 8A, 21 and 25, Schedule 3, Police Reform Act 2002

- 13.11 When informing the complainant of a decision which carries a right of appeal, the local policing body or the chief officer must also inform the complainant who will consider that appeal.
- 13.12 Depending on the circumstances of the complaint, an appeal will be considered by either the chief officer of the relevant appropriate authority or the IPCC.



- 13.13 When determining who should consider the appeal, the local policing body or the chief officer should ask the following questions:
- i. is it an appeal about a failure to determine if it is the appropriate authority or to record or notify a complaint?
  - ii. is the complaint which is the subject of the appeal about the conduct of a senior officer (an officer holding a rank above chief superintendent)?
  - iii. if proved, would the conduct as described in the complaint either justify criminal or misconduct proceedings or involve the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights?
  - iv. has the complaint which is the subject of the appeal been referred to the IPCC or must it be referred?
  - v. does the complaint arise from the same incident as a complaint falling within sub-paragraphs i-iv above?
  - vi. does part of the complaint which is the subject of the appeal fall within any of the sub-paragraphs outlined in ii-iv above?
- 13.14 If the answer to all of these questions is no, the right of appeal is to the chief officer.
- 13.15 If the answer to any of these questions is yes, the right of appeal is to the IPCC.
- 13.16 The test listed at 13.13 iii above must be applied to the substance of the complaint, not applied with hindsight after the complaint has been dealt with. It means that if the appropriate authority cannot satisfy itself from the complaint as presented that the conduct complained about, if proved, would not lead to criminal or misconduct proceedings against a person serving with the police or infringe Article 2 or 3 of the European Convention on Human Rights, any appeal in relation to that complaint must be dealt with by the IPCC regardless of how the complaint has been dealt with or any findings in relation to the complaint.
- 13.17 When considering whether a complaint arises from the same incident as another complaint, appropriate authorities should consider whether the complaints arise from the same time, place and involve the same or substantially similar persons serving with the police. A number of separate complaints which are otherwise unconnected but arise from the same large scale event should not be considered as having arisen from the same incident.

### **Appeals to the chief officer**

- 13.18 Assigning the responsibility for some appeals to chief officers is designed to ensure that more complaints are dealt with, and thus resolved, locally. However, chief officers will need to be mindful of the importance of public confidence in the complaints system and should ensure that any arrangements they put in place to determine appeals allow objective decision making.

- 13.19 As this section is focusing on the role of the chief officer in determining appeals, references to ‘chief officer’ are to the chief officer as the relevant appeal body, unless otherwise specified.

### **Delegation of the consideration of appeals**

Where the chief officer is the relevant appeal body he or she may delegate his or her responsibilities in relation to appeals to the following officer or police staff member who is of at least a similar level of seniority):

- i. if the complaint is about the conduct of a senior officer, to a senior officer; and
- ii a police officer of at least the rank of chief inspector in any other case.

The chief officer may not delegate these responsibilities to a person whose involvement in that role could reasonably give rise to a concern as to whether he or she could act impartially, whether because that person has acted as the investigating officer in the case or attempted to resolve the complaint by way of local resolution or otherwise.

Regulation 33, Police (Complaints and Misconduct) Regulations 2012

- 13.20 The IPCC considers that chief officers should not delegate the consideration of an appeal to the following:
- i. anyone who was involved in the local resolution of the complaint or the investigation process (either carrying out tasks, advising on the case or making the final decision) which is subject to appeal
  - ii. anyone involved in the decision to disapply or discontinue which is subject to appeal
  - iii. anyone overseeing or supervising the decision which is subject to appeal (this means involvement in the decision itself rather than having a general supervisory role over the person making the decision)
  - iv. the person in whose name the notification of the decision subject to appeal was sent as this could lead the complainant to believe that both the original decision and the appeal decision have been made by the same person
  - v. anyone of a lower rank than the person who made the decision subject to appeal (or equivalent for police staff)
  - vi. anyone who has a personal connection to the person serving with the police or incident subject of the complaint or is that person’s immediate line manager.
- 13.21 In many circumstances, the type of case which will come to the chief officer on appeal will have been dealt with by local management. Therefore, consideration of the appeal by the professional standards department (PSD) will provide sufficient distance for an objective review. Where an appeal relates to actions taken by the PSD, the chief officer should consider carefully whether another member of the PSD will be viewed as being capable of carrying out an objective review or whether the appeal should be considered by a person from another department. This may mean that in some forces, more complaints will need to be dealt with initially by local management to allow for a two-stage process.

- 13.22 The fundamental consideration for the chief officer when deciding to delegate his or her power to consider appeals is whether the person to whom he or she proposes to delegate is a person whose involvement in the role could reasonably give rise to a concern about whether he or she could act impartially. This is an objective test. The chief officer should consider whether a reasonable person could have concerns about whether the person deciding the appeal could act impartially. If the answer to that question is yes, then someone else should be appointed to determine the appeal.
- 13.23 The IPCC considers it good practice to tell the complainant who has considered the appeal and why he or she is an appropriate person to do so. In some circumstances this may reassure the complainant. It is important for public confidence that the complainant feels his or her appeal has been given full consideration by an appropriate person.
- 13.24 In order to assist in maintaining confidence in the appeals process, chief officers should develop an internal process for quality checking the handling of appeals and ensuring they are dealt with appropriately.
- 13.25 Chief officers should also develop and disseminate a scheme of delegation to ensure that the right people at the right levels and with the right training are allocated as decision makers. In the interests of accountability and transparency, it is good practice to make the scheme of delegation available on the force website.

### **Notification and receipt of appeals**

Where a chief officer (or a local policing body) notifies the complainant of a decision which carries a right of appeal, he or she must notify the complainant in writing of:

- i. the existence of the right of appeal
- ii. the body to whom the appeal should be made
- iii. where the relevant appeal body is the IPCC, the reason why
- iv. that there is no right of appeal to the IPCC, where the chief officer is the relevant appeal body; and
- v. the time limit for making the appeal.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012

- 13.26 It is important that the right appeal body is identified and clearly communicated to the complainant in order to avoid appeals being made to the incorrect appeal body creating delay and unnecessary administrative work for the complainant, appropriate authorities and the IPCC. Appropriate authorities should be in a position to respond quickly and fully to any enquiries from the IPCC where there is any uncertainty as to whether the correct relevant appeal body has been identified.



If an appropriate authority receives an appeal which should be considered by the IPCC, the appeal must be forwarded to the IPCC and the complainant notified that the appeal has been forwarded and that the IPCC is the relevant appeal body. The appeal will be taken to have been made when it is forwarded.

Paragraph 32, Schedule 3, Police Reform Act 2002

13.27 It is important that the appeal is forwarded as soon as reasonably practicable. In order to aid timeliness this should be done, where possible, by email or fax.

13.28 When an appeal is received, unless it can be immediately identified as not being a valid appeal, a letter acknowledging receipt of the appeal must be sent to the complainant. This should inform the complainant when they can expect to hear about their appeal and what they can expect to happen. It should also give the complainant a point of contact should he or she have any queries.

## **Appeals to the IPCC**

13.29 When the IPCC receives an appeal for which it is the relevant appeal body it will notify the local policing body or chief officer concerned of the appeal. Once notified that an appeal has been made, the local policing body or the chief officer should not take any action that would prejudice the appeal or any action that may be taken as a result.

The IPCC may request any information which it considers necessary to deal with an appeal from any person. Any information requested by the IPCC for this purpose must be supplied.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012

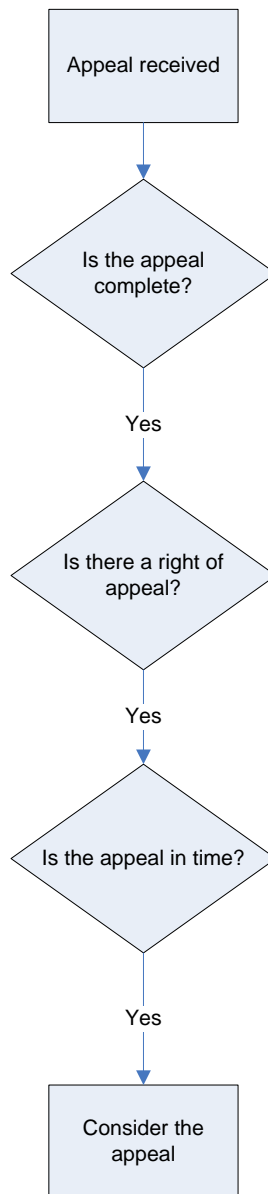
13.30 The IPCC expects any information it requests to be provided within five working days of the request.

If the IPCC receives an appeal which should be considered by the chief officer of a force, the IPCC will forward the appeal to the chief officer and notify the complainant that the appeal has been forwarded and that the chief officer is the relevant appeal body. The appeal will be taken to have been made when it is forwarded.

Paragraph 31, Schedule 3, Police Reform Act 2002

## **Appeal validity**

13.31 There are a number of reasons why an appeal may be judged to be invalid. If it is judged that an appeal is invalid, the complainant should be advised of this determination and the reason for the decision should be explained clearly.



