

Statutory guidance

**on the police
complaints system**



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Chapter 1

Introduction

- 1.1 The Independent Office for Police Conduct (IOPC) has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales and to ensure that it is efficient and effective. We aim to improve public confidence in policing by ensuring the police are accountable for their actions and lessons are learnt.
- 1.2 This guidance is one of the ways in which the IOPC assists local policing bodies and forces to achieve high standards in the handling of complaints, conduct matters, and death and serious injury (DSI) matters concerning those serving with the police, and to comply with their legal obligations.
- 1.3 An effective police complaints system is vital. The way in which complaints, conduct matters and death and serious injury matters are dealt with has a huge impact on confidence in the police. Where they are dealt with well, it helps to restore trust, bring about improvements in policing and makes sure something that has gone wrong does not happen again. Where they are dealt with badly, it damages confidence in both the police and the police complaints system. The handling of all matters should aim to improve the police service and individual performance through learning, and to put things right when they have gone wrong. This should be done while ensuring there is appropriate accountability at both individual and force level.

The Policing and Crime Act 2017: changes to the police complaints system

- 1.4 The *Policing and Crime Act 2017* and supporting regulations made significant changes to the police complaints and disciplinary systems. They introduced a number of changes designed to achieve a more customer-focused complaints system.
- 1.5 The complaints system was expanded to cover a broader range of matters. Formerly, the way that the term ‘complaint’ was defined meant that it needed to relate to the conduct of an individual officer. Now a complaint can be made about a much wider range of issues including the service provided by the police as an organisation. This was designed to increase access to the police complaints system. The IOPC expects forces to consider the information they keep about complaints with the intent of the reforms in mind – a positive obligation to increase access and to collect information that enables forces and local policing bodies to learn from complaints and other matters.

- 1.6** Legislation changed to ensure that matters can be dealt with at the most appropriate level, supporting both the efficiency and fairness of the complaints system. There is still provision for the most serious matters to be investigated independently. Below that level there are a wide range of complaints that are most appropriately dealt with by the police themselves. The changes allow for certain types of complaints to be resolved outside the requirements of Schedule 3 to the *Police Reform Act 2002* (see chapter 6), while those that have been recorded may be handled reasonably and proportionately otherwise than by investigation, by investigation, or, in some circumstances, no further action may be taken (see chapter 10 for guidance on determining how to handle a complaint). This allows for the police to quickly learn from, and make improvements based on, the complaints they handle.
- 1.7** Responding to matters in a timely manner is key to securing confidence in the complaints system and providing good customer service (to complainants and interested persons, as well as anybody whose actions are being considered). The legislation introduced a process to hold those responsible for an investigation to account if an investigation takes longer than 12 months to complete (see Chapter 13).
- 1.8** Other changes aimed to increase the focus on learning and improvement. Misconduct proceedings are now focused on serious breaches of the Standards of Professional Behaviour and a new process which encourages officers to reflect and learn from any mistakes or errors (Reflective Practice Review Process) has been introduced. These changes aimed to increase the emphasis on finding solutions, rather than focusing on an exclusively punitive approach to errors and mistakes.
- 1.9** Previously, there were different rights of appeal a complainant could exercise, depending on how their complaint was handled. Changes to the legislation replaced these different rights with a single right to apply for a review of the outcome of the complaint. This is aimed at making the system clearer and more accessible for complainants, while maintaining their rights to have decisions about their complaints reviewed.
- 1.10** Local accountability was enhanced through changes to the role of local policing bodies. They have a statutory responsibility to hold their chief officer to account for the performance of the complaints system locally and for ensuring there are appropriate processes in place for dealing with conduct and DSI matters. They also have a central role in deciding how the complaints system operates at a local level as they have the option of taking on direct responsibility for certain functions (see paragraph 1.27 below). Finally, where appeals were previously handled by either the chief officer or the IOPC, the new right to apply for a review is to either the local policing body or the IOPC. This change aimed to increase independence and transparency.

- 1.11** The first section of this guidance sets out the principles of accessibility, reasonable and proportionate handling and learning and improvement, which are crucial to a strong, effective and efficient complaints system.

To whom the guidance applies

- 1.12** This guidance is issued under Section 22 to the *Police Reform Act 2002*. It applies to local policing bodies and all 43 Home Office police forces in England and Wales. Local policing bodies, police officers, police staff members, special constables and all those working in policing must have regard to the guidance. It also applies to those agencies and non-Home Office forces that have entered into Section 26 or Section 26BA agreements with the IOPC, subject to any particular provisions contained in those agreements.
- 1.13** If the people listed above do not follow the guidance, they need to have a sound rationale and justification for departing from it or risk legal challenge. A failure to have regard to the guidance is admissible in evidence in legal proceedings, including any disciplinary proceedings and any appeal proceedings after a disciplinary decision.
- 1.14** 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 IOPC has published a range of other material to both supplement this guidance and assist different audiences.

Other guidance and legislation

- 1.15** The guidance should be read in conjunction with:
- the IOPC's *Guidelines on handling allegations of discrimination*
 - the IOPC's *Guidance on capturing data about police complaints*
 - the Home Office's guidance on *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*
 - College of Policing guidance on outcomes in police misconduct proceedings
- 1.16** As well as the legislation and guidance governing the police complaints and disciplinary systems, police forces and local policing bodies must have due regard to other legislation that has implications for how they exercise their roles and responsibilities under the *Police Reform Act 2002*. In particular:
- the Public Sector Equality Duty and their duties to¹:

¹ Section 149, *Equality Act 2010*.

- i. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it².
- the *Welsh Language Act 1993* and *Welsh Language (Wales) Measure 2011* including Standards applicable to respective organisations.
 - data protection legislation, and guidance from the Information Commissioner's Office. For example, police forces and local policing bodies should consider how they can signpost their privacy information to complainants at the outset of the handling of a complaint. Public confidence in the police complaints system could be undermined if data protection breaches occur in the course of complaint handling, or if complainants have a lack of trust in how their personal data is handled.

This guidance and key roles in the police complaints system – delegation and responsibilities

IOPC

- 1.17** This guidance is for the police service and local policing bodies on the handling of complaints, therefore, it does not detail all the IOPC's own responsibilities under the *Police Reform Act 2002*, or how it will carry out those responsibilities. These are, however, touched on where it is necessary to explain what is expected of forces and local policing bodies.
- 1.18** Powers and responsibilities that are conferred or imposed on the Director General of the IOPC are referred to in this guidance as being undertaken by the IOPC.

Appropriate authorities

- 1.19** The appropriate authority for a complaint is the chief officer of the force about which dissatisfaction is expressed or, where a complaint relates to the conduct of an individual, the chief officer who has direction and control over that person³.
- 1.20** However, if a complaint relates to the conduct of a chief officer or acting chief officer, the appropriate authority is the local policing body with responsibility for that police force area⁴.

² The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

³ Section 29, *Police Reform Act 2002*.

⁴ Section 29, *Police Reform Act 2002*.

- 1.21** This guidance refers to the appropriate authority where legislation specifically confers a power or responsibility on them.

Chief officers

- 1.22** For most police forces, the chief officer is the Chief Constable. For the Metropolitan Police Service and City of London Police it is the Commissioner.
- 1.23** The chief officer can delegate their responsibilities under Part 2 to the *Police Reform Act 2002* (including those undertaken as part of their role as appropriate authority) to⁵:
- in the case of a complaint or conduct matter concerning the conduct of a senior officer:
 - a senior officer, or
 - a police staff member who, in the opinion of the chief officer, is of at least a similar level of seniority
 - in any other case:
 - a member of a police force of at least the rank of inspector, or
 - a police staff member who, in the opinion of the chief officer, is of at least a similar level of seniority

However, where the complaint is a recorded complaint being handled otherwise than by investigation, or being handled outside of Schedule 3 to the *Police Reform Act 2002*, the chief officer can delegate their responsibilities under Part 2 to the *Police Reform Act 2002* (including those undertaken as part of their role as appropriate authority) to:

- any person serving with the police
- 1.24** A chief officer must not delegate the exercise or performance of any power or duty to a person if to do so could reasonably give rise to a concern as to whether the person could act impartially.
- 1.25** 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.

Local policing bodies

- 1.26** For most areas the local policing body is the Police and Crime Commissioner (see glossary)⁶. The local policing body has an overarching duty to scrutinise, support and challenge the overall performance of forces, monitor complaints and hold chief officers to account for the performance of officers and staff⁷. They are also able, where they

⁵ Regulation 46, Police (Complaints and Misconduct) Regulations 2020.

⁶ Section 101, *Police Act 1996*.

⁷ Paragraph 17, Schedule, Policing Protocol Order 2011.

consider that aspects of Part 2 to the *Police Reform Act 2002* are not being complied with, to direct chief officers to take steps to remedy this⁸.

1.27 All local policing bodies have certain duties in relation to the handling of complaints. They can also choose to take on responsibility for certain additional functions that would otherwise sit with the chief officer:

- Model 1 (mandatory): all local policing bodies have responsibility for carrying out reviews where they are the relevant review body.
- Model 2 (optional): in addition to the responsibilities under model 1, a local policing body can choose to assume responsibility for making initial contact with complainants, handling complaints outside of Schedule 3 to the *Police Reform Act 2002*, and recording complaints.
- Model 3 (optional): a local policing body that has adopted model 2 can additionally choose to assume responsibility for keeping complainants and interested persons properly informed of the progress of the handling and outcome of their complaint.

Local policing bodies do not become the appropriate authority for the complaint under any of the above models. Rather, in the case of models 2 and 3, they perform some of the functions that the chief officer would otherwise carry out as the appropriate authority.

1.28 A local policing body may delegate their responsibilities, but may not delegate them to⁹:

- a police constable
- another local policing body or the Mayor of London
- any other person who maintains a police force
- a member of staff of a person who falls into any of the above criteria
- any person whose involvement in that role could reasonably give rise to a concern as to whether they could act impartially

How the guidance is arranged

1.29 The guidance is arranged in four main sections:

Principles of the complaints system

This section outlines principles that are crucial to achieving a fair and effective complaints system – accessibility for all, taking a reasonable and proportionate approach, and using the system to identify and act on learning to ensure continuous improvement.

⁸ Section 15, *Police Reform Act 2002*.

⁹ Regulation 50, Police (Complaints and Misconduct) Regulations 2020.

Initial handling of complaints

This section outlines initial considerations and actions on receipt of a complaint, including the definition of a complaint and what action can be taken before recording a complaint under Schedule 3 to the *Police Reform Act 2002*.

Handling complaints, recordable conduct matters and death or serious injury matters under Schedule 3 to the *Police Reform Act 2002*

This section outlines requirements and considerations when investigating or otherwise handling matters under Schedule 3 to the *Police Reform Act 2002*. This includes requirements around referral to the IOPC, keeping people informed, severity assessments, special procedures and reporting.

Outcomes of handling

This section outlines action on receipt of an investigation report, outcomes available, communicating outcomes and responsibilities relating to reviews.

- 1.30** Flowcharts setting out processes for handling complaints, recordable conduct matters, death or serious injury matters and reviews are presented in the annex.
- 1.31** Annexes also outline how the *Police Reform Act 2002* is adapted to apply to certain types of complaints.
- 1.32** Rather than including definitions (including legal definitions) throughout the guidance itself, key terms and concepts are defined in the glossary.

Principles of the complaints system



Chapter 2

Accessing the complaints system

2.1 This chapter covers:

- the importance of an accessible system
- promoting access
- recognising and overcoming barriers
- complainants who may need additional assistance
- complaints made by young people under 18

The importance of an accessible system

2.2 Easy access to the police complaints system is vital to ensuring and demonstrating that the police service is transparent, accountable and responsive. The complaints system enables members of the public to raise concerns. It can help them to understand why a decision or action was taken and to seek redress. Complaints provide valuable feedback and are an important source of learning to help forces, or individuals, improve the service they deliver.

2.3 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. They must ensure they make provisions for access to the system that reflect the needs, expectations and rights of complainants, and that those provisions do not deter members of the public from making complaints.

Promoting access

2.4 All organisations with responsibility for handling police complaints should ensure that members of the public can quickly and easily find information about how to make a complaint. The information should tell people what they can and cannot expect from the complaints system. It should be clear, accurate and easy to understand. Information should be publicised in a range of ways and be available when and where it may be needed. For example:

- online – forces and local policing bodies should have clear links on the home page of their websites to information about how to make a complaint.

- social media – information about how to make a complaint should be readily available on social media accounts and pages. Forces and local policing bodies should recognise that, for some complainants, social media may be the preferred method for raising complaints, and they should take steps to manage this. Police forces are not expected to scour social media for expressions of dissatisfaction, however, where someone directs a post at the force, where they are intending to raise a complaint, and they appear to meet the definition of a complainant (see Chapter 5), police forces should ensure that there are systems in place to bring that post to the attention of the department/body responsible for the initial handling of a complaint, for logging and handling.
- in police stations and custody suites – posters and leaflets about the complaints system should be displayed in public areas of police premises, including custody areas and front desks. Those in police custody must be able to make a complaint while in custody, if they wish to do so.

2.5 Websites should include:

- relevant contact details and forms for making complaints and making an application for a review of the outcome of a complaint
- clear, accurate, and up-to-date information about complaint procedures including a complainant's right to apply for a review of the outcome of the complaint at the conclusion of the handling of a recorded complaint, reflecting the current legislation
- frequently asked questions to common issues and information for complainants, including about professional standards departments and, for example, police and crime commissioners

2.6 In addition, forces and local policing bodies should promote the complaints system to the communities they serve, especially to groups and communities that may feel less confident about using it. They should work with other organisations to disseminate information and assess what support different sections of the community may need to access the complaints system – for example, libraries, Citizens Advice, schools or voluntary sector organisations.

2.7 Forces and local policing bodies should ensure that the information they provide gives prominence to how to complain directly to the relevant police force or local policing body, rather than to the IOPC. It should make clear that complaints made to the IOPC will automatically be passed to the force or local policing body for logging, unless there are exceptional circumstances that justify not passing it on¹⁰.

2.8 Forces and local policing bodies must ensure that members of the public who wish to make a complaint can do so in a variety of ways. This should include access to

10 Paragraph 2, Schedule 3, *Police Reform Act 2002*.

paper-based forms, online forms, an email address, telephone numbers and, where practical, face-to-face meetings.

- 2.9** The IOPC recognises that there may be times when there is a need to manage contact with complainants whose actions or behaviour is considered to have a significantly adverse impact on staff welfare or resources. In these circumstances access should be managed appropriately. However, a complainant must always be able to access the system by some means¹¹.

Recognising and overcoming barriers

- 2.10** It is essential that the system can be accessed by all those who may wish to make a complaint. The IOPC's public confidence surveys have shown consistently that certain groups, in particular young people and people from black and minority ethnic communities, lack confidence in the complaints system and are less likely to use it¹².
- 2.11** It is important that forces and local policing bodies recognise that an individual's specific needs or circumstances may impact on their confidence and ability to make a complaint. For example, a complainant may feel less willing or able to make a complaint owing to their age, physical or mental health issues, cultural differences, learning difficulties, or their language or literacy skills. They may also feel particularly unwilling or unsure owing to a combination of intersecting factors that make up their identity, such as gender, sexuality or race; or owing to the nature of their previous interaction with the police or their personal experiences as a victim of crime. Forces and local policing bodies should recognise that making a complaint about the police, and the police environment, may be intimidating for some.
- 2.12** Forces and local policing bodies need to be mindful of potential barriers to engagement and have robust strategies for promoting access. They should ensure that all reasonable steps are taken to remove barriers that might prevent any of the communities they serve from engaging with the complaints system. They should also be mindful that if a complaint is not dealt with effectively from the point at which it is made, it can lead to the complainant disengaging from the process without a resolution to the issue they raised and losing confidence in the police.

11 The IOPC has produced further information on handling unacceptable and unreasonable complainant conduct, which is available on our website.

12 IPCC (2016) *Public confidence in the police complaints system: 2016 report prepared for the IPCC by IPSOS MORI*.

Complainants who may need additional assistance

- 2.13** Some people may need adjustments to usual procedures to enable them to access the complaints system. It might be, for example, that a complainant finds communicating in English, or via the written word, difficult, or is disadvantaged in some other way. It is important that no-one is discouraged from using the police complaints system.
- 2.14** Forces and local policing bodies must take into account their obligations under the *Equality Act 2010* including ensuring that their actions are not discriminatory. They must also ensure that their actions reflect the aims of the Public Sector Equality Duty and the Code of Practice for Victims of Crime.
- 2.15** Forces and local policing bodies need to be aware that what is customary for non-disabled people can be difficult for someone who has an impairment or health condition. Under Section 20 of the *Equality Act 2010* there is a duty to make reasonable adjustments to ensure that a disabled person does not suffer any substantial disadvantage when accessing a service.
- 2.16** It must 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 they do not¹³.
- 2.17** The assistance of a relative, carer or other representative may be necessary to help a complainant overcome any barriers to making a complaint. They can also help a complainant make their wishes and the details of their complaint clear. However, in some cases, additional support may still be required. For example, it may be appropriate to signpost or facilitate access to other support services. Forces and local policing bodies must always consider what adjustments may be appropriate in the circumstances.
- 2.18** This guidance highlights that forces and local policing bodies need to provide certain information 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 if a dispute arises about what has happened or what has been said. However, it may be appropriate to provide information in writing and by another method.
- 2.19** Forces and local policing bodies should ensure that communication is tailored to meet the individual needs of the complainant. They should take into account the complainant's or interested person's stated preference for the method of communication when providing them with information.

13 Section 1, *Mental Capacity Act 2005*.

- 2.20** Provision should also be made for people who wish to make a complaint, or need information about the complaints system, in another language or format. This includes sign language, access to interpreters, and formats such as Braille, audio or easy read.

Complaints made by young people under 18

- 2.21** In many cases, a young person who makes a complaint against a person serving with the police will be supported by a parent, guardian or other appropriate adult. In situations where a young person makes a complaint alone, the force or local policing body should still take action on their complaint. The force or local policing body should ask the young person whether they would like their parent or guardian to be notified, and their wishes should be followed. The force or local policing body should also consider whether an alternative form of support should be offered, such as an advocate.
- 2.22** In some situations, a young person may want to make their complaint through a parent, guardian or other adult. Forces and local policing bodies must accept complaints where a young person has given permission for their parent, guardian or other nominated adult to submit the complaint on their behalf.
- 2.23** If the young person is under 16, they should not normally need to provide written permission for a parent or guardian to act for them in this manner. However, if it becomes apparent that the young person's views about pursuing a complaint are at odds with those of their parent, guardian or advocate, the young person's views should be taken into account, giving due weight to their age and maturity.
- 2.24** When a young person makes a complaint, the force or local policing body is responsible for ensuring that they understand the process and the potential outcomes. Young people should receive support not only when they first access the police complaints system, but throughout the handling of their complaint, including ensuring that they understand the process and providing them with appropriate support.

Chapter 3

Principles of reasonable and proportionate handling

3.1 This chapter sets out:

- the importance of reasonable and proportionate handling
- what is meant by ‘reasonable and proportionate’
- principles of reasonable and proportionate handling:
 - customer service focus
 - case by case approach
 - considering the wider context
 - fair and effective decisions

The importance of reasonable and proportionate handling

3.2 The reasonable and proportionate handling of complaints and other matters is necessary to ensure both public confidence in the complaints system, and the system’s efficient and effective operation.

3.3 All complaints recorded under Schedule 3 to the *Police Reform Act 2002* must be handled in a way that the appropriate authority considers to be reasonable and proportionate. While this chapter therefore refers to complaints, the principles outlined here should also be applied to the handling of recordable conduct and death and serious injury (DSI) matters, wherever possible.

3.4 The principles of reasonable and proportionate handling apply to decisions about how a complaint should be handled, and, as part of that handling, what steps are required to resolve it. Handling a case reasonably and proportionately includes providing a reasonable and proportionate outcome. This chapter articulates the principles of reasonable and proportionate handling and what these mean in the context of the police complaints system. It does not outline the legislative requirements, which are included in the relevant places in the other sections of this guidance.

What does ‘reasonable and proportionate’ mean?

3.5 This means doing what is appropriate in the circumstances, taking into account the facts of the matter and the context in which it has been raised, within the framework of legislation and guidance. It means weighing up the matter’s seriousness and its

potential for learning, against the efficient use of policing resources, to determine the extent and nature of the matter's handling and outcome. Considering the matter's seriousness should involve due regard to the nature of the incident, any actual or potential impact on, or harm to, individual(s), communities or the wider public and the potential impact on confidence in the police and in the police complaints system. A reasonable and proportionate response includes providing a clear and evidence-based rationale for any decisions taken.

Principles of reasonable and proportionate handling

Customer service focus – delivering good customer service should be a central aspect of the handling of all complaints. All parties involved in a complaint should be treated with consideration throughout the process.

- 3.6** Complaint handlers should seek to explore the complainant's perspective. Complainants should feel confident that their complaint is understood properly. Complaint handlers will need to fully understand the complaint, why the complainant has made it, and the outcome they are seeking. At the outset, the complainant must be contacted and provided the opportunity to give their views about how their complaint should be handled, and these should be considered by the person handling the complaint (see Chapter 6). Exploring fully the complaint with a complainant and explaining the remit of the police complaints system to them, can help set boundaries and ensure that no element of the complaint is accidentally missed.
- 3.7** It is important that expectations are managed throughout the process, so that the complainant knows the type of response they should expect to receive and the issues it will address. If, and when, it becomes apparent that the outcome of a complaint is unlikely to meet the complainant's expectations, the complaint handler should explain the reasons for this to the complainant.
- 3.8** Complainants, and any person complained about, should be able to follow the progress of the complaint throughout its handling. Communication should be as open and transparent as possible (taking into account any legal constraints) and tailored to meet individual needs from the outset.
- 3.9** It is also important, for all those involved, that complaints are handled in a timely manner.
- 3.10** The response a complainant receives should not be defensive. It should address all aspects of the complaint that have been agreed with the complainant, acknowledge any potential or actual harm caused (and the impact of this), and willingly demonstrate organisational accountability where appropriate.

Case by case approach – what is reasonable and proportionate must be assessed on a case by case basis.

- 3.11** The way in which a complaint is handled should be tailored to the circumstances of the complaint as far as possible.
- 3.12** All complaints should be handled in a way that takes account of the seriousness of the allegation, any actual or potential impact or harm caused, and the potential for learning and improvement. The more serious a complaint, the greater the need for accountability and scrutiny. For more serious complaints, this may mean that more wide-ranging enquiries need to be carried out, or that efforts need to be made to corroborate information, where it otherwise may not be considered to be reasonable or proportionate in the circumstances. More guidance on how to assess the seriousness of a complaint can be found in paragraph 10.12.
- 3.13** Complaint handlers should also:
- consider how best to communicate with all those involved in the complaint, including, but not limited to, any reasonable adjustments that might be required (see Chapter 2)
 - consider whether it would be helpful for the complaint to be dealt with by a specific person because of the subject matter or circumstances of the complaint, or their expertise. Where the subject matter of the complaint is particularly serious or sensitive, the complaint handler should also consider having regard to the entitlements set out in the Ministry of Justice’s *Code of Practice for Victims of Crime* – for example, offering the opportunity to have a person of the same sex handle certain types of complaint
 - explore what actions might provide the complainant with a suitable remedy or otherwise address their concerns, taking into account the circumstances of the complaint and any legislative requirements, including the requirements of the *Human Rights Act 1998*, which incorporates the European Convention on Human Rights into UK law
- 3.14** Sometimes it will be appropriate to take no action to resolve a complaint (see paragraphs 12.11 – 12.13). The complaint handler should provide the complainant with a sound rationale about why they intend to take no action, and advise the complainant of their right to have the outcome of the handling of their complaint reviewed. No complaint should receive no response at all.

Consider the wider context – complaint handlers should take a holistic approach to handling complaints and act on any wider concerns. They should be alert to opportunities to identify learning and improve service delivery.

- 3.15** The handling of a complaint should not be limited strictly to the issues a complainant has raised, if other areas of concern are identified. Sometimes a complaint may

give rise to concerns additional to those alleged by the complainant or may indicate opportunities for wider learning or improvement. For example, it may reveal an aspect of poor service or treatment that the complainant was not aware of, or indicate a systemic or organisational failing. If such concerns or opportunities for learning are identified, they should be documented and explored in addition to responding to the original points of the complaint.

- 3.16** In addition, there may be particular public interest in a complaint about the application of new police powers or techniques, or areas that are known to be controversial. Such complaints may provide an opportunity for wider learning or identification of best practice.
- 3.17** Any learning identified as a result of a complaint should be shared with the complainant, including details of how, and when, any improvements will be implemented.

Fair and effective decisions – actions taken to handle a complaint should be, and should be seen to be, just and any conclusions drawn should be capable of withstanding appropriate scrutiny.

- 3.18** Complaint handlers should consider the fairness of their actions on all those involved in a complaint. They should ensure that the decisions they make:
- are impartial, free from bias (or the appearance of bias) or discrimination, having considered the perspectives provided by all parties
 - are logical and justifiable with reference to the relevant available evidence
 - do not place undue weight on any given consideration
 - are accompanied by a clear, evidence-based rationale
- 3.19** To be fair and effective, decisions also need to be made transparently (as far as is possible) and in a timely manner. Wherever possible (subject to the exemptions outlined in paragraphs 11.16 – 11.20) they should be communicated to all those involved and supported by a clear rationale that allows everyone involved to understand them.
- 3.20** Complaint handlers should promote the fair and equal treatment of all parties. In order to do this, where a complaint is about a specific incident, or the actions of a specific person, those involved should have the opportunity and be encouraged, where appropriate, to participate throughout the handling of a complaint (not just where required by the legislation) and to discuss their views and any concerns.

Chapter 4

Learning and improvement

4.1 This chapter covers:

- building a learning culture
- learning from complaints, investigations and reviews
- learning from wider sources
- using data to inform improvement
- making data available locally
- communicating the impact of learning

Building a learning culture

4.2 One of the most important functions of the police complaints system is to support individuals, police forces and the police service to reflect on and learn from complaints and incidents where something has gone wrong. It provides a vital source of evidence to help chief officers and local policing bodies drive improvements in policing.

4.3 A strong learning culture is extremely important to securing and maintaining public confidence in the police service. Chief officers, local policing bodies and all those serving with the police must be open to considering and acknowledging where something could be, or could have been, done better. A service that values learning:

- embraces a culture of continuous improvement and reflection, actively looking for opportunities to develop and improve practice before a weakness, failing, or gap is identified
- encourages innovation, and is open to exploring new and different ways of working
- learns from experience, retains a corporate memory of what worked and what did not, is open to learning from others and shares their experience with others
- identifies and shares best practice
- actively seeks feedback from service users and staff at all levels to help improve practice, and tells people how their input was used

4.4 Chief officers and local policing bodies must make sure that information relating to complaints, conduct matters and death or serious injury (DSI) matters is used as a source of learning and, importantly, that this learning is used to make improvements where appropriate.

Learning from complaints, investigations and reviews

- 4.5** The IOPC expects police forces and local policing bodies to routinely consider whether any learning can be taken from each complaint, investigation or review.
- 4.6** Chief officers and local policing bodies should ensure that there are robust procedures in place for identifying and acting on learning. They should:
- Develop terms of reference or standard operating procedures that prompt those dealing with complaints, investigations and reviews to consider whether there are any opportunities to improve policy or practice.
 - Ensure that action is taken to implement any learning, including any accepted IOPC learning recommendations, as swiftly as possible. Where organisational learning is identified during the course of handling a matter, it is not always necessary to wait until the end of handling that matter before implementing any changes and improvements.
 - Ensure that there are systems in place to record, monitor and report on the progress of action taken as a result of any learning.
 - Ensure that any learning or good practice is shared with police officers and staff locally, where relevant, and incorporated into training and guidance as appropriate.
 - Ensure that any learning or good practice is shared with other forces or partners working nationally, such as the College of Policing, where appropriate.
 - Ensure that key stakeholders are informed when significant changes to policies or practice have occurred as a result of learning.
- 4.7** The IOPC expects local policing bodies to monitor their force's performance in this regard.
- 4.8** The IOPC may make recommendations where it identifies a potential area of organisational learning for a police force, the police service or another body. It may, for example, recommend a change to local or national policy, guidance, training or practice where it believes this may improve policing practice or prevent a recurrence of something that went wrong. See paragraphs 17.33 – 17.37 for further information on the processes that must be followed where a recommendation is made.

Learning from wider sources

- 4.9** Aside from the police complaints system, there are a number of other sources of information which should be considered. These sources include, but are not limited to:
- IOPC research and learning publications
 - Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) inspections and reports

- feedback provided by members of the public or police officers/staff
- civil proceedings brought against the chief officer or local policing body
- reviews commissioned by the force or local policing body
- reviews or research undertaken by other statutory bodies, independent experts, academics, community and voluntary sector groups, or specialist interest organisations
- learning from inquests, including prevention of future death reports
- serious case reviews, domestic homicide reviews or other reviews commissioned to identify learning
- local and/or national statistical data

4.10 Chief officers and local policing bodies should have processes in place for community groups to raise issues, which may not amount to a complaint under the *Police Reform Act 2002*, but where they have, or are aware of, concerns with the service provided by the police in their area. This will assist in lessening the impact of any potential barriers to accessing the police complaints system (see Chapter 2).

4.11 These sources of information may be considered alongside police complaints information to fully understand an identified issue and its context. They may also be considered on their own account to identify areas of learning for the force, and any appropriate action to take (including quick-time changes to potentially prevent a situation from worsening).

Using data to inform improvement

4.12 In addition to learning from individual cases, chief officers and local policing bodies should use wider local and national data from the police complaints system to monitor their performance and to identify opportunities for learning and improvement¹⁴. Local policing bodies have a key role to play in ensuring that forces understand and monitor their performance.

4.13 Data collected through the IOPC's performance framework is a key source of information for police forces and local policing bodies. The IOPC uses the performance framework to collate data on complaints. Chief officers and local policing bodies are required to provide the IOPC with this data. The IOPC's *Guidance on capturing data about police complaints* provides more detail about how information should be recorded on systems and how it will be collected, analysed and shared with the public.

¹⁴ Forces and local policing bodies are under an obligation to handle data in compliance with data protection legislation, including the principle of data minimisation, and, therefore, forces and local policing bodies may wish to consider whether data used for these purposes can be anonymised.

- 4.14** Chief officers and local policing bodies should make use of data from the performance framework and other sources to:
- compare their performance to others
 - arrive at an understanding of what good performance looks like and identify opportunities to improve performance
 - understand how different parts of the complaints system are performing
 - report on performance
 - identify good practice in complaints handling or other areas, which could be built on and/or shared more widely
 - identify themes in complaints – including within teams, divisions, or geographical areas – which might indicate a need to change a process, or address a gap in policy or training
 - identify individuals, groups or communities who are under-represented in the complaints system, highlighting a need to raise awareness, develop confidence or improve access
 - identify recurring issues or patterns in issues affecting particular individuals, groups or communities, which may require forces or local policing bodies to look more closely at the issues involved and people’s experiences to identify the root causes of complaints and concerns, and take appropriate action to help rebuild trust and confidence
- 4.15** The IOPC encourages chief officers and local policing bodies to seek information that provides an insight into how individuals involved in complaints, investigations and reviews found the experience. This type of feedback may help identify opportunities to improve handling.
- 4.16** Chief officers and local policing bodies may also wish to collate data on the performance of the complaints system in their force, including data around complaints that are handled outside of Schedule 3, and enhance opportunities for learning, by performing quality audits. File sampling can be a useful way to identify issues, whether proper procedures are being followed and whether matters are being dealt with reasonably and proportionately.

Making data available locally

- 4.17** The public and other stakeholders such as the Home Office, HMICFRS, the College of Policing, independent advisory groups, community monitoring groups and specialist interest organisations, will have an interest in police complaints system data. Some of these stakeholders play an important role in monitoring performance and identifying opportunities for learning.