## **Is the appeal complete?**

An appeal must be in writing and state:

- i. the details of the complaint
- ii. the date on which the complaint was made
- iii. the name of the force or local policing body whose decision is the subject of the appeal
- iv. the grounds for the appeal; and
- v. the date on which the decision to which the appeal relates was given to the complainant.

However, the relevant appeal body (or the IPCC in the case of a non-recording appeal) may decide to consider an appeal even though it does not comply with one or more of these requirements.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012

- 13.32 It may still be possible to consider an appeal even if the reasons given for the appeal are minimal (or absent), or show a lack of understanding of the complaints system. An appeal should usually be considered in the absence of any of the information above unless the lack of information makes it impossible to identify the case to which the appeal relates.
- 13.33 In some circumstances it may be appropriate to contact the complainant to clarify the points he or she is raising, or if it is not clear to which complaint the appeal relates. If, after taking all reasonable steps to contact the complainant, it has not been possible to make contact with them or it has not been possible to gather sufficient information to consider the appeal, the appeal may be considered invalid.

## **Is there a right of appeal?**

- 13.34 The complaint to which the appeal relates must have come to the attention of the appropriate authority on or after 22<sup>nd</sup> November 2012. If the complaint was made before this date the appeal will be dealt with in accordance with the relevant previous Police (Complaints and Misconduct) Regulations.
- 13.35 Only a complainant, or someone acting on his or her behalf, can bring an appeal (of any type) in relation to a complaint (see “Who can complain” in section three for the definition of a complainant). If anyone other than the complainant or someone acting on his or her behalf tries to make an appeal, the appeal is invalid.
- 13.36 Before an appeal can be made there should be a final decision, clearly dated, which can evidence the decision being appealed. The exception to this is where the appeal is in relation to the non-recording of a complaint and no decision has been made. In this case the IPCC will consider any appeal made 15 working days or more after the complaint was submitted.

There is no right of appeal in relation to a complaint that relates to a direction and control matter in the following cases:

- i. an appeal against a decision by the appropriate authority to disapply the requirements of Schedule 3 of the Police Reform Act 2002
- ii. an appeal against the outcome of any complaint that is subject to local resolution or handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002
- iii. an appeal against a decision by the appropriate authority to discontinue an investigation (where that discontinuance is not within the IPCC's power); or
- iv. an appeal with respect to an investigation.

Paragraphs 7, 8A, 21 and 25, Schedule 3, Police Reform Act 2002

There is no right of appeal against a failure by the local policing body to determine whether it is the appropriate authority, to notify or record a complaint if the complaint relates to a direction and control matter.

Paragraph 3C, Schedule 3, Police Reform Act 2002

There is no right of appeal against a decision by the appropriate authority to disapply or discontinue where the IPCC has given permission.

Paragraph 7 and Paragraph 21, Schedule 3, Police Reform Act 2002

There is no right of appeal against a decision to discontinue an investigation (where that discontinuance is within the IPCC's power).

Paragraph 21, Schedule 3, Police Reform Act 2002

### **Is the appeal in time?**

Appeals must be made within 28 days of the day after the date of the letter from the local policing body or chief officer giving a notification of the decision which is capable of appeal to the complainant.

Except in the case of a non-recording appeal, if the appeal has been made to the wrong appeal body, it will be treated as having been made when it is forwarded by the chief officer or the IPCC to the correct relevant appeal body. However, any time elapsing between the appeal being received by the chief officer or the IPCC and being forwarded on to the correct relevant appeal body will not be taken into account for the purposes of the 28 day period.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012  
Paragraph 31 and 32, Schedule 3, Police Reform Act 2002

13.37 The IPCC expects the notification to the complainant to specify the date by which the appeal should be received and for it to be posted on the day it is dated. If any of the information required in the notification has not been given

(or there is no evidence that it has been given), the appeal should not be treated as out of time and should be given full consideration.

The relevant appeal body (or the IPCC in the case of a non-recording appeal) may extend the period for making an appeal where it is satisfied that because of the special circumstances of a case it is just to do so.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012

13.38 Whether such special circumstances exist will be a matter for the person dealing with the appeal to consider on a case-by-case basis. Where an appeal has been made out of time, the complainant should be asked to provide any reasons why the appeal is late. Any reasons provided should be taken into account when deciding whether an appeal should be considered. The following matters should also be taken into account (though this is not an exhaustive list):

- any reasons for the delay – including whether the delay is outside the complainant’s control and whether he or she has taken all reasonable steps to submit his or her appeal in time. This should include consideration of any particular vulnerabilities or needs of the complainant – for example medical conditions, disabilities or where English is not his or her first language.
- the subject matter of the complaint – is this a particularly serious case or one in which there would be real public interest?
- links to other complaints which may be being investigated or appealed
- the length of the delay – the test should become more difficult to pass the further beyond 28 days the appeal is received
- the fairness of the case – e.g. the potential impact on the complainant or any other member of the public and on those subject to the investigation.

13.39 The fact that a notice of investigation (see paragraph 9.39) may have been withdrawn before an appeal was made does not prevent an appeal from being considered. Even if a notice of investigation has been withdrawn, disciplinary proceedings may follow a successful appeal.

13.40 If, following consideration, the appeal is judged to be out of time and there are no special circumstances making it just to extend the time, the appeal should be treated as invalid and the appeal should not be considered further.

### **Notifying the complainant where the appeal is invalid**

13.41 The complainant should be informed of the decision to treat the appeal as invalid. This notification should be made in writing (and by any other means where the complainant has asked for such communication) as soon as reasonably practicable. The reasons for considering the appeal as invalid should be explained clearly to the complainant.

## **Appeals against a failure to notify or record a complaint or to determine whether it is the appropriate authority (non-recording appeals)**

There is a right of appeal to the IPCC against the non-recording of any complaint except where:

- i. there is no requirement to record the complaint because the subject matter of the complaint has been or is already being dealt with by means of criminal or disciplinary proceedings against the person whose conduct it was
- ii. there is no requirement to record the complaint because the complaint has been withdrawn; or
- iii. the complaint is about direction and control and appeal relates to a failure by the local policing body.

Paragraph 3A-3C, Schedule 3, Police Reform Act 2002

There are three potential grounds for an appeal against the non-recording of a complaint:

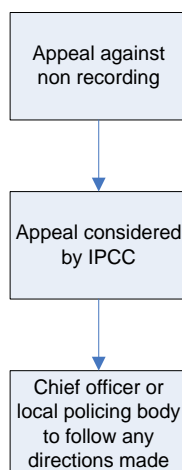
- i. a failure by the chief officer or local policing body to determine whether or not it is the appropriate authority
- ii. a failure by the chief officer or local policing body to notify the correct appropriate authority about the complaint; or
- iii. a failure by the chief officer or local policing body to record a complaint or part of a complaint.

Paragraph 3, Schedule 3, Police Reform Act 2002

13.42 If the appeal is upheld, the chief officer or the local policing body must follow any direction given to it by the IPCC as to the action to be taken for making a determination or for notifying or recording a complaint.<sup>25</sup> In determining whether the chief officer or local policing body has failed to make a decision or to record or notify, the IPCC will take into consideration its expectation that any decision about recording will be made within ten working days of a complaint being received.

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<sup>25</sup> Paragraph 3, Schedule 3, Police Reform Act 2002



## Appeals against the decision to disapply

An appeal may be made to the relevant appeal body against a decision to disapply the requirements of Schedule 3 of the Police Reform Act 2002. However there is no right of appeal where the complaint relates to a direction and control matter or where the IPCC has given its permission for the disapplication.

Paragraph 7, Schedule 3, Police Reform Act 2002

## Consideration of appeals against the decision to disapply

The chief officer (where he or she is the relevant appeal body) must determine whether the decision to disapply the requirements of Schedule 3 of the Police Reform Act 2002 should have been taken.

Paragraph 7, Schedule 3, Police Reform Act 2002

- 13.43 When determining an appeal against a decision to disapply, the person dealing with the appeal should take the following points into consideration:
- has the complaint been, or should the complaint have been, referred to the IPCC? If so, the complaint should not have been subject to any decision to disapply without the approval of the IPCC and the appeal must be upheld
  - was the decision to disapply made with the permission of the IPCC? If so, there is no right of appeal and the appeal should be considered as invalid; and
  - was the complainant offered the opportunity to make representations before the decision to disapply was made and if any representations were provided, were these taken into account in making the decision to disapply?

- 13.44 The disapplication decision should show on which ground the decision to disapply has been made and the reason why that ground was considered appropriate. The guidance below covers each ground for disapplication

separately; however the guidance on disapplications in section four of this guidance should also be taken into account.

*More than 12 months have passed between the incident, or the latest incident, and the complaint and either no good reason for the delay has been shown or injustice would be caused by the delay*

- 13.45 Where the complaint relates to a series of incidents, the person dealing with the appeal must ensure that the date used as a benchmark for the 12 month period is the date of the most recent incident.
- 13.46 Assuming that the 12 month period has passed, the person dealing with the appeal must also assess whether the appropriate authority should have determined:
- i. no good reason for the delay has been shown; or
  - ii. injustice would be likely to be caused by the delay.

*The matter is already the subject of a complaint made by or on behalf of the same complainant*

- 13.47 The disapplication decision should include details of the previous complaint and why this new complaint is the same. The person dealing with the appeal must ensure that the complaint is against the same officer originally complained against, relating to the same subject and by the same complainant.
- 13.48 The person dealing with the appeal should ensure that, at the time of the decision to disapply, the handling of the previous complaint was still ongoing. If not, disapplication under this ground is not appropriate.

*Anonymous complaints*

- 13.49 Although it is unlikely that an appeal will be made relating to an anonymous complaint, the complainant or interested person may make his or her identity known only after the disapplication decision has been taken. Where this happens, the complainant should be advised of his or her right of appeal.

*The complaint is vexatious, oppressive or an abuse of the procedures for dealing with complaints*

- 13.50 The person dealing with the appeal must assess whether the complaint meets the definition of vexatious, oppressive or an abuse of the procedures for dealing with complaints as set out in paragraphs 4.15 and 4.16 and section 15 of this guidance.
- 13.51 The person dealing with the appeal must also satisfy him or herself that the decision has been made based on the substance of the complaint, rather than about the complainant.



### *Repetitious complaints*

- 13.52 The person dealing with the appeal must ensure that the complaint satisfies the definition of a repetitious complaint.

*It is not reasonably practicable to complete the investigation of the complaint or any other procedures under Schedule 3 to the Police Reform Act 2002*

- 13.53 The disapplication decision should show that one of the criteria for not reasonably practicable applies to the complaint and how it is considered to apply.
- 13.54 If the disapplication decision is reached on the basis of either lack of communication or refusal or failure to co-operate; the person dealing with the appeal must consider what efforts have been made to communicate and engage with the complainant. This should include looking at the methods of communication used, any communication preferences expressed by the complainant, any attempts to deal with his or her representative where appropriate, and the efforts made to meet any particular needs of the complainant.
- 13.55 The person dealing with the appeal should also consider whether the complaint could have been dealt with without the complainant's co-operation.
- 13.56 If the disapplication decision is made on the basis of the lapse of time, the person dealing with the appeal must consider whether he or she agrees that the lapse of time is such that the completion of a satisfactory investigation is not reasonably practicable.

### **Considering the appeal**

- 13.57 The appeal must be upheld if the relevant appeal body finds that the decision to disapply the requirements of Schedule 3 of the Police Reform Act 2002 should not have been made.
- 13.58 If a decision to disapply has been based upon a single disapplication ground, the person dealing with the appeal may consider that the particular criterion used was not appropriate. In some circumstances, it may be clear from the information available that another disapplication ground would apply and therefore disapplication would still have been appropriate. Where the complainant has not had the opportunity to make representations in relation to the new ground being considered as part of the appeal, he or she should be given an opportunity to make representations at the appeal stage before a decision is made as to whether the appeal should be upheld.
- 13.59 Some complaints may consist of multiple allegations. The person dealing with the appeal may find that disapplication was the correct decision in relation to some allegations but not for others. In such circumstances, the appeal may be upheld in part. However, action under Schedule 3 of the

Police Reform Act 2002 would only need to be taken in relation to those allegations where the decision to disapply should not have been made.

### **Directions and notification**

The chief officer must notify the complainant of the reasons for his or her determination in relation to the appeal. Where an appeal against the decision to disapply is upheld by the chief officer, the chief officer must take whatever action he or she thinks appropriate in relation to the complaint. The chief officer must also notify the complainant and the person complained against of any action he or she proposes to take in relation to the complaint.

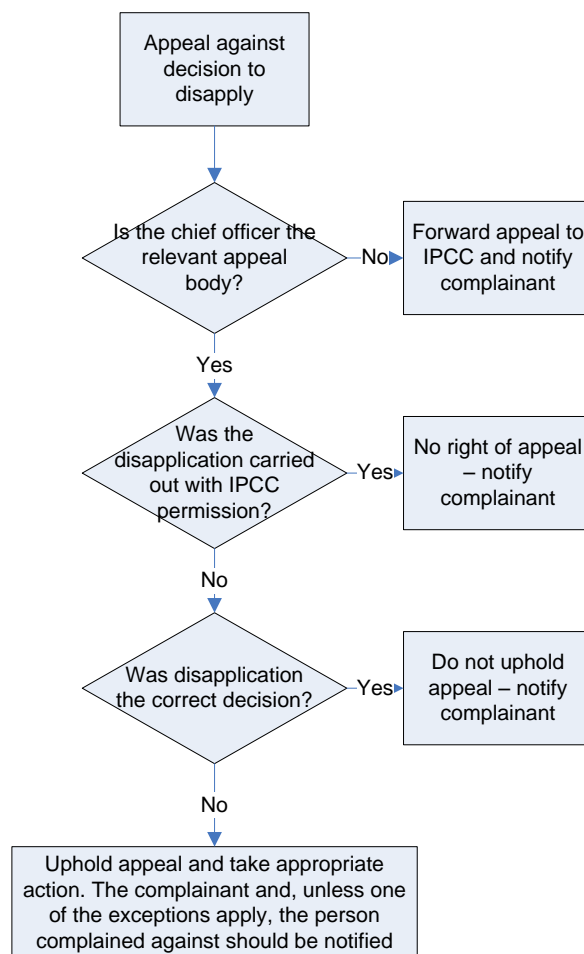
Where the IPCC is the relevant appeal body, it must notify the complainant and the appropriate authority of the reasons for its determination and any directions in relation to the appeal. The appropriate authority must notify the person complained against of any direction the IPCC gives unless it might prejudice any criminal investigation, pending proceedings or would otherwise be contrary to the public interest.

Paragraph 7, Schedule 3, Police Reform Act 2002  
Regulation 11, Police (Complaints and Misconduct) Regulations 2012

- 13.60 Where an appeal against the decision to disapply is upheld by the IPCC, the IPCC will give whatever directions it thinks appropriate as to the action to be taken by the appropriate authority. The appropriate authority must comply with any directions given by the IPCC.<sup>26</sup>

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<sup>26</sup> Paragraph 7, Schedule 3, Police Reform Act 2002



**Appeals against the outcome of the local resolution of a complaint or the outcome of a complaint handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002**

There is a right of appeal against the outcome of any complaint which is subjected to local resolution or is handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002 except where the complaint relates to a direction and control matter.

Paragraph 8A, Schedule 3, Police Reform Act 2002

- 13.61 An appeal against the outcome of a complaint handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002 refers to an appeal against the outcome of a complaint that has been the subject of a disapplication. The right of appeal relates to the outcome of any action, including no action, taken in respect of such a complaint.
- 13.62 In most circumstances, the relevant appeal body for this type of appeal will be the chief officer. However, if a person begins to consider an appeal and finds that the complaint was not initially suitable to be dealt with by local resolution or that the complaint should not have been handled otherwise

than in accordance with Schedule 3 of the Police Reform Act 2002, the appeal should be upheld because the complaint should not have been handled in such a way.

### Consideration of appeals

The chief officer must decide whether the outcome of the complaint, whether it has been locally resolved or handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002, is a proper outcome.

Paragraph 8A, Schedule 3, Police Reform Act 2002

- 13.63 When deciding whether the outcome is a proper one, the focus should be on whether the outcome is appropriate to the complaint, not simply on the process followed to reach that outcome. The decision should be made on the basis of the evidence available.
- 13.64 In making a decision about the appeal, the relevant appeal body should take the following into consideration:
- any representations the complainant has provided as part of his or her appeal as to why the outcome is not a proper outcome
  - whether an action plan was drawn up and agreed with the complainant setting out the steps to be taken when locally resolving his or her complaint. The outcome of the local resolution should be a clear consequence of the actions agreed
  - whether both the complainant and the person complained against had the opportunity to comment on the complaint during the local resolution process
  - whether any explanation given was sufficiently clear and comprehensive to address the complainant's concerns
  - if no apology has been given as part of the outcome, whether an apology would be appropriate, taking into account the substance of the complaint;<sup>27</sup> and
  - whether there is any learning from the complaint and whether this has been identified and communicated to the complainant.
- 13.65 If the person dealing with the appeal finds that the outcome of the complaint is not a proper outcome, the appeal must be upheld.
- 13.66 An appeal may result from the fact that although the outcome is proper, it has not been effectively communicated. In these circumstances the appeal should not be upheld but further information about the outcome should be provided to the complainant.