- 4.18** To help ensure that all stakeholders can make the best use of available data, chief officers and local policing bodies should seek to raise awareness of it, for example via force intranet sites, external websites, social media or targeted email campaigns. They should provide additional information, context and guidance where appropriate, to help members of the public understand what the data shows. In some circumstances, it may also be useful to present data in a way that conveys the combined characteristics of individuals, rather than, for example, presenting separate figures on age, gender or ethnicity. This may help to provide a more informative picture of the interactions and experiences that individuals, groups and communities have with the police complaints system.
- 4.19** The IOPC believes it is also good practice for chief officers and local policing bodies to consult regularly with stakeholders to identify potential data needs and to seek feedback about how data that has been published is being used. This could help to identify where further information could be provided, or where changes to the format of information could be made to aid transparency.

Communicating the impact of learning

- 4.20** Where improvements to policy or practice are implemented as a result of issues identified through the police complaints system, chief officers and local policing bodies should communicate the changes to those involved in a complaint, investigation or review¹⁵.
- 4.21** Chief officers and local policing bodies should also publicise improvements, where appropriate, to the wider public and to any groups and communities likely to be interested in the changes.
- 4.22** Seeing evidence of action being taken to improve policy or practice can play an important part in helping to build confidence in the complaints system and restore trust and confidence in policing where this may have been damaged.

¹⁵ Subject to the exceptions outlined in paragraphs 11.16 – 11.20.

Initial handling of complaints



Chapter 5

Complaints

5.1 This chapter sets out:

- the definition of a complaint
- what can be complained about
- who can make a complaint
- complaints made on someone else's behalf
- complaints falling outside of the police complaints system

Definition of a complaint

5.2 A complaint is any expression of dissatisfaction with a police force that is expressed by or on behalf of a member of the public¹⁶. It must be made by a person who meets the definition of a complainant (see paragraph 5.6, and the table, below). There must also be some intention from the complainant to bring their dissatisfaction to the attention of the force or local policing body. A complaint does not have to be made in writing, nor must it explicitly state that it is a complaint for it to be considered as one¹⁷.

What can be complained about?

5.3 A complaint can be made about any matter which has had an adverse effect on the person making the complaint (or, where the complaint is about the conduct of an individual, that they have witnessed or which happened to them, see table below). Complaints may, for example, be about force-wide crime initiatives, the organisation of policing resources and general policing standards.

5.4 However, a complaint can also be made about the conduct of any person serving with the police, i.e. a police officer, police staff member, special constable, designated volunteer or a person contracted to provide services to a chief officer¹⁸. Conduct includes any acts, omissions, statements and decisions, whether actual, alleged or inferred¹⁹.

16 Section 12, *Police Reform Act 2002*.

17 Section 12, *Police Reform Act 2002*.

18 However, matters regarding contractors are not covered by the Police (Complaints and Misconduct) Regulations 2020 and, therefore, are not covered by this guidance.

19 Section 29, *Police Reform Act 2002*.

- 5.5** There is no bar on complaints being made about the conduct of a person who is no longer serving with the police, as long as it concerns matters that occurred while they were serving. In addition, a complaint may concern the actions of an officer who was off-duty at the time of the incident (see also paragraph 12.10).

Who can make a complaint?

- 5.6** Who can complain is dependent on whether the complaint is about the conduct of a person serving with the police, or about other matters.

	Complaints not about the conduct of individuals	Complaints about the conduct of individuals
Who can complain	<p>A complainant must be a member of the public who:</p> <ul style="list-style-type: none"> • was adversely affected by the matter complained about, or • is acting on behalf of someone who was adversely affected by the matter complained about. 	<p>A complainant must be a member of the public who:</p> <ul style="list-style-type: none"> • claims to be the person in relation to whom the conduct took place • claims to have been adversely affected by the conduct • claims to have witnessed the conduct, or • is acting on behalf of someone who satisfies one of the above three criteria²⁰
Who cannot complain	<p>A person cannot make a complaint if they are a person serving with the force complained about, unless they are a designated community support volunteer or police support volunteer²¹.</p>	

²⁰ Section 12, *Police Reform Act 2002*.

²¹ Section 29, *Police Reform Act 2002*.

	Complaints not about the conduct of individuals	Complaints about the conduct of individuals
		<p>A person cannot make a complaint if:</p> <ul style="list-style-type: none"> • at the time of the alleged conduct they were under the direction and control of the same chief officer as the person whose conduct it was, or • they are a person serving with the police, a National Crime Agency officer or a person on relevant service (within the meaning of section 97(1)(a) or (d) of the <i>Police Act 1996</i>) and were on duty at the time that: <ul style="list-style-type: none"> – the alleged conduct took place in relation to them – they were allegedly adversely affected by it, or – they allegedly witnessed it²²
<p>Definition of adversely affected</p>	<p>A person will be considered to have been adversely affected if they have suffered any form of loss, damage, distress or inconvenience as a result of the matter complained about, if they have been put in danger or otherwise unduly put at risk of being adversely affected²³.</p>	
		<p>A person will not be considered to have been adversely affected solely by virtue of having seen or heard about the conduct or its effects, (for example, in the news or being told about it by a third party²⁴) unless they:</p> <ul style="list-style-type: none"> • were physically present or sufficiently nearby when the conduct took place, or the effects occurred, and saw or heard the conduct or its effects, or • were adversely affected due to the fact that they knew the person directly affected by the conduct before it happened²⁵

22 Section 29, *Police Reform Act 2002*.
23 Section 29, *Police Reform Act 2002*.
24 Section 12, *Police Reform Act 2002*.
25 Section 12, *Police Reform Act 2002*.

	Complaints not about the conduct of individuals	Complaints about the conduct of individuals
Definition of witness	Not applicable	<p>A person can be said to be a witness to the conduct if, and only if:</p> <ul style="list-style-type: none"> • they have acquired their knowledge of the conduct in a manner which would make them a competent witness capable of giving admissible evidence of that conduct in criminal proceedings, or • they possess or have in their control anything that could be used as admissible evidence in such proceedings²⁶

Concerns raised by persons serving with the police

- 5.7** Although persons serving with the police in most circumstances are not able to use the police complaints system to make a complaint about their own force, this does not mean that they cannot raise concerns. However, the person serving with the police who raises the concern will not have the same statutory rights as a complainant.
- 5.8** Police forces and local policing bodies should ensure that there are adequate systems in place to support and protect persons serving with the police who want to raise concerns. This might include extending confidentiality to anyone who raises such a concern, as far as is possible and appropriate.
- 5.9** A person serving with the police should consider raising concerns within their own force in the first instance. However, as an addition to the routes offered by forces, the IOPC provides a 'report line'. This is a dedicated phone line and email address that persons serving with the police can use to report that someone serving with the police may have committed a criminal offence or behaved in a way that would justify disciplinary proceedings. People serving with the police can get contact details for the IOPC report line from the IOPC's website or their professional standards department, staff association or trade union.

Concerns raised by officers working in alliances or collaborative working arrangements

- 5.10** Whether a person working in an alliance or collaborative working arrangement (where, for example, officers from more than one police force are working together) is able to make a complaint under the *Police Reform Act 2002* will depend on the details of any

26 Section 12, *Police Reform Act 2002*.

applicable collaboration agreements and whose direction and control they are under²⁷. Even if a person working under a collaborative arrangement is technically able to raise a complaint under the *Police Reform Act 2002*, there may be more appropriate internal procedures to use, as the police complaints system is not intended to deal with internal employment issues.

Complaints made on someone else's behalf

- 5.11** A person is able to appoint someone to act on their behalf when making a complaint. The person could be a family member, friend, legal representative or any other person of their choosing. The appointed person must have, and be able to produce, the written consent of the person on whose behalf they are acting. However, a young person under 16 should not normally need to provide written permission for a parent or guardian to act for them in this manner (see paragraphs 2.21 to 2.24). The written consent should be clear and unambiguous and does not have to be in English.

Complaints falling outside of the police complaints system

- 5.12** A complaint may appear to fall outside the *Police Reform Act 2002*. For example, it may be unclear how concerns raised relate to policing or whether the person making the complaint is eligible to make a complaint under the *Police Reform Act 2002*. In these situations, the police force or local policing body should consider clarifying the nature and circumstances of the complaint with the person wanting to make a complaint.
- 5.13** Where a complaint is considered to fall outside the police complaints system, the person making it should be informed of this and why, as soon as possible. A record should be kept of the decision and of any other action taken.
- 5.14** If it appears that the concern may be more appropriately raised with another organisation, it may be helpful to explain this to the person making the complaint. Where a complaint relates to a matter that did not adversely affect an individual, the police force or local policing body may still wish to register it as feedback to help improve their service, or, for example, consider whether it constitutes a recordable conduct matter (see Chapter 8).

²⁷ For further guidance on direction and control arrangements see Home Office statutory guidance on police collaboration.

Chapter 6

Initial handling and recording of complaints

6.1 This chapter sets out:

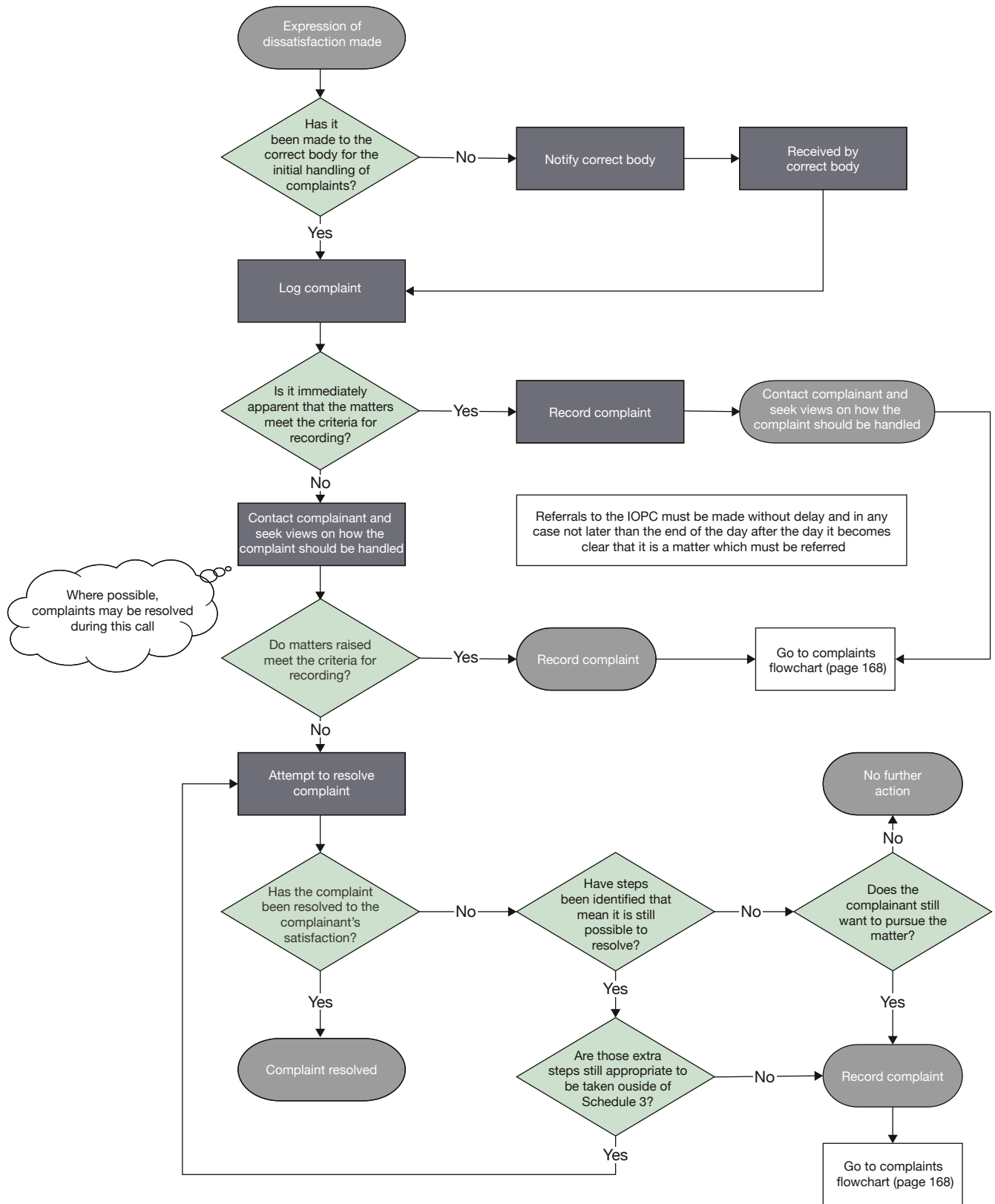
- what action to take on receipt of a complaint
- what is meant by handling complaints outside of Schedule 3 to the *Police Reform Act 2002*
- when complaints must be recorded under Schedule 3 to the *Police Reform Act 2002*

6.2 Information must be captured about all matters that meet the definition of a complaint (see chapter 5) which are received by, or are brought to the attention of, a local policing body, police force or IOPC, as an expression of dissatisfaction with a police force. The IOPC *guidance on capturing data about police complaints* provides detail about the matters which should be logged in a way that can be extracted and reported on, and what detail should be captured.

6.3 This information is important to ensure that feedback about policing is captured and can be used to identify issues, trends and opportunities for learning and improvement.

6.4 Some complaints may then be resolved quickly and to the satisfaction of the complainant, without being recorded under Schedule 3 to the *Police Reform Act 2002*. Other complaints must, however, be recorded and handled in accordance with Schedule 3 to the *Police Reform Act 2002* (see paragraphs 6.26 – 6.34).

Initial handling and recording of complaints



Action on receipt of a complaint

Directing complaints to the correct body

- 6.5** The *Police Reform Act 2002* states that where the complaint is made to a force or local policing body which is not the appropriate authority for the complaint, the body that has received the complaint must provide a notification of the complaint to the appropriate authority²⁸. Where the complaint has been made to the chief officer and they are the appropriate authority, but the local policing body has adopted responsibility for the initial handling of complaints, the appropriate authority should also provide them with notification of the complaint. So that the correct body has sufficient information for it to handle the complaint, the IOPC recommends that the complaint itself is forwarded. Police forces and local policing bodies should have processes in place to ensure that complaints are sent to the correct body as soon as practicable, in order to avoid delays.
- 6.6** Sometimes a complaint may involve more than one appropriate authority. For example, it may relate to additional forces, or involve allegations directed at both the chief officer and other ranks or personnel in the same police force. In these circumstances, the relevant parts of the complaint must be sent to the correct body to deal with.
- 6.7** There is no requirement in the *Police Reform Act 2002* for consent from the complainant to forwarding a complaint. However, the complainant must always be informed if their complaint has been sent to another body. They should also be informed of the content of what has been sent and the name of the body it has been sent to²⁹. In some cases, for example, where a complaint contains particularly sensitive data and the complainant has intentionally sent it to a particular body, or the complainant has expressed concern about sensitive information in their complaint being shared, consideration could be given to notifying the complainant in advance that this will happen.
- ### Initial handling by the relevant body
- 6.8** 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 on, how to make a complaint. The same applies to local policing bodies in relation to their staff.
- 6.9** From the point a complaint is received, it is important to acknowledge that the complainant has concerns, and to take prompt, effective steps to begin to address the matter. The way in which a complaint is dealt with at the outset can influence significantly a complainant's confidence in, and participation with, the police complaints system.
- 6.10** Once a complaint is received by the body responsible for the initial handling of the complaint, it should be logged on their systems (see the IOPC's *guidance on capturing data about police complaints*).

28 Paragraph 2, Schedule 3, *Police Reform Act 2002*.

29 Paragraph 2, Schedule 3, *Police Reform Act 2002*.

- 6.11** Where a local policing body has adopted model 2 or 3 (see paragraph 1.27), and is handling a complaint where the chief officer is the appropriate authority to which the complaint relates, they should inform the appropriate authority when a complaint has been made. This should be done regardless of whether the complaint is recorded under Schedule 3 to the *Police Reform Act 2002*. Where there are no further actions for the appropriate authority to take – i.e. the complaint has been resolved outside of Schedule 3 – this can be done by systematically sharing data, rather than after each case individually.
- 6.12** The body responsible for the initial handling of the complaint must contact the complainant and seek their views on how the complaint should be handled³⁰. This should be done as soon as possible after receipt of the complaint³¹. Early contact with the complainant is pivotal to the success of resolving the complaint to the complainant's satisfaction, and in many cases, where this is done promptly, and the complaint is suitable to be resolved outside of Schedule 3, the complaint may be fully resolved during this initial contact.
- 6.13** Where it is immediately obvious that the complaint is one that must be recorded, rather than handled outside of Schedule 3 (see paragraphs 6.26 – 6.31), the body responsible for initial handling may record the complaint before contacting the complainant. After recording, the complainant must still be contacted. However, attempts to contact the complainant should not delay the referral of a complaint to the IOPC, where this is required or otherwise appropriate³².
- 6.14** The complainant should also be provided with the name and contact details of the person who will initially be handling their complaint, as soon as this is identified.
- 6.15** Complaint handlers should consider whether a complainant has any additional needs to enable them to participate effectively in the process (see Chapter 2), and, should, where possible make any adjustments reasonably required.

Understanding the complaint

- 6.16** The police complaints system allows for the resolution of complaints both under or outside of Schedule 3. However, certain types of complaints must be recorded and handled under Schedule 3 (see paragraphs 6.26 – 6.31). It is crucial to ensure that a complaint is properly understood, not only as it impacts on whether it must be recorded under Schedule 3, but also to ensure that the concerns raised can be properly considered and addressed.

30 Paragraph 2, Schedule 3, *Police Reform Act 2002*.

31 The IOPC recognises that this may not be possible in all circumstances, including, for example, where a force has a policy in place to manage contact with that particular complainant. The complainant must still be contacted as soon as possible, but the method and timing may be subject to that policy.

32 Referrals must be made to the IOPC no later than the end of the day after the day it first becomes clear to the appropriate authority that it is a matter which must be referred (see Chapter 9).

6.17 Complaint handlers should explore the nature of the complaint with the complainant, to ensure it is understood in its entirety. A complainant's dissatisfaction may not always be captured fully at the time of their initial contact to make a complaint, particularly if the complainant is vulnerable or has difficulty articulating fully the nature of their concerns and the impact of them. Certain types of complaints may require more exploration than others. For example, where a complaint includes allegations that may amount to discrimination, complaint handlers should explore with the complainant why they feel they have been discriminated against (see the IOPC's *Guidelines on handling allegations of discrimination*).

Explaining what the complainant can expect

- 6.18** Complaint handlers should seek to understand what outcome the complainant wants. However, they should be open and transparent in managing a complainant's expectations if they appear to want or expect something that is either not possible or is highly unlikely to be reasonable or proportionate to provide.
- 6.19** Complainants must be informed whether their complaint has been recorded and is to be handled under Schedule 3 to the *Police Reform Act 2002* or if it has been (or is being) resolved outside of Schedule 3³³. However, complaint handlers should be mindful of the terms they use when discussing the handling of a complaint. For example, referring to the complaint solely in terms of being handled under or outside of the requirements of Schedule 3 may be confusing. The system may be more effectively and clearly explained to complainants by informing them of the steps involved in the process and ensuring that they understand what this means for their complaint.

Handling complaints outside of Schedule 3 to the *Police Reform Act 2002*

6.20 Complaints dealt with outside the requirements of Schedule 3 must be handled with a view to resolving them to the complainant's satisfaction³⁴. Handling a complaint outside the requirements of Schedule 3 provides an opportunity to address promptly the concerns a complainant has raised. Some complaints do not require detailed enquiries in order to address them. For example, the complainant may only want an explanation, or for their concerns to be noted or passed on. Handling such complaints outside of Schedule 3, promptly, may be the most efficient, effective, and beneficial way to resolve the complaint. It can assure the complainant that their concerns have been listened to and addressed, while potentially providing a learning opportunity for the force (and, if appropriate, any individuals involved).

³³ Paragraph 2, Schedule 3, *Police Reform Act 2002*.

³⁴ Paragraph 2, Schedule 3, *Police Reform Act 2002*.

6.21 There is no set procedure to follow when handling a complaint outside the requirements of Schedule 3. The key consideration is whether a course of action is appropriate and whether it will be an effective response to a complaint, which will satisfy the complainant. Actions could include:

- providing information and an explanation – either by telephone or in writing
- providing an update on the complainant’s outstanding matters
- answering questions the complainant has
- organising the return of property
- offering an apology for poor service
- confirming that steps have been taken to prevent an error occurring again
- signposting the complainant to appropriate processes – for example, the Information Commissioner’s Office complaints process or Victim’s Right to Review
- logging the complainant’s concerns for consideration when a policy or procedure is next due for a review

6.22 The IOPC expects complaints handled outside of Schedule 3 to be handled in a timely manner. This does not mean that a complaint has to be resolved immediately, if the complaint handler believes a short delay will mean the necessary information to resolve the complaint is available. Nor does it prevent additional steps being taken to resolve a matter following an initially unsuccessful attempt, if the complainant agrees those steps may be sufficient to remedy the matter to their satisfaction. If, however, at any point it appears to the complaint handler that remedying the matter to the complainant’s satisfaction cannot be achieved in a timely manner or without substantial additional steps being taken, this is likely to indicate the matter should be recorded. The complainant must be kept properly informed of the progress of the handling of the complaint, in line with the duties outlined in paragraphs 11.7 – 11.20³⁵.

6.23 A complaint will not be suitable for handling outside of Schedule 3 where accounts need to be taken from officers, or other investigative type steps are needed to provide a satisfactory outcome.

6.24 The conclusion of handling a complaint outside of Schedule 3 must be communicated to the complainant within five working days of the outcome being determined, and subject to the exemptions in paragraphs 11.16 – 11.20³⁶. It should be discussed with them, unless it is not appropriate or possible to do so. The outcome does not need to be communicated in writing, unless the initial complaint was made in writing³⁷.

35 Section 20, *Police Reform Act 2002*; Regulation 34, Police (Complaints and Misconduct) Regulations 2020.

36 Section 20, *Police Reform Act 2002*; Regulations 34 and 35, Police (Complaints and Misconduct) Regulations 2020.

37 Regulation 34, Police (Complaints and Misconduct) Regulations 2020.

6.25 If a complainant is dissatisfied with the way their complaint has been handled, complaint handlers should remind complainants that:

- they can ask for their complaint to be recorded; and
- if it is recorded, that there will be a right to apply to have the outcome of their complaint reviewed (unless it is subject to a directed or independent investigation)

Where appropriate, the complainant's expectations of what further substantive action could result from recording should be managed. However, complainants should not be dissuaded from requesting that their complaint be recorded, if that is what they want.

Recording complaints

6.26 A complaint must be recorded under Schedule 3 to the *Police Reform Act 2002*, and handled in accordance with the provisions of that Schedule, if at any point the person making the complaint wants it to be recorded³⁸. This applies even if previous attempts have been made to handle the complaint outside of the requirements of Schedule 3. Where a complainant's wishes are unclear, reasonable steps should be taken to clarify what they are³⁹.

6.27 A complaint must also be recorded and handled under Schedule 3 if the chief officer or local policing body (where it is the appropriate authority or it has taken on responsibility for the initial handling of complaints) decides that it is appropriate or if the complaint⁴⁰:

- is an allegation that the conduct or other matter complained of resulted in death or serious injury
- is an allegation that, if proved, might constitute a criminal offence by a person serving with the police or justify the bringing of disciplinary proceedings⁴¹

38 Paragraph 2, Schedule 3, *Police Reform Act 2002*.

39 Paragraph 2, Schedule 3, *Police Reform Act 2002*.

40 Paragraph 2, Schedule 3, *Police Reform Act 2002*.

41 See glossary for the definition of disciplinary proceedings – in these circumstances, the definition, for members of a police force or special constables, includes proceedings under the Police (Performance) Regulations 2020, as well as any proceedings under the Police (Conduct) Regulations 2020 (apart from the Reflective Practice Review Process, in accordance with Part 6 of those regulations). For any other person serving with the police, it includes both any proceedings or management process during which that person's conduct is considered and any proceedings or management process during which that person's performance is considered. Although proceedings under the Police (Performance) Regulations 2020 do not apply to senior officers, where the complaint includes allegations about the performance of a senior officer, the IOPC considers that it would be appropriate to record matters that would otherwise have met the criteria for recording, had the officer in question not been a senior officer.

- is about conduct or any other matter which, if proved, might have involved the infringement of a person's rights under Articles 2 or 3 of the European Convention on Human Rights (see glossary) or
- meets any of the mandatory referral criteria (see Chapter 9)⁴²

- 6.28** These criteria must be assessed on the basis of the allegations made, not on their apparent merit. Therefore, no scoping is required before making this decision, except to ensure that the complainant's allegations are fully understood.
- 6.29** The only time a complaint that meets these criteria does not need to be recorded is where it has been withdrawn (see Chapter 16).
- 6.30** When considering whether it is appropriate to record a complaint which does not otherwise meet the criteria for recording, other factors to be considered include:
- the extent and nature of enquiries required to address the complaint
 - whether the allegations include an alleged breach of any of the articles of the European Convention on Human Rights (other than those mentioned at paragraph 6.27)
 - whether previous similar complaints have been recorded or logged (either about the same issue, or, where appropriate, about the same officer or department)
- 6.31** Complaints that include allegations which, if proven, are likely to be considered 'practice requiring improvement' and be referred to the Reflective Practice Review Process, should be recorded⁴³.
- 6.32** Once it becomes apparent that a complaint must be recorded, the IOPC expects it to be recorded as soon as possible. As noted in paragraph 6.13, where it is clear from the initial complaint that the complaint meets the criteria for recording, it is not necessary to wait to contact the complainant before making that decision. The complainant must still be contacted to discuss their complaint (see paragraph 6.12).
- 6.33** Complaints should be recorded in a format that can be easily accessed and inspected. Sufficient information should be recorded about each complaint to enable the monitoring and reporting of actions and outcomes that may result from it (see IOPC's *guidance on capturing data about police complaints*). Where the local policing body has taken on responsibility for the initial handling of complaints, they and the appropriate authority must ensure they have appropriate processes in place to pass on the details of recorded complaints to the appropriate authority as soon as possible, so that the handling of the complaint is not delayed.

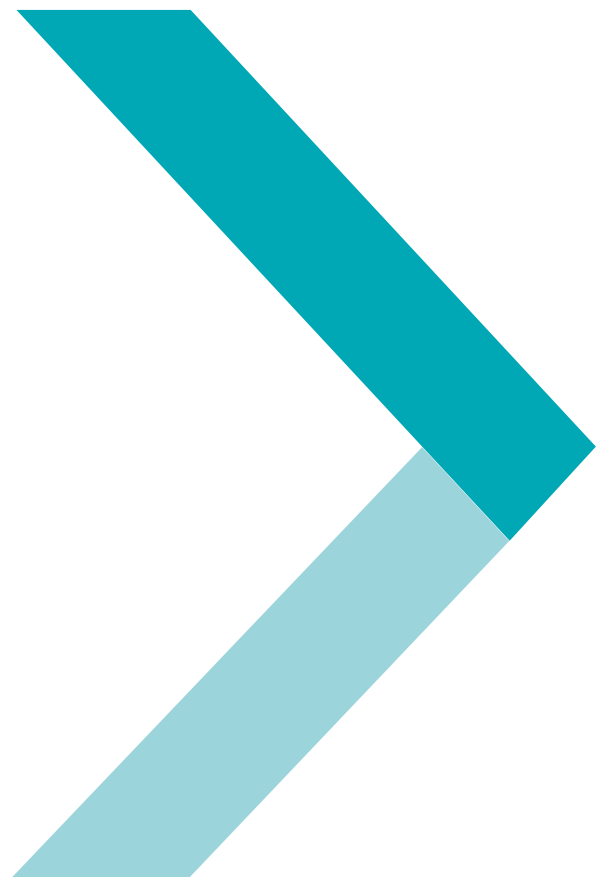
42 Appropriate authorities must also record any complaint that the IOPC is treating as having been referred, see paragraphs 9.36 – 9.39.

43 Further guidance on 'practice requiring improvement' and the Reflective Practice Review Process can be found in Home Office guidance, *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*.

6.34 Forces and local policing bodies must inform the complainant as soon as is practical that their complaint has been recorded and provide them with a copy of the record that has been made. A copy of the complaint must also be given to the person complained about (if any), unless the force or local policing body considers that to do so might prejudice any criminal investigation or pending proceedings, or would otherwise be contrary to the public interest⁴⁴. This decision must be kept under regular review. The identity of any person may be anonymised in the copy provided.

44 Regulation 3, Police (Complaints and Misconduct) Regulations 2020.

Handling complaints, recordable conduct matters and death or serious injury matters under Schedule 3 to the *Police Reform Act 2002*



Chapter 7

Death or serious injury matters

7.1 This chapter covers:

- the definition of a death or serious injury (DSI) matter
- recording a DSI matter

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 their 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 they were acting in the execution of their 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*

7.2 If a death or serious injury occurs while a person is under arrest or otherwise detained in the custody of a person serving with the police, this meets the definition of DSI matter. In these circumstances, there does not need to be any indication of a causal link between the contact with a person serving with the police and the death or serious injury to meet the definition.

- 7.3** If a death or serious injury occurs following direct or indirect contact with a person serving with the police, and the person who died, or was seriously injured, was not under arrest or otherwise in the custody of a person serving with the police at the time, the appropriate authority will need to assess whether there is any indication that the contact may have caused or contributed to the death or serious injury. For example, through action, or inaction. If there is such an indication, this meets the definition of a DSI matter.

Recording a DSI matter

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

Paragraph 14A, Schedule 3, *Police Reform Act 2002*

- 7.4** Appropriate authorities must ensure that they have processes in place to identify and refer DSI matters without delay. Therefore, all officers and staff members need to be able to recognise circumstances that may constitute a DSI matter and when and how to raise them with the appropriate personnel.
- 7.5** DSI matters should be recorded as soon as practicable after they are identified, bearing in mind the timescale for referral set out in the box above paragraph 9.40.
- 7.6** All DSI matters are mandatory referrals to the IOPC (see Chapter 9).

Chapter 8

Recordable conduct matters

8.1 This chapter covers:

- the definition of a conduct matter
- identifying conduct matters
- recording conduct matters
- matters involving allegations of discrimination

8.2 The majority of ‘conduct matters’ will be handled under the Police (Conduct) Regulations 2020, however the *Police Reform Act 2002* stipulates that certain matters must (or may) be recorded. ‘Recording’ in this context means that the conduct matter is given formal status and must be handled under the *Police Reform Act 2002*.

8.3 There are various criteria that must be applied to establish whether a conduct matter must or may be recorded. These criteria differ depending on whether the matter has arisen from civil proceedings or otherwise. This chapter explains this process, and the decisions that must be taken.

Definition of a conduct matter

A conduct matter is any matter which is not and has not been the subject of 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 proceedings⁴⁵.

Section 12, *Police Reform Act 2002*

8.4 Where there are issues relating to the conduct of an individual, it is important that those issues are recognised and dealt with appropriately, even where no complaint is

45 See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

made. This is vital both to ensure individual accountability and to support learning and improvement for the individual and the force.

- 8.5 Further details about the identification and handling of conduct matters can be found in the Home Office guidance, *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*.

Identifying conduct matters

- 8.6 Appropriate authorities should be proactive and alert to the potential for conduct matters to arise. The Home Office guidance, *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*, provides further detail on how this should be achieved.

Conduct matters arising in civil proceedings

- 8.7 There is a specific, ongoing, legal duty for chief officers and local policing bodies to identify and deal with conduct matters that come to their attention as a result of civil proceedings⁴⁶.
- 8.8 Where a chief officer or local policing body receives notification that civil proceedings relating to any matter have been brought or are likely to be brought against them by a member of the public, they should make an initial assessment about whether any complaint has been made about the same conduct. If so, they should deal with that complaint in accordance with the guidance on handling complaints.
- 8.9 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. They must continually review any civil proceedings to ensure that any conduct matters are identified.
- 8.10 If a conduct matter exists, the chief officer or local policing body must first decide if they are the appropriate authority. If they are not the appropriate authority, they must notify the appropriate authority of the proceedings and the circumstances that suggest they involve or would involve a conduct matter.