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<sup>27</sup> Regulation 6, Police (Complaints and Misconduct) Regulations 2012 prevents, during the local resolution of a complaint, an apology being tendered on behalf of the person complained against if they have not agreed to the apology

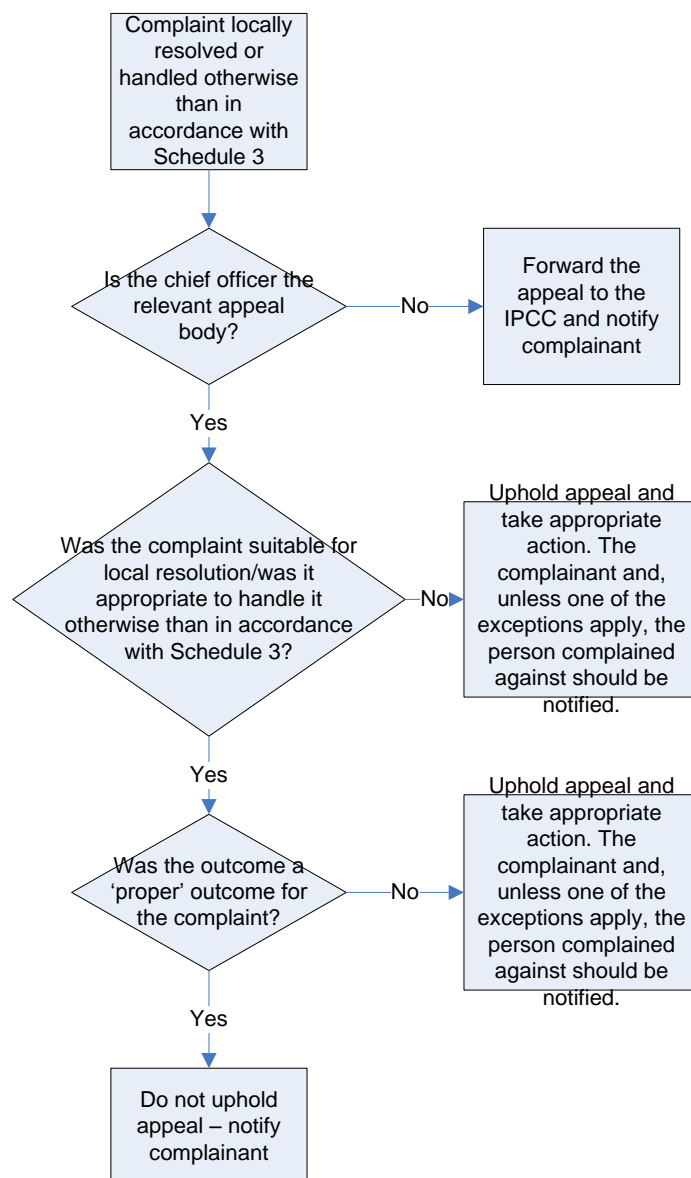
## **Directions and notifications**

The chief officer must notify the complainant of the reasons for his or her determination in relation to the appeal. Where an appeal is upheld by the chief officer, he or she must take whatever action he or she thinks appropriate in relation to the complaint. The chief officer must notify the complainant and the person complained against of any action he or she proposes to take in relation to the complaint.

Where the IPCC is the relevant appeal body, it must notify the complainant and the appropriate authority of the reasons for its determination and any directions in relation to the appeal. The appropriate authority must notify the person complained against of any direction the IPCC gives unless it might prejudice any criminal investigation, pending proceedings or would otherwise be contrary to the public interest.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012  
Paragraph 8A, Schedule 3, Police Reform Act 2002

- 13.67 Any action taken by the appropriate authority as a result of an appeal should be aimed at reaching a proper outcome for the complaint.



## Appeals against the decision to discontinue

An appeal may be made to the relevant appeal body against a decision by the appropriate authority to discontinue an investigation of a complaint (where the discontinuance is not within the Commission’s power). However, there is no right of appeal where the complaint relates to a direction and control matter.

Paragraph 21, Schedule 3, Police Reform Act 2002

## Consideration of appeals against the decision to discontinue

The chief officer must determine whether the decision to discontinue the investigation should have been taken.

Paragraph 21, Schedule 3, Police Reform Act 2002

- 13.68 When determining an appeal against a decision to discontinue an investigation, the person dealing with the appeal should consider the following questions:
- if the investigation was a local investigation, was the complaint one which required referral to the IPCC? Is the investigation supervised or managed? If the answer is yes to either question, the investigation can only be discontinued with the permission of the IPCC. If the investigation was discontinued without an application to the IPCC the appeal should be upheld
  - was the discontinuance ordered or carried out by the IPCC? If so, there is no right of appeal and the appeal should be considered as invalid
  - was the complainant offered the opportunity to make representations before the decision to discontinue was made and if any representations were provided, were these taken into account in making the decision to discontinue?
- 13.69 The discontinuance decision should show on which ground the decision was based and the reason why that ground was felt to be appropriate. The guidance below covers each ground for discontinuance separately however the guidance on discontinuances in section 10 of this guidance should also be taken into account.

*The complainant refuses to co-operate to the extent that it is not reasonably practicable to continue the investigation*

- 13.70 The relevant appeal body must consider what efforts have been made to communicate and engage with the complainant. This should include looking at the methods of communication used, any communication preferences expressed by the complainant, attempts to deal with his or her representative where appropriate, and efforts made to meet any particular needs of the complainant.
- 13.71 The relevant appeal body should also consider whether the complaint could have been investigated without the complainant's co-operation.

*Where the appropriate authority has determined the complaint is suitable for local resolution*

- 13.72 The relevant appeal body should consider whether the complaint passed the suitability test for local resolution set out in paragraphs 5.10 to 5.12.

*The complaint is vexatious, oppressive or an abuse of the procedures for dealing with complaints, conduct matters or DSI matters*

- 13.73 The person dealing with the appeal must assess whether the complaint meets the definition of vexatious, oppressive or an abuse of the procedures for dealing with complaints as set out in paragraphs 10.10 to 10.12 and section 15 of this guidance.
- 13.74 The person dealing with the appeal must also satisfy him or herself that the decision has been made based on the substance of the complaint and not on the basis of the complainant.

*The complaint is repetitious*

- 13.75 The person dealing with the appeal must ensure that the complaint fits the definition of a repetitious complaint.

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

- 13.76 The person dealing with the appeal must consider the rationale given by the appropriate authority as to why it was not reasonably practicable to proceed with the investigation and whether he or she agrees with that rationale. The person dealing with the appeal must decide whether it was reasonably practicable to proceed with the investigation.
- 13.77 The appeal must be upheld if the person dealing with the appeal finds that the decision to discontinue the investigation should not have been taken.
- 13.78 If a decision to discontinue an investigation has been made based upon a single discontinuance ground, the person dealing with the appeal may consider that the particular ground used was not appropriate. In some circumstances, it may be clear from the information available that another discontinuance ground would apply and therefore a discontinuance would still have been appropriate. Where the complainant has not had the opportunity to make representations in relation to the new ground being considered as part of the appeal, they should be given this opportunity at the appeal stage before a decision as to whether the appeal should be upheld is made.
- 13.79 Some complaints may consist of multiple allegations. The person dealing with the appeal may find that discontinuance was the correct decision in relation to some allegations, but not in relation to others. In such circumstances, the appeal may be upheld in part however the action required to investigate would only need to be taken in relation to those allegations where the discontinuance decision was incorrect.

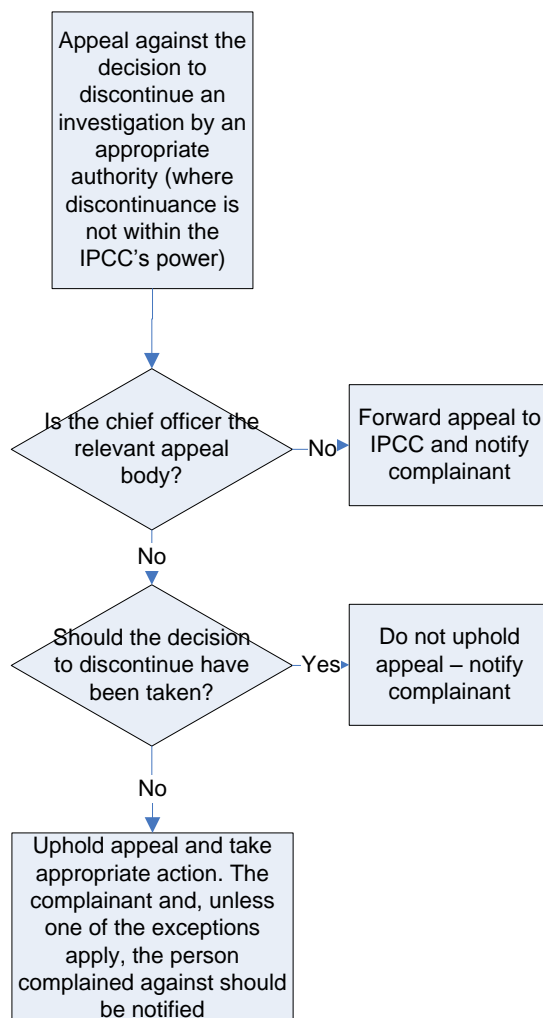


## Directions and notification

The chief officer must notify the complainant of the reasons for his or her determination in relation to the appeal. Where an appeal against the decision to discontinue an investigation is upheld by the chief officer, the chief officer must take whatever action the chief officer thinks appropriate for investigating the complaint. The chief officer must notify the complainant and the person complained against of any action he or she proposes to take in relation to the complaint.

Where the IPCC is the relevant appeal body, it must notify the complainant and the appropriate authority of the reasons for its determination and any directions in relation to the appeal. The appropriate authority must notify the person complained against of any direction the IPCC gives unless it might prejudice any criminal investigation, pending proceedings or would otherwise be contrary to the public interest.

Paragraph 21, Schedule 3, Police Reform Act 2002  
 Regulation 11, Police (Complaints and Misconduct) Regulations 2012



## Appeals against investigation

There is a right of appeal to the relevant appeal body in relation to an investigation of a complaint carried out by the appropriate authority itself or supervised by the IPCC. The only exception to this is where the complaint relates to a direction and control matter; in which case there is no right of appeal.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.80 There is no right of appeal in respect of managed or independent investigations.

A complainant may appeal on the following grounds:

- i. that he or she has not been adequately informed about the findings of the investigation or any determination relating to the action to be taken or not taken in respect of the matters dealt with in the report
- ii. against the findings of the investigation
- iii. against the appropriate authority's determination as to whether to whose conduct the investigation related has a case to answer for misconduct, gross misconduct or no case to answer or whether the person's performance is unsatisfactory or not
- iv. against the appropriate authority's determinations relating to the action to be taken or not taken in respect of the matters dealt with in the report, or
- v. against the appropriate authority's determination not to refer the report to the CPS.

Paragraph 25, Schedule 3, Police Reform Act 2002

## Consideration of appeals against investigation

The chief officer must consider those appeal grounds that are appropriate in the circumstances.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.81 In practice this means that the person dealing with the appeal does not have to consider a ground of appeal not mentioned by the complainant, but may still do so if he or she deems appropriate: for example, where it appears that another ground of appeal may apply and may lead to the upholding of the appeal. The person dealing with the appeal should consider all grounds of appeal raised by the complainant.

Where an appeal is brought, the IPCC may require the appropriate authority to submit a memorandum to it setting out:

- i. whether it has determined that the person to whose conduct the investigation related has a case to answer and, if so, whether in respect of misconduct or gross misconduct
- ii. whether it has determined that the person's performance is or is not unsatisfactory
- iii. what action, if any, it will take in respect of the matters dealt with in the report
- iv. if no disciplinary proceedings are to be brought, the reasons for that determination; and
- iv. the reasons for determining it does not need to send the report to the CPS.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.82 The appropriate authority must comply<sup>28</sup> and should do so as soon as reasonably practicable (which, in practice, should not generally exceed seven days) unless the IPCC requires this memorandum by a specified deadline.

13.83 The guidance below covers each ground of appeal separately. However, it may be appropriate to consider them together: for example, where there are strong links between findings and outcome.

*Considering whether the complainant received adequate information*

The right of appeal relates only to whether the complainant has been given adequate information about:

- i. the findings of the investigation; or
- ii. any determination of the appropriate authority relating to the action to be taken or not taken in respect of the matters dealt with in the report.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.84 It is essential that a full explanation is given to the complainant about what has been found to have happened. A person whose complaint against a person serving with the police has been investigated should receive:

- a clear narrative explanation for what has happened, based on the facts established
- a description of the context for any behaviour complained about
- a clear statement of whether his or her complaints have been upheld
- where appropriate, whether a person serving with the police has a case to answer for misconduct or gross misconduct or no case to answer or whether a person's performance is satisfactory or unsatisfactory; and

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<sup>28</sup> Paragraph 25, Schedule 3, Police Reform Act 2002

- what, if any, action is to be taken in relation to the matters dealt with in the report.
- 13.85 The quality of the explanation provided, in the context of the investigation work undertaken, should be taken into account when considering this ground.
- 13.86 Where an investigation report has been written, the IPCC considers that forces should disclose it to the complainant (subject to the harm test). This means that it is important that it is clear and easy to understand. If the report was redacted or edited before being given to the complainant, the person dealing with the appeal should satisfy him or herself that the relevant points in the report were not omitted unnecessarily because of the redaction.
- 13.87 Where an investigation report has been written but the complainant has been given a decision letter instead, the person dealing with the appeal should ensure that all relevant points in the report were also included in the letter. The person dealing with the appeal should also consider sending the report to the complainant as part of the appeal determination.
- 13.88 Where an investigator has failed to provide sufficient information during the investigation this should be highlighted to the appropriate authority to ensure that it fulfils its duties to provide information to a complainant in the future. However, an appeal cannot be upheld based on a failure to provide information during the progress of the investigation as this falls outside the appeal grounds.

#### *Considering the findings of the investigation*

- 13.89 The findings of the investigation include the eventual conclusions. In their clearest form this will be a set of allegations that are either upheld or not. The findings of the investigation also include the reasons for the conclusions, the evidence that has been gathered to support the conclusions, and a critical analysis of the evidence.
- 13.90 Guidance on findings and outcomes is contained within sections 11 and 12 of this guidance. These sections provide information on explanations of the outcome of an investigation, the giving of apologies where appropriate, and the making of decisions as to whether a complaint should be upheld or not.
- 13.91 When determining an appeal against the findings of an investigation, the person dealing with the appeal should consider the investigation findings, taking into account the evidence gathered and decide whether the investigation's findings need to be reconsidered. The person dealing with the appeal must develop his or her own assessment of the case, not base it on the assessment that the investigator has made.

13.92 When communicating a decision about whether an appeal is upheld in relation to the findings, the rationale for the decision should be provided to the complainant with reference to the relevant evidence.

13.93 The following questions should be considered to reach a decision on the findings:

Are the conclusions reached reasonable in light of the evidence?

13.94 The appropriate authority should have looked at every allegation that the complainant has made, for example in a statement or letter of complaint. If the investigation has not answered the allegations that have been made, the person dealing with the appeal should consider whether this was an appropriate and proportionate approach, taking into account the substance and circumstances of the case. If not it may be appropriate to uphold the appeal on this ground. The person dealing with the appeal should continue to assess the findings in relation to those allegations that have been dealt with.

13.95 The person dealing with the appeal must consider whether the conclusions of the investigation are supported by the evidence available, and that a clear rationale is being made to link the evidence to the conclusions.

Has the investigation been carried out in a proportionate manner and has sufficient evidence been gathered?

13.96 The factors listed at paragraph 9.15 of this guidance should be used to inform what approach was proportionate for an investigator to have taken to investigate a complaint. As an investigation has progressed, the proportionality of the response required may have changed and this should be taken into account when considering any appeal. Proportionality is a particular consideration when it appears that lines of enquiry may have been missed or consciously not pursued by an investigator. However, it is not sufficient to conclude that an investigation has been proportionate without further explanation. When considering the 'proportionality' of following particular lines of enquiry a judgement is being made about the likelihood and difficulty of obtaining fruitful evidence weighed against the seriousness of the allegations. When considering the 'proportionality' of the investigation as a whole, a judgement is being made about the scope and robustness of the investigation weighed against the seriousness of the allegations. Where appropriate it should be made clear to the complainant why the person dealing with the appeal has deemed a particular approach to be disproportionate.

13.97 In considering the lines of enquiry pursued by the investigator, the person dealing with the appeal should take into account any terms of reference or similar document such as an investigation log or file record of relevant decisions that may have applied to the scope and methods used during the investigation. This may have required a particular direction to be taken by

the investigation or put limits on what the investigation would examine, including the availability of evidence required and considerations as to the sufficiency of the evidence to establish the facts of the case given the seriousness of the allegation and likely outcomes.

Have the right decisions been made about whether or not the complaint(s) which have been investigated should be upheld?

13.98 Guidance in paragraphs 11.18 to 11.24 outlines where a complaint should be upheld. The person dealing with the appeal should have regard to this guidance when reviewing an appeal and considering whether a complaint should have been upheld. A decision on whether each complaint has been upheld or not should be clear from the file and the person dealing with the appeal should satisfy him or herself that the correct decisions have been reached. If the person dealing with the appeal decides the findings need to be reconsidered then the appeal should be upheld and the appropriate authority must then re-investigate the complaint.<sup>29</sup> It is the final decision made by the appropriate authority as to whether each complaint is upheld or not that is subject to appeal, not any recommendations made by an investigator to the appropriate authority. Such recommendations and their rationale may however be useful in considering whether the right decisions have been reached.

*Considering whether there is a case to answer or whether a person's performance is unsatisfactory*

The person dealing with the appeal must decide if he or she considers the appropriate authority's decision is appropriate as to:

- i. whether the person subject of investigation has a case to answer in respect of misconduct, or gross misconduct or no case to answer
- ii. whether the person's performance is unsatisfactory or not; and
- iii. whether the action, if any, to be taken by the appropriate authority is appropriate.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.99 The person dealing with the appeal should be satisfied that the findings do not need to be reconsidered before considering whether the determinations as to the action to be taken are appropriate.

13.100 The person dealing with the appeal should assess whether the appropriate authority's decisions and the action to be taken, if any, are appropriate. If they are not, then the appropriate authority should take action, which he or she considers appropriate, in relation to the bringing of disciplinary proceedings.

*Considering whether the proposed action is appropriate*

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<sup>29</sup> Paragraph 25, Schedule 3 of the Police Reform Act 2002.

- 13.101 The proposed action in respect of an investigation could include the possibility of disciplinary proceedings.
- 13.102 The action could also include non-disciplinary action – recommendations regarding force practices or policies that are suggested by the circumstances of the complaint and its investigation.
- 13.103 In terms of the determinations as to whether any disciplinary proceedings should be brought against persons serving with the police, the person dealing with the appeal should judge whether the proposed action is appropriate based on the seriousness of the conduct in respect of which findings have been made and the underlying evidence. The person dealing with the appeal should assess each case on its own merits but, for example, may consider the following factors:
- the background to the incident in which the alleged conduct took place
  - whether an individual has shown remorse for what happened
  - whether the alleged action was accidental, negligent or deliberate; and
  - whether the person serving with the police has admitted to the conduct alleged and, if so, at what stage he or she did so.
- 13.104 A clear rationale should be provided for any action which is to be taken as a result of the appeal.