Recording conduct matters

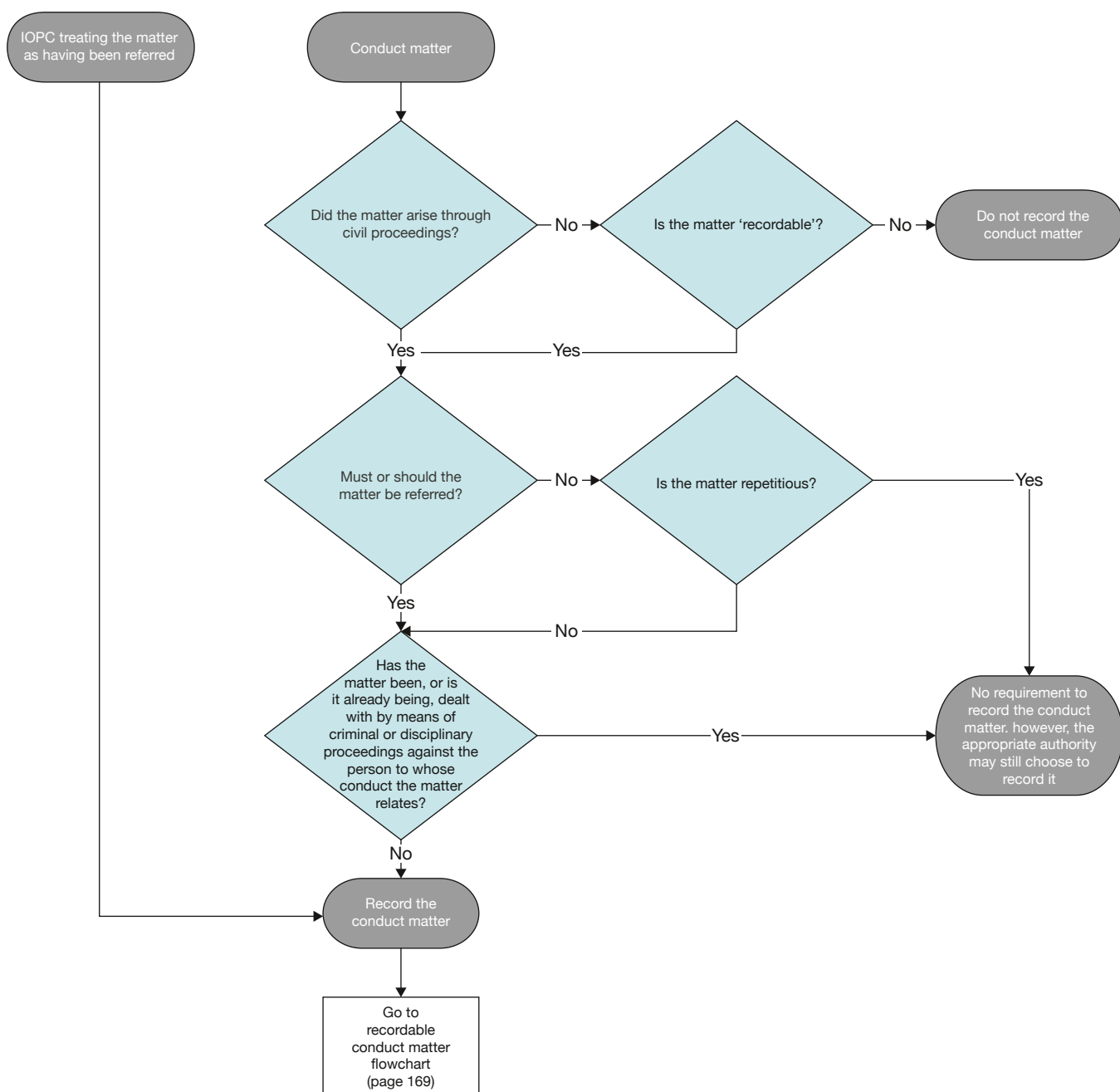
- 8.11 When a conduct matter comes to the attention of the appropriate authority, it must then consider whether it is a conduct matter that must, or may, be formally recorded and handled under the *Police Reform Act 2002*. Recordable conduct matters should be recorded as soon as practicable after they have come to light. A conduct matter should

46 Paragraph 10, Schedule 3, *Police Reform Act 2002*.

still be recorded even if there is a lengthy period of time between the events occurring and the matter coming to light.

8.12 The process for considering whether a conduct matter should be recorded as a recordable conduct matter is outlined in the following flowchart, with key terms explained further in paragraphs 8.13 to 8.19.

Recording conduct matters



- 8.13** Where the conduct matter has been recorded under Schedule 3 to the *Police Reform Act 2002* but there is no requirement to refer it, the appropriate authority may deal with the matter in such manner (if any) as the appropriate authority determines. If the appropriate authority determines that it is necessary for the matter to be investigated, the appropriate authority must carry out a local investigation under the *Police Reform Act 2002*⁴⁷. If the appropriate authority determines the matter does not require investigation, it may handle the matter under the Police (Conduct) Regulations 2020 (including under the Reflective Practice Review Process), or the appropriate police staff disciplinary procedures.
- 8.14** Where the IOPC has decided to treat a conduct matter as referred, also known as the ‘power of initiative’ (see paragraph 9.36 – 9.39), the conduct matter must be recorded.

What is meant by ‘recordable’?

- 8.15** As shown in the flowchart above, where a conduct matter has not arisen from civil proceedings, the appropriate authority must first consider whether the matter is ‘recordable’. A matter is recordable if it involves allegations of conduct that, assuming it to have taken place⁴⁸:

- 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
- meets any of the following criteria⁴⁹:
 - i. a serious assault, as defined in paragraphs 9.7 – 9.11 of this guidance;
 - ii. a serious sexual offence, as defined in paragraphs 9.12 – 9.14 of this guidance;
 - iii. serious corruption including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship, as defined in paragraphs 9.15 – 9.23 of this guidance;
 - iv. a criminal offence or behaviour which is liable to lead to disciplinary proceedings⁵⁰ 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 9.24 of this guidance;
 - v. a relevant offence (see paragraph 9.28);

47 Paragraph 16, Schedule 3, *Police Reform Act 2002*.

48 Paragraph 11, Schedule 3, *Police Reform Act 2002*; Regulation 7, Police (Complaints and Misconduct) Regulations 2020.

49 Regulation 7, Police (Complaints and Misconduct) Regulations 2020.

50 See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

- vi. 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; or
- vii. conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved;
- viii. conduct of a chief officer or the Deputy Commissioner of the Metropolitan Police.

8.16 If none of these criteria apply, then the matter cannot be recorded. Point vii allows an element of discretion when the appropriate authority considers that a matter should be recorded, but it does not otherwise fall under these criteria.

What is meant by ‘must or should the matter be referred’?

8.17 This box in the flowchart is referring to a consideration of whether⁵¹:

- the matter relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury
- it meets any of the mandatory criteria for referring a matter to the IOPC (see Chapter 9)
- the gravity of the conduct matter or any exceptional circumstances make it appropriate to refer the matter to the IOPC voluntarily
- the appropriate authority has been notified by the IOPC that it is required to refer the matter (otherwise known as ‘called in’, see paragraphs 9.34 – 9.35)

8.18 However, a conduct matter that has been referred to the IOPC previously (or that the IOPC has treated as having been referred) cannot be referred again, unless the IOPC directs the appropriate authority to do so or consents for the referral to be made. Therefore, a conduct matter that has been referred previously does not meet the definition of ‘must or should the matter be referred’.

What is meant by ‘repetitious’?

8.19 For the purposes of the decisions in the above flowchart, a repetitious matter is one⁵²:

- that concerns substantially the same conduct as a previous complaint or recorded conduct matter

⁵¹ Paragraph 10, Schedule 3, *Police Reform Act 2002*; Paragraph 11, Schedule 3, *Police Reform Act 2002*; Paragraph 13, Schedule 3, *Police Reform Act 2002*.

⁵² Regulation 7, *Police (Complaints and Misconduct) Regulations 2020*.

- where there is no fresh indication that a person serving with the police may have committed a criminal offence or behaved in a way which would justify the bringing of disciplinary proceedings⁵³
- where there is no fresh substantive⁵⁴ evidence, which was not reasonably available at the time the previous complaint was made or previous conduct matter was recorded, and
- the previous complaint or conduct matter has been, or is being, investigated or (in the case of a complaint) otherwise handled in accordance with Schedule 3

Conduct matters involving allegations of discrimination

8.20 When considering whether conduct matters involving allegations of discrimination should be recorded, appropriate authorities will need to consider the gravity of the alleged conduct and should have regard to the IOPC's *Guidelines on handling allegations of discrimination*.

Referring a conduct matter

8.21 For information on the referral of conduct matters, see Chapter 9.

53 See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

54 'Substantive' evidence means, for example, evidence of a material fact which is in dispute or may have a bearing on the outcome of the conduct matter, as distinct from evidence of matters peripheral to the conduct matter and highly unlikely to have any bearing on the outcome.

Chapter 9

Referrals

9.1 This chapter covers:

- complaints that must be referred to the IOPC
- conduct matters that must be referred to the IOPC
- referral of death or serious injury (DSI) matters
- mandatory referral criteria
- definitions of referral criteria
- voluntary referrals
- matters which the IOPC requires to be referred to it ('call in')
- IOPC power to treat matters as having been referred ('power of initiative')
- deadlines for referral
- notification of referral
- determining whether and how a matter should be investigated
- notification of mode of investigation decisions

Complaints that must be referred to the IOPC

Appropriate authorities must refer to the IOPC complaints which:

- allege that the conduct or other matter complained of has resulted in death or serious injury;
- fall within the mandatory referral criteria (see below); or
- the IOPC notifies the appropriate authority that it must refer

However, a complaint that has been referred to the IOPC previously (or that the IOPC has treated as having been referred) cannot be referred again unless the IOPC directs the appropriate authority to do so, or consents for the referral to be made.

Paragraph 4, Schedule 3, *Police Reform Act 2002*

- 9.2** Where local policing bodies have assumed responsibility for recording complaints, referrals to the IOPC remain the responsibility of the appropriate authority. A complaint must be recorded before it can be referred. It is essential that, where local policing

bodies receive complaints or have taken on responsibility for the initial handling of complaints, chief officers and local policing bodies agree clear procedures to identify referable complaints and ensure that they are referred to the IOPC without delay and in accordance with the statutory timeframes for referral (see box above 9.40).

- 9.3** Appropriate authorities should notify the IOPC where concerns or issues arise after the initial referral that indicate the complaint should be referred again.

Conduct matters that must be referred to the IOPC

Appropriate authorities must refer to the IOPC 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 IOPC notifies the appropriate authority that it must refer.

However, a conduct matter that has been referred to the IOPC previously (or that the IOPC has treated as having been referred) cannot be referred again unless the IOPC directs the appropriate authority to do so, or consents for the referral to be made.

Paragraph 13, Schedule 3, *Police Reform Act 2002*

- 9.4** Appropriate authorities should notify the IOPC where concerns or issues arise after the initial referral that indicate the matter should be referred again.

Referral of death or serious injury (DSI) matters

Appropriate authorities must refer all DSI matters to the IOPC.

However, a DSI matter that has been referred to the IOPC previously (or that the IOPC has treated as having been referred) cannot be referred again unless the IOPC directs the appropriate authority to do so, or consents for the referral to be made.

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:

- a serious assault
- a serious sexual offence
- serious corruption, including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship
- a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status identified in paragraph 9.24 of this guidance
- a relevant offence
- complaints or conduct matters arising from the same incident as one where conduct falling within the above criteria is alleged; or
- any conduct matter relating to a chief officer (or the Deputy Commissioner of the Metropolitan Police Service) and any complaint relating to a chief officer (or the Deputy Commissioner of the Metropolitan Police Service) where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of, if it were proved, would not justify the bringing of criminal or disciplinary proceedings

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 2020

- 9.5** The appropriate authority can seek the IOPC's advice about whether to refer a specific incident or allegation. Where there is doubt about whether a complaint or recordable conduct matter must be referred, the IOPC encourages referral.
- 9.6** If further information or evidence is obtained that indicates an incident was more serious than first thought and it meets the criteria for referral, the appropriate authority must refer the matter to the IOPC. The appropriate authority should also be mindful that a re-referral may be appropriate if further information or evidence is obtained that means that the IOPC may wish to review the mode of investigation. Where the appropriate authority makes a referral some time after the original incident, an explanation should be provided about the reasons for the delay and the new evidence or information that has come to light leading to the referral of the matter.

Definitions of referral criteria

Serious assault

- 9.7 'Serious assault' is conduct that results in an injury that amounts to actual bodily harm or a more serious injury.
- 9.8 '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 intentionally or recklessly assaults another, thereby causing actual bodily harm to that other person. This can include psychological harm which is more than fear, distress or panic.
- 9.9 The Crown Prosecution Service (CPS) legal guidance on the charging standard for the offence of assault occasioning actual bodily harm should be applied in determining whether an allegation is one of assault occasioning actual bodily harm, rather than common assault.
- 9.10 An allegation of an attempt, incitement, conspiracy, assistance or encouragement to commit assault occasioning actual bodily harm or a more serious offence against a person must also be referred to the IOPC.
- 9.11 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 (which constitutes a DSI) or one that must otherwise be referred. If not, they should ask themselves whether there is anything about the conduct or the circumstances in which the injury was sustained that points to the need for a voluntary referral.

Serious sexual offences

- 9.12 The IOPC considers an allegation that a person serving with the police has committed any sexual offence is, in light of their public role, likely to be serious. The term 'serious sexual offences' refers to conduct by a person serving with the police that constitutes a sexual offence under the *Sexual Offences Acts 1956 to 2003*, unless it is a summary-only offence, committed while the person is off-duty.
- 9.13 For example, the IOPC would not expect a referral for an allegation of soliciting (section 51A of the *Sexual Offences Act 2003*) or 'sexual activity in a public lavatory' (section 71 of the *Sexual Offences Act 2003*) while off-duty. However, we would expect a referral for an allegation of 'causing or inciting prostitution for gain' (section 52 of the *Sexual Offences Act 2003*), whether it was alleged to have been committed on or off-duty.
- 9.14 Any attempt, incitement, conspiracy, assistance or encouragement to commit any offence captured by the above must also be referred to the IOPC.

Serious corruption

9.15 The term serious corruption refers to conduct that includes:

- any conduct that could fall within the definition of the statutory offence of ‘corruption or other improper exercise of police powers and privileges’
- perverting the course of justice or other conduct that is likely to seriously 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 position for a sexual purpose or for the purpose of pursuing an improper emotional relationship
- 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 could lead to a possible prosecution for an offence under Section 170 of the *Data Protection Act 2018*, or a more serious offence
- extraction and supply of seized controlled drugs, firearms or other material
- any other abuse of position, or
- attempts, conspiracies, incitements, assistance or encouragement to do any of the above

9.16 A police constable commits the offence of ‘corruption or other improper exercise of police powers and privileges’ if they:

- exercise the powers and privileges of a constable improperly (i.e. for the purpose of obtaining a benefit for themselves or a benefit or detriment for someone else and a reasonable person would not expect the power or privilege to be exercised for that purpose), and
- they know or ought to have known that the exercise is improper⁵⁵

Exercising the powers and privileges of a constable improperly includes a failure to, or a threat to, exercise a power or privilege.

9.17 An abuse of position is any attempt by a person serving with the police, whether on or off-duty, to inappropriately or illegitimately take advantage of:

- their position as a person serving with the police
- the authority their position as a person serving with the police affords them, or
- any powers conferred on them by virtue of their position as a person serving with the police

⁵⁵ Section 26, *Criminal Justice and Courts Act 2015*.

- 9.18** The term ‘sexual purpose’ should be interpreted widely and will include any relationship, communication, action or gratification of a sexual nature with a member of the public.
- 9.19** An improper emotional relationship is any emotional or personal relationship between a person serving with the police and a member of the public that a reasonable person would consider to be a serious breach of appropriate professional boundaries.
- 9.20** It is not necessary for the pursued sexual purpose or improper emotional relationship to have been achieved. An allegation that a person serving with the police has sought to abuse their position for such a purpose is sufficient to warrant a mandatory referral.
- 9.21** As with all matters meeting the mandatory referral criteria, allegations of serious corruption must be referred to the IOPC without delay. It is therefore not appropriate to wait until there is sufficient information to make an arrest.
- 9.22** Where an allegation of serious corruption is made, or potential serious corruption is otherwise identified, this may require covert investigation. This should not prevent or delay referral to the IOPC.
- 9.23** The case should be discussed with the IOPC if it is unclear whether referral is necessary.

Criminal offences or behaviour liable to lead to disciplinary proceedings and which, in either case, is aggravated by discriminatory behaviour

- 9.24** This refers to any criminal offence or other behaviour liable to lead to disciplinary proceedings⁵⁶ 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

⁵⁶ See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

- 9.25** This criterion is met if the alleged behaviour, without the discrimination element, would amount to a criminal offence or behaviour which is liable to lead to disciplinary proceedings and it is alleged that discrimination was a reason for this behaviour.
- 9.26** The referral ground requires an assessment of the gravity of the underlying conduct, without the discrimination element (to decide if it is an allegation of a criminal offence or behaviour liable to lead to disciplinary proceedings). It will not be necessary to assess the gravity of the discrimination element; only that discrimination is alleged as an aggravating factor.
- 9.27** 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 conduct was motivated by discrimination. They may allege treatment that amounts to discrimination when compared with the treatment given to others. While it is not for the complainant to prove that the person serving with the police discriminated against them, it is important that they are able to identify (where possible) how their treatment was discriminatory. The person dealing with the matter should encourage the complainant or interested person to provide as much information as possible about why they consider they were discriminated against. It is also possible that the complainant or interested person does not allege discrimination, but that the person dealing with the matter believes discrimination is a factor. For additional guidance, see the IOPC's *Guidelines on handling 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 or 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 2020

- 9.28** In order to assess whether an offence meets this definition, guidance should be taken from the CPS sentencing guidelines for the offence in question. This assessment should not consider what the likely sentence would be, only whether the offence has the possibility to result in a sentence of imprisonment for seven years or more.

Complaints and conduct matters concerning chief officers

- 9.29** An appropriate authority must refer to the IOPC any conduct matter relating to a chief officer (or Deputy Commissioner of the Metropolitan Police Service).
- 9.30** An appropriate authority must also refer to the IOPC any complaint relating to the conduct of a chief officer (or Deputy Commissioner of the Metropolitan Police Service) where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of, if it were proved, would not justify the bringing of criminal or disciplinary proceedings⁵⁷. This test should be based on the complaint alone.

Voluntary referrals

- 9.31** The IOPC encourages appropriate authorities to use their ability 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 justify referral⁵⁸. This may be, for example, because the complaint or recordable conduct matter could have a significant impact on public confidence, or the confidence of particular communities, or the appropriate authority otherwise feels there is a need for independent involvement in the investigation.
- 9.32** Appropriate authorities should consider the voluntary referral of complaints and recordable conduct matters that involve both the actions of a chief officer and actions of other persons serving with the police, where the matters about the other persons serving with the police would not usually require referral, but are intrinsically linked to the matters related to the chief officer.
- 9.33** Local policing bodies may also refer complaints or recordable conduct matters that have not been, and are not required to be, referred by the appropriate authority, if the local policing body considers a referral would be appropriate because of the gravity of the subject matter or any other exceptional circumstances⁵⁹. Local policing bodies may only refer matters concerning the force for which they are the local policing body.

57 See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures (in accordance with Part 6 of those regulations).

58 Paragraph 4 and 13, Schedule 3, *Police Reform Act 2002*.

59 Paragraph 4 and 13, Schedule 3, *Police Reform Act 2002*.

Matters which the IOPC requires to be referred to it ('call in')⁶⁰

- 9.34** The IOPC may require any complaint or recordable conduct matter to be referred to it by the appropriate authority. The IOPC may use the power to 'call in' a matter, regardless of whether the matter is already being investigated or has previously been considered by the IOPC.
- 9.35** If the IOPC calls a matter in, the appropriate authority should provide all relevant information at, or as soon as possible after, the time of referral.

IOPC power to treat matters as having been referred ('power of initiative')⁶¹

- 9.36** The IOPC may treat any complaint, conduct matter or DSI matter which comes to its attention otherwise than by being referred by the appropriate authority, as having been referred, whether or not that matter has been recorded.
- 9.37** In contrast to the 'call in' power, this power enables the IOPC to consider the matter for the purposes of determining whether an investigation is necessary and making a mode of investigation decision without receiving a referral from the appropriate authority. The IOPC can do this in the absence of a matter having been recorded.
- 9.38** When the IOPC treats a matter as having been referred, it must notify the appropriate authority and complainant (if there is one). The IOPC must also notify any person complained about, or to whose conduct the matter relates, unless it appears to the IOPC that the notification might prejudice an investigation or potential future investigation of the matter.
- 9.39** Where an appropriate authority receives notification that a matter has been treated as referred, it must record the matter if it has not already done so. The appropriate authority should provide to the IOPC, as soon as possible after the notification, all relevant information that has not already been supplied.

⁶⁰ Paragraph 4 and 13, Schedule 3, *Police Reform Act 2002*.

⁶¹ Paragraphs 4A, 13A and 14CA, Schedule 3, *Police Reform Act 2002*.

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 to the appropriate authority that it is a matter which must be referred.

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

Regulations 4, 7 and 9, Police (Complaints and Misconduct) Regulations 2020

- 9.40** Voluntary referrals should be made as soon as possible after the appropriate authority determines that the matter warrants a referral to the IOPC.
- 9.41** In order that referrals can be made as soon as possible, appropriate authorities and local policing bodies must ensure that there is appropriate training and processes in place to ensure that referable matters are identified and alerted to the appropriate people (both internally or the IOPC) without delay.
- 9.42** It is important that referrals are made to the IOPC as soon as possible so that there are no delays to the handling of matters. Where the matter is a complaint, the processes outlined in paragraph 6.12 should not delay the referral. This is especially important where there is potential engagement of Articles 2 or 3 of the European Convention on Human Rights.
- 9.43** Where necessary the IOPC should be contacted without delay, including, where the incident happens out of normal working hours, via the on-call number. Incidents where this is necessary include:
- any death in custody
 - any life-threatening or life-changing injuries that occurred in custody
 - a death following police contact, where there is an ongoing incident/scene or a post incident procedure (PIP) may be held
 - potentially life-threatening or life-changing injuries following police contact, where there is an ongoing incident/scene or a PIP may be held
 - the circumstances of a DSI may require the declaration of a critical incident⁶² or there is potential for community impact
 - the incident meets the mandatory or voluntary referral criteria and a PIP is being considered

62 See College of Policing Authorised Professional Practice on critical incident management.

- the circumstances of the incident give rise to the possibility of Article 2 being engaged

9.44 Where a telephone call has been made to the IOPC about a matter, a documented referral will still be required. Where there has been consideration of the factors in paragraph 9.43 and it has been determined that the matter does not require an immediate telephone call to the IOPC, but does require referral, this rationale should be documented and included within the referral. A matter can be referred to the IOPC by email at the weekend or bank holidays, however, the IOPC will not consider the referral until the next working day.

9.45 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. For further information, please see the IOPC's *Statutory guidance to the police force on achieving best evidence in death and serious injury matters*.

9.46 When referring a matter, an appropriate authority should provide as much relevant information as possible to the IOPC to enable it to make an informed decision about whether an investigation is necessary and, if so, the appropriate mode of investigation. The need to provide information should be balanced against the timeliness of making the referral. The following list gives some examples of information that, where available and relevant, will help those assessing the referral:

- 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 sustained or allegedly sustained
- the custody record, where the referral relates to an issue that occurred in custody or where the time spent in custody may be relevant
- footage from CCTV, body-worn or in-car cameras, or confirmation of whether it exists
- officer notes relating to the incident

9.47 The appropriate authority should inform the IOPC at the time of referral if further information is likely to become available shortly afterwards.

Notification of referral

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

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

A local policing body must notify the appropriate authority of any voluntary referral it makes where the chief officer is the appropriate authority.

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

Determining whether and how a matter should be investigated

Once a referral is made to the IOPC (or the IOPC treats a matter as having been referred), the IOPC must determine whether the matter should be investigated. If the IOPC decides that it should be investigated, then it must determine the mode of investigation. To do this, it will consider the seriousness of the case and the public interest.

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

- 9.48** If the IOPC decides that a matter does not need to be investigated then it may refer the matter back to the appropriate authority. If the appropriate authority is already investigating the matter, it must complete the investigation⁶³. If there is no investigation already underway, the appropriate authority must handle the matter in whatever reasonable and proportionate manner it determines. Where this involves an investigation, this must be carried out in accordance with paragraph 16 of Schedule 3 to the *Police Reform Act 2002* ('local investigations').

63 When a matter is recorded, the appropriate authority must decide what to do with it: investigate, handle it otherwise than by investigation or take no further action. From the point where there is a decision to investigate (and, for example, an investigator is appointed), the investigation should be regarded as having begun. If someone is appointed to handle the matter otherwise than by investigation under the *Police Reform Act 2002*, then they may gather information in relation to the matter. This does not mean that an investigation has begun.

9.49 If the IOPC decides that a matter must be investigated, it will decide whether the mode of investigation will be:

- a local investigation
- a directed investigation, or
- an independent investigation

9.50 The IOPC may revisit a mode of investigation determination at any time and change it. It may wish to do this, for example, where further information comes to light. In the case of a directed investigation, the IOPC is obliged to keep the mode of investigation under review.

Notification of mode of investigation decisions

9.51 The IOPC will notify the appropriate authority of the mode of investigation decision and the reason for it. It will also notify the following, unless certain conditions apply⁶⁴:

- the complainant (if there is one);
- any interested person (within the meaning to the *Police Reform Act 2002*);
- any person who is complained about or to whose conduct the matter relates (this may be via the appropriate authority if necessary).

⁶⁴ Paragraph 15, Schedule 3, *Police Reform Act 2002*; Regulation 11, Police (Complaints and Misconduct) Regulations 2020.

Chapter 10

Deciding how to handle a matter under Schedule 3 to the *Police Reform Act 2002*

10.1 This chapter sets out:

- requirements to take a reasonable and proportionate approach
- matters that must be investigated
- exceptions to the duty to investigate complaints
- assessing what is reasonable and proportionate

Requirements to take a reasonable and proportionate approach

10.2 All complaints that have been recorded under Schedule 3 to the *Police Reform Act 2002* must be handled in a reasonable and proportionate manner (see Chapter 3). Depending on the circumstances, this may mean:

- an investigation of the matter
- otherwise responding to concerns raised and seeking to resolve them, or
- on occasion, notifying a complainant that no further action will be taken

10.3 While the legislative requirement to handle reasonably and proportionately relates to complaints, the principles of reasonable and proportionate handling should also be applied to the handling of recordable conduct and DSI matters insofar as possible.

10.4 Decisions on the appropriate handling should be made on a case by case basis. However, there are some matters that must be investigated (see paragraphs 10.5 to 10.9) and certain requirements for the handling of all matters, irrespective of whether they are being investigated or otherwise handled under Schedule 3 (see Chapter 11).

Matters that must be investigated

10.5 A complaint must be investigated where the appropriate authority determines that is the reasonable and proportionate way to handle it.

10.6 In addition, subject to the exceptions set out in the box above paragraph 10.10, the following must be investigated:

- any complaint where there is an indication, either from the complaint itself or from handling to date, that:
 - a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings⁶⁵, or
 - there may have been the infringement of a person's rights under Articles 2 or 3 of the European Convention on Human Rights (see glossary)⁶⁶
- any complaint, DSI matter or recordable conduct matter that the IOPC has determined must be investigated, following the referral of the matter to the IOPC or the IOPC treating the matter as having been referred⁶⁷
- any complaint that the IOPC has determined must be investigated or re-investigated following its decision in respect of a review⁶⁸

10.7 'Indication' is taken to have its plain English definition. In making the decision about whether there is 'an indication', the appropriate authority should consider whether the circumstances, and the evidence readily available, show or reasonably imply that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, or that there may have been the infringement of a person's rights under Articles 2 or 3. This decision should take account of the facts being asserted by the complainant, alongside any readily available evidence, and not focus solely on what the complainant says those facts amount to⁶⁹. Where a complainant alleges, for example, that an offence has been committed without explaining what has been done that they believe constitutes that offence, the appropriate authority should seek further information and clarification from the complainant before making the decision regarding whether there is an indication.

65 See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. Therefore, this would mean behaved in a manner which justifies, at a minimum, a misconduct meeting (and, therefore, by definition a written warning – see College of Policing guidance on outcomes for further guidance). For any other person serving with the police it 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.

66 Paragraph 6, Schedule 3, *Police Reform Act 2002*.

67 Paragraph 16, Schedule 3, *Police Reform Act 2002*.

68 A local policing body may also recommend that a complaint is investigated or re-investigated following its decision in respect of a review (see Chapter 18).

69 However, an allegation does not need to be accompanied by corroborating evidence for there to be an indication.

- 10.8** When making the decision about whether there is an ‘indication’ the appropriate authority can review evidence that is readily available, but it should not take preliminary investigative steps in order to make this decision⁷⁰. Therefore, the appropriate authority should not, for example, obtain accounts from officers or other witnesses, or instruct an expert. If what is alleged in a complaint is undermined by contemporaneous real objective evidence (i.e. evidence from things as distinct from persons, such as CCTV/body worn video), or is inherently unlikely, there is unlikely to be an indication.
- 10.9** Where there is doubt whether or not there is an ‘indication’, this may suggest that it is reasonable and proportionate to investigate. Where a decision is made that there is no indication, but during subsequent handling the complaint handler considers that the indication test may now be met, the complaint handler should highlight the matter to the appropriate authority to consider whether the complaint must now be investigated.

70 However, they must be aware of the chief officer’s duties to preserve evidence set out in Paragraphs 1, 12 and 14B, Schedule 3, *Police Reform Act 2002*, and IOPC statutory guidance to the police force on *achieving best evidence in death and serious injury matters*.

Exceptions to the duty to investigate complaints

The duty to investigate a complaint does not apply where the appropriate authority determines that:

- the complaint concerns substantially the same:
 - conduct or other matter as a complaint made previously, or
 - conduct as a conduct matter recorded previously
- there is no fresh indication in respect of that conduct or other matter that:
 - a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings⁷¹, or
 - there may have been the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights;
- there is no fresh substantive evidence which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded; and
- the previous complaint or conduct matter:
 - has been, or is being, investigated
 - (in the case of a complaint) has been, or is being, otherwise handled in accordance with Schedule 3
 - (in the case of a complaint) has previously been withdrawn (see Chapter 16) and, therefore, the provisions of Part 2 to the *Police Reform Act 2002* ceased to apply to that previous complaint

Regulation 6, Police (Complaints and Misconduct) Regulations 2020

10.10 'Substantive' evidence means, for example, evidence of a material fact which is in dispute or may have a bearing on the outcome of the complaint, as distinct from evidence of matters peripheral to the complaint and highly unlikely to have any bearing on the outcome.

10.11 However, the matter should still be handled in a reasonable and proportionate manner (see Chapter 12). This is a requirement where the matter is a complaint.

71 See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures (in accordance with Part 6 of those regulations). For any other person serving with the police it 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.

Assessing what is reasonable and proportionate

10.12 As stated, the appropriate authority must consider whether the reasonable and proportionate way to handle a complaint is by investigation or otherwise than by investigation. The complaint handler must consider what steps are reasonable and proportionate to take in order to handle a complaint. When making these decisions about what is reasonable and proportionate, both the appropriate authority and the complaint handler should take a number of factors into account. These include:

- the seriousness of the matter, including:
 - what is alleged
 - the impact and/or harm that has, or could have been, caused
 - the public interest
 - whether any articles of the European Convention on Human Rights are engaged
 - the wider context and whether the matter gives rise to concerns additional to those alleged by the complainant
 - whether a number of previous similar complaints have been recorded or logged (either about the same issue, or, where appropriate, about the same officer or department)
 - the potential for learning for individuals, or local or national policing
 - whether there appears to be an indication that whilst the matter may not be misconduct or gross misconduct, it appears to be ‘gross incompetence’⁷²
- what facts need to be established and whether they are in dispute
- how long ago any incident took place and whether evidence is still likely to be available
- what might be done to remedy any issues
- what outcome the complainant may have indicated that they are seeking

10.13 In some circumstances, the reasonable and proportionate response to a complaint may be necessarily limited – for example, where the passage of time means that some evidence is no longer available. However, it is always important to balance this with the factors outlined in paragraph 10.12 above. The complaint handler should consider what can be done to address dissatisfaction, to learn and avoid repetition of any mistakes, and to provide a reasonable and proportionate outcome, particularly when the matters alleged have the potential to have had serious effects – either for the complainant or throughout the police service.