*Considering whether a referral to the CPS should have been made*

The person dealing with the appeal should consider whether the following conditions are satisfied:

- i. the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related, and
- ii. the circumstances are such that it is appropriate for the report to be considered by the CPS, or
- iii. any of the matters in the report fall within any prescribed category of matters.

Paragraph 25, Schedule 3, Police Reform Act 2002

- 13.105 When considering whether the circumstances are such that it is appropriate for the report to be considered by the CPS, this decision must be made in light of the report's findings and the evidence gathered and the reasons given by the appropriate authority for not referring the report to the CPS.
- 13.106 Many of the issues which are relevant here will have been considered when looking at the findings of the investigation. A full rationale will be required when it is determined that a referral to the CPS is not necessary despite the report indicating that a criminal offence may have been committed.

**Following an appeal against investigation: determinations, directions and notification**



When a chief officer upholds an appeal, he or she shall, depending on the appeal ground upheld:

- i. take such steps as he or she considers appropriate for ensuring the complainant is properly informed
- ii. reinvestigate the complaint
- iii. take such action as he or she considers appropriate in relation to the bringing of disciplinary proceedings and ensure that any such proceedings are proceeded with to a proper conclusion; and/or
- iv. notify the CPS of the determination and send it a copy of the investigation report.

The chief officer must give notification of any determination to the complainant, to any interested person and (unless it may prejudice any proposed review or re-investigation of the complaint) the person complained against.

Paragraph 25, Schedule 3, Police Reform Act 2002

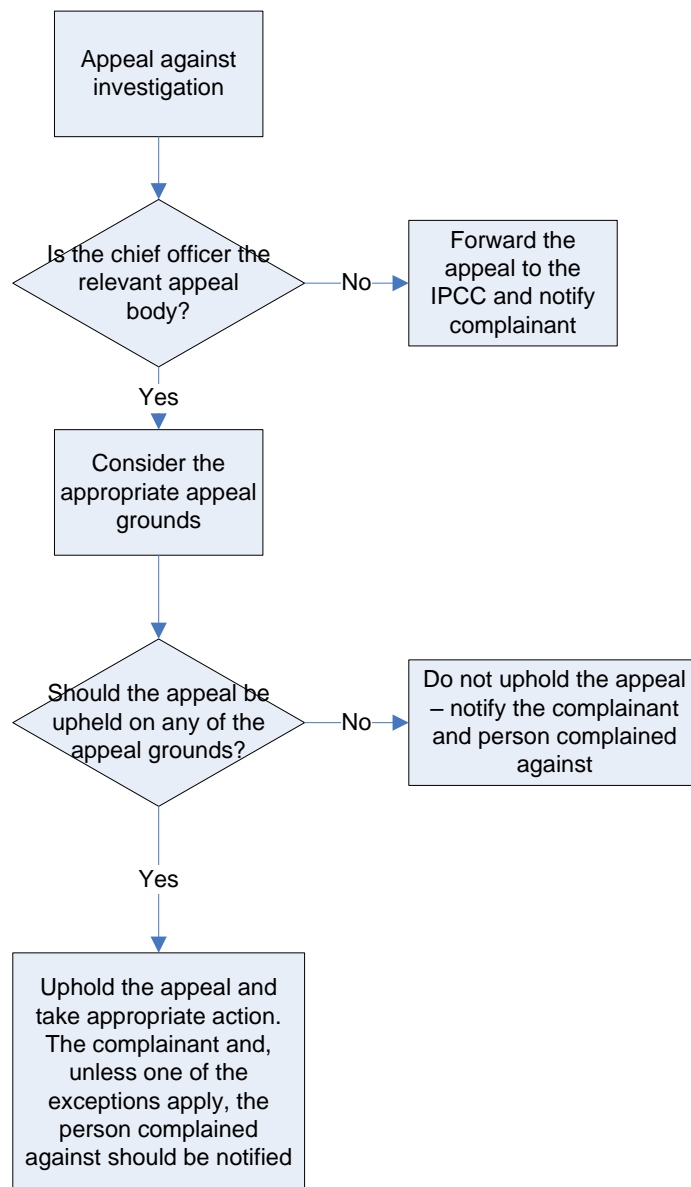
Where the IPCC is the relevant appeal body and an appeal is upheld, the IPCC shall (depending on the appeal ground upheld):

- i. give directions to the appropriate authority to ensure the complainant is properly informed
- ii. review the findings, without further investigation
- iii. direct a reinvestigation of the complaint
- iv. determine whether to make recommendations under paragraph 27, Schedule 3, Police Reform Act 2002
- v. direct the appropriate authority to notify the CPS of the determination and send it a copy of the investigation report.

The appropriate authority must comply with any directions given to it by the IPCC.

Paragraph 25, Schedule 3, Police Reform Act 2002







## Section 14: **DATA COLLECTION AND MONITORING**

- 14.1 The IPCC has a statutory duty to secure and maintain public confidence in the police complaints system.<sup>30</sup> The co-operation and participation of all the other bodies that operate and oversee the complaints system – forces, local policing bodies, Her Majesty’s Inspector of Constabulary (HMIC), and others – is essential in carrying out this duty.
- 14.2 The handling of complaints, conduct matters and DSI matters provides one of the most valuable feedback mechanisms for the police service. Chief officers and local policing bodies should have a commitment to learn, whether from individual cases or from broader analysis of the complaints system and to share that learning both internally and externally.
- 14.3 The IPCC, police forces, local policing bodies, ACPO, and policing partners all have a role to play in ensuring that learning is captured, disseminated and monitored.
- 14.4 The IPCC expects the monitoring of complaints, particularly allegations of discriminatory behaviour, by police forces and local policing bodies. Monitoring allows regular review of the types of complaints being made, helps to identify any emerging trends and encourages forces and local policing bodies to consider how, and whether, the number of complaints can be reduced. Learning from complaints is an important element of the complaints system.

### **Responsibilities of the chief officer**

- 14.5 Each chief officer is responsible for the overall running and performance of his or her force. There is therefore a clear interest for the chief officer in the learning which arises from the complaints system and performance data which gives a picture of what is happening within the force and can be used as a means of comparison with similar forces. The chief officer should use this information as an evidence base to inform planning and improvement for the force.
- 14.6 The IPCC expects the chief officer to:
- respond to the IPCC on recommendations in IPCC investigation reports and appeal decisions
  - report regularly to his or her local policing body on progress of the implementation of recommendations that have been accepted
  - promote and ensure the identification of learning and recommendations from appeals considered within the force
  - provide information to the IPCC on learning in relation to the relevant performance framework indicators

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<sup>30</sup> Section 10, Police Reform Act 2002

- support the professional standards department in setting and maintaining quality standards in handling complaints, conduct matters and DSI matters across the force.
- 14.7 The chief officer should ensure that his or her force has a system for recording:
- recommendations in investigation reports
  - appeal and other decisions (whether made internally or by the IPCC)
  - learning published in the Learning the Lessons bulletins
  - internal learning from local resolution, investigations and appeals.
- 14.8 This system should be designed to:
- decide what to do with a recommendation
  - implement it (or not) in accordance with what is decided
  - monitor implementation and the impact of learning
  - make adjustments to recommended policy or practice as appropriate

## **Responsibilities of the local policing body**

- 14.9 The IPCC expects the local policing body to:
- ensure that his or her force has a system for monitoring and recording learning as outlined above
  - regularly monitor whether the force is using this system appropriately
  - monitor the force's appeals activity and outcomes to satisfy him or herself that the force's processes are operating properly and fairly
  - check the progress of his or her force in relation to recommendations it has agreed to implement (whether from investigations or appeals, IPCC decisions or internal decisions)
  - be aware of the process in place in the force to ensure quality across all aspects of handling complaints, conduct matters and DSI matters
  - use learning from the way the force is handling complaints, conduct matters and DSI matters to decide whether to use their powers of direction (outlined in section 2 of this guidance)
- 14.10 Local policing bodies have an important role to play in ensuring that forces understand and monitor their performance. The IPCC expects that forces will provide them with information about what those who use their service say about the service. Local policing bodies should ensure that they receive such information and should use it to inform their understanding of the force's performance on the handling of complaints, conduct matters and DSI matters and to identify problems or good practice within the force.
- 14.11 Local policing bodies may also perform quality audits to provide important information about a force's performance. Among a number of methods that can serve the same purpose, file sampling is one such activity that enables a local policing body to scrutinise the performance of its force. It provides the means, through a formal structured process, to determine the extent to

which proper procedures were followed and whether a force is dealing with matters appropriately and proportionately.

- 14.12 As the appropriate authority for chief officers, local policing bodies should also ensure that they comply with the guidance given to chief officers in paragraphs 14.5 to 14.8.

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

- 14.13 The IPCC uses a performance framework to collate data on complaints from police forces and local policing bodies and publish regular reports. The performance framework is a tool which supports the analysis and evaluation of performance. This is used as a common way of assessing performance across the police service and benchmarking forces and levels of complaints.