10.14 When dealing with any matter in which discrimination is or may be a factor the IOPC’s *Guidelines on handling allegations of discrimination* should be followed.

10.15 Complaint handlers should regularly review whether their initial approach remains appropriate.

72 See Home Office guidance, *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*. This would also apply where there appears to be an indication that a matter regarding a senior officer would amount to ‘gross incompetence’ had the officer in question not been a senior officer.

Chapter 11

Duties and considerations relevant to all handling under Schedule 3 to the *Police Reform Act 2002*

- 11.1** This chapter sets out duties and considerations that apply irrespective of whether a matter is being investigated or otherwise handled under Schedule 3, including:
- appointment of a person to handle the matter
 - police witnesses
 - communicating with the complainant and other parties
 - exceptions to the duty to provide information
 - keeping an audit trail
 - apologising when and where appropriate
 - criticism
- 11.2** This chapter should be read alongside Chapter 12 or 13, which outline duties specific to matters that are handled otherwise than by investigation, or investigated. A complaint must be handled in a reasonable and proportionate manner, in line with the principles set out in Chapter 3.

Appointment of a person to handle the matter

- 11.3** The person appointed to handle a matter must not be someone whose involvement in that role could reasonably give rise to a concern about whether they could act impartially. The appropriate authority may wish to consider, for example, if someone has been involved in the matter previously, and whether that prior involvement means that they are now unsuitable to handle the case. When appointing a person, the appropriate authority should consider the circumstances, including the subject matter of a complaint, to ensure that they appoint an appropriate handler.
- 11.4** There are specific requirements regarding the appointment of an investigator (see paragraphs 13.3 to 13.8).

Police witnesses

- 11.5** Under the Standards of Professional Behaviour, police officers who are witnesses are expected to co-operate with investigations, inquiries and formal proceedings. They must participate openly and professionally in line with the expectations of a police officer when they are identified as a witness. Failure to do so may be treated as a breach of the standards.
- 11.6** In an independent or directed investigation, a person serving with the police who is a witness may be compelled to attend an interview with investigators if required⁷³.

Communicating with the complainant and other parties

- 11.7** The appropriate authority, the local policing body (where they have taken on responsibility for updating complainants) or the IOPC (in directed and independent cases) must keep the complainant and/or interested persons properly informed about the progress and outcome of the handling of the complaint, recordable conduct matter or DSI matter⁷⁴. In doing so they must take into account the exceptions in paragraphs 11.16 – 11.20. They must ensure that they are in a position to respond to any questions or requests for information. This includes, where the local policing body has taken on responsibility for updating complainants, ensuring that appropriate processes are in place to ensure the local policing body has accurate and up-to-date information.
- 11.8** Forces and local policing bodies should ensure that communication is tailored to meet the needs of the individual, as far as possible. They should ask the complainant and/or interested person how they wish to be kept informed of the progress, and take all reasonable steps to achieve this. They must also make any reasonable adjustments required under the *Equality Act 2010*.
- 11.9** The updates that complainants and/or interested persons are provided with should be regular and meaningful. The first update must be provided promptly, in writing, and, at the latest, within four weeks of the start of the handling of the matter under Schedule 3⁷⁵. Subsequent updates must be provided at least every four weeks after that. A failure to give regular, timely, updates, or providing poor updates, is highly likely to damage the complainant's and/or interested person's trust in the process. Effective

73 Paragraph 19F, Schedule 3, *Police Reform Act 2002* and Regulation 2, Police (Complaints and Conduct) Regulations 2013.

74 Sections 20 & 21, *Police Reform Act 2002*; Regulation 33, Police (Complaints and Misconduct) Regulations 2020. Please note, Section 20 also applies where complaints are handled outside of Schedule 3 to the *Police Reform Act 2002*.

75 Regulation 34, Police (Complaints and Misconduct) Regulations 2020. Where a complaint is being handled outside of Schedule 3, and was not received in writing, it is not necessary for updates to be provided in writing.

updates will also reduce the complainant feeling that it is necessary to chase for updates in order to feel properly informed.

- 11.10** Updates on the progress of handling should include, for example, information about the stage reached, 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 or other handling and any revisions to this. If there are any revisions to timescales, the reason for this should be given.
- 11.11** There may be occasions where there has been little progress on the handling of the complaint since the last update – for example, the complaint handler is waiting for information from an external party. In these circumstances, an update must still be provided. For example, the update should explain why there is a delay, and what steps have been taken to mitigate the effect of any delay.
- 11.12** Depending on the complainant’s and/or any interested person’s wishes, it may be appropriate to provide updates both in writing and by another method.
- 11.13** The appropriate authority must in any event decide whether it is appropriate to offer, or grant a request for, a meeting with a complainant and/or interested person in order to comply with its duties to keep them properly informed⁷⁶. As soon as practicable after any such meeting, the appropriate authority must send the complainant or interested person a written record of the meeting and explain how any concerns raised will be addressed.
- 11.14** The IOPC also expects any person who is complained about (if any), or to whose conduct the matter relates, to be provided with updates in a similar fashion, taking into account the exceptions at paragraphs 11.16 – 11.20.
- 11.15** Where an investigation is subject to special procedures, there are specific requirements regarding the provision of information to the person who is complained about, or to whose conduct the matter relates (see Chapter 13).

Exceptions to the duty to provide information

- 11.16** The duty to keep the complainant and interested persons informed does not apply in circumstances where non-disclosure is necessary⁷⁷:
- to prevent premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings
 - in the interest of national security

⁷⁶ Regulation 34, Police (Complaints and Misconduct) Regulations 2020.

⁷⁷ Regulation 35, Police (Complaints and Misconduct) Regulations 2020.

- for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders
- on proportionality grounds, and/or
- otherwise in the public interest

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

- that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings⁷⁸ (or appeal against the outcome of such proceedings)
- the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings (or appeal)
- the disclosure of that information may prejudice the welfare or safety of any third party, and/or
- that information constitutes criminal intelligence

11.18 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 effect⁷⁹. 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 named explicitly, but it may be possible to identify them from the context when several documents are considered together.

11.19 Potential harm can sometimes be avoided or minimised by redacting harmful or personal material 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. Handlers should consider what information can reasonably and proportionately be provided to the complainant or interested person without breaching any of the exemptions above.

11.20 There are also specific exceptions regarding the provision of information during the handling of a matter:

- to the person who is complained about, or to whose conduct the matter relates, as set out at the appropriate points in this guidance

78 See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

79 Regulation 35, Police (Complaints and Misconduct) Regulations 2020.

- in a directed investigation, where that information is of a certain nature under Section 21A to the *Police Reform Act 2002* (see glossary)

Where relevant to these exceptions, a requirement to consider the risk of prejudice to any investigation includes the risk of prejudice to any proceedings which may arise from that investigation.

Keeping an audit trail

- 11.21** The person handling a matter must be able to demonstrate what has been done, including what decisions have been made and why. This includes where a decision has been made not to do something. They should be able to demonstrate that they took steps to understand the matter and the views of any complainant or interested person where appropriate.
- 11.22** Any documents or evidence seen or created should be collated and preserved. The IOPC expects this audit trail to be available in relation to every matter, regardless of the complexity. Such information will assist if the handling of a complaint is subject to a review, and must be provided to the relevant review body.

Apologising when and where appropriate

- 11.23** The IOPC expects an apology to be made where the handling of a matter indicates that something has gone wrong. A sincere and timely apology can have a significant effect and demonstrates a willingness to accept accountability. Delaying an apology unnecessarily can diminish its value when it is finally received.
- 11.24** If it becomes apparent that an apology is appropriate before the handling is complete, the appropriate authority should seek to ensure that an apology is provided at the earliest appropriate opportunity. It is not always necessary to wait until the end of handling before giving an apology. However, where there is a possibility that disciplinary proceedings could follow, and the apology relates to any action, fact or circumstance that is relevant to a misconduct allegation, it will be appropriate to wait to give any apology until after any related proceedings have taken place, or until it is clear that they will not take place.
- 11.25** An apology should not be offered on behalf of someone, unless they have agreed to the apology.

Criticism

11.26 No criticism or adverse comment about a person who is identified, or capable of being identified, should appear in an investigation report or other written outcome unless that person has had an opportunity to respond to the criticism or adverse comment. This applies not only to persons serving with the police, but to anyone who is identified, or capable of being identified. Normally, where the matter has been investigated, criticism or adverse comments will be put to the relevant person during an interview or by giving them a notice of investigation. In matters that are not being investigated, criticism or adverse comments could be drawn to the person's attention in other ways – for example, by providing a copy or summary of the complaint.

11.27 When drafting a report or other written outcome, if it appears to the person handling the matter that the person criticised or subject to adverse comment has not had an opportunity to respond then either:

- the criticism or adverse comment should be removed from the report or response (unless to do so would undermine the findings or adequacy of the explanation), or
- a letter or email should be sent to the relevant person informing them of what the criticism or adverse comment is and the facts or evidence that support the criticism or adverse comment⁸⁰. The recipient must then be given a reasonable opportunity to respond to that criticism or adverse comment. The person handling the matter should consider any response and decide 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 or written outcome.

80 Where appropriate to the needs of the person in question, it may additionally be necessary to make reasonable adjustments and inform them in another way.

Chapter 12

Handling complaints under Schedule 3 to the *Police Reform Act 2002* otherwise than by investigation

12.1 This chapter sets out:

- taking a flexible approach
- deciding to take no further action

Taking a flexible approach

- 12.2 Where the appropriate authority decides that it is not reasonable and proportionate to investigate a recorded complaint, and it is not required to investigate (see paragraphs 10.5 – 10.9), the complaint must be handled under Schedule 3 otherwise than by investigation.
- 12.3 Appropriate authorities should apply the principles outlined in Chapter 3 and consider the matters outlined in paragraphs 10.12 – 10.15, and take a case-by-case approach to handling each complaint reasonably and proportionately.
- 12.4 Complaint handlers should think creatively about what action will be most useful to provide meaningful answers to issues or concerns raised, remedy the dissatisfaction of the complainant, and identify learning or changes required to policies and procedures. Although the legislation distinguishes between those matters that are ‘investigated’ and those that are not, in practice, certain investigative steps may be reasonable and proportionate even when not carrying out an investigation under the *Police Reform Act 2002*. This may be, for example, where conflicting information cannot be reconciled without accounts being taken.
- 12.5 Actions to handle the complaint may include those suggested at paragraph 6.21 to address complaints that have not been recorded. Mediation may also be considered. A mediation process, which will usually involve a third party to mediate, can be a useful way of seeking a resolution where both parties agree to it. Mediation offers an opportunity for both the complainant and the person complained about (if any) to describe their experiences and understand the other’s views.
- 12.6 At an early stage, complaint handlers should consider setting out the scope of what they plan to do to address the complaint. They should share this with the complainant, interested persons or people whose actions are under consideration (if any), taking into

account any considerations in paragraphs 11.16 – 11.20. This can help to ensure that all the issues are addressed, and help a complainant to understand what to expect from the outset.

- 12.7** Where the complaint includes concerns about the actions of a person serving with the police, that person should be actively encouraged to participate in the handling of the complaint. It should generally be expected that they will, at a minimum, comment on the complaint. Where a complaint is not being investigated, any account taken as part of the handling of the complaint is not admissible in any subsequent criminal, civil or disciplinary proceedings⁸¹ (except to the extent it consists of an admission relating to a matter that is not under consideration as part of the handling)⁸².
- 12.8** When considering complaints that include a concern about a policy or procedure that has been identified because of a particular incident, complaint handlers should consider including those who were involved in the incident (the complainant, and any officers or staff) in any consideration of the policy itself. They may be able to offer valuable insight into the policy's application, or they may direct the complaint handler to relevant expertise.
- 12.9** Reasonable and proportionate handling must lead to a reasonable and proportionate outcome. Complaint handlers should consider the guidance on outcomes found in Chapter 17.

Deciding to take no further action

- 12.10** Complaint handlers should seek to resolve a complainant's concerns wherever possible and reasonable and proportionate to do so – even if it is only reasonable and proportionate to take limited steps (see paragraph 10.13). However, in some circumstances, it may not be reasonable and proportionate to take further action with a complaint after recording it. Circumstances where it may not be reasonable to take action with a complaint include (but are not limited to):
- A complaint that is about the off-duty behaviour of a person serving with the police, which has no relevance to their role as a person serving with the police and, even if proved, would not discredit the police service or undermine public confidence in it.

81 See glossary for the definition of disciplinary proceedings – in these circumstances, the definition, for members of a police force or special constables, includes proceedings under the Police (Performance) Regulations 2020, as well as any proceedings under the Police (Conduct) Regulations 2020 (apart from the Reflective Practice Review Process, in accordance with Part 6 of those regulations). For any other person serving with the police, it includes both any proceedings or management process during which that person's conduct is considered and any proceedings or management process during which that person's performance is considered.

82 Paragraph 6, Schedule 3, *Police Reform Act 2002*.

- If the complaint is fanciful – this means that it is patently of a nature that no reasonable person could lend any credence to it. It is important to consider the complaint itself, rather than the alleged incident giving rise to the complaint.
- If the complaint would be better handled by another process, for example, a complaint to the Information Commissioner’s Office.
- If the complaint contains too little information to be able to progress any enquiries, and attempts to clarify it with the complainant have been unsuccessful.

12.11 There may be circumstances where some enquiries are needed before it can be established that it is reasonable and proportionate to take no further action to handle the complaint after recording it. These circumstances include, for example, where:

- It is established that the complaint has already been responded to and no new evidence or concerns are apparent. However, if a complainant raises similar issues to ones they have raised before, this is not necessarily a reason in itself to take no further action. The fact that the same concerns are being raised again may suggest that more can be done to handle the matter and respond to the complainant’s dissatisfaction. A decision should be made whether further action would be reasonable and proportionate. Nonetheless, complaints should not be re-visited where it is not appropriate to do so, and where this may raise unrealistic expectations of different outcomes.
- Evidence demonstrates that the complainant is using the complaints system purely to vex, worry, annoy or embarrass and there is no foundation to the complaint.

12.12 A decision to take no further action should never be taken simply because, for example, the complaint is considered to be ‘difficult’ to deal with. Complaint handlers should always endeavour to take positive action towards the resolution of a complaint wherever it is reasonable and proportionate to do so (see paragraph 10.13).

12.13 Where it is decided that no further action can be taken as part of the reasonable and proportionate handling of a complaint, a detailed rationale for this should be provided to the complainant (in line with the duties around communicating the outcome of a complaint, and the right to apply for a review set out in paragraphs 17.67 – 17.74).

Chapter 13

Requirements when investigating

13.1 This chapter sets out:

- appointment of a person to carry out the investigation
- terms of reference
- death or serious injury matters becoming conduct matters
- special procedures
- severity assessments
- notices of investigation and providing terms of reference
- representations to the investigator
- accelerated procedures
- suspension of police officers and special constables
- conducting an investigation
- timeliness of investigations

Investigations

13.2 An investigation must be effective and capable of leading to the establishment of the facts of the case, learning, and, where appropriate, accountability for those responsible. While there are some specific requirements for investigations, particularly where they are subject to special procedures, all investigations should be reasonable and proportionate (see Chapter 3), conducted promptly and allow effective participation from complainants or interested persons (if any).

Appointment of a person to carry out the investigation

13.3 The appropriate authority is responsible for appointing the investigator in a local or directed investigation. However, in a directed investigation the IOPC may:

- require that no appointment is made until the IOPC has confirmed that it approves the proposed person
- at any time, if it is not satisfied with the person investigating, require the appropriate authority to select someone else to investigate, and to notify the IOPC of who is selected

- 13.4** Where the IOPC has required the appropriate authority to select a different person to investigate, the appropriate authority may only appoint that person if the IOPC confirms that it approves of the appointment. If it does not approve, the appropriate authority must make another selection⁸³.

An appropriate authority may appoint a person serving with the police or a National Crime Agency officer as an investigator. However, the appointment is subject to a number of important qualifications. These are:

- the investigator must have an appropriate level of knowledge, skills and experience to plan and manage the investigation
- the investigator must not work, directly or indirectly, under the management of a person being investigated
- a person must not be appointed if their involvement in that role could reasonably give rise to a concern about whether they could act impartially
- where an investigation relates to a senior officer, the investigator must not be a person serving with the same force as the senior officer

Paragraph 16 and 18, Schedule 3, *Police Reform Act 2002*.
Regulation 12, Police (Complaints and Misconduct) Regulations 2020.

- 13.5** The appointment of an investigator should be recorded in writing. Where any concerns have been raised about the appointment (including about any real, perceived or alleged conflict of interest) the appropriate authority should also record in writing its decision about whether or not to appoint the investigator, together with its rationale.
- 13.6** At the start of each investigation, the investigator should make a written note to declare whether or not there is anything that could reasonably give rise to a concern about whether they or any member of the investigation team could act impartially.
- 13.7** Where no such concern is identified, this should be noted for the purposes of transparency. Where there is concern, the investigator should raise it with the appropriate authority (and the IOPC in a directed investigation) before they, or any member of the investigation team, takes any steps other than preservation of evidence in connection with the investigation.
- 13.8** The appropriate authority (or the IOPC in a directed investigation) should then decide whether the investigator should be replaced. If concerns are identified about any other member of the investigation team, they should advise the investigator whether to replace the team member. Any decision made, together with the reasons, should be recorded in writing.

83 Paragraph 18, Schedule 3, *Police Reform Act 2002*.

Terms of reference

13.9 While the regulations only mandate terms of reference for investigations that are subject to special procedures, the IOPC expects all investigations to have terms of reference. Terms of reference will vary according to the complexity of an investigation. In straightforward investigations that are not subject to special procedures, they may be as simple as a summary of the complaint being investigated. Other investigations will require more detailed terms of reference to ensure clarity from the outset about what will, and will not be, addressed.

13.10 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 be a list of all actions to be undertaken
- include the identification of learning – both for individuals or organisations
- spell out, where there is a parallel investigation, the relationship between the two investigations

13.11 Subject to the exceptions at Regulation 35 of the Police (Complaints and Misconduct) Regulations 2020 (where appropriate), a copy of the terms of reference and also any revisions to them should be sent to complainants, interested persons and also any person whose actions are under investigation (see paragraphs 13.38 – 13.41 regarding the provision of terms of reference to the person subject to investigation, in an investigation that is subject to special procedures). It may also be useful to offer to meet with the complainant and any interested person to discuss these further if they have any questions about them.

Complaints relating to investigations of death or serious injury matters

13.12 When a complaint is made that relates to a matter under investigation as a DSI, the details of the complaint should be considered, and decisions made about whether it should be recorded, whether it should be investigated and whether it should be referred. If the complaint covers the entire DSI incident, it is not necessary to continue the DSI matter (as the definition of a DSI matter is no longer met) and the whole investigation will be converted to a complaint investigation. The investigator for the DSI should decide whether there are any matters that form part of the DSI investigation that do not form part of the complaint investigation. If there are, then the DSI investigation should continue to address these matters.

Death or serious injury matters becoming conduct matters

- 13.13** 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 effect⁸⁴. This should be in writing and should set out the investigator's reasons for reaching this conclusion.
- 13.14** In a local investigation the submission must be sent to the appropriate authority for the DSI matter. In a directed investigation, the submission must be sent to the IOPC.
- 13.15** In a local investigation, if the appropriate authority agrees with the submission, it must notify the relevant appropriate authority for the person whose conduct is in question (if it is not the relevant authority itself) and the IOPC. It must send both a copy of the investigator's submission. The relevant appropriate authority must then record the matter as a recordable conduct matter and consider whether it should be referred to the IOPC⁸⁵. In any case, the IOPC may redetermine the mode of investigation.
- 13.16** In a directed investigation, if the IOPC agrees that there is such an indication, it will send a copy of the submission to the appropriate authority for the DSI matter (and the appropriate authority for the person whose conduct is in question, if different). The appropriate authority for the person whose conduct is in question must record the matter as a recordable conduct matter. The IOPC may also decide to redetermine the mode of investigation.
- 13.17** At any point in a directed investigation, the IOPC may also itself determine that there is such an indication, even if there has not been a submission from the investigator. If it decides this, it will notify the appropriate authority for the DSI matter (and the appropriate authority for the person whose conduct is in question, if different) of its determination. The appropriate authority must then record the matter as a recordable conduct matter.
- 13.18** Once the matter has been recorded, the person who was investigating the DSI matter must investigate the matter as a conduct matter (unless the IOPC has decided to redetermine the mode of investigation). They must make a severity assessment in

84 Paragraph 21A, Schedule 3, *Police Reform Act 2002*. See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

85 A recordable conduct matter must be referred to the IOPC where it relates to any incident or circumstances in, or in consequence of which, any person has died or suffered serious injury (see chapter 9 and paragraph 13, Schedule 3, *Police Reform Act 2002*).

relation to the conduct of the person concerned, where that person is a member of a police force or special constable.

13.19 A DSI investigation should be kept under review to establish whether, at any time, there is an indication of the matters set out in paragraph 13.13.

Special procedures

13.20 Special procedures exist to protect the rights of those under investigation for more serious matters. The procedures apply only to investigations of complaints and recordable conduct matters relating to a member of a police force or a special constable. In the case of any other person (such as a member of police staff), the investigator must adhere to the relevant policies and procedures for investigating allegations made against such persons.

13.21 Special procedures must be followed if:

- the investigation concerns a recordable conduct matter; or
- at any time during an investigation of a complaint, it appears to the investigator (or the IOPC in a directed investigation) that there is an indication that a member of a police force or special constable to whose conduct the investigation relates may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings⁸⁶

13.22 When considering whether there is an indication that the person may have committed a criminal offence or behaved in a manner that justifies the bringing of disciplinary proceedings, the same considerations set out at paragraphs 10.7 – 10.8 should be applied.

13.23 The investigator must record the reasoning behind their decision about whether an investigation should be subject to special procedures. Once the decision has been made that the investigation is subject to special procedures, a severity assessment must be conducted (see paragraphs 13.25 – 13.37).

13.24 In a directed investigation the IOPC will make the decision about whether the investigation should be subject to special procedures. If at any time during the course of an investigation the IOPC determines that the investigation should be subject to special procedures, the investigator must follow the special procedures.

86 Paragraph 19A, Schedule 3, *Police Reform Act 2002*. See glossary for the definition of disciplinary proceedings – in this case, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures.

Severity assessments

- 13.25** Severity assessments provide the person subject of investigation (if any) with an indication of the investigator's view (or the IOPC's view in directed or independent investigations) of the level of seriousness of the conduct, if proved and, if any disciplinary proceedings were to follow, the likely form of those proceedings.
- 13.26** Severity assessments, as outlined below, apply only to investigations of police officers or special constables that are subject to special procedures. In the case of any other person, the investigator must adhere to the relevant policies and procedures for investigating allegations against such persons.

The Police (Complaints and Misconduct) Regulations 2020 define the severity assessment as an assessment of:

- whether the conduct of the person concerned, if proved, would amount to misconduct that is so serious as to justify disciplinary action or gross misconduct; and
- if the conduct were to become the subject of disciplinary proceedings⁸⁷, the form which those proceedings would be likely to take.

Regulation 1, Police (Complaints and Misconduct) Regulations 2020

- 13.27** 'Misconduct that is so serious as to justify disciplinary action' is any conduct which, if proved, would amount to a breach of the Standards of Professional Behaviour so serious as to justify:
- a written warning
 - a final written warning
 - reduction in rank; or
 - dismissal without notice⁸⁸

87 See glossary for the definition of disciplinary proceedings – in this case, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures.

88 See College of Policing guidance on outcomes for further guidance.

Gross misconduct is defined as:

- a breach of the Standards of Professional Behaviour so serious that dismissal would be justified.

Paragraph 29, Schedule 3, *Police Reform Act 2002*

13.28 In a local investigation, once the investigator decides that an investigation is subject to special procedures, the investigator must carry out a severity assessment as soon as is reasonably practicable⁸⁹.

13.29 In a directed investigation, once the IOPC has decided that an investigation is subject to special procedures, the investigator must, as soon as is reasonably practicable, form an opinion on⁹⁰:

- whether the conduct of the person under investigation, if proved, would amount to misconduct that is so serious as to justify disciplinary action or gross misconduct; and
- the form that any disciplinary proceedings would be likely to take if the conduct were to become the subject of proceedings

13.30 In a directed investigation, the investigator must then notify the IOPC of that opinion and send the case to the IOPC for it to make a severity assessment in relation to the conduct of the person concerned.

13.31 The investigator (or the IOPC in directed or independent investigations) must consult the appropriate authority before making the severity assessment. However, the final decision is for the investigator (or the IOPC in directed or independent investigations).

13.32 The severity assessment must be made on the basis of what would happen if the conduct alleged was proved. It must be considered whether the conduct, if proved, would amount to misconduct that is so serious as to justify disciplinary action (including some assessment of why it is not suitable to be handled by the unsatisfactory performance procedures or the Reflective Practice Review Process) – or constitute gross misconduct. To assist with this, those making the severity assessment should have regard to College of Policing guidance on disciplinary outcomes. They should not consider the likelihood of the conduct being proven.

13.33 After deciding whether the conduct, if proved, would amount to misconduct that is so serious as to justify disciplinary action or amount to gross misconduct, the investigator must decide what form any disciplinary proceedings would be likely to take.

89 Regulation 16, Police (Complaints and Misconduct) Regulations 2020.

90 Regulation 16, Police (Complaints and Misconduct) Regulations 2020.

13.34 Ordinarily, an assessment that the conduct amounts to misconduct that is so serious as to justify disciplinary action would result in a misconduct meeting and an assessment that the conduct amounts to gross misconduct would result in a misconduct hearing. However, checks on an officer's disciplinary record should be made to determine whether they:

- are the subject of a live final written warning at the time of the initial severity assessment, or
- have been reduced in rank under the Police (Conduct) Regulations 2004 or Police (Conduct) Regulations 2020 less than two years prior to the initial severity assessment.

13.35 If either condition applies, then the proceedings will be a misconduct hearing, even if the conduct was not initially assessed as gross misconduct⁹¹.

13.36 After consultation with the appropriate authority, the severity assessment may be revised if the investigator (or the IOPC in a directed investigation) believes this is appropriate⁹². In a directed investigation, if the investigator forms the opinion that the severity assessment should be revised then they should notify the IOPC of their opinion. The IOPC may also indicate that it is appropriate to revise the assessment. If so, the investigator must refer the case to the IOPC for it to revise the assessment.

13.37 Any severity assessment must be fully reasoned and documented.

91 Regulation 23, Police (Conduct) Regulations 2020.

92 Regulation 19, Police (Complaints and Misconduct) Regulations 2020.

Notices of investigation and providing terms of reference

13.38 On the completion of a severity assessment, the investigator must give a written notice to the person concerned notifying them that they are under investigation.

The notice must state:

- the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour
- that there is to be an investigation into the matter and the identity of the person investigating
- the result of the severity assessment
- that if the person concerned is dismissed at disciplinary proceedings, information including the person's full name and a description of the conduct which led to dismissal will be added to the police barred list (referred to in section 88B(2) of the *Police Act 1996*) and may be subject to publication for a period of up to five years
- that the person concerned has the right to seek advice from the person's staff association or any other body
- the effect of regulation 18 of the Police (Complaints and Misconduct) Regulations 2020 (special procedure: police friend)
- the effect of regulation 20 of the Police (Complaints and Misconduct) Regulations 2020 (special procedure: representations to the person investigating) and regulation 8 of the Police (Conduct) Regulations 2020 (legal and other representation), and
- that whilst the person concerned does not have to say anything it may harm the person's case if they do not mention when interviewed or when providing any information under regulation 20 of the Police (Complaints and Misconduct) Regulations 2020 or regulation 31 of the Police (Conduct) Regulations 2020 (procedure on receipt of notice) something later relied on in any disciplinary proceedings (or appeal against the outcome of such proceedings)

Regulation 17, Police (Complaints and Misconduct) Regulations 2020

13.39 The investigator must also provide the person concerned with a copy of the terms of reference of the investigation, and any subsequent revised terms of reference. Where practicable, and subject to paragraph 13.41, these should be provided at the time of giving the written notice or, if not then, within five working days of this (beginning with the first working day after the day on which the notice is given).

13.40 The written notice and terms of reference must be⁹³:

- given to the person concerned in person
- left with a person at, or sent by recorded delivery to, the person concerned's last known address
- given to the person concerned in person by that person's police friend (where the police friend has agreed with the appropriate authority to deliver the notice) or
- given to the person concerned in any other manner agreed between the investigator and the person concerned (for example, by email)

13.41 However, the notice and/or the terms of reference do not have to be given to the person concerned if the investigator (or the IOPC in a directed investigation) considers that to do so might prejudice the investigation, or any other investigation⁹⁴. If a notice is provided, but the terms of reference are not, the investigator must provide (within the same timescale as in paragraph 13.39) a further notice explaining that the terms of reference are not being provided and why.

13.42 If, during the investigation, the severity assessment is revised, the investigator must give a further written notice to the person concerned as soon as practicable, unless they (or the IOPC in a directed investigation) consider that doing so might prejudice the investigation, or any other investigation. The investigator must also notify the appropriate authority of the revision.

Representations to the investigator

13.43 During an investigation that is subject to special procedures, the investigator (in a local investigation) or the IOPC (in a directed investigation) must consider any relevant statement or document (see glossary) provided by the person concerned, or by their police friend. This applies where the document or statement has been provided within ten working days (unless this period has been extended by the investigator), starting the day after the day on which a copy of the terms of reference (or notice explaining why a copy of the terms is not being sent) is sent⁹⁵.

13.44 Where the investigation is a directed investigation the investigator must send a copy of any relevant statement or document (see glossary) received to the IOPC for consideration.

13.45 The investigator should make a record of any oral statement or response. The person concerned should be asked to sign the record as an accurate reflection of what has been said.

93 Regulation 17, Police (Complaints and Misconduct) Regulations 2020.

94 The requirement to consider the risk of prejudice to any investigation includes the risk of prejudice to any proceedings which may arise from that investigation.

95 Regulation 20, Police (Complaints and Misconduct) Regulations 2020.

Accelerated procedures

13.46 If at any time before the completion of an investigation of a complaint or recordable conduct matter, the investigator believes (in a local or directed investigation) or the IOPC determines (in a directed investigation) believes that the appropriate authority would be likely to consider that⁹⁶:

- there is sufficient evidence, in the form of written statements or other documents to establish, on the balance of probabilities, that the conduct to which the investigation relates constitutes gross misconduct, and
- it is in the public interest for the person whose conduct it is to cease to be a member of a police force or be a special constable without delay

13.47 Where this is the case, the following documents must be submitted to the appropriate authority⁹⁷:

- a statement outlining why it is considered that the appropriate authority would agree that the conditions set out at paragraph 13.46 are met, and
- a written report of the investigation so far⁹⁸

13.48 In a local investigation, the investigator must submit these documents to the appropriate authority. If the investigator was appointed after the IOPC determined the mode of investigation (or after the IOPC has directed that a complaint is re-investigated following an application for a review, see Chapter 18), the investigator must send a copy of the documents to the IOPC.

13.49 In a directed investigation, if the investigator believes that the appropriate authority would be likely to consider the conditions described in paragraph 13.46 to be met, the investigator must submit these documents to the IOPC. If the IOPC agrees with the investigator, the IOPC will submit these documents to the appropriate authority. The investigator should also consult the IOPC before making a submission of this type. If it is the IOPC that has determined that the appropriate authority would be likely to consider that the conditions are satisfied, the IOPC must submit the documents.

13.50 After submitting the documents, the investigator must continue the investigation to such extent as they (or the IOPC in a directed investigation) consider appropriate – in particular, the investigator may wish to consider whether there are other matters included in the investigation which will not be covered by the accelerated procedures.

96 Paragraph 20A, Schedule 3, *Police Reform Act 2002*.

97 Regulation 24, Police (Complaints and Misconduct) Regulations 2020.

98 If a person would contravene Section 21A to the *Police Reform Act 2002* (see glossary) by submitting a complete report, the person must instead submit the report having removed or obscured the information which should not be disclosed.

- 13.51** Once the documents have been submitted, the appropriate authority must determine whether the conditions outlined in paragraph 13.46 are satisfied⁹⁹. Where the submission was made by the IOPC, or was required to be copied to the IOPC, the appropriate authority must notify the IOPC of their decision.
- 13.52** If the appropriate authority consider that the conditions are satisfied, unless it is inappropriate to do so, the case should be certified as meeting the special conditions and handled under the Police (Conduct) Regulations 2020 procedures for accelerated cases (see Chapter 12 of the Home Office guidance, *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*).
- 13.53** If the appropriate authority determines that the conditions are not satisfied, or they are but the circumstances are such that it is inappropriate to bring disciplinary proceedings at present, the appropriate authority must notify the investigator.
- 13.54** Where they decide not to certify the matter, and the investigation is a directed investigation, the appropriate authority must submit a memorandum to the IOPC explaining why it has made that decision¹⁰⁰. The IOPC will consider the reasons provided by the appropriate authority and determine whether it will direct the appropriate authority to certify the case.
- 13.55** If the IOPC decides to make such a direction, it will provide the appropriate authority with a statement outlining its reasons. The appropriate authority must certify the case, proceed accordingly, and keep the IOPC informed of subsequent actions in response to the direction. The IOPC may withdraw a direction under this regulation¹⁰¹.
- 13.56** If the IOPC decides not to direct, it will inform the appropriate authority and the investigator of that determination.
- 13.57** A further submission may be made, after the appropriate authority has declined to certify the conduct as subject to accelerated procedures, however, the person making the submission (the investigator or the IOPC) must have grounds to believe that the appropriate authority will reach a different determination.

99 Regulations 25 and 26, Police (Complaints and Misconduct) Regulations 2020.

100 Regulation 26, Police (Complaints and Misconduct) Regulations 2020.

101 Regulation 26, Police (Complaints and Misconduct) Regulations 2020.

Suspension of police officers and special constables

The Police (Conduct) Regulations 2020 allow the appropriate authority to suspend a police officer or special constable in certain circumstances. The appropriate authority may suspend an officer who is subject of investigation only if temporary redeployment to alternative duties or an alternative location is not appropriate, and it appears that either:

- the effective investigation of the case may be prejudiced unless the officer concerned is suspended, or
- having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the officer should be so suspended.

Regulation 11, Police (Conduct) Regulations 2020

The investigator must provide the appropriate authority with any information the appropriate authority reasonably requests in order to assist with the determination of whether an officer should be, or should remain, suspended.

Regulation 22, Police (Complaints and Misconduct) Regulations 2020

13.58 Further guidance on suspension can be found in Home Office guidance, *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*. In an independent or directed investigation, the appropriate authority must consult with the IOPC when deciding whether to suspend the person concerned, and before bringing a suspension to an end. The appropriate authority should inform the IOPC of its preliminary view and the rationale for it. This includes which suspension conditions are satisfied.

13.59 The above provisions apply only to police officers and special constables. Where the person who is subject of an investigation is a police staff member, investigators will need to follow any procedures for suspension set out in the relevant force policies. However, in an independent or directed investigation, the IOPC expects to be notified of any decision in respect of the suspension of a police staff member.

Conducting an investigation

13.60 Investigations will vary greatly in their scope, purpose and complexity depending on the nature of the complaint or matter under investigation. The investigator should take the reasonable steps available to them to secure the evidence concerning the incident,

including witness statements and forensic evidence. Investigations may require only limited enquiries or more substantial activity to gather and analyse a wide range of evidence.

- 13.61** The investigator should attempt to obtain an account from the complainant (if there is one). In investigations into a DSI, the investigator should consider whether any injured person should be engaged with during the investigation, as a witness. Injured persons will often have evidence to offer about how they suffered their injury.
- 13.62** In addition, where the actions of a person serving with the police are under investigation, it will usually be reasonable and proportionate to obtain an account from them. While the account must be recorded in such a way that it can be reviewed, it is not always reasonable and proportionate for that account to be taken via an interview. For example, a written statement provided by the person in question may suffice.
- 13.63** Where a decision is taken not to obtain information or material that has been identified, a record should be made of why it is not considered reasonable and proportionate to do so.

Interviews

- 13.64** Where an investigation is subject to special procedures, there are certain processes, outlined below, which must be applied where a police officer or special constable whose actions are under investigation is going to be interviewed. Police staff members whose actions are under investigation may also be interviewed. The investigator should follow the procedures for arranging the interview of police staff members that are set out in the relevant force policies. The investigator must consider whether the person to be interviewed reasonably requires any adjustments in order to ensure procedural fairness – for example, the processes set out below allow for the timescales set for the interview to be reasonable, which may, therefore, accommodate a delay if considered reasonable for the interviewee to arrange access for the interview.
- 13.65** These provisions apply to interviews conducted under the *Police Reform Act 2002*. Criminal interviews conducted under the *Police and Criminal Evidence Act 1984* must comply with that Act and the relevant case law and codes of practice.
- 13.66** During an investigation that is subject to special procedures, if an investigator proposes to interview the person concerned (the interviewee), they must, if reasonably practicable, agree a date and time for the interview with the interviewee¹⁰².
- 13.67** If a date and time is not agreed, the investigator must specify a date and time. If the interviewee or their police friend is not available to attend at the specified time, but proposes an alternative that is reasonable and that falls within five working days

102 Regulation 21, Police (Complaints and Misconduct) Regulations 2020.

(beginning with the first working day after the day specified by the investigator), then the interview will be postponed to the time proposed.

- 13.68** An interviewee must attend the interview. Failure to attend an interview may in itself be a breach of the Standards of Professional Behaviour.
- 13.69** The interviewee must be given a written notice of the date, time and place of interview¹⁰³. This should happen as soon as reasonably practicable after these are either agreed or, in the absence of agreement, specified by the investigator.
- 13.70** 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.
- 13.71** Decisions about what should be disclosed should be documented and made in light of the circumstances of the case. The purpose of disclosure is to give the interviewee a clear understanding of the allegations and to enable them to respond fully. It does not follow that the interviewee is entitled to disclosure of every document, but only those that the investigator considers appropriate in the circumstances of the case to enable them to prepare for interview¹⁰⁴.
- 13.72** In some situations – for example, where the allegations are at the more serious end of the spectrum – the interviewer may wish to consider using methods to assist accurate recording, such as video interviewing, or techniques to assist accurate recollection, such as cognitive interviewing. Only investigators who have been trained appropriately should undertake such interviews.
- 13.73** At the beginning of the interview the interviewee should be reminded of the content of any written notice of investigation given to them and reminded of the warnings it contains.

Early referral to the CPS

- 13.74** Where there is an early indication that a person whose conduct is under investigation (if any) may have committed a criminal offence, the IOPC encourages the appropriate authority to have early conversations with the CPS. Criminal proceedings cannot be brought before an investigation report is completed and submitted to the appropriate authority or the IOPC (see paragraphs 14.19 – 14.21), unless¹⁰⁵:

103 Regulation 21, Police (Complaints and Misconduct) Regulations 2020.

104 Regulation 21, Police (Complaints and Misconduct) Regulations 2020.

105 Paragraph 20, Schedule 3, *Police Reform Act 2002*.

- the investigation has been certified as subject to accelerated procedures (see paragraphs 13.46 – 13.57), or
- it appears to the CPS that there are exceptional circumstances that make it undesirable to delay criminal proceedings

13.75 The appropriate authority, therefore, may make an early referral to the CPS where they consider that exceptional circumstances might be present. This should happen only once they have gathered all the information that the CPS would properly need to reach both a decision as to whether or not such exceptional circumstances exist, and also to properly and safely make a charging decision.

13.76 The appropriate authority should outline why they think that exceptional circumstances apply. The fact that an offence is summary only and, therefore, subject to a statutory time limit is unlikely, on its own, to amount to an exceptional circumstance (therefore appropriate authorities should ensure that where a summary only offence is being investigated, they are mindful of the statutory time limit). In considering whether there might be exceptional circumstances, the appropriate authority would need to consider why, in the specific circumstances of the case, it would be undesirable for there to be a delay in bringing criminal proceedings, or highlight any other relevant factors that the CPS should be made aware of. For example, the subject or a witness may be in poor health or the alleged offence may be particularly serious, and a delay would represent a risk to the public.

13.77 Even where an early referral has been made and a charge is being considered, the investigator should continue with the investigation to its completion. If no charging decision has been made within this timeframe, the investigation report should be submitted in the usual way.

13.78 Where no charge is brought following an early referral, the person investigating should continue and complete the investigation and submit a final report in the usual way.

13.79 Where a charge is brought, before the completion of the investigation, consideration should be given to the matters in Chapter 15. Where the investigation covers more than one allegation, or where the conduct of multiple people is under investigation, the investigator (in a local investigation) or the IOPC (in a directed investigation) may also wish to consider whether it would be more efficient and effective, or otherwise in the public interest, to split the investigation under regulation 14, Police (Complaints and Misconduct) Regulations 2020.

Timeliness of investigations

13.80 It is important that investigations are conducted in a timely manner. This can affect what outcomes may be available and therefore the ability to secure a fair result. It helps to

secure confidence in the complaints system and minimise the impact of an investigation on all those involved. However, acting promptly should not come at the expense of necessary diligence.

Where a local investigation is not completed within 12 months, the appropriate authority must provide the following information, in writing, to the local policing body (where the appropriate authority is the chief officer) and the IOPC:

- the date on which:
 - the complaint was made; or
 - the conduct matter or DSI matter to which the investigation relates came to the attention of the appropriate authority
- the date on which any notice of a severity assessment was given;
- the progress of the investigation;
- an estimate of when the report on the investigation will be submitted to the appropriate authority or IOPC as the case may be;
- the reason for the length of time being taken to complete the investigation; and
- a summary of planned steps to progress the investigation and bring it to a conclusion.

The 12 months starts from:

- the day on which the complaint was made; or
- the day on which the conduct matter or DSI matter to which the investigation relates came to the attention of the appropriate authority.

Regulation 13, Police (Complaints and Misconduct) Regulations 2020

13.81 For the purposes of this provision, an investigation is completed once the report has been completed and submitted to the appropriate person (see paragraphs 14.19 – 14.21).

13.82 In a directed or independent investigation, the IOPC must provide this information to the local policing body for the relevant force and, unless it is the conduct of the chief officer that is under investigation, the chief officer of the relevant force.

13.83 The information provided should be sufficient to enable all parties to clearly understand the reason that the investigation has not been completed within 12 months, and what the next steps are. Clear, reasonable, timescales for when the investigation will be completed should also be provided.

13.84 A copy of the information should be provided to the complainant, any interested person and the person to whose conduct the investigation relates (if any).

- 13.85** The information does not need to be provided to the local policing body, chief officer or person to whose conduct the investigation relates where the appropriate authority (or the IOPC in an independent or directed investigation) considers that to do so might prejudice the investigation or any other investigation. It also does not need to be provided to the complainant or any interested persons where the appropriate authority (or the IOPC in an independent or directed investigation) considers the caveats in paragraphs 11.16 – 11.20 (duty to provide information) apply. However, the information must be provided to the IOPC.
- 13.86** This process must be repeated every subsequent six months if the investigation has not been completed. However, efforts should be made to ensure that the proposed timescales are kept, wherever possible.

Chapter 14

Concluding an investigation

14.1 This chapter sets out:

- who owns the report
- the content of an investigation report
- submission of the report

The investigation report

14.2 At the end of an investigation, an investigation report must be completed¹⁰⁶. The investigation report is an important document as it is the primary record of the investigation, the evidence and the investigator's analysis of the evidence.

14.3 Subject to certain exceptions (see paragraphs 11.16 – 11.20) the report will usually be sent to the complainant, any person whose actions are under investigation and any interested persons, so it needs to be written in clear and unambiguous terms. Therefore, the person writing the report should be mindful of the guidance provided in paragraphs 17.67 – 17.74.

14.4 The appropriate authority will rely on the report to guide them through the evidence, as may others including the IOPC, the relevant review body, the Crown Prosecution Service (CPS), a coroner, a court and/or those conducting disciplinary proceedings. Therefore, it is important that it is factually correct and that any opinions expressed are coherent and based on the evidence gathered in the course of the investigation.

Who owns the report

14.5 In a local investigation, the final report is submitted to the appropriate authority by the appointed investigator. Any opinion expressed in the report must be that of the investigator and not the appropriate authority. The appropriate authority can only make its own determinations following submission of the report.

¹⁰⁶ Paragraph 22, Schedule 3, *Police Reform Act 2002*.

- 14.6** In a directed investigation, the report is submitted to the IOPC by the investigator. However, the IOPC has direction and control of the investigation and the IOPC should be consulted about the report's content before it is finalised. If there is any dispute between the IOPC and the investigator on any matter in the report, the IOPC may provide an addendum to the report setting out its views.

The content of an investigation report

Investigations not subject to special procedures

- 14.7** The report should include an accurate summary and analysis of the evidence and should attach or refer to any relevant documents.
- 14.8** Where relevant, it may also be appropriate to explain in the report why the investigation was not subject to special procedures (for example, that there was no indication of a criminal offence or behaviour that would justify disciplinary proceedings). This may be particularly useful where, for example, the investigation is into a complaint and the complainant made allegations of misconduct in the original complaint.
- 14.9** In a report for an investigation that has not been subject to special procedures, the investigator should not express an opinion in the report on whether or not there is a case to answer for misconduct or gross misconduct. However, the investigator should highlight any areas of learning they have identified. In the investigation of a complaint, the report should address each of the allegations made and state whether, in the investigator's opinion, any of the determinations at paragraph 17.4 are appropriate. The opinion of the investigator should be accompanied by a clear rationale, for the benefit of the appropriate authority and the complainant (see paragraphs 17.67 – 17.74 about communicating the outcome to the complainant). This is particularly important if they have looked into the complaint, but have not been able to determine whether the service provided was acceptable.
- 14.10** Where the investigation has considered the actions of officers or special constables, the investigator should also draw attention to matters that would help the appropriate authority, or the IOPC in a directed investigation, to decide whether there may have been unsatisfactory performance, practice requiring improvement or learning.
- 14.11** Where the investigation has considered the actions of police staff members or police volunteers, the investigator should consider the relevant force procedures for staff and/or volunteers and ensure that the report contains sufficient information for the appropriate authority (or IOPC in a directed investigation) to make any relevant determinations on receipt of the report.

14.12 Additionally, in a DSI investigation the report should include an analysis of the evidence as to how, and to what extent, if any, the person who died or was seriously injured had contact with the police, and the degree to which this may have caused or contributed to the death or injury. It should seek to include questions or concerns raised by interested persons, such as the injured person or next of kin, or otherwise identified by the investigator. It should also highlight any areas of learning identified.

Investigations subject to special procedures

For investigations into recordable conduct matters and complaints that were subject to special procedures, the investigator's report must provide an accurate summary of the evidence and attach or refer to any relevant documents.

In a local investigation subject to special procedures the report must also indicate the investigator's opinion as to:

- whether any person to whose conduct the investigation has related has a case to answer in respect of misconduct, gross misconduct or has no case to answer;
- whether or not any such person's performance was unsatisfactory;
- whether or not any matter which was the subject of the investigation should be referred to be dealt with under the Reflective Practice Review Process

In a directed investigation, it is for the IOPC, on receipt of the investigator's report, to give its opinion on these matters (see paragraphs 17.54 – 17.58).

Regulation 27, Police (Complaints and Misconduct) Regulations 2020

14.13 In a local investigation, having analysed the evidence, the investigator must give their opinion on the questions in the above box. In doing so, they should identify which Standard(s) of Professional Behaviour, in their opinion, any case to answer relates to. Guidance on applying the 'case to answer' test, and whether disciplinary proceedings should be brought, is contained in the Home Office's guidance *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*, which investigators must have regard to. This guidance must be read in conjunction with any College of Policing guidance on outcomes.

14.14 In a directed investigation, the investigator's role is to summarise the relevant evidence gathered in the course of the investigation. They should also provide an analysis of that evidence.

14.15 At no time (including following the conclusion of any disciplinary proceedings) should the determinations in paragraph 17.4 be made about a complaint that has been investigated subject to special procedures.

14.16 Investigators should take particular care not to reach findings of fact that may be determinative of whether or not there has been misconduct. It is unnecessary and unlawful. These findings should be left for any subsequent misconduct hearing or meeting to make.

Mixed complaints

14.17 Often a complaint will contain several different allegations. In such cases, even when complainants have not itemised the distinct elements, the investigator should break down the complaint into its allegations for the purpose of analysis in the report. Some may be subject to special procedures and others not.

14.18 While it is possible to formally split the investigation¹⁰⁷, it is also possible to deal with all allegations in the same report and give an opinion on determinations (see paragraph 17.4) for the allegations that were not subject to special procedures. However, it is very important that the report clearly outlines the allegations and identifies those that are subject to special procedures and those that are not, and that the report is structured so that it is clear which allegations are being addressed. This should be done only where there is a clear distinction between the elements of the complaint, so that making determinations on the non-special procedures allegations does not determine the matters that are also subject to the investigator's case to answer opinion.

Submission of the report

The report in a local investigation of a complaint or recordable conduct matter (whether subject to special procedures or not) must be submitted to the appropriate authority.

The report in a directed investigation of a complaint or recordable conduct matter (whether subject to special procedures or not) must be submitted to the IOPC and a copy sent to the appropriate authority.

Paragraph 22, Schedule 3, *Police Reform Act 2002*

The report in a DSI investigation, where there has been no related recordable conduct matter, must be submitted to the IOPC and a copy sent to the appropriate authority.

Paragraph 24A, Schedule 3, *Police Reform Act 2002*

- 14.19** The report of an investigation that was subject to special procedures must be accompanied by, or refer to, any relevant documents¹⁰⁸. The IOPC expects these documents also to be supplied where the investigation was not subject to special procedures, including where the report in a DSI investigation is submitted to the IOPC.
- 14.20** In addition where a report of an investigation that was subject to special procedures has been submitted to the appropriate authority, the investigator must supply the appropriate authority with any further documents (or other items) that the appropriate authority requests which it considers to be relevant to the investigation, and that are needed in order for the appropriate authority to comply with its obligations under the Police (Conduct) Regulations 2020 and Police (Performance) Regulations 2020, and to ensure that any person whose conduct is subject of the investigation receives a fair hearing at any disciplinary proceedings¹⁰⁹.
- 14.21** The submission of the report and the provision of documents are subject to Section 21A to the *Police Reform Act 2002*. Where Section 21A applies, careful consideration should be given on a case-by-case basis to the material disclosed, both in the report and otherwise.

108 Regulation 27, Police (Complaints and Misconduct) Regulations 2020.

109 Paragraph 22, Schedule 3, *Police Reform Act 2002*. See glossary for the definition of disciplinary proceedings – in these circumstances, the definition, for members of a police force or special constables includes proceedings under the Police (Performance) Regulations 2020, as well as any proceedings under the Police (Conduct) Regulations 2020 (apart from the Reflective Practice Review Process, in accordance with Part 6 of those regulations).

Chapter 15

Suspending and resuming handling

15.1 This chapter sets out:

- the power to suspend an investigation or other handling
- resumption of a complaint investigation after criminal proceedings

Power to suspend an investigation or other handling

An appropriate authority may suspend an investigation or other procedure that in its opinion would, if it were to continue, prejudice any criminal investigation or proceedings.

Regulation 40, Police (Complaints and Misconduct) Regulations 2020

15.2 The power to suspend handling a matter arises only where continuing the investigation or other handling would, in the opinion of the appropriate authority, prejudice a criminal investigation or criminal proceedings. 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 extent to which the matter raises issues that are the same as, or closely connected with, the issues in the ongoing criminal investigation or proceedings, and
- what particular prejudice (if any) would be caused to the ongoing criminal investigation or proceedings by the investigation or any other handling

15.3 If the power to suspend arises, the appropriate authority should consider whether it is appropriate to exercise that power, or whether measures can be put in place to reduce or remove the risk of prejudice. When deciding whether to exercise the power to suspend, the appropriate authority should consider whether, even if appropriate measures were taken, there would be significant prejudice to the criminal investigation or proceedings, which is not outweighed by the public interest in ensuring:

- the prompt consideration of the matter, and

- the prompt bringing of criminal or disciplinary proceedings¹¹⁰ against persons serving with the police, where these are warranted

15.4 In other words, a balancing exercise should be carried out. The following 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 or other handling 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 or other handling
- whether delay would otherwise lead to injustice to the complainant, interested person or to the subject of the complaint

15.5 Steps that may be taken to reduce or remove the risk of prejudice to a criminal investigation or proceedings, while still allowing the investigation or other handling of the matter to proceed, 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

15.6 There will be cases where the balancing exercise comes down in favour of continuing the investigation or other handling, 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 person serving with the police has committed a more serious offence than that with which the defendant to the related criminal investigation or 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).

¹¹⁰ See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

- 15.7** Before exercising the power to suspend, the appropriate authority should consider seeking the views of the CPS, or their own legal department, about whether continuing the investigation or other handling would prejudice any criminal investigation or proceedings, and, if so, whether there are any steps short of suspension that can be taken to mitigate the risk of prejudice.
- 15.8** Where an investigation or other handling is suspended, there may be steps that can be taken without prejudicing the criminal investigation or proceedings. Consultation with the CPS may help identify these. For example, steps should be taken to secure evidence, such as CCTV, which may otherwise be lost. There may still be opportunities to obtain other evidence – for example, witness statements from those not involved in a criminal investigation or trial. It may also be the case that, after receiving legal advice, the complainant decides that they still wish to provide a statement of complaint. There is unlikely to be any reason why, if it is otherwise appropriate to do so (see Chapter 13), the relevant persons cannot, or should not, be given a written notice of investigation.
- 15.9** In any instance where an investigation or other handling of a complaint is suspended, the complainant should be notified in writing and be provided with a rationale for the decision. Where a complainant objects to the suspension of the investigation or other handling, they should also be informed that they may ask the IOPC to consider whether to direct that the investigation or other handling continue.

Having consulted with the appropriate authority, the IOPC may direct that the investigation or procedure shall continue, or be resumed, if the IOPC is of the view that it is in the public interest.

Regulation 40, Police (Complaints and Misconduct) Regulations 2020

Resumption after criminal proceedings

- 15.10** Where circumstances change and it is no longer necessary to continue the suspension of the handling of a complaint that was being handled otherwise than by investigation, the appropriate authority should contact the complainant and resume the handling of the complaint (see Chapter 12). Where the complaint was being investigated prior to the suspension, the following processes must be followed.

Where the whole or part of a local investigation of a complaint has been suspended until the conclusion of criminal proceedings, unless the complainant has indicated that they wish for the investigation to start or be resumed, the appropriate authority must write to them (or if applicable, their solicitor or other representative), to ascertain whether they wish for the investigation to be started or resumed.

The investigation must be started or resumed if the complainant indicates that they want this.

If the complainant indicates that they do not want the investigation started or resumed or if they fail to reply within 28 days starting on the day after the date of the letter sent to them, 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 41, Police (Complaints and Misconduct) Regulations 2020

- 15.11** If the appropriate authority decides that it is in the public interest for the complaint to be treated as a recordable conduct matter, then it must be dealt with as a recordable conduct matter. If it decides it is not in the public interest, the appropriate authority can take no further action under the *Police Reform Act 2002* and should notify the complainant of this. The appropriate authority must also notify any person whose actions are or were under investigation whether it will treat the matter as a recordable conduct matter, unless doing so might prejudice any criminal investigation or pending proceedings, or it would not be in the public interest.
- 15.12** The IOPC expects the appropriate authority to take all reasonable steps to contact the complainant, and to ensure that they have the right contact details for the complainant. This is especially important in these circumstances as, given the potential passage of time, the complainant's circumstances may have changed and a lack of reply may not be owing to an unwillingness to co-operate.
- 15.13** In a directed investigation, the IOPC will be responsible for writing to the complainant (or their solicitor or other representative) following the conclusion of criminal proceedings, and for determining whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

Chapter 16

Dealing with withdrawn complaints

16.1 This chapter sets out:

- the notification required
- whether the complaint should be treated as a recordable conduct matter

Notification required

16.2 The complainant, or someone acting on behalf of the complainant, may write to the appropriate authority providing signed notification that the complainant wishes to withdraw their complaint, or does not wish any further steps to be taken in respect of it. The appropriate authority must record this¹¹¹.

16.3 Where the complainant has indicated such a wish, but has not provided signed confirmation in writing (either from them or someone acting on their behalf) the appropriate authority must write to the complainant to determine how they wish to proceed¹¹². If the complainant replies confirming they wish to withdraw their complaint or do not want any further steps to be taken in respect of it, or if they do not reply within 28 days (starting with the day after the day the appropriate authority sent the letter), the appropriate authority must continue as if it had received signed notification that the complainant wants to withdraw their complaint. The letter to the complainant must be sent in a way that can be audited – the IOPC encourages appropriate authorities to use recorded delivery, unless this is contrary to the complainant’s preferred method of contact.

Whether the complaint should be treated as a recordable conduct matter

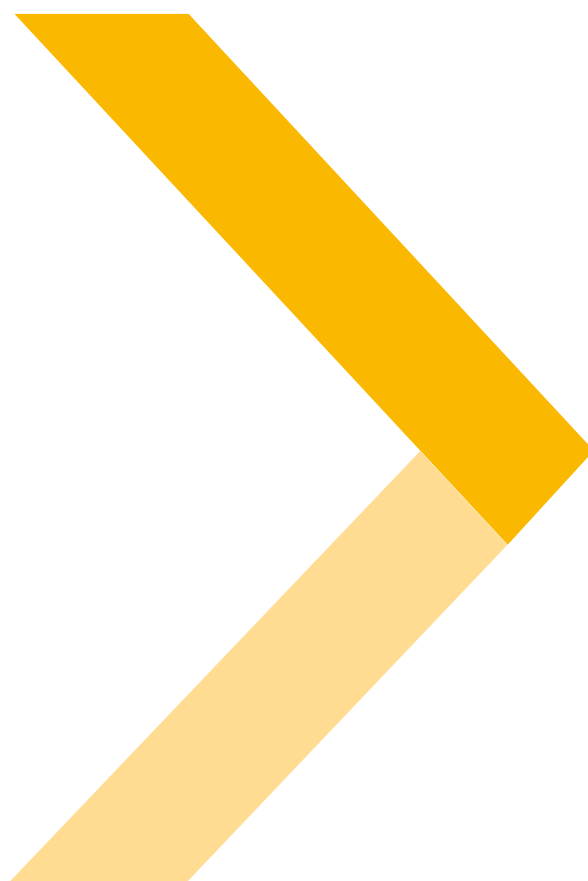
16.4 Where the complaint has been referred to the IOPC (or the IOPC is treating the complaint as having been referred), and the IOPC has made a decision that the complaint should be investigated, the appropriate authority must inform the IOPC that it has recorded the complainant’s notification. The IOPC must then consider whether it is in the public interest for the complaint to be treated as a recordable conduct matter and notify the appropriate authority of its decision.

¹¹¹ Regulation 38, Police (Complaints and Misconduct) Regulations 2020.

¹¹² Regulation 39, Police (Complaints and Misconduct) Regulations 2020.

- 16.5** Where the complaint has not been referred (or has been referred and the IOPC has referred it back to the appropriate authority), the appropriate authority must make a decision about whether it is in the public interest for the complaint to be treated as a recordable conduct matter.
- 16.6** Where a decision is taken (either by the IOPC or the appropriate authority) that the complaint will be treated as a recordable conduct matter, it must be handled as such.
- 16.7** Where the complaint is subject to an ongoing review, the appropriate authority must notify the relevant review body that it has recorded the withdrawal or the fact that the complainant does not wish any further steps to be taken. The appropriate authority must also inform the relevant review body of its decision about whether to treat the complaint as a recordable conduct matter, and of its reasons for this decision. Where the relevant review body is the IOPC, and the review is of the outcome of a complaint handled by investigation, the IOPC may instruct the appropriate authority to reverse a decision not to treat the complaint as a recordable conduct matter if it does not agree with it.
- 16.8** Unless the appropriate authority believes that to do so might prejudice any criminal investigation or pending proceedings, or would otherwise be contrary to the public interest, the appropriate authority must, as soon as practicable, inform the person complained against (if any) if:
- it records the withdrawal of the complaint or the fact that the complainant does not wish any further steps to be taken
 - the provisions of Part 2 to the *Police Reform Act 2002* cease to apply to the complaint
 - a decision has been made that it is in the public interest to treat the complaint as a recordable conduct matter
 - the IOPC has reversed the appropriate authority's decision (under regulation 38, Police (Complaints and Misconduct) Regulations 2020) not to treat the complaint as a recordable conduct matter and it will be treated as such
- 16.9** Where a decision is taken that the complaint will not be treated as a recordable conduct matter, no further action needs to be taken in respect of the complaint. There will be no right to apply for a review of this decision.

Outcomes of handling



Chapter 17

Outcomes following an investigation or other handling under Schedule 3 to the *Police Reform Act 2002*

17.1 This chapter covers:

- reasonable and proportionate outcomes
- action on receipt of an investigation report of a death or serious injury (DSI) matter
- action on receipt of an investigation report of a complaint or recordable conduct matter – local investigations
- action on receipt of an investigation report of a complaint or recordable conduct matter – directed investigations
- communicating the outcome

Reasonable and proportionate outcomes

17.2 The outcome of handling should be reasonable and proportionate to the matter in question. Decisions should be taken after considering the relevant evidence gathered, the wider context and the perspectives of any complainants, interested persons and persons complained about or to whose conduct the matter relates.

17.3 Conclusions reached should be impartial and logical, based on the facts of the case and giving appropriate weight to relevant evidence. They should be supported by sound rationale. The outcome should seek to address and remedy any issues identified during handling.

Determinations on a complaint

17.4 Where a complaint has been investigated but the investigation has not been subject to special procedures, or a complaint has been handled otherwise than by investigation, the outcome of the complaint should include a determination of whether:

- the service provided by the police was acceptable
- the service provided by the police was not acceptable, or
- we have looked into the complaint, but have not been able to determine if the service provided was acceptable

- 17.5** In an investigation not subject to special procedures, the investigator will offer an opinion on this in the report (see paragraph 14.9). However, the final determination will be made by the appropriate authority. In a complaint that has been handled otherwise than by investigation, this determination should be made by the complaint handler.
- 17.6** It should be determined that the service provided by the police was not acceptable where handling has shown that the service provided (whether due to the actions of an individual, or organisational failings) did not reach the standard a reasonable person could expect. The person making the determination should apply an objective test: that of a reasonable person in possession of the available facts. They should have regard to any agreed standards or national guidance that apply to the matter.
- 17.7** When making this determination the complaint handler should reflect the need to willingly demonstrate organisational accountability where appropriate (see paragraph 3.10). Wherever possible, the person making the determination should endeavour to draw a conclusion as to whether the service provided was acceptable or not (see paragraph 17.4). It should only be determined that ‘we have not been able to determine if the service provided was acceptable’ in situations where, for example, despite the complaint being handled in a reasonable and proportionate manner, there is too little information available on which to make the determination, having applied the objective test referred to in paragraph 17.6.
- 17.8** It is essential that whatever determination is reached, the complainant is provided with sufficient information to be able to understand the rationale (see paragraphs 17.67 – 17.74 about communicating the outcome to the complainant).
- Remedying dissatisfaction**
- 17.9** On receipt of an investigation report, or at the conclusion of handling otherwise than by an investigation, the appropriate authority should consider what action can and should be taken as part of the outcome to provide a remedy where something has gone wrong.
- 17.10** When considering possible remedies, the appropriate authority should have regard to the principles of reasonable and proportionate handling set out at Chapter 3.
- 17.11** Notwithstanding any other remedies, the IOPC expects appropriate authorities to apologise if a failing has occurred, or the service has been unacceptable (if they have not already done so earlier in the handling of a matter). A sincere and timely apology demonstrates accountability. It can also help to rebuild trust in the police and secure confidence in the complaints system.
- 17.12** The appropriate authority should consider who the most appropriate person to deliver an apology is. The IOPC expects a chief officer to deliver any apology given by a force in relation to the most serious matters, including where failings (whether by individuals, or, for example, in policies and procedures) have caused or contributed to a person’s death.