- 14.14 The benefits of the performance framework are:
- the creation of a consensus on what constitutes good performance for the police complaints system, which is evidence based rather than intuitive
  - the ability to make accurate comparisons about the performance of each constituent part of the complaints system
  - increased clarity for the police service and the IPCC of the performance which is expected
  - a reduced burden of reporting
  - the ability to identify and share best practice across the system
  - access to timely, relevant, consistent performance data that supports decision making among those responsible for the complaints system
  - the ability to demonstrate increased accountability to stakeholders and the public through publication of performance data.

- 14.15 The IPCC makes the information collated publicly available enabling those responsible for the complaints system to take action in response to that information and so improve future performance.

- 14.16 In order for effective monitoring and reporting to be possible it is important that recording practice is consistent. Anyone entering police complaints data onto recording systems should have regard to the IPCC's guidance on recording standards which are available on the IPCC's website.



## LEGAL DEFINITIONS

<b>Abuse of the complaints system</b>	Where there is or has been manipulation or misuse of the complaints system 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.
<b>Acting chief officer</b>	A person exercising or performing the functions and duties of a chief officer in accordance with either Sections 41, 44, 45(4) of the Police Reform and Social Responsibility Act 2011 or Section 25 of the City of London Police Act 1839. <sup>31</sup>
<b>Adversely affected</b>	<p>A person is adversely affected if he or she suffers any form of loss or damage, distress or inconvenience, if he or she is put in danger or is otherwise unduly put at risk of being adversely affected.<sup>32</sup> A person cannot be a complainant by claiming to be adversely affected if he or she has only seen or heard the conduct or its alleged effects unless:</p> <ul style="list-style-type: none"><li>• he or she was physically present or sufficiently nearby when the conduct took place or effects occurred that he or she could see or hear the conduct or its effects; or</li><li>• he or she was adversely affected because (or it was aggravated by the fact that) he or she already knew the person in relation to whom the conduct took place.<sup>33</sup></li></ul>
<b>Anonymous complaint</b>	A complaint that does not disclose the complainant's name and address, nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address. <sup>34</sup>
<b>Appropriate authority</b>	<p>The appropriate authority for a person serving with the police is:<sup>35</sup></p> <ul style="list-style-type: none"><li>• for a chief officer or an acting chief officer, the local policing body for the area of the police force of which the officer is a member; or</li><li>• in any other case, the chief officer with direction and control over the person serving with the police.</li></ul>

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<sup>31</sup> Section 29, Police Reform Act 2002

<sup>32</sup> Section 29, Police Reform Act 2002

<sup>33</sup> Section 12, Police Reform Act 2002

<sup>34</sup> Regulation 3 and 5, Police (Complaints and Misconduct) Regulations 2012

<sup>35</sup> Section 29, Police Reform Act 2002

## **Article 2**

Article 2 of the European Convention on Human Rights provides that everyone's life shall be protected by law. This involves both a prohibition on the state taking life (subject to very limited exceptions), and in certain circumstances a positive duty on the state to protect life. Sometimes it will be very clear that an allegation engages a person's Article 2 rights - for example, where a person dies whilst in police detention. In other cases, it may be less clear whether Article 2 is engaged - for example, where the police are alleged to be aware of a threat to a person's life and have failed to take adequate steps to protect that life. If appropriate authorities are unsure whether a matter engages Article 2, they should take legal advice.

## **Article 3**

Article 3 of the European Convention on Human Rights provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. It is an absolute right - which means that torture, or inhuman or degrading treatment is never permissible, in any circumstances. The ill treatment of the person must reach a minimum level of severity before it can be considered as torture, inhuman or degrading treatment or punishment. Whether the ill treatment engages Article 3 will depend on the circumstances of the case, including the duration of the treatment, the physical and mental effects on the victim, taking into account his or her age, gender and state of health. If appropriate authorities are unsure whether a matter engages Article 3, they should take legal advice.

## **Complainant refuses to co-operate**

This is where the complainant refuses to co-operate to such an extent that the relevant body considers it is not reasonably practicable to continue the investigation.<sup>36</sup>

The relevant body is the IPCC where discontinuance is within its power. The appropriate authority is the relevant body in any other case.

## **Conduct**

Conduct includes acts, omissions, statements and decisions (whether actual, alleged or inferred).<sup>37</sup>

This may include, for example:

- language used and the manner or tone of communications;
- breach of a published code or policy

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<sup>36</sup> Regulation 10, Police (Complaints and Misconduct) Regulations 2012  
<sup>37</sup> Section 29, Police Reform Act 2002



- the making of a specific decision on the deployment of officers for a particular investigation or operation
- the decision to (or not to) arrest and prosecute a particular suspect for a certain crime
- decisions about the deployment of a particular tactic on a particular occasion, and the use of that tactic
- the application of force policies, in particular, circumstances where the application of the policy involves an officer exercising their discretion
- day-to-day operational decisions made in response to a particular set of circumstances that have arisen.

**Direction and control matter**

A direction and control matter means a matter relating to the direction and control of a police force by its chief officer or a person for the time being carrying out that chief officer's functions.<sup>38</sup>

**Disapplication**

This occurs, under paragraph 7, Schedule 3 of the Police Reform Act 2002, where an appropriate authority handles a complaint otherwise than in accordance with Schedule 3 of the Police Reform Act 2002. The appropriate authority may handle a complaint in whatever manner (if any) it thinks fit.<sup>39</sup>

**Discontinuance**

A discontinuance ends an ongoing investigation into a complaint, conduct matter or DSI matter. An investigation may only be discontinued if it meets one or more of the grounds for discontinuance as described at paragraphs 10.5 to 10.15.

**Disciplinary proceedings**

The meaning of disciplinary proceedings for the purposes of the Police Reform Act 2002 is different for members of a police force and special constables compared to any other person serving with the police.

For a member of a police force or special constable, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2012.

The term 'disciplinary proceedings' will also include unsatisfactory performance procedures under the Police (Performance) Regulations 2012 wherever that term is used in section 22, section 36 and paragraphs 22, 23, 25 and 27, Schedule 3, Police Reform Act 2002.

For any other person serving with the police, disciplinary

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<sup>38</sup> Paragraph 29, Schedule 3, Police Reform Act 2002

<sup>39</sup> Paragraph 7, Schedule 3, Police Reform Act 2002

proceedings means any proceedings or management process during which that person's conduct, rather than their performance, is considered for the purposes of deciding whether any sanction or punitive measure should be imposed against them for that conduct.

The term 'disciplinary proceedings' will also include any proceedings or management process during which that person's performance is considered to determine whether it is satisfactory and whether any action should be taken in relation to it wherever that term is used in section 22 and paragraphs 22, 23, 25 and 27, Schedule 3, Police Reform Act 2002.<sup>40</sup>

**European Convention on Human Rights**

This means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.

**Fanciful complaints**

A complaint is fanciful if no reasonable person could lend any credence to it.<sup>41</sup> It is an objective test.

**Independent investigation**

An investigation carried out by the IPCC itself.<sup>42</sup>

An independent investigation is often used for the most serious incidents and/or those with the greatest public interest. For example, those 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.

**Interested person**

Someone who has an interest in being kept properly informed about the handling of a complaint, recordable conduct matter or DSI matter. An interested person is not a complainant.

In the case of a complaint or recordable conduct matter, a person will have an interest in being kept properly informed if it appears to the IPCC or to an appropriate authority that the person:

- is a relative of the person whose death is alleged to be the result of the conduct complained of or to which the recordable conduct relates;
- is a relative of the person whose serious injury is alleged to be the result of the conduct complained of or to which

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<sup>40</sup> Section 29, Police Reform Act 2002; Regulation 1, Police (Complaints and Misconduct) Regulations 2012; Regulation 3, Police (Conduct) Regulations 2012 and Regulation 4, Police (Performance) Regulations 2012

<sup>41</sup> Regulation 3, Police (Complaints and Misconduct) Regulations 2012

<sup>42</sup> Paragraph 19, Schedule 3, Police Reform Act 2002

- the recordable conduct relates and that person cannot make a complaint; or
- is a person who has suffered serious injury which is alleged to be the result of the conduct complained of or to which the recordable conduct relates.<sup>43</sup>

In the case of a DSI matter, a person will have an interest in being kept properly informed if it appears to the IPCC or to an appropriate authority that the person:

- is a relative of the person who has died;
- is a relative of the person who suffered serious injury and that person cannot make a complaint; or
- is the person who has suffered serious injury.<sup>44</sup>

A relative is defined as any spouse, partner, parent or adult child.<sup>45</sup>

A person who does not fall into any of the categories above may still be an interested person if the IPCC or the appropriate authority considers that person has an interest in the handling of the complaint, conduct matter or DSI matter which is sufficient to make it appropriate for information to be provided to him in accordance with this section. For example this may include coroners.