17.13 Where the apology relates to the actions of a person serving with the police, and they are willing to apologise personally, appropriate authorities should facilitate this and support the person 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. An apology should not be offered on someone's behalf unless they agreed to this.

17.14 Other options may include, but are not limited to:

- An explanation of the circumstances surrounding the incident that gave rise to the complaint or of other aspects relating to the complaint.
- Returning seized property, where it is appropriate, necessary and lawful to do so.
- Reviewing information on police records or databases. This may be appropriate where there is evidence that a complainant's details may have been kept on police records or other databases inaccurately or inappropriately.
- Removing police cautions. This may be appropriate where evidence indicates that a caution may have been issued outside of any guidelines.
- Providing mediation, or any other remedial meeting. This may be appropriate where it can be established that parties are amenable to mediation or another form of remedial meeting, particularly where there is a strong likelihood of the complainant encountering the same officer(s) again.
- Sharing evidence of learning or service improvement.
- Holding a service improvement meeting between the appropriate authority, the complainant/interested persons and other suitable attendees – for example, change and improvement leads, or subject matter specialists.
- Committing to review a policy or procedure to ensure that it remains fit for purpose.

17.15 Under paragraph 28ZA of Schedule 3 to the *Police Reform Act 2002*, the IOPC and local policing bodies may also make recommendations with a view to remedying the dissatisfaction of a complainant. Recommendations under paragraph 28ZA of Schedule 3 to the *Police Reform Act 2002* can be made:

- by the IOPC and local policing bodies, to the appropriate authority, when the IOPC or local policing body uphold a review (see Chapter 18)
- by the IOPC, to the appropriate authority, at the conclusion of an independent or directed investigation into a complaint
- by a local policing body, following a local investigation into a complaint for which they are the appropriate authority. In this case the recommendation would be to the chief officer to whose conduct the complaint relates

17.16 The remedies recommended to the appropriate authority/chief officer under this power can be anything that the IOPC or local policing body consider appropriate to remedy the dissatisfaction expressed by the complainant (see examples in paragraphs 17.9 – 17.14)

above). It may also include a recommendation that a matter be referred to be dealt with under the Reflective Practice Review Process. It may not be a recommendation that compensation be paid¹¹³.

17.17 It is important to note that a recommendation made under paragraph 28ZA cannot determine the lawfulness of police actions (see also paragraphs 17.38 and 17.39) and, therefore, should not state or imply that action has been taken unlawfully. A recommendation should only be issued where the investigation or handling of the complaint has properly established that the remedy would be appropriate, reasonable and lawful. Particular care should be taken with regard to, for example, any recommendation regarding the removal of a police caution – paragraph 28ZA recommendations should not encroach on matters that are yet to be properly determined by another court or body. The person making the recommendation should be mindful of whether there are, or are likely to be, any ongoing proceedings that may make a recommendation inappropriate.

17.18 The person making the recommendation may wish to recommend action is undertaken in a certain timeframe, where appropriate.

17.19 The person to whom the recommendation is made must respond to the IOPC or local policing body within 28 days (starting with the day after the day on which the recommendation is made)¹¹⁴. The response must include:

- whether they accept the recommendation
- if they do, the steps they propose to take to give effect to the recommendation
- if they do not, the reasons why

17.20 The person making the recommendation must send a copy of it and the response to:

- the complainant
- any interested person, and
- the person complained against (if any), unless the person making the recommendation considers that to do so might prejudice any investigation

17.21 Depending on the circumstances, the IOPC or local policing body may extend the time limit for a response.

Reflective Practice Review Process

17.22 There are a number of routes into the Reflective Practice Review Process under the *Police Reform Act 2002*. These are:

¹¹³ Regulation 30, Police (Complaints and Misconduct) Regulations 2020.

¹¹⁴ Regulation 30, Police (Complaints and Misconduct) Regulations 2020.

- as the outcome to a complaint handled otherwise than by investigation
- as the outcome of an investigation into a complaint or recordable conduct matter (see paragraphs 17.44, 17.57 or 17.66). Where, following an investigation, a matter is assessed as amounting to practice requiring improvement, it must be referred to the Reflective Practice Review Process.
- as a result of a recommendation under paragraph 28ZA (see paragraphs 17.15 – 17.20)

17.23 Where the actions proposed as a result of a complaint include the referral of an officer to the Reflective Practice Review Process, the handling that has taken place in order to come to that conclusion will form part of the fact-finding stage. See Home Office's guidance *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing* for more guidance on the Reflective Practice Review Process. Before referral to the Reflective Practice Review Process is proposed, the person handling the complaint should have a discussion with the line manager (see also, paragraph 17.58).

17.24 The Reflective Practice Review Process is not a disciplinary process or a disciplinary outcome. It is intended to provide an open environment to encourage all those involved in the process to reflect, learn and, where necessary, put things right and prevent any issues identified from reoccurring. It is important that this, and the steps involved in the process, are explained to complainants and any interested persons (see paragraphs 17.67 – 17.74 about communicating the outcome).

Unsatisfactory Performance Procedures (UPP)

17.25 The purpose of UPP is to improve the performance of individuals and the overall performance of the force. There are a number of routes into the UPP process under the *Police Reform Act 2002*. These are:

- where the appropriate authority decides, as a result of the submission of a report of a local investigation into a complaint, recordable conduct matter or DSI, that the performance of a member of a police force or special constable is unsatisfactory
- as directed by the IOPC following a directed or independent investigation into a complaint or recordable conduct matter
- as recommended or directed by the IOPC following the consideration of the report of an investigation into a DSI
- a recommendation or direction as the result of a review of the outcome of a complaint handled by way of a local investigation

17.26 The Police (Performance) Regulations 2020 apply to members of a police force (of the rank of chief superintendent or below) and special constables (who have completed their probationary period). They do not apply to senior officers, members of police staff, police volunteers or contracted staff. In the case of members of police staff or

contracted staff, the relevant disciplinary and capability procedures and policies for such persons apply.

- 17.27** Unsatisfactory performance or attendance is different from misconduct and gross misconduct. Misconduct and gross misconduct will always involve a breach of the Standards of Professional Behaviour whereas unsatisfactory performance or attendance concerns the member of a police force or special constable's inability or failure to perform their role to a satisfactory level. Their performance may be unsatisfactory, but not breach the Standards of Professional Behaviour.
- 17.28** If the appropriate authority determines that disciplinary action is justified or there is a case to answer for gross misconduct, then the case should not be dealt with under the Police (Performance) Regulations 2020.
- 17.29** 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)

Other learning and improvement

- 17.30** On receipt of an investigation report, or the conclusion of handling otherwise than by an investigation, the appropriate authority should always consider whether there are any opportunities for individual or organisational learning, at a local or national level, and act on this (see Chapter 4). While there are certain prescribed routes into the Reflective Practice Review Process (see paragraph 17.22), the principles of reflective practice can be applied at any time.
- 17.31** The IOPC may also make recommendations where it identifies a potential area of organisational learning for a police force, the police service or another body. It may, for example, recommend a change to local or national policy, guidance, training or practice where it believes this may improve policing practice or prevent a recurrence of something that went wrong.
- 17.32** The IOPC has the power to make such recommendations under both Section 10 to the *Police Reform Act 2002* and paragraph 28A of Schedule 3 to the Act. There are differences in the scope of these powers. Section 10 recommendations may be made to chief officers, local policing bodies and contractors. They may be made following or before the conclusion of an investigation or review, and may therefore be used for 'quick-time learning'. Depending on the circumstances, paragraph 28A

recommendations may be made to chief officers, local policing bodies, contractors or any other organisation. They may be made only following an investigation or review.

17.33 Where the IOPC makes a recommendation under paragraph 28A, the recipient must provide a written response within 56 days of the recommendation being made (unless either the IOPC allows an extension to this time limit, or there is a judicial review challenge of the IOPC's decision to make a recommendation)¹¹⁵. If the recipient needs additional time to provide a response they must request an extension in writing from the IOPC in advance of the deadline. The request must set out why the extension is required and indicate when a response will be provided.

17.34 The response must set out:

- what action the recipient has taken or proposes to take in response to the recommendation, or
- why they have not taken, or do not propose to take, any action in response

17.35 The IOPC will publish recommendations made under paragraph 28A. The IOPC and the recipient must also publish a copy of the response within 21 days of it being received by the IOPC. The recipient must publish the original recommendation at the same time. The IOPC will advise the recipient in advance of when it will publish the response.

17.36 If the recipient believes that all or any part of the response should not be published, they must contact the IOPC in writing, setting out the reasons. The IOPC will make the final decision on publication, taking into account any representations received.

17.37 Chief officers and local policing bodies should publish paragraph 28A recommendations made to them and their response on their websites in a way that is clear and easy for members of the public to find.

Complaints about lawfulness

17.38 A complaint can be about the lawfulness of the conduct of a person serving with the police (for example, it may be alleged that an arrest was unlawful). No determination should be reached, either during the handling of the complaint or in the outcome, as to whether there has been criminal behaviour or civil unlawfulness. Reaching determinations on these issues is for the criminal and civil courts and/or those conducting disciplinary proceedings.

17.39 If there is a critical need to offer a view in order to address a complaint which has been made, it must be couched in the language of an indication of opinion on the matter. For example: *“Having considered the evidence and the relevant law, it is my opinion that a disciplinary tribunal could find that there was no lawful reason for the arrest and that it was an abuse of the officer’s authority”*.

¹¹⁵ Paragraph 28B, Schedule 3, *Police Reform Act 2002*.

Action on receipt of an investigation report of a DSI matter – local, directed and independent investigations

- 17.40** On receipt of an investigation report of a DSI matter, the IOPC must determine whether the report indicates that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings¹¹⁶. The IOPC may also make a determination on any other matter dealt with in the report, apart from whether or not a person's performance is satisfactory (as this will be determined by the appropriate authority at a later stage if it is required to do so by the IOPC – see paragraph 17.42)¹¹⁷.
- 17.41** Where the IOPC determines that the report does indicate that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, it will notify the appropriate authority. The appropriate authority must then record the matter as a recordable conduct matter. The person who was investigating the DSI matter must investigate the matter as a conduct matter (unless the IOPC decides to re-determine the mode of investigation). As with all recordable conduct matters the appropriate authority must consider whether it should be referred to the IOPC¹¹⁸.
- 17.42** Where the IOPC determines that the report does not indicate that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, it may notify the appropriate authority that it must now determine whether any person's performance is unsatisfactory and, if so, what action (if any) it will take¹¹⁹. On receipt of such a notification, the appropriate authority must make the required determinations and submit a memorandum to the IOPC setting those out. The IOPC expects this to be submitted within 28 days, starting the day after the appropriate authority is notified.
- 17.43** On receipt of that memorandum, the IOPC will consider whether the determinations made are appropriate. Where it disagrees with the determinations, it may recommend and, if necessary, direct that the performance was or was not satisfactory and what action

116 See glossary for the definition of disciplinary proceedings. In this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

117 Paragraph 24A, Schedule 3, *Police Reform Act 2002*.

118 Paragraph 24B, Schedule 3, *Police Reform Act 2002*. A recordable conduct matter must be referred to the IOPC where it relates to any incident or circumstances in, or in consequence of which, any person has died or suffered serious injury (see chapter 9 and paragraph 13, Schedule 3, *Police Reform Act 2002*).

119 Paragraph 24C, Schedule 3, *Police Reform Act 2002*.

should be taken in respect of it¹²⁰. The appropriate authority must keep the IOPC informed of whatever action it takes in response to the IOPC's recommendation or direction.

Action on receipt of an investigation report of a complaint or recordable conduct matter – local investigations

On receipt of a report of a local investigation of a complaint or recordable conduct matter the appropriate authority must determine:

- whether the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation relates, and whether the circumstances are such that it is appropriate for the Crown Prosecution Service (CPS) to consider it or it falls within a prescribed category
- with regards to any member of a police force or special constable to whose conduct the investigation relates:
 - whether or not they have a case to answer in respect of misconduct, gross misconduct or no case to answer
 - whether or not their performance is unsatisfactory
 - what action, if any, the appropriate authority must or will take in respect of the matters dealt with in the report

Paragraph 24, Schedule 3, *Police Reform Act 2002*

The appropriate authority must also:

- if it considers it appropriate, make a determination as to any other matter dealt with in the report (apart from one already required above)
- determine what other action it will take, if any

Paragraph 24, Schedule 3, *Police Reform Act 2002*

17.44 These decisions are for the appropriate authority, not the investigator. They must be made in all investigations, whether or not the investigation is subject to special procedures, and whether or not there are any persons whose actions were under investigation. They can include a decision to refer a matter to the Reflective Practice Review Process, where appropriate (see paragraphs 17.57 – 17.60).

¹²⁰ Paragraph 27, Schedule 3, *Police Reform Act 2002*.

17.45 The decisions in the second box above include determinations about any procedures to be followed in relation to the actions of any person serving with the police such as a police staff member or volunteer. When making such decisions about the actions of a person who is not a member of a police force or special constable, the appropriate authority should have regard to the relevant policies and procedures, including those relating to the discipline and performance of staff and volunteers.

17.46 Following these determinations, the appropriate authority must consider paragraphs 17.67 to 17.80 about communicating the outcome of the investigation. Where the investigation is into a complaint, this includes providing the complainant with information about the right to apply for a review of the outcome of the complaint.

Making a decision about referral to the CPS

17.47 Where a report indicates that a criminal offence may have been committed and the appropriate authority considers it to be appropriate for the matters dealt with in the report to be considered by the CPS, or if they fall within a prescribed category, the report must be referred to the CPS. The reason(s) for a decision not to refer to the CPS should be documented clearly.

17.48 The appropriate authority must inform the complainant and any interested person(s) of its decision about whether to refer a matter to the CPS.

17.49 It is important to remember that, for most summary only criminal offences, information must be laid within six months of the date of the alleged commission of the offence¹²¹. Therefore, the appropriate authority should ensure that any determination or notification it makes is done in time to avoid any proceedings taken in respect of the alleged offence being time barred.

17.50 Where a case is referred to the CPS, the person referring the matter should ensure that the CPS is given relevant information to enable them to initiate effective liaison with the complainant and/or interested person.

17.51 Appropriate authorities and investigators should ensure an effective working relationship with the CPS. In the event of any doubt about their roles and responsibilities, the investigator should consult the CPS.

Making a decision about whether or not there is a case to answer for misconduct or gross misconduct or no case to answer

17.52 As stated in the boxes above paragraph 17.44, the appropriate authority must determine whether any member of a police force or special constable has a case to answer for misconduct¹²², gross misconduct, or no case to answer. Guidance on making this determination is contained in the Home Office's guidance *Conduct, efficiency and*

¹²¹ Section 127, *Magistrates' Courts Act 1980*.

¹²² As this determination is made under the *Police Reform Act 2002*, the definition of 'misconduct' to be applied at this stage is a 'breach of the Standards of Professional Behaviour'.

effectiveness: statutory guidance on professional standards, performance and integrity in policing, which the appropriate authority must have regard to. This guidance must be read in conjunction with any College of Policing guidance on outcomes.

- 17.53** Where the appropriate authority determines that there is a case to answer for misconduct (as opposed to gross misconduct), it must then, as soon as practicable, determine¹²³:
- whether the breach of the Standards of Professional Behaviour is so serious as to justify disciplinary action
 - if it is, whether or not misconduct proceedings should be brought against the officer concerned, and
 - if so, what form the misconduct proceedings should take
- 17.54** Where the appropriate authority determines that there is a case to answer for gross misconduct it must, as soon as possible, determine whether or not misconduct proceedings should be brought and, if so, the form of those proceedings¹²⁴.
- 17.55** Where the appropriate authority decides to refer the case to misconduct proceedings, those proceedings must be a misconduct hearing where there is a case to answer for gross misconduct or the officer concerned had¹²⁵:
- a final written warning in force at the date of the severity assessment made in relation to the conduct, or
 - been reduced in rank under the Police (Conduct) Regulations 2004 or Police (Conduct) Regulations 2020 less than two years before the severity assessment made in relation to the conduct
- 17.56** Where an investigation uncovers both organisational learning and misconduct, gross misconduct or unsatisfactory performance, it is important to assess in the case to answer determination the extent to which the organisational failing did or did not impact on the conduct of the individual officer.
- 17.57** Where the appropriate authority determines that there is no case to answer, or that the breach of the Standards of Professional Behaviour is not so serious as to justify disciplinary action or that no misconduct proceedings should be brought, it must assess whether:
- the matter should be dealt with by unsatisfactory performance procedures under the Police (Performance) Regulations 2020
 - the matter amounts to practice requiring improvement, or
 - it should take no further action

123 Regulation 23, Police (Conduct) Regulations 2020.

124 Regulation 23, Police (Conduct) Regulations 2020.

125 Regulation 23, Police (Conduct) Regulations 2020.

17.58 Before making a determination that a matter should be dealt with by unsatisfactory performance procedures, or that it amounts to practice requiring improvement, the appropriate authority must consult the line manager of the officer concerned¹²⁶. This conversation will assist the appropriate authority in deciding whether this is the correct decision. A record should be made of this consultation.

17.59 The officer concerned must be informed of the outcome of the assessment in paragraph 17.57 as soon as practicable. Subject to the harm test, they must be provided with a copy of the report or part of the investigation report relating to them¹²⁷.

17.60 With regards to the determinations made at paragraph 17.57:

- where the appropriate authority determines that the matter should be dealt with by unsatisfactory performance procedures, it must direct that the matter is dealt with under those procedures
- where the appropriate authority determines that the matter amounts to practice requiring improvement, it must direct that the matter is dealt with under the Reflective Practice Review Process

Complaint investigations not subject to special procedures

17.61 As well as the above considerations, on receipt of a report of a complaint investigation that was not subject to special procedures, when considering what determinations to make on matters dealt with in the report the appropriate authority should also refer to paragraphs 17.4 – 17.8.

Action on receipt of an investigation report of a complaint or recordable conduct matter – directed investigations

17.62 On receipt of a report of a directed investigation, the IOPC will determine whether the report indicates that a criminal offence may have been committed, and whether the circumstances are such that it is appropriate for the CPS to consider it, or whether it falls within a prescribed category¹²⁸. The IOPC will also seek the views of the appropriate authority on:

- whether any person investigated has a case to answer for misconduct, gross misconduct or no case to answer
- whether or not any person's performance is unsatisfactory
- any other matters dealt with in the report

¹²⁶ Regulation 23, Police (Conduct) Regulations 2020.

¹²⁷ The harm test is relevant in this context because these disclosure decisions are made by the appropriate authority under the Police (Conduct) Regulations 2020 rather than the *Police Reform Act 2002* and the Police (Complaints and Misconduct) Regulations 2020.

¹²⁸ Paragraph 23, Schedule 3, *Police Reform Act 2002*.

17.63 Where the directed investigation is subject to special procedures, when seeking the views of the appropriate authority on the above matters, the IOPC will notify the appropriate authority of its views on whether¹²⁹:

- any person to whose conduct the investigation has related has a case to answer in respect of misconduct or gross misconduct or has no case to answer
- whether or not any such person's performance was unsatisfactory
- whether or not disciplinary proceedings should be brought, and, if so, what form those proceedings should take (taking into account, in particular, the seriousness of any breach of the Standards of Professional Behaviour)
- whether or not performance proceedings should be brought
- whether or not any matter that was the subject of the investigation should be referred to be dealt with under the Reflective Practice Review Process

17.64 The IOPC expects to receive the appropriate authority's views (if any) on the matters outlined in paragraph 17.62 as soon as practicable. These must be received within 28 days, starting with the day after the request, unless this time limit is extended by the IOPC¹³⁰. The IOPC also expects the appropriate authority to provide its views (if any) on any additional matters that the IOPC has expressed a view on (i.e. the additional matters under paragraph 17.63). The views provided should be clear and well-reasoned. Having considered any views of the appropriate authority, the IOPC will determine¹³¹:

- whether any person has a case to answer for misconduct¹³², gross misconduct or no case to answer
- whether or not any person's performance is unsatisfactory

17.65 The IOPC will then determine whether disciplinary proceedings¹³³ should be brought against any person and, if so, what form those proceedings should take. If it determines that disciplinary proceedings should take place, the IOPC will, at the same time, direct the appropriate authority to bring those proceedings. The appropriate authority must comply with the IOPC's direction, keep the IOPC informed of the progress of proceedings and ensure that they are brought to a proper conclusion.

129 Regulation 27, Police (Complaints and Misconduct) Regulations 2020.

130 Regulation 27, Police (Complaints and Misconduct) Regulations 2020.

131 Paragraph 23, Schedule 3, *Police Reform Act 2002*.

132 As this determination is made under the *Police Reform Act 2002*, the definition of 'misconduct' to be applied at this stage is a 'breach of the Standards of Professional Behaviour'.

133 See glossary for the definition of disciplinary proceedings – in these circumstances, the definition, for members of a police force or special constables includes proceedings under the Police (Performance) Regulations 2020, as well as any proceedings under the Police (Conduct) Regulations 2020 (apart from the Reflective Practice Review Process, in accordance with Part 6 of those regulations). For any other person serving with the police, it includes both any proceedings or management process during which that person's conduct is considered and any proceedings or management process during which that person's performance is considered.

17.66 The IOPC may also, having considered the views (if any) of the appropriate authority, make a determination as to any matter dealt with in the report¹³⁴. This may include a determination that a matter amounts to practice requiring improvement. The IOPC will direct the appropriate authority to determine what action, if any, the appropriate authority will take in respect of any other matter raised in the report, having regard to the IOPC's determinations. The appropriate authority must notify the IOPC of any determination it makes.

Criminal proceedings

Where, at the conclusion of a local investigation, the appropriate authority decides that a case must be referred to the CPS, the appropriate authority must also decide the other matters – including whether any person has a case to answer; if they do, whether the breach is so serious as to justify disciplinary action; if so, whether or not misconduct proceedings should be brought; and, if so, what form they should take.

It is important for these decisions to be taken as soon as possible so that matters are progressed to their respective conclusions without delay. In the IOPC's view, officers should be informed of a case to answer decision (subject to paragraphs 17.59 and 17.75 – 17.80) as soon as possible so that they are aware of what action is likely to be taken, as opposed to facing the uncertainty that accompanies unnecessary and avoidable delay. The legislation does allow for the appropriate authority to subsequently delay the actual referral to misconduct proceedings if it considers that referral would prejudice any criminal proceedings¹³⁵.

Once the criminal case is concluded then the legislation allows for a further determination to be made on the matters outlined in paragraph 17.53 above¹³⁶. The IOPC considers that the case to answer decision should only be revisited if the evidential case for the purposes of disciplinary proceedings has changed significantly.

134 Apart from a determination whether the report indicates that a criminal offence may have been committed, whether the circumstances are such that it is appropriate for the CPS to consider it (or it falls within a prescribed category) and those determinations already made in paragraphs 17.62 and 17.64.

135 Regulation 10, Police (Conduct) Regulations 2020.

136 Regulation 23, Police (Conduct) Regulations 2020.

Inquest proceedings

In most cases, an investigation will be completed before the inquest is held. If this is the case, then the appropriate authority must make its determinations in respect of the final report as soon as practicable after receiving it. Where an investigation is carried out in relation to a death of a person and an inquest is likely or has already been opened, there may be cases where it is necessary to delay any proceedings until after the conclusion of the inquest. However, 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 any misconduct proceedings or unsatisfactory performance procedures. Doing so is likely to be in the interests of all those involved.

If proceedings take place before the inquest, 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.

Where an inquest follows a directed investigation into the circumstances of the death, lead responsibility for liaison with the coroner rests with the IOPC. Given that the investigator produces the final report under IOPC guidance, it may be more appropriate for a person serving with the police 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.

Communicating the outcome

Complainants and interested persons

- 17.67** The appropriate authority must inform the complainant and/or interested person(s) of the outcome of the handling of a complaint, recordable conduct matter or DSI matter¹³⁷. They must do this in writing, within five working days of the outcome being determined¹³⁸. However, this is the responsibility of the local policing body if the matter is a complaint and the local policing body has chosen to take on responsibility for updating complainants and interested persons about complaints or, in a directed or independent investigation, it is the responsibility of the IOPC.
- 17.68** The complainant and/or interested person(s) must be provided with sufficient information to ensure that they are properly informed. This should include a written

¹³⁷ Sections 20 & 21, *Police Reform Act 2002*; Regulation 34, Police (Complaints and Misconduct) Regulations 2020.

¹³⁸ Subject to the exemptions in Regulation 35, Police (Complaints and Misconduct) Regulations 2020 (see glossary).

explanation of how the matter has been handled, the actions taken or to be taken, the findings and the outcome. Where appropriate, it should include the reasons for not taking certain actions where this was in line with reasonable or proportionate handling.

17.69 Where it was considered that it was reasonable or proportionate to take no further action in relation to a matter, the reasons for this should be explained clearly.

17.70 In addition to providing the information in writing, it may also be appropriate to communicate this by other channels that may better meet any additional individual needs, i.e. to ensure that the complainant or interested person fully understands the decisions that have been made.

17.71 Subject to certain exceptions (see paragraphs 11.16 – 11.20), where a matter has been investigated the investigation report should be provided to the complainant and interested persons. However, the body supplying the information should consider whether the investigation report is sufficient to ensure that the complainant and interested persons have all the information they need and can understand what it means. It may be helpful to provide supplementary explanation of the outcomes and any next steps.

17.72 Whether the outcome is communicated by way of an investigation report or otherwise, it should be communicated in a clear and accessible way. It should:

- provide the recipient with sufficient information to properly understand and examine the handling of the matter, the decisions taken and the conclusions reached
- directly address the matters raised
- show that the objectives set – for example, in the terms of reference or during discussions with a complainant or interested person – have been met
- be written in plain language, free of technical jargon wherever possible
- be impartial and supported by evidence-based rationale
- provide a clear account of the information/evidence gathered and how it has been evaluated
- where appropriate, explain why information or action/lines of enquiry were not pursued
- not be defensive in tone
- acknowledge any concerns and harm caused, and the impact of this
- willingly demonstrate organisational accountability, where appropriate
- set out any learning opportunities for an individual or organisation, and how these will be acted on

17.73 Where a complaint has been subject to a local investigation, or handled otherwise than by investigation, the appropriate authority (or the local policing body where they have

taken on responsibility for updating complainants and interested persons) must also inform the complainant about¹³⁹:

- their right to apply for a review of the outcome of their complaint
- who the application for a review should be made to (see paragraphs 18.5 – 18.9)
- where the relevant review body is the IOPC, the reason why
- the fact that there is no right of review to the IOPC where the local policing body is the relevant review body
- the time limit for applying for the review, and
- what should be included in the application (see the box above paragraph 18.20)

They must do this in writing, promptly, within five working days of the outcome being determined¹⁴⁰.

17.74 The IOPC expects the complainant to be advised of the actual date by which an application for a review must be received – which is 28 days after the day after the day on which the complainant is sent the information in paragraph 17.73. It also expects the written communication to the complainant to be sent on the day it is dated.

Person(s) complained about or to whose conduct the matter relates (if any)

17.75 It is important that any person whose actions are under consideration receives a clear explanation of the outcome of the handling of the matter, wherever possible.

17.76 Following an investigation, where the appropriate authority (or the IOPC in a directed or independent investigation) has determined that neither disciplinary proceedings nor performance proceedings will be brought against an individual, it must provide that person with a copy of the report on the investigation, or such parts of it as relate to that person¹⁴¹.

17.77 This information should not be provided if the appropriate authority (or the IOPC in a directed or independent investigation) believes that to do so:

- might prejudice any investigation or proceedings (criminal or otherwise)
- might prejudice any subsequent review of the investigation, or
- would contravene Section 21A to the *Police Reform Act 2002* (see glossary) – in this case they must instead provide the copy having removed or obscured the information that, by virtue of Section 21A, must not be disclosed

17.78 Any document, or part of a document, may be provided in a form that keeps the identity of the complainant (if any) or any other person anonymous.

139 Section 20, *Police Reform Act 2002*; Regulation 33, Police (Complaints and Misconduct) Regulations 2020.

140 Regulation 34, Police (Complaints and Misconduct) Regulations 2020.

141 Regulation 28, Police (Complaints and Misconduct) Regulations 2020.

- 17.79** Following an investigation, where the appropriate authority (or the IOPC in a directed or independent investigation) has determined that disciplinary proceedings will be brought against an individual, it must comply with its duties under the Police (Conduct) Regulations 2020 to provide information to that person (see paragraph 17.59).
- 17.80** Where there has been a complaint that has been subject to a local investigation, or handled otherwise than by investigation, there is a possibility that the complainant may apply for a review of the outcome, which could result in a change to the conclusions reached initially. This should be highlighted to any person complained about.

Publication

- 17.81** The IOPC is responsible for publishing investigation reports or summaries following directed or independent investigations. In the majority of cases, it will do this, in the interests of transparency.
- 17.82** Appropriate authorities should consider whether it is appropriate to publish reports, summaries or other information following local investigations or other handling. This may be appropriate in the interests of transparency. Due regard needs to be given to data protection issues and reports may require some redaction.

Chapter 18

Reviews

18.1 This chapter sets out:

- the right of review
- who is the relevant review body
- delegation by the local policing body of the consideration of reviews
- receiving an application for review
- validity
- conducting the review
- outcome of the review

The right of review

18.2 Where a complaint has been recorded under Schedule 3 to the *Police Reform Act 2002*, the complainant has a right to apply for a review of the outcome of the complaint. This applies whether the complaint has been investigated by the appropriate authority or handled otherwise than by investigation¹⁴². The review will consider whether the outcome of the handling of the complaint is reasonable and proportionate. Where the relevant review body finds that the outcome of the complaint is not reasonable and proportionate it will uphold the review.

18.3 There is no right to apply for a review of the outcome of a directed or independent investigation.

18.4 There is no right to apply for a review of the outcome of a complaint that has been handled outside of Schedule 3 to the *Police Reform Act 2002*¹⁴³, or where the complaint has not been logged or recorded because the person making the complaint is not eligible to be a complainant.

¹⁴² Paragraph 6A, Schedule 3, *Police Reform Act 2002*; Paragraph 25, Schedule 3, *Police Reform Act 2002*.

¹⁴³ However, see paragraph 6.25 regarding steps to take if a complainant is dissatisfied with the outcome of a complaint handled outside of Schedule 3 to the *Police Reform Act 2002*.

Who is the ‘relevant review body’?

- 18.5** The appropriate authority should decide who the relevant review body is, and this must be communicated to the complainant (see paragraph 17.73). Depending on the circumstances of the complaint, the application for a review will be considered either by the local policing body or the IOPC.
- 18.6** The IOPC is the relevant review body where¹⁴⁴:
- i. the appropriate authority is a local policing body
 - ii. the complaint is about the conduct of a senior officer (an officer holding a rank above chief superintendent)
 - iii. the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of criminal or disciplinary proceedings¹⁴⁵ or would not involve an infringement of a person’s rights under Article 2 or 3 of the European Convention on Human Rights (see glossary)
 - iv. the complaint has been, or must be, referred to the IOPC
 - v. the IOPC is treating the complaint as having been referred (also known as the ‘power of initiative’, see paragraphs 9.36 – 9.39)
 - vi. the complaint arises from the same incident as a complaint falling within ii-v
 - vii. any part of the complaint falls within ii-vi
- 18.7** In any other case the relevant review body is the local policing body.
- 18.8** The test at paragraph 18.6 iii must be assessed on the substance of the complaint alone, not on the apparent merit of the allegations or with hindsight after the complaint has been dealt with.
- 18.9** When considering the test listed at paragraph 18.6 vi, appropriate authorities should consider whether the complaints arise from the same time and place and involve the same or substantially similar persons serving with the police. This includes where the complaints are made by different complainants. A number of separate complaints that are otherwise unconnected but arise from the same large-scale event should not be considered as having arisen from the same incident.

144 Paragraph 30, Schedule 3, Police Reform Act 2002; Regulation 32, Police (Complaints and Misconduct) Regulations 2020.

145 See glossary for the definition of disciplinary proceedings – in this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process (in accordance with Part 6 of those regulations). It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

Delegation by the local policing body of the consideration of reviews

- 18.10** A local policing body may delegate its responsibilities for considering reviews (see paragraph 1.28).
- 18.11** When delegating their responsibilities local policing bodies should bear in mind the need for the arrangements to demonstrate an appropriate degree of independence from their police force in order that their review decisions are, and are seen to be, credible.
- 18.12** Local policing bodies must ensure that anyone considering applications for reviews has sufficient training.
- 18.13** The IOPC considers that local policing bodies should not delegate the consideration of a review to:
- anyone who was involved in the handling of the complaint, including anyone who was responsible for deciding whether the complaint should be recorded, deciding how the complaint should be handled or providing updates
 - anyone who has a close personal connection to any person whose conduct is complained about, to the complainant or to the incident complained about

Receiving an application for review

Where the IOPC receives an application for review, but the local policing body is the relevant review body, the IOPC will forward it to the local policing body. The IOPC will notify the complainant that it has been forwarded and that the local policing body is the relevant review body.

Where a local policing body receives an application for a review, but the IOPC is the relevant review body, it must be forwarded to the IOPC. The local policing body must notify the complainant that it has been forwarded and that the IOPC is the relevant review body.

Paragraphs 31 & 32, Schedule 3, *Police Reform Act 2002*

- 18.14** The application should be forwarded to the correct review body as soon as reasonably practicable and, where possible, digitally.

- 18.15** When an application for a review is received by the relevant review body, an acknowledgment should be sent to the complainant. This should inform the complainant what they can expect to happen next and when they can expect to hear about the outcome. It should also give the complainant a point of contact should they have any queries.
- 18.16** The relevant review body must also notify the appropriate authority, any interested person and the person complained about (if any). The person complained about may be notified via the appropriate authority. Once notified that an application for a review has been made, the appropriate authority should not take any steps that would prejudice the review or any action that may be taken as a result.

The relevant review body must request any information from any person which it considers necessary to deal with a review (subject to the limitations as outlined in sub-paragraphs (2) to (3A) of paragraph 19ZA, Schedule 3, *Police Reform Act 2002*).

Regulation 29, Police (Complaints and Misconduct) Regulations 2020

Where the relevant review body requires, the appropriate authority must provide it with a copy of the report of the investigation, and any information requested concerning the appropriate authority's determinations at the conclusion of the investigation (i.e. those in paragraphs 17.44 – 17.60).

Paragraph 25, Schedule 3, *Police Reform Act 2002*

- 18.17** As noted in paragraphs 11.21 – 11.22, all documents or evidence created or obtained during the handling of a complaint should be provided to the relevant review body. When considering whether to request further information, the local policing body must consider whether the information is necessary to carry out the review. Information requested should be provided as soon as reasonably practicable.

Validity

- 18.18** There are a number of reasons why an application for a review may be invalid. If it is invalid, the complainant should be advised of this and the reason should be explained clearly.
- 18.19** When deciding whether the application for a review is valid, the relevant review body will need to consider the following points.

Is the application complete?

An application for a review 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 application; and
- iv. the date on which the complainant was provided with the details about their right of review at the conclusion of the investigation or other handling of their complaint.

However, the relevant review body may decide to consider a review even though it does not comply with one or more of these requirements.

Regulation 29, Police (Complaints and Misconduct) Regulations 2020

18.20 Although the legislation has certain stipulations about the content of an application for a review, it also acknowledges that the relevant review body may decide to consider the review without those requirements being met. The IOPC considers that the relevant review body should consider a review in the absence of any of the information above (or where the complainant is unable to make their application in writing) unless the lack of information makes it impossible to identify the case to which the application relates. In some circumstances, it may be appropriate to contact the complainant to clarify which complaint the application relates to, or any points they have raised. If, after taking all reasonable steps to contact the complainant, it has not been possible to make contact, or it has not been possible to gather sufficient information to conduct the review, the application may be considered invalid.

Is there a right to apply for a review?

18.21 Only a complainant, or someone acting on their behalf (see paragraph 5.11), can make an application for a review in relation to a complaint. If anyone other than the complainant or someone acting on their behalf tries to make an application, the application will be invalid.

18.22 Before an application can be made there must be a written notification of the outcome of the complaint.

Has the application been made in time?

Applications for reviews must be made within 28 days, starting with the day after the day the complainant was provided the information outlined in paragraph 17.73, at the conclusion of the investigation or other handling of their complaint.

Regulation 29, Police (Complaints and Misconduct) Regulations 2020

- 18.23** Where the application was made to the wrong review body, any time elapsing between the application being received by the local policing body or the IOPC, and it being forwarded on to the correct relevant review body will not be taken into account for the purposes of the 28-day period¹⁴⁶.
- 18.24** A complainant cannot exercise their right to apply for a review before the completion of the handling of a complaint. However, if the handling is complete, but any of the information about the complainant's right to apply for a review that the appropriate authority was obliged to provide was not given, the application should not be treated as out of time.
- 18.25** The relevant review body may extend the period for making an application for a review where it is satisfied that because of the special circumstances of a case it is just to do so¹⁴⁷. This should be considered on a case-by-case basis. The following matters should be taken into account (though this is not an exhaustive list):
- any reasons for the delay – this should include whether the delay is outside the complainant's control, whether they have taken all reasonable steps to submit their review in time, and consideration of any particular vulnerabilities or needs of the complainant. Where an application has been made out of time, the complainant should be asked to provide any reasons for this, where this is not already apparent. Any reasons provided must be taken into account when deciding whether an application for a review should be considered
 - the subject matter of the complaint – whether it is a particularly serious case or one that it would be in the public interest to consider
 - links to other complaints being handled or reviewed
 - the length of the delay – the test should become more difficult to pass the further beyond 28 days the application is received
 - fairness – for example, the potential impact on the complainant or any other member of the public and on any person complained about
- 18.26** The fact that a person complained about has been told about the conclusion of an investigation, or other handling, before an application for review is made does not

¹⁴⁶ Regulation 29, Police (Complaint and Misconduct) Regulations 2020.

¹⁴⁷ Regulation 29, Police (Complaints and Misconduct) Regulations 2020.

prevent a review from being conducted, and disciplinary proceedings or other outcomes may still follow a review.

- 18.27** If, having considered any special circumstances, the application for a review is judged to be out of time and the relevant review body is not satisfied that it is just to extend the time period, the application should be treated as invalid and not be considered further.

Notifying the complainant where the application is invalid

- 18.28** The complainant should be informed of the decision to treat the application as invalid. This notification should be made in writing (and by other means where appropriate, taking into account any particular needs or requests) as soon as reasonably practicable. The reasons for deciding the application is invalid should be explained clearly to the complainant.

Conducting the review

- 18.29** An application for a review offers the opportunity to consider whether the complaint outcome is reasonable and proportionate and, if not, to put things right. Conducting a review should not be merely a quality check of what has happened before. The reviewer should come to their own conclusions about whether the outcome is reasonable and proportionate.
- 18.30** While each review must be considered on a case-by-case basis, a consistent approach should be taken to considering reviews overall. The consideration of any review should be conducted fairly and in good faith. Decisions must be reached as soon as practicable.
- 18.31** Any representations made by the complainant, the person who is complained about (if any) and the appropriate authority should be given due consideration.
- 18.32** A review must consider whether the outcome of the investigation or other handling is reasonable and proportionate. If the reviewer concludes that the outcome was not reasonable and proportionate, the review should be upheld. In reaching this decision, the reviewer should take into account the matters outlined below.
- 18.33** When deciding whether the outcome is reasonable and proportionate, the focus should be on whether it is appropriate to the circumstances of the individual complaint, rather than the process followed to reach that outcome. However, where the handling of a complaint is found to be legally flawed in a manner that could have affected the outcome, the review should be upheld unless the reviewer finds that the same outcome would inevitably have been reached even without those flaws.

A decision to take no further action

- 18.34** Taking ‘no further action’ in relation to a complaint is expressly allowed under the legislation. There are various reasons why a complaint handler may have legitimately decided to take no further action in relation to a complaint or aspects of it. The reviewer should consider the points in paragraphs 12.10 – 12.13, and whether there were steps that could or should have been taken to provide a reasonable and proportionate outcome.
- 18.35** For example, where no further action has been taken because the complaint handler believed that further information was needed from the complainant, the reviewer should consider what efforts were made to communicate with the complainant, any communication preferences or needs of the complainant, any attempts to communicate through their representative (if any) and whether they consider that further information from the complainant was necessary.

Information provided to the complainant

- 18.36** The reviewer should consider whether the outcome given to the complainant provides sufficient information to explain any findings, determinations and actions taken or proposed as a consequence. In some situations, the outcome of the complaint will consist purely of the explanation provided in the outcome letter to the complainant. Where this has not been done, this may mean that the outcome is not reasonable and proportionate. However, it would only be appropriate to uphold the review where the inadequacies mean that it is not possible for the outcome to be understood. It is not sufficient for the information provided to be merely missing something that could have been provided, or not to have been written the way the reviewer would have written it.
- 18.37** Where information that has not been provided to the complainant is the only reason that the reviewer considers the outcome is not reasonable and proportionate, and the reviewer is able to provide the missing information from the evidence they have reviewed, this should be provided to the complainant by the reviewer. Although the review can be upheld on this basis, the reviewer will not need to make any further recommendations to address this issue.

Findings and determinations

- 18.38** When deciding whether any findings or determinations are reasonable and proportionate, the reviewer should first consider whether findings and determinations were reached in relation to all matters required. The reviewer should then consider whether those findings and determinations were reasonable and proportionate. In doing this, they should consider, for example:
- Was the complaint fully understood and were all allegations or concerns addressed?
 - Were reasonable lines of enquiries undertaken to be able to provide a reasonable and proportionate outcome?

- Was due regard given to relevant guidance? (for example, operational guidance, the IOPC's *Guidelines on handling allegations of discrimination*, IOPC statutory guidance, Home Office guidance, College of Policing guidance)
- If any aspects of the complaint were not addressed, or any lines of enquiry were not pursued, were there sound reasons for this?
- Was information or evidence weighed appropriately and fairly?
- Do the findings or determinations reached, logically follow from the information or evidence obtained?

Actions proposed

18.39 When deciding whether any actions proposed are reasonable and proportionate, the reviewer should consider:

- Whether due regard was given to the relevant legal tests and guidance (for example, Home Office and College of Policing guidance).
- Whether the complaint handler attempted to understand the outcome the complainant was seeking and gave that due consideration.
- Whether the proposed actions have sought to remedy the issues raised by the complainant, so far as is reasonably possible.
- Whether the proposed actions are reasonable and proportionate, considering all the circumstances.
- Whether actions have been proposed or taken in respect of any learning or other issues identified through the handling of the complaint.

Other issues identified while undertaking a review

18.40 Sometimes when considering a review, issues with complaints handling may be identified that have not prevented a reasonable and proportionate outcome. These would not be a reason to uphold the review. However, such issues should be fed back to the appropriate authority as a part of the relevant review body's oversight role. Local policing bodies should also ensure that processes are in place to collate any issues identified with complaint handling, in order to identify any trends that can be addressed with the appropriate authority. Any issues like this should be noted to the complainant as part of the decision they receive.

Outcome of the review

18.41 Where a local policing body is the relevant review body and it finds that the outcome is not reasonable and proportionate it may make certain recommendations, depending on whether the complaint has been investigated or handled other than by investigation. These are outlined in the boxes below. Where the IOPC is the relevant review body, as well as an ability to make recommendations, the IOPC is able to make certain directions where it finds that the outcome is not reasonable and proportionate (see below).

Reviews of the outcome of complaints dealt with other than by investigation

Where a local policing body is the relevant review body and finds that the outcome is not reasonable and proportionate, it may:

- recommend that the appropriate authority refer it to the IOPC, if the complaint has not been previously referred
- recommend that the appropriate authority investigate the complaint
- make a recommendation under paragraph 28ZA, Schedule 3, *Police Reform Act 2002* (recommendation with a view to remedying the dissatisfaction of a complainant, see paragraphs 17.15 – 17.20)

Where the IOPC is the relevant review body and finds that the outcome is not reasonable and proportionate, it may:

- determine that it is necessary for the complaint to be investigated
- make a recommendation under paragraph 28ZA, Schedule 3, *Police Reform Act 2002* (recommendation with a view to remedying the dissatisfaction of a complainant, see paragraphs 17.15 – 17.20)

Paragraph 6A, Schedule 3, *Police Reform Act 2002*

Reviews of the outcome of complaints that have been investigated

Where, following a local investigation, a local policing body is the relevant review body and finds that the outcome is not reasonable and proportionate, it may:

- recommend that the appropriate authority re-investigate the complaint
- if the complaint has not been previously referred to the IOPC, recommend that the appropriate authority refer it to the IOPC
- make a recommendation to the appropriate authority in respect of any person serving with the police:
 - that the person has a case to answer in respect of misconduct or gross misconduct, or has no case to answer in relation to the person's conduct to which the investigation related
 - that the person's performance is, or is not, satisfactory
 - that disciplinary proceedings of the form specified in the recommendation are brought against the person in respect of the person's conduct, efficiency or effectiveness to which the investigation related
 - that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct, efficiency or effectiveness as may be so specified
- make a recommendation under paragraph 28ZA, Schedule 3, *Police Reform Act 2002* (recommendation with a view to remedying the dissatisfaction of a complainant, see paragraphs 17.15 – 17.20)
- make a recommendation that the appropriate authority provide the CPS with a copy of the report and notify them that the local policing body considers that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related, and they consider it is appropriate for the matters to be considered by the CPS (or they fall within a prescribed category).

Paragraph 25, Schedule 3, *Police Reform Act 2002*

Where, following an investigation, the IOPC is the relevant review body and finds that the outcome is not a reasonable and proportionate outcome, it may:

- make its own findings (in place of, or in addition to, findings of the investigation)
- direct that the complaint be re-investigated, and determine the mode of investigation (see paragraph 9.49)
- make a recommendation (and, if necessary, a direction) to the appropriate authority in respect of any person serving with the police:
 - that the person has a case to answer in respect of misconduct or gross misconduct, or has no case to answer in relation to the person's conduct to which the investigation related
 - that the person's performance is, or is not, satisfactory
 - that disciplinary proceedings of the form specified in the recommendation are brought against the person in respect of the person's conduct, efficiency or effectiveness to which the investigation related
 - that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct, efficiency or effectiveness as may be so specified
- make a recommendation under paragraph 28ZA, Schedule 3, *Police Reform Act 2002* (recommendation with a view to remedying the dissatisfaction of a complainant, see paragraphs 17.15 – 17.20)
- notify the CPS that it considers that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation relates, and it considers it is appropriate for the matters to be considered by the CPS (or they fall within a prescribed category), and provide them with a copy of the report.

Paragraphs 25 and 26, Schedule 3, *Police Reform Act 2002*

18.42 For these determinations, the term 'disciplinary proceedings' includes, for members of a police force or special constables, proceedings under the Police (Performance) Regulations 2020, as well as any proceedings under the Police (Conduct) Regulations 2020 (apart from the Reflective Practice Review Process, in accordance with Part 6 of those regulations). For any other person serving with the police, it includes both any proceedings or management process during which that person's conduct is considered and any proceedings or management process during which that person's performance is considered.

18.43 When considering making recommendations in relation to conduct, performance or referring the matter to be dealt with under the Reflective Practice Review Process,

the relevant review body should have regard to Home Office and College of Policing guidance.

18.44 Any decision by a relevant review body about whether to recommend that the CPS is notified should be made in light of the findings of the review and the evidence gathered during the handling of the complaint. The reasons given by the appropriate authority for not referring the report to the CPS should also be taken into account. A full rationale will be required from the relevant review body if it decides not to recommend that a referral to the CPS be made, despite the report indicating that a criminal offence may have been committed.

Notifications of the outcome

18.45 After considering a review, the relevant review body must notify the following of the outcome of the review, and the reasons for its decision¹⁴⁸:

- the appropriate authority
- the complainant
- any interested person
- the person complained against (if any), unless it would prejudice an investigation or re-investigation of the complaint (notification may be given via the appropriate authority)

18.46 The outcome should be communicated in writing (and by other means where appropriate, taking into account any particular needs or requests) and should use clear language, avoiding use of jargon wherever possible. Sufficient information should be provided to enable recipients to understand what decisions and recommendations have been made, and why.

18.47 Where the relevant review body recommends (or in the case of the IOPC, directs) investigation or re-investigation, it is good practice to outline what the reviewer considers should be addressed. This makes clear to the complainant and complaint handler what is expected from the investigation or re-investigation.

Appropriate authority responses to the outcome of a review

18.48 Where the IOPC has made directions, the appropriate authority must comply with those directions.

18.49 Where recommendations have been made by the local policing body (or by the IOPC under paragraph 28ZA), the appropriate authority must consider the recommendation and respond in writing within 28 days (starting with the day after the

148 Paragraph 6A, Schedule 3, *Police Reform Act 2002*; Paragraph 25, Schedule 3, *Police Reform Act 2002*.

day the recommendation was made)¹⁴⁹. The response from the appropriate authority must include¹⁵⁰:

- whether they accept the recommendation
- if they do, the steps they propose to take to give effect to the recommendation
- if they do not, the reasons why

18.50 Where the appropriate authority does not agree with the recommendation it must provide a clear rationale for why it will not be followed. It is therefore important that the reasons for any recommendations made are outlined clearly by the relevant review body. The appropriate authority may wish to discuss any recommendations made with the reviewer before deciding whether to accept them. Even where the recommendation as made is disagreed with, the appropriate authority may, having considered the rationale, propose an alternative. The expectation is that recommendations will be complied with, unless there is good reason.

18.51 The person making the recommendation must send a copy of the recommendation and the response to:

- the complainant
- any interested person, and
- the person complained against (if any), unless the person making the recommendation considers that to do so might prejudice any investigation (including any criminal investigation)

18.52 The IOPC or local policing body may extend the time limit for a response.

18.53 For guidance on responding to organisational learning recommendations made by the IOPC, see paragraphs 17.33 – 17.37. Where a recommendation has been made by the IOPC, other than a recommendation under paragraph 28ZA, the appropriate authority must notify the IOPC whether it accepts the recommendation and (if it does) set out the steps that it is proposing to take to give effect to it¹⁵¹. The IOPC expects a response within 28 days (starting with the day after the day the recommendation was made). If the appropriate authority does not accept the recommendation (or accepts the recommendation but fails to take appropriate steps), the IOPC may make a direction¹⁵². The appropriate authority must keep the IOPC informed of whatever action it takes in response to such a recommendation or direction.

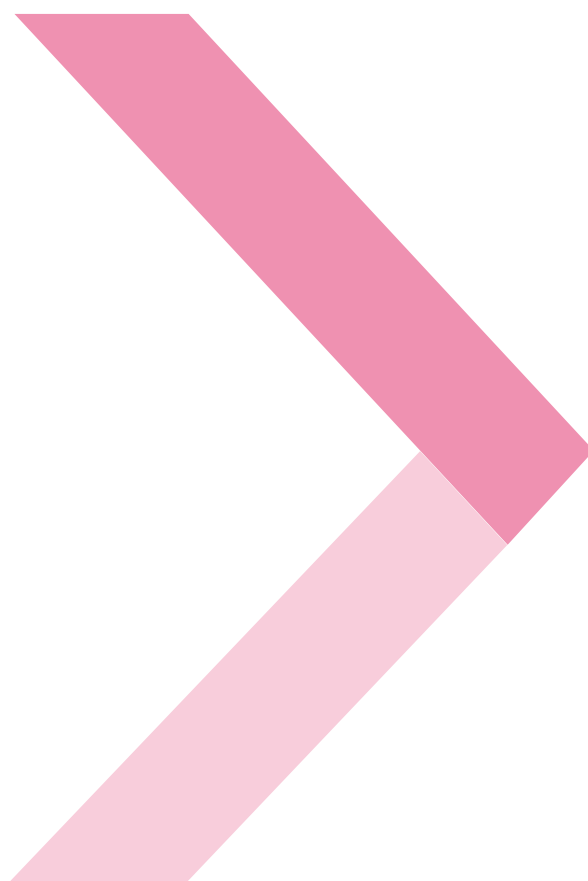
149 Regulation 30, Police (Complaints and Misconduct) Regulations 2020

150 Regulation 30, Police (Complaints and Misconduct) Regulations 2020.

151 Paragraph 25, Schedule 3, *Police Reform Act 2002*.

152 Paragraph 27, Schedule 3, *Police Reform Act 2002*.

Annexes



Annex A

Supplementary guidance on handling matters about the actions of chief officers

A.1 This annex sets out:

- the appropriate authority
- initial handling and recording of complaints
- recording of conduct matters
- referrals
- handling of matters under Schedule 3 to the *Police Reform Act 2002*
- reviews and the relevant review body

A.2 This annex outlines certain specific considerations for handling a matter relating to the actions of a chief officer¹⁵³ (or acting chief officers, in some cases), as opposed to a matter relating to the conduct of another person serving with the police. It is not intended to be an exhaustive list of everything an appropriate authority will need to consider. In addition to this annex, the appropriate authority must have regard to the main body of this guidance.

Appropriate authority

A.3 The appropriate authority for a complaint or recordable conduct matter that relates to the conduct of a chief officer or acting chief officer is the local policing body with responsibility for that police force area. For most areas, this is the local police and crime commissioner¹⁵⁴.

A.4 The local policing body is also the appropriate authority for a DSI matter where the chief officer or acting chief officer is the relevant officer¹⁵⁵. The 'relevant officer' in relation to a DSI matter means the person serving with the police:

- who arrested the person who has died or suffered a serious injury
- in whose custody that person was at the time of the death or serious injury, or
- with whom the person who has died or suffered a serious injury had contact¹⁵⁶

153 See the glossary for the definition of a 'chief officer'.

154 Section 29, *Police Reform Act 2002*.

155 Section 29, *Police Reform Act 2002*.

156 Section 29, *Police Reform Act 2002*.

If there is more than one such officer, ‘relevant officer’ refers to the one who dealt with the person last, before the death or serious injury occurred. Where it cannot be determined which of two or more persons serving with the police dealt with a person last before a death or serious injury occurred, the relevant officer is the most senior of them¹⁵⁷.

Initial handling and recording of complaints

- A.5** The handling of complaints about the actions of a chief officer or acting chief officer is not affected by the model for potential involvement in the handling of complaints about other personnel in their force that the local policing body has chosen (see paragraph 1.27). The local policing body must follow the processes set out in Chapter 6.
- A.6** Sometimes a matter may involve more than one appropriate authority even though it concerns people who are all in the same force. For example, the matter may involve allegations directed at the chief officer and other ranks or personnel. The appropriate authority for the chief officer is the local policing body, and the appropriate authority for the other ranks or personnel is the chief officer. In these circumstances, the relevant parts of the complaint must be passed between the force and local policing body so the correct body deals with them.
- A.7** There will be times where a complaint names the chief officer or acting chief officer, but the complaint is actually about something where authority has been delegated to another officer or staff member within the force. Where the local policing body receives a complaint for which it is not the appropriate authority, they must forward the complaint to the appropriate authority¹⁵⁸. Therefore, where it is immediately clear that the chief officer or acting chief officer has had no involvement, the local policing body must take the steps outlined in paragraphs 6.5 – 6.7. They should explain the reasons for this to the complainant.

Recording of conduct matters

- A.8** As outlined in Chapter 8, the appropriate authority must record all conduct matters regarding the conduct of a chief officer (or Deputy Commissioner of the Metropolitan Police)¹⁵⁹. The definition of a conduct matter is any matter that is not, and has not been, the subject of 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

157 Section 29, *Police Reform Act 2002*.

158 Paragraph 2, Schedule 3, *Police Reform Act 2002*

159 Paragraphs 10, 11 and 13, Schedule 3, *Police Reform Act 2002*; Regulation 7, Police (Complaints and Misconduct) Regulations 2020.

offence or behaved in a manner which would justify disciplinary proceedings¹⁶⁰. See paragraphs 10.7 – 10.8 for guidance on deciding whether there is an indication. Advice on whether or not a matter meets the definition of a conduct matter can be sought from the IOPC.

Referrals

- A.9** The appropriate authority must refer to the IOPC any complaints relating to a chief officer (or Deputy Commissioner of the Metropolitan Police Service) where the appropriate authority is unable to satisfy itself that the conduct complained of, if it were proved, would not justify the bringing of criminal or disciplinary proceedings¹⁶¹. This test should be based on the substance of the complaint alone, not on the apparent merit of the allegations and the appropriate authority should not carry out any preliminary investigative steps¹⁶². The appropriate authority should have regard to the College of Policing guidance on outcomes when making this assessment.
- A.10** The appropriate authority must refer to the IOPC any conduct matter concerning a chief officer (or Deputy Commissioner of the Metropolitan Police Service) (see paragraph A.8). All DSI matters must be referred to the IOPC.
- A.11** When a conduct matter is referred to the IOPC that concerns a chief officer (or Deputy Commissioner of the Metropolitan Police) or DSI matter where the chief officer (or Deputy Commissioner of the Metropolitan Police) is the relevant officer, the IOPC will determine whether a directed or independent investigation is the most appropriate¹⁶³.
- A.12** When a complaint concerning a chief officer (or the Deputy Commissioner of the Metropolitan Police Service) is referred to it, the IOPC will first determine whether there is an indication that the chief officer (or the Deputy Commissioner of the Metropolitan Police Service) may have committed a criminal offence or behaved in a way which would justify the bringing of disciplinary proceedings. If there is, the IOPC is obliged to determine a directed or independent investigation¹⁶⁴.
- A.13** As with all referrals, the appropriate authority can seek the IOPC's advice about whether a matter meets the threshold for referral.

160 Section 12, *Police Reform Act 2002*. In this case, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures.

161 Regulation 4, Police (Complaints and Misconduct) Regulations 2020. In this case, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures.

162 However, the local policing body must be aware of their duties to preserve evidence set out in Paragraphs 1, 12 and 14B, Schedule 3, *Police Reform Act 2002*, and IOPC *statutory guidance to the police force on achieving best evidence in death and serious injury matters*.

163 Regulations 8 and 10, Police (Complaints and Misconduct) Regulations 2020

164 Regulation 5, Police (Complaints and Misconduct) Regulations 2020.

A.14 Where a matter involves the actions of both a chief officer and other persons serving with the police, each appropriate authority will (where appropriate) need to make separate referrals. The fact that part of a matter involves the actions of a chief officer does not automatically make the actions of other involved persons serving with the police referable. The actions of those personnel may not be mandatorily referable on any other basis. However, as noted in paragraph 9.32, where the circumstances are intrinsically linked, for the part of the matter which is not mandatorily referable, the appropriate authority may decide to voluntarily refer the matter to the IOPC. This will support the IOPC in considering the full circumstances.

Handling of matters under Schedule 3 to the *Police Reform Act 2002*

A.15 As with any matter, if the IOPC is not carrying out an investigation, the appropriate authority must consider what is the reasonable and proportionate way to handle it. Where there is more than one appropriate authority involved, the extra complications that this causes should be taken into consideration. The appropriate authorities should ensure that communications to any complainant or interested persons are coherent and set out clearly.

A.16 Where the appropriate authorities decide that one investigation into the matter is the most appropriate course of action, they may decide to have the investigation carried out by a different force. Even though there is one investigation being conducted, the decisions that an appropriate authority is required to make, will still need to be taken by the respective appropriate authorities – i.e. the local policing body for the chief officer or acting chief officer, and the chief officer for other ranks or personnel.

A.17 At the end of handling the overall matter, consideration should be given to the best way to communicate the outcome to those involved – for example, on a complaint, it may be appropriate to combine the decisions taken by each appropriate authority into one decision letter to the complainant.

A.18 An investigation into a chief officer involves certain requirements, additional to those that the box on page 83 outlines, regarding who can be appointed as an investigator. These requirements are¹⁶⁵:

- where an investigation relates to the conduct of a chief officer or a DSI matter in which they are the relevant officer, the investigator must not be under that chief officer's direction and control

¹⁶⁵ Paragraph 16 and 18, Schedule 3, *Police Reform Act 2002*; Regulation 12, Police (Complaints and Misconduct) Regulations 2020.

- where an investigation relates to the conduct of the Commissioner or Deputy Commissioner of the Metropolitan Police Service or to a DSI matter in which they are the relevant officer, the investigator must be nominated by the Home Secretary

A.19 As outlined in Chapter 17 paragraphs 17.15 – 17.20, the local policing body also has additional powers to recommend a remedy at the conclusion of an investigation it has carried out as appropriate authority.

Reviews and the relevant review body

A.20 Where the appropriate authority is a local policing body, or where any part of the complaint that is subject to the application for a review relates to the conduct of a senior officer, the IOPC will be the relevant review body.

Annex B

Supplementary guidance on handling matters related to persons who are no longer serving with the police

B.1 This annex sets out:

- Handling of matters where the person ceased serving on or after 15 December 2017. In particular:
 - the appropriate authority
 - initial handling and recording of complaints
 - recording of conduct matters
 - referrals
 - handling of matters under Schedule 3 to the *Police Reform Act 2002*
 - where a person ceases to serve during the handling of a matter
 - disciplinary proceedings for former officers
- Handling of matters where the person ceased serving before 15 December 2017.

B.2 This annex outlines where there are additional considerations for the handling of a matter that relates to a person who is no longer serving with the police, as opposed to a matter related to the conduct of a person still serving with the police.

B.3 Appropriate authorities must have regard to this guidance, and to Home Office guidance, *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*. All matters should be handled reasonably and proportionately, irrespective of whether any individual involved is no longer serving with the police.

Handling of matters where the person ceased serving on or after 15 December 2017

B.4 Schedule 2 to the Police (Complaints and Misconduct) Regulations 2020 modifies the *Police Reform Act 2002*, and the Police (Complaints and Misconduct) Regulations 2020. Schedule 1 to the Police (Conduct) Regulations modifies the Police (Conduct)

Regulations 2020¹⁶⁶. The purpose of these modifications is to allow a disciplinary process to take place where a police officer or special constable has ceased serving with the police, but has a case to answer for gross misconduct. These changes apply only to officers and special constables who ceased serving on or after 15 December 2017.

- B.5** As disciplinary proceedings can be brought only where the matter may amount to gross misconduct, the only disciplinary proceeding that can be brought for a former officer is a misconduct hearing. When considering whether there is an indication of behaviour ‘justifying disciplinary proceedings’ for a former officer, it is therefore necessary to consider whether the behaviour, if proven, is serious enough to have justified dismissal (had the person not ceased to be a member of a police force or special constable). This affects some of the handling decisions to be made under Schedule 3 to the *Police Reform Act 2002*. There are also some changes to the procedure for an investigation concerning a former officer, and changes to the opinions that should be given in the final report.
- B.6** The modifications listed above have the effect that all references to ‘misconduct’, as opposed to ‘gross misconduct’ are omitted, as are references to ‘misconduct meetings’. For example, for officers who ceased to serve on or after 15 December 2017, the definition of ‘disciplinary proceedings’ is changed to refer only to misconduct hearings, or accelerated misconduct hearings¹⁶⁷.
- B.7** In addition, the *Police Reform Act 2002* and the Police (Complaints and Misconduct) Regulations 2020 should be read as if the person who is no longer serving was still in the post that they last served in¹⁶⁸. For example, when considering who can be appointed as an investigator (see the box above paragraph 13.5).