A person may only be treated as an interested person under the Police Reform Act if he or she has consented to information being provided to him or her.<sup>46</sup>

### **Local policing body**

This is a collective term for:

- police and crime commissioners
- the Mayor's Office for Policing and Crime (in relation to the Metropolitan Police district)
- the Common Council (in relation to the City of London Police police area)<sup>47</sup>

### **Local investigation**

An investigation carried out by the appropriate authority on its own behalf.<sup>48</sup>

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<sup>43</sup> Section 21, Police Reform Act 2002

<sup>44</sup> Section 21, Police Reform Act 2002

<sup>45</sup> Regulation 14, Police (Complaints and Misconduct) Regulations 2012

<sup>46</sup> Section 21, Police Reform Act 2002

<sup>47</sup> Section 101, Police Act 1996

**Managed investigation** An investigation conducted by the appropriate authority under the direction and control of the IPCC.<sup>49</sup>

The IPCC manages the investigation in terms of its scope, investigative strategy and findings of the report.

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's manager will review policy books and the IPCC will confirm the investigation has met the terms of reference.

**Mandatory referral** A complaint, conduct matter or DSI matter which must be referred to the IPCC.

**Matter which is already the subject of a complaint relating to the same subject matter and made by or on behalf of the same complainant** A matter is considered to be already the subject of a complaint where a complaint is made against the same person serving with the police originally complained of, relating to the same subject and by the same complainant.

**Misconduct proceedings** For a member of a police force or a special constable, misconduct proceedings means a misconduct meeting or a misconduct hearing.

For a person serving with the police who is not a member of a police force or a special constable, misconduct proceedings means any proceedings or management process during which the conduct (as opposed to the performance) of such a person is considered in order to determine whether a sanction or punitive measure is to be imposed against him or her in relation to that conduct.<sup>50</sup>

**Not reasonably practicable to complete the investigation of** For the purposes of the disapplication grounds, it is not reasonably practicable to investigate a complaint or any other procedures under Schedule 3, Police Reform Act 2002 where:

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<sup>48</sup> Paragraph 16, Schedule 3, Police Reform Act 2002

<sup>49</sup> Paragraph 18, Schedule 3, Police Reform Act 2002

<sup>50</sup> Regulation 1, Police (Complaints and Misconduct) Regulations 2012

**the complaint or any other procedures under Schedule 3, Police Reform Act 2002**

- it is not reasonably practicable to communicate with the complainant or person acting on his or her behalf; or
- it is not reasonably practicable to complete a satisfactory investigation because:
  - i. the complainant is refusing or failing to make a statement or provide other reasonable assistance for the purposes of the investigation; or
  - ii. of the lapse of time since the event(s) complained about.

Not being reasonably practicable includes action which it is not reasonably practicable to take within a period which is reasonable in all the circumstances of the case.<sup>51</sup>

**Oppressive complaint**

A complaint which is without foundation which is intended, or likely to result in burdensome, harsh or wrongful treatment of the person complained against.

**Person concerned**

Person concerned means:

- in the case of an investigation of a complaint, the person in respect of whom there is an indication that he or she may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings
- in the case of an investigation of a recordable conduct matter, the person to whose conduct the investigation relates.

**Person serving with the police**

This includes:

- a member of a police force
- a civilian employee of a police force (referred to in this guidance as a police staff member)
- an employee of the Common Council of the City of London who is under the direction and control of a chief officer
- a special constable who is under the direction and control of a chief officer<sup>52</sup>

**Recording**

Recording a complaint, conduct matter or DSI matter gives it formal status under the Police Reform Act 2002.

**Repetitious complaint**

A repetitious complaint is one which:

- concerns substantially the same conduct as previous conduct matter or is substantially the same as a previous complaint made by or on behalf of the same complainant;

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<sup>51</sup> Regulation 5, Police (Complaints and Misconduct) Regulations 2012  
<sup>52</sup> Section 12 Police Reform Act 2002

- contains no new allegations which significantly affect the account of the conduct complained of; and
- no new evidence (which was not reasonably available at the time the previous complaint was made) is provided to support the complaint.

However, one or more of the following conditions must also be met in relation to the previous complaint or conduct matter for the new complaint to be repetitious:

- the complaint was locally resolved;
- the requirements of Schedule 3 of the Police Reform Act 2002 were disapplied or dispensed with in respect of the complaint;
- the IPCC ordered the discontinuance of the investigation of the complaint and gave the appropriate authority a direction to disapply or dispense;
- the appropriate authority disapplied the requirements of Schedule 3 of the Police Reform Act 2002 when it discontinued an investigation (where the discontinuance was not within the IPCC's power);
- the complaint was withdrawn; or
- the appropriate authority either submitted a memorandum to the IPCC setting out its determinations following a managed or independent investigation, or made the determinations following a local or supervised investigation.<sup>53</sup>

### **Repetitious conduct matter**

A repetitious conduct matter is one which:

- concerns substantially the same conduct as a previous complaint or conduct matter;
- there is no fresh indication in respect of that matter that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings; and
- there is no fresh evidence in respect of that matter which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded.

However, one or more of the following conditions must also be met in relation to the previous complaint or conduct matter for the new conduct matter to be repetitious:

- the complaint was locally resolved;

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<sup>53</sup> Regulation 3, Police (Complaints and Misconduct) Regulations 2012

- the requirements of Schedule 3 of the Police Reform Act 2002 were disapplied or dispensed with in respect of the complaint;
- the IPCC ordered the discontinuance of the investigation of the complaint and gave the appropriate authority a direction to disapply or dispense;
- the appropriate authority disapplied the requirements of Schedule 3 of the Police Reform Act 2002 following the discontinuance of an investigation (where the discontinuance was not within the IPCC's power);
- the complaint was withdrawn and it does not fall to be treated as a recordable conduct matter; or
- the appropriate authority either submitted a memorandum to the IPCC setting out its determinations following a managed or independent investigation or made the determinations following a local or supervised investigation.<sup>54</sup>

**Senior officer** A member of a police force holding a rank above chief superintendent.<sup>55</sup>

**Serious injury** A fracture, deep cut, deep laceration or injury causing damage to an internal organ or the impairment of any bodily function.<sup>56</sup>

**Severity assessment** An assessment as to:

- whether the conduct, if proved would amount to misconduct or gross misconduct; and
- if the conduct were to become the subject of disciplinary proceedings, the form which those proceedings would be likely to take.<sup>57</sup>

**Special requirements** Special requirements only apply to investigations of complaints against a member of a police force or a special constable. In the case of any other person, the investigator must adhere to the relevant policies and procedures for investigating allegations of any form of misconduct.

If, at any time during an investigation of a complaint, it appears to the investigator that there is an indication that a person to whose conduct the investigation relates may have:

- committed a criminal offence; or

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<sup>54</sup> Regulation 7, Police (Complaints and Misconduct) Regulations 2012

<sup>55</sup> Regulation 1, Police (Complaints and Misconduct) Regulations 2012

<sup>56</sup> Section 29, Police Reform Act 2002

<sup>57</sup> Paragraph 19B, Schedule 3, Police Reform Act 2002



- behaved in a manner which would justify the bringing of disciplinary proceedings

then the investigator must certify the investigation as one subject to special requirements.<sup>58</sup> Throughout the investigation, the investigator must consider whether such an indication exists even if he or she initially decided it did not.

**Supervised investigation**

An investigation carried out by the appropriate authority under the IPCC's supervision.<sup>59</sup>

The IPCC will also agree the terms of reference and investigation plan. The investigator must satisfy any requirements imposed by the IPCC which appear to the IPCC to be reasonable and necessary.<sup>60</sup>

**Unsatisfactory Performance Procedures**

Means the procedures set out in the Police (Performance) Regulations 2012.<sup>61</sup>

**(UPP)**

**Unsatisfactory performance or attendance**

Unsatisfactory performance or attendance means an inability or failure of a police officer to perform the duties of the role or rank he or she is currently undertaking to a satisfactory standard or level.<sup>62</sup>

**Vexatious complaint**

A complaint which is without foundation which is intended, or tends, to vex, worry, annoy or embarrass.

**Voluntary referral**

A complaint or recordable conduct matter which is not required to be referred to the IPCC but where the gravity of the subject matter or any exceptional circumstances justify referral.<sup>63</sup>

**Withdrawn complaints**

A complaint that is withdrawn in accordance with regulation 21, Police (Complaints and Misconduct) Regulations 2012 following an indication or notification from the complainant.<sup>64</sup>

**Witnessed the conduct**

For the purposes of making a complaint under the Police Reform Act 2002, a person can only be said to have 'witnessed the

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<sup>58</sup> Paragraph 19B, Schedule 3, Police Reform Act 2002

<sup>59</sup> Paragraph 17, Schedule 3, Police Reform Act 2002

<sup>60</sup> Paragraph 17, Schedule 3, Police Reform Act 2002 and Regulation 9, Police (Complaints and Misconduct) Regulations 2012

<sup>61</sup> Regulation 4, Police (Performance) Regulations 2012

<sup>62</sup> Regulation 4, Police (Performance) Regulations 2012

<sup>63</sup> Paragraphs 4 and 13, Schedule 3, Police Reform Act 2002

<sup>64</sup> Regulation 21, Police (Complaints and Misconduct) Regulations 2012



conduct' (and thus able to be a complainant) if he or she acquired his [or her] knowledge of that conduct in a manner which would make him [or her] a competent witness capable of giving admissible evidence of that conduct in criminal proceedings or has in his or her possession or control anything which would be admissible evidence in criminal proceedings of the conduct.<sup>65</sup>

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<sup>65</sup> Section 12, Police Reform Act 2002

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