Appropriate authority

- B.8** The appropriate authority for a person no longer serving with the police is the chief officer of the force the person was a member of immediately before they ceased to serve¹⁶⁹. If the former officer was a chief officer, the appropriate authority is the local policing body for the force area for which they were the chief officer immediately before they ceased to serve.

Initial handling and recording of complaints

- B.9** If a complaint is related to the actions of a person no longer serving with the police, this does not mean that it should not initially be handled in the same way as any other

166 Guidance on handling matters under the Police (Conduct) Regulations 2020 can be found in the Home Office guidance, Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing.

167 Regulation 2, Police (Conduct) Regulations 2020 as amended by Schedule 1, Police (Conduct) Regulations 2020.

168 Regulation 42, Police (Complaints and Misconduct) Regulations 2020.

169 Regulation 42, Police (Complaints and Misconduct) Regulations 2020.

complaint. When considering whether the complaint is one that must be recorded, the appropriate authority must consider the modified meaning of ‘disciplinary proceedings’ and whether the complaint alleges behaviour by the former officer that would justify a misconduct hearing.

- B.10** However, the IOPC considers that it would also be appropriate to record matters that would otherwise have met the criteria for recording if the person had still been serving – i.e. where the allegation is one that, if proved, might have constituted misconduct had the person still been serving with the police.

Recording of conduct matters

- B.11** As disciplinary proceedings can take place only for matters of gross misconduct, this affects what will be identified as conduct matters. Further guidance on this can be found in Home Office guidance, *Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*.

- B.12** Once a conduct matter has been identified, the appropriate authority must consider whether it is a recordable conduct matter. For a person no longer serving with the police, this process is different in one respect:

- a criminal offence or behaviour that is liable to lead to disciplinary proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person’s race, sex, religion, or other status identified in paragraph 9.24 of this guidance

The appropriate authority will need to consider whether the behaviour would be liable to lead to a misconduct hearing.

- B.13** However, where a conduct matter would have met this criterion for recording if the officer had still been serving, the appropriate authority should consider whether it falls into the category of ‘conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved’.

Referrals

- B.14** The only mandatory referral criterion that is affected by the fact that a person is no longer serving is:

- a criminal offence or behaviour that is liable to lead to disciplinary proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person’s race, sex, religion, or other status identified in paragraph 9.24 of this guidance.

The appropriate authority will need to consider whether the alleged behaviour would be liable to lead to a misconduct hearing.

- B.15** However, where a complaint or recordable conduct matter would have met this referral criterion if the person had still been serving, the appropriate authority should consider whether a voluntary referral to the IOPC is appropriate.

Handling of matters under Schedule 3 to the *Police Reform Act 2002*

- B.16** The only criterion for deciding whether a matter must be investigated (see paragraphs 10.5 – 10.6), that is affected by the revised meaning of ‘disciplinary proceedings’ is:
- Any complaint where there is an indication, either from the complaint itself or from handling to date that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings

However, the appropriate authority may still decide that, where a complaint would have met the unmodified definition if the person was still serving, it is reasonable and proportionate to investigate the complaint.

- B.17** The person handling the matter should consider the principles set out in paragraphs 11.26 – 11.27. Where the matter is not to be investigated under special procedures the former officer could be invited to attend an interview voluntarily, or provide a response to a list of written questions.

Investigations

- B.18** When considering whether an investigation into a DSI should become a conduct matter, the test to be applied by the investigator, and subsequently the appropriate authority, is affected by the change to the definition of disciplinary proceedings, i.e. it is necessary to consider whether the behaviour would be liable to lead to a misconduct hearing.
- B.19** When deciding whether a complaint is to be investigated under special procedures (see paragraphs 13.20 – 13.24), the investigator must apply the revised definition of ‘disciplinary proceedings’.
- B.20** When investigating a complaint or recordable conduct matter, related to a former officer, under special procedures the severity assessment to be applied is amended as below.

A severity assessment is an assessment of:

- whether the conduct of the person concerned, if proved, would amount to gross misconduct.

Regulation 1, Police (Complaints and Misconduct) Regulations 2020 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020

- B.21** Where a matter is not to be investigated under special procedures because the conduct, if proved, would not amount to gross misconduct, it will usually be appropriate to provide the person concerned with some form of notification to inform them that, while it is not currently considered that the conduct, if proved, would amount to gross misconduct, this will be kept under review.
- B.22** Where a former officer is under investigation for gross misconduct they should be provided with a copy of the terms of reference of the investigation and a written notice in the same manner, and subject to the same exceptions, as a serving officer. However, the requirements for the content of the written notice differ slightly.

The notice must state:

- the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- that there is to be an investigation into the matter and the identity of the person investigating;
- the result of the severity assessment;
- that if the allegation of gross misconduct is proved, the person concerned may be subject to a finding that the person would have been dismissed if the person had not ceased to be a member of a police force or a special constable;
- that if the person concerned is subject to such a finding, information including the person's full name and a description of the conduct which would have led to the person's dismissal will be added to the police barred list (referred to in section 88B(2) of the Police Act 1996) and may be subject to publication for a period of up to five years;
- that the person concerned has the right to seek advice from the person's staff association, police friend or any other body;
- the effect of regulation 18 of the Police (Complaints and Misconduct) Regulations 2020 (special procedure: police friend);
- the effect of regulation 20 of the Police (Complaints and Misconduct) Regulations 2020 (special procedure: representations to the person investigating) and regulation 8 of the Police (Conduct) Regulations 2020 (legal and other representation);
- that it may harm the person's case if the person fails to attend an interview of which the person has been given notice, and

- that whilst the person concerned does not have to say anything it may harm the person's case if they do not mention when interviewed or when providing any information under regulation 20 of the Police (Complaints and Misconduct) Regulations 2020, regulation 21A of those regulations (special procedure: notice of enquiry) or regulation 31 of the Police (Conduct) Regulations 2020 (procedure on receipt of notice) something later relied on in any disciplinary proceedings (or appeal against the outcome of such proceedings).

Regulation 17, Police (Complaints and Misconduct) Regulations 2020 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020

- B.23** If an investigator proposes to interview the former officer, they must, if reasonably practicable, agree a date and time for the interview with the former officer. If a date and time is not agreed, the investigator must specify a date and time. If the former officer or their police friend is not available to attend at the specified time but proposes an alternative that is reasonable, then the interview will be postponed to the time proposed¹⁷⁰.
- B.24** In a local investigation, where the investigator is satisfied that, having regard to the circumstances of the former officer concerned, it would be unreasonable to require them to attend an interview, the investigator may instead give the former officer a written notice of enquiry. In a directed investigation, the decision about whether to give the former officer a written notice of enquiry (rather than require them to attend interview) is taken by the IOPC. This notice must contain any questions the investigator (or the IOPC, in the case of a directed investigation) wishes to ask and must request that a response is provided within a specified time period. The investigator must keep a record of any notice of enquiry and response received¹⁷¹.
- B.25** Accelerated procedures cannot be applied where a former officer under investigation falls into condition C (see paragraph B.37). When considering accelerated procedures, the considerations in paragraph 13.45 are amended to read as follows¹⁷²:
- there is sufficient evidence, in the form of written statements or other documents to establish, on the balance of probabilities, that the conduct to which the investigation relates constitutes gross misconduct; and
 - it is in the public interest for the person whose conduct it is to be included in the police barred list without delay

170 Regulation 21, Police (Complaints and Misconduct) Regulations 2020 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020.

171 Regulation 21A, Police (Complaints and Misconduct) Regulations 2020 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020.

172 Paragraph 20A, Schedule 3, *Police Reform Act 2002* as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020.

Concluding an investigation

- B.26** When completing a report of an investigation that is subject to special procedures, in respect of the person who has ceased to serve with the police, rather than the information outlined in the box on page 102, the following conclusions must be reached.

For investigations into recordable conduct matters and complaints that were subject to special procedures, the investigator's report must provide an accurate summary of the evidence and attach or refer to any relevant documents.

In a local investigation subject to special procedures, in regards to any person who falls into condition A or B (see paragraph B.37), the report must also indicate the investigator's opinion as to whether:

- i. there is a case to answer in respect of gross misconduct or there is no case to answer;
- ii. if the opinion is that there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or special constable.

In a local investigation subject to special procedures, in regards to any person who falls into condition C (see paragraph B.37), the report must also indicate the investigator's opinion as to whether:

- i. there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or special constable;
- ii. if the opinion is that there may have been such a breach, the breach is so serious that, had the person not ceased to be a member of a police force or special constable, it would have justified dismissal.

In a directed investigation, which is subject to special procedures, it is for the IOPC, on receipt of the investigator's report, to give its opinion on these matters (see paragraphs B.30 – B.33 and B.34 – B.36).

Regulation 27, Police (Complaints and Misconduct) Regulations 2020 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020

Paragraph 28ZA recommendations

- B.27** Where a paragraph 28ZA recommendation is made (see paragraphs 17.15 – 17.20), it cannot be a recommendation that a matter regarding a person who is no longer serving with the police is to be referred to the Reflective Practice Review Process, as this process is not available.

Outcomes following an investigation – Condition A and B persons¹⁷³

- B.28** The determinations that the appropriate authority must make on receipt of a report of a local investigation of a complaint or recordable conduct matter, as outlined in the boxes on page 121, are amended for former officers – see the box below.

On receipt of a report of a local investigation of a complaint or recordable conduct matter, the appropriate authority must determine:

- whether the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation relates, and whether the circumstances are such that it is appropriate for the Crown Prosecution Service (CPS) to consider it or it falls within a prescribed category
- whether or not the former officer to whose conduct the investigation related has a case to answer in respect of gross misconduct or has no case to answer
- where the appropriate authority determines that there is no such case to answer, whether there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable
- what action, if any, the appropriate authority must, or will, take in respect of the matters dealt with in the report
- if it considers it appropriate, any other matter dealt with in the report and what action, if any, it will take in respect of it

Paragraph 24, Schedule 3, Police Reform Act 2002 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020

- B.29** Where the appropriate authority decides that there is a case to answer for gross misconduct they must, as soon as practicable, then determine whether misconduct proceedings should be brought against the officer concerned¹⁷⁴.
- B.30** When the investigation is a directed investigation, and the report is submitted to the IOPC, there are various changes to what can be determined. The IOPC will still determine whether the report indicates that a criminal offence may have been committed, and whether the circumstances are such that it is appropriate for the CPS to consider it, or it falls within a prescribed category. However, the matters that the IOPC must seek views from the appropriate authority on (see paragraph 17.62) are modified to¹⁷⁵:

¹⁷³ See paragraph B.37 for definition of condition A persons and condition B persons.

¹⁷⁴ Regulation 23, Police (Conduct) Regulations 2020 as modified by Schedule 1, Police (Conduct) Regulations 2020.

¹⁷⁵ Paragraph 23, Schedule 3, *Police Reform Act 2002* as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020.

- whether any former member of a police force or special constable to whose conduct the investigation related has a case to answer for gross misconduct or has no case to answer
- whether, if there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable, and
- any other matters dealt with in the report

B.31 In directed investigations which are subject to special procedures, the IOPC will, when seeking views from the appropriate authority on the matters above, offer their opinion about whether¹⁷⁶:

- there is a case to answer in respect of gross misconduct or no case to answer
- disciplinary proceedings should be brought
- if the opinion is that there no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings, had the person not ceased to be a member of a police force or special constable

B.32 Having considered the appropriate authority's views (if any), the IOPC will then make a determination on:

- whether any former member of a police force or special constable to whose conduct the investigation related has a case to answer for gross misconduct or has no case to answer
- whether, if there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable
- whether or not disciplinary proceedings should be brought against any former member of a police force or special constable to whose conduct the investigation related
- any other matter dealt with in the report

Outcomes following an investigation – Condition C persons¹⁷⁷

B.33 The determinations that the appropriate authority must make on receipt of a report of a local investigation of a complaint or recordable conduct matter, as outlined in the boxes on page 121, are amended for former officers to what is in the box below.

176 Regulation 27, Police (Complaints and Misconduct) Regulations 2020 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020.

177 See paragraph B.37 for definition of condition C persons.

On receipt of a report of a local investigation of a complaint or recordable conduct matter, the appropriate authority must determine:

- whether the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation relates, and whether the circumstances are such that it is appropriate for the Crown Prosecution Service (CPS) to consider it or it falls within a prescribed category
- whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable
- where the appropriate authority determines that there may have been such a breach, whether the breach is so serious that, had the person not ceased to be a member of a police force or a special constable, it would have justified dismissal
- if it considers it appropriate, any other matter dealt with in the report and what action, if any, it will take in respect of it

Paragraph 24, Schedule 3, *Police Reform Act 2002* as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020

B.34 When the investigation is a directed investigation, and the report is submitted to the IOPC, there are various changes to what can be determined. The IOPC will still determine whether the report indicates that a criminal offence may have been committed, and whether the circumstances are such that it is appropriate for the CPS to consider it, or it falls within a prescribed category. However, the matters that the IOPC must seek views from the appropriate authority on (see paragraph 17.62) are modified to¹⁷⁸:

- whether any former member of a police force or special constable to whose conduct the investigation related has a case to answer for gross misconduct or has no case to answer
- whether, if there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable, and
- any other matters dealt with in the report

¹⁷⁸ Paragraph 23, Schedule 3, *Police Reform Act 2002* as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020.

B.35 In directed investigations which are subject to special procedures, the IOPC will, when seeking views from the appropriate authority on the matters above, offer their opinion about whether¹⁷⁹:

- there is a case to answer in respect of gross misconduct or no case to answer
- disciplinary proceedings should be brought
- if the opinion is that there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings, had the person not ceased to be a member of a police force or special constable

B.36 Having considered the appropriate authority's views (if any), the IOPC will then make a determination on:

- whether any former member of a police force or special constable to whose conduct the investigation related has a case to answer for gross misconduct or has no case to answer
- whether, if there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable
- where the IOPC determines that the person has a case to answer in respect of gross misconduct, make a Condition C special determination (see paragraph B.39)
- any other matter dealt with in the report

Disciplinary proceedings for former officers

B.37 Disciplinary action can be taken against a person who is no longer serving with the police where the person ceased to be a police officer on or after 15 December 2017, was a police officer at the time of the alleged conduct and where the allegation may amount to gross misconduct. In addition, one of the following conditions must apply¹⁸⁰:

- the person ceased to be a police officer after the allegation first came to the attention of the relevant body (condition A)
- the person ceased to be a police officer not more than 12 months before the allegation first came to the attention of the relevant body (condition B), or
- the allegation came to the attention of the relevant body more than 12 months after the person to whose conduct the allegation relates ceased to be a police officer and the IOPC has made a special determination that the taking of disciplinary proceedings would be reasonable and proportionate (condition C)

179 Regulation 27, Police (Complaints and Misconduct) Regulations 2020 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020

180 Regulation 4, Police (Conduct) Regulations 2020.

- B.38** The conditions at paragraph B.37 do not apply where the disciplinary proceedings would not be the first disciplinary proceedings to be taken against the person in respect of the alleged gross misconduct, unless they result from a re-investigation of the allegation that begins not later than 12 months after the date on which they ceased to be a police officer.
- B.39** A condition C determination is a determination carried out by the IOPC at the end of directed and independent investigations to determine whether it is reasonable and proportionate to bring disciplinary proceedings against a Condition C person. The modified Police (Conduct) Regulations 2020 set out the factors that the IOPC must take into account, and the procedure that must be followed. Condition C determinations can only be made following a directed or independent investigation.
- B.40** If a condition A or B officer has a case to answer for gross misconduct, or if a special determination is made in favour of bringing proceedings against a condition C officer, the case can proceed to a misconduct hearing.

Reviews and the relevant review body

- B.41** The fact that any person involved in a complaint is no longer serving with the police does not change how an application for a review will be considered. The determinations that can be made following a review of the outcome of a complaint that has been handled otherwise than by investigation do not change. However, where the result of a review of the outcome of a complaint that has been investigated is that the outcome is not reasonable and proportionate, the determinations that the relevant review body can make do change.

Where, following an investigation, a local policing body is the relevant review body and finds that the outcome is not reasonable and proportionate, it may:

- recommend that the appropriate authority re-investigate the complaint
- if the complaint has not been previously referred to the IOPC, recommend that the appropriate authority refer it to the IOPC
- where the person no longer serving with the police falls into condition A or B (see paragraph B.37), make a recommendation to the appropriate authority in respect of any person serving with the police:
 - that the person has a case to answer in respect of gross misconduct, or has no case to answer, in relation to the person's conduct to which the investigation related
 - that disciplinary proceedings are brought against the person in respect of the person's conduct to which the investigation related
 - that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct as may be so specified
- where the person no longer serving with the police falls into condition C, (see paragraph B.37), make a determination (in place of the determination of the appropriate authority) as to:
 - whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force, or a special constable, and
 - if so, whether the breach is so serious that, had the person not ceased to be a member of a police force or a special constable, it would have justified dismissal
- make a recommendation under paragraph 28ZA, Schedule 3, *Police Reform Act 2002* (recommendation with a view to remedying the dissatisfaction of a complainant, see paragraphs B.27 and 17.15 – 17.20)
- make a recommendation that the appropriate authority provide the CPS with a copy of the report and notify them that the local policing body considers that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related, and they consider it is appropriate for the matters to be considered by the CPS (or they fall within a prescribed category).

Paragraph 25, Schedule 3, *Police Reform Act 2002* as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020

Where, following an investigation, the IOPC is the relevant review body and finds that the outcome is not a reasonable and proportionate outcome, it may:

- make its own findings (in place of, or in addition to, findings of the investigation)
- direct that the complaint be re-investigated, and determine the mode of investigation (see paragraph 9.49)
- where the person no longer serving with the police falls into condition A or B (see paragraph B.37), make a recommendation to the appropriate authority in respect of any person serving with the police:
 - that the person has a case to answer in respect of gross misconduct, or has no case to answer in relation to the person's conduct to which the investigation related
 - that disciplinary proceedings are brought against the person in respect of the person's conduct to which the investigation related
 - that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct as may be so specified
- where the person no longer serving with the police falls into condition C, see paragraph B.37), make a determination (in place of the determination of the appropriate authority) as to:
 - whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force, or a special constable, and
 - if so, whether the breach is so serious that, had the person not ceased to be a member of a police force or a special constable, it would have justified dismissal
- make a recommendation under paragraph 28ZA, Schedule 3, *Police Reform Act 2002* (recommendation with a view to remedying the dissatisfaction of a complainant, see paragraphs B.27 and 17.15 – 17.20)
- notify the CPS that it considers that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation relates, and it considers it is appropriate for the matters to be considered by the CPS (or they fall within a prescribed category), and provide them with a copy of the report.

Paragraphs 25 and 26, Schedule 3, *Police Reform Act 2002* as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020

Handling of matters where the person ceased serving before 15 December 2017

- B.42** Matters that relate to the actions of a person who ceased to serve before 15 December 2017 should still be handled reasonably and proportionately in line with this guidance. Learning should be identified for the force, where appropriate. Where the matter is a complaint that has been recorded, the complainant must be provided with a reasonable and proportionate outcome in the same way as any other recorded complaint.
- B.43** When deciding whether a complaint should be recorded or investigated, or whether any matter should be referred, the appropriate authority should consider whether it is appropriate to do so even though it may not be mandatory (because no disciplinary proceedings can follow).
- B.44** The person handling the matter should consider the principles set out in paragraphs 11.26 – 11.27. The person concerned could still be invited to voluntarily attend an interview, or provide a response to a list of written questions.
- B.45** At the conclusion of handling no decisions can be made on disciplinary matters (or performance) as no action can be taken. However, for transparency, an opinion may be offered on whether or not there would have been a case to answer for misconduct or gross misconduct had the person still been serving.

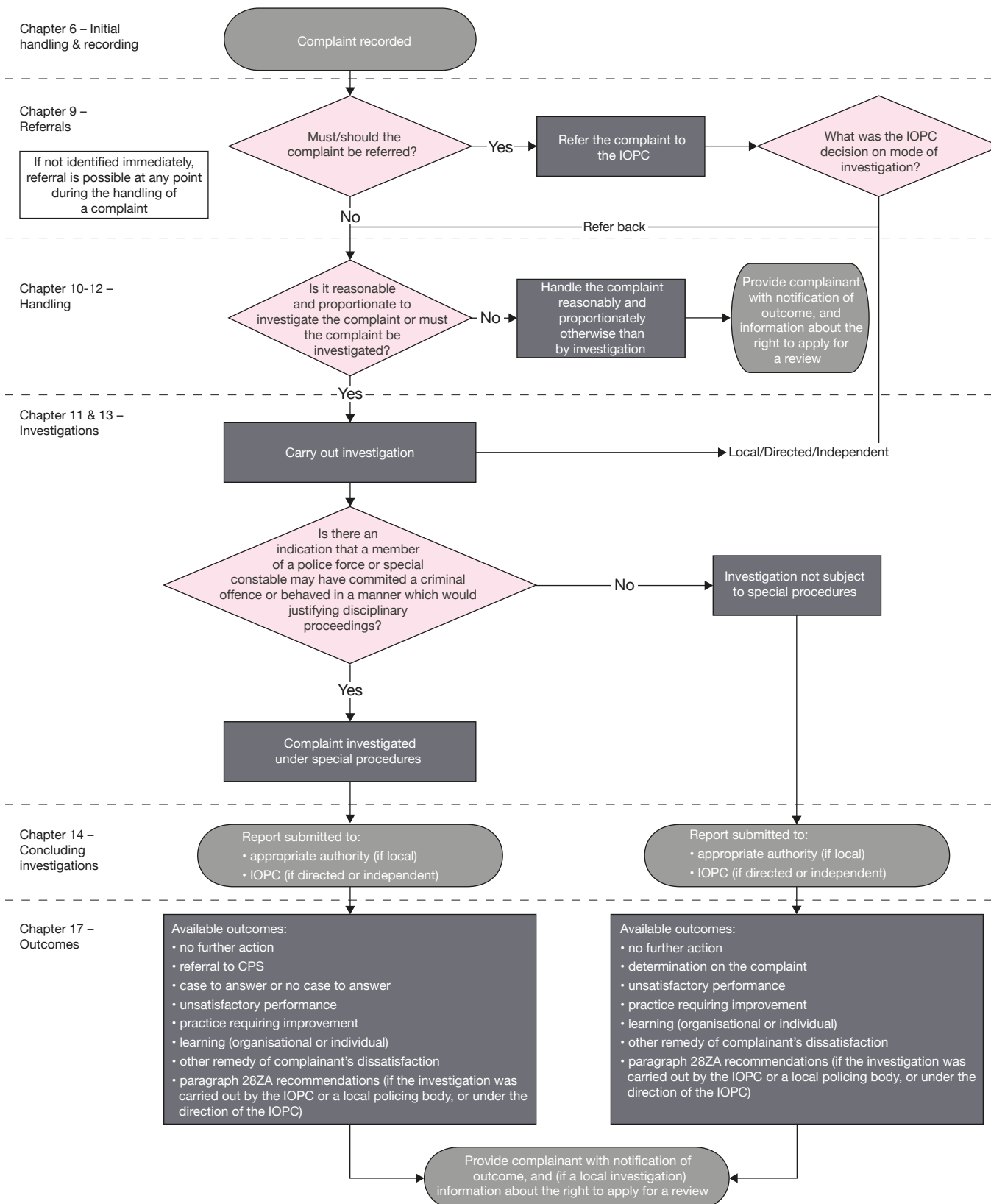
Where a person ceases to serve during the handling of a matter

- B.46** For complaints which do not include conduct which may amount to gross misconduct, and DSI matters, if a person ceases to serve during the handling, the matter in relation to that person must continue to be handled in a reasonable and proportionate manner. However, no disciplinary proceedings can be brought.
- B.47** Where it is an investigation into a recordable conduct matter, if the matter does not amount to gross misconduct there is no longer any jurisdiction under the *Police Reform Act 2002* to continue to investigate the matter.
- B.48** Where the matter is considered potentially to amount to gross misconduct, the following should happen:
- the officer should be given a new notice under the modified regulations (see paragraph B.22)
 - if the interview has not yet taken place, the procedure under the modified regulations should be followed (see paragraphs B.23 – B.24)

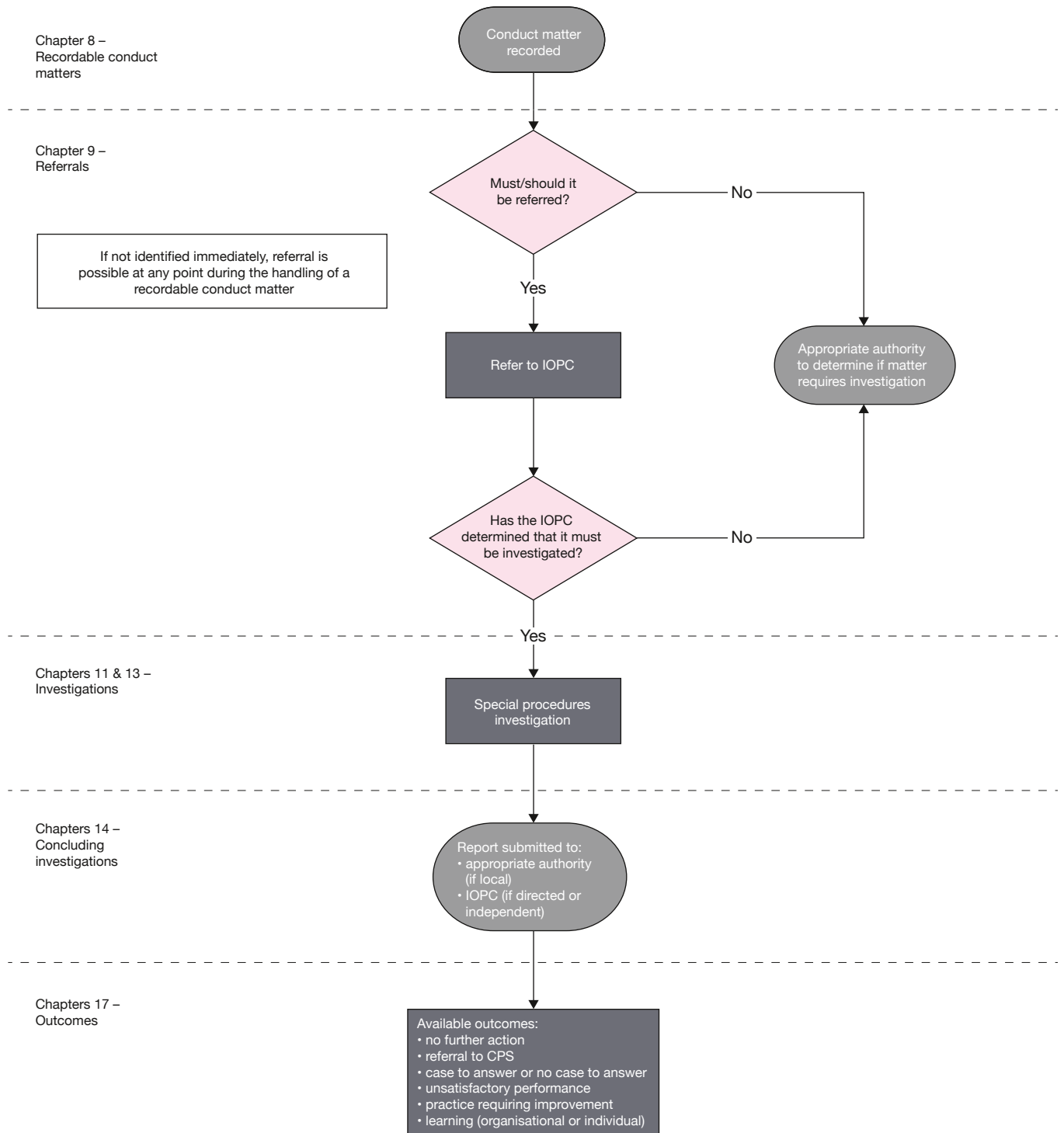
- if the severity assessment is revised during the course of the investigation the officer should be notified of the information required by the modified regulations (see paragraph B.22)
- the final report will need to comply with the modified requirements outlined above (see paragraph B.26)

Flowcharts

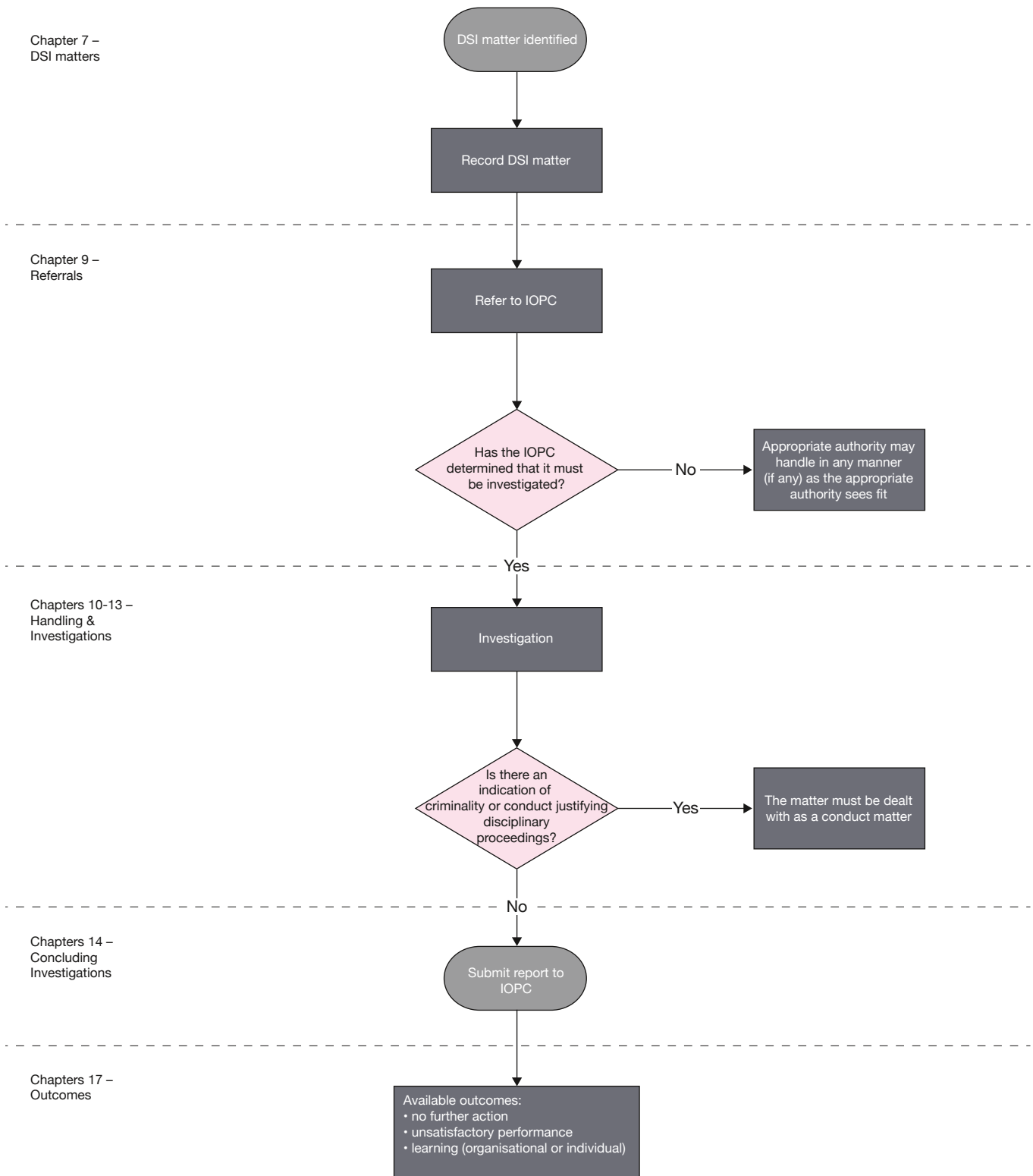
Complaints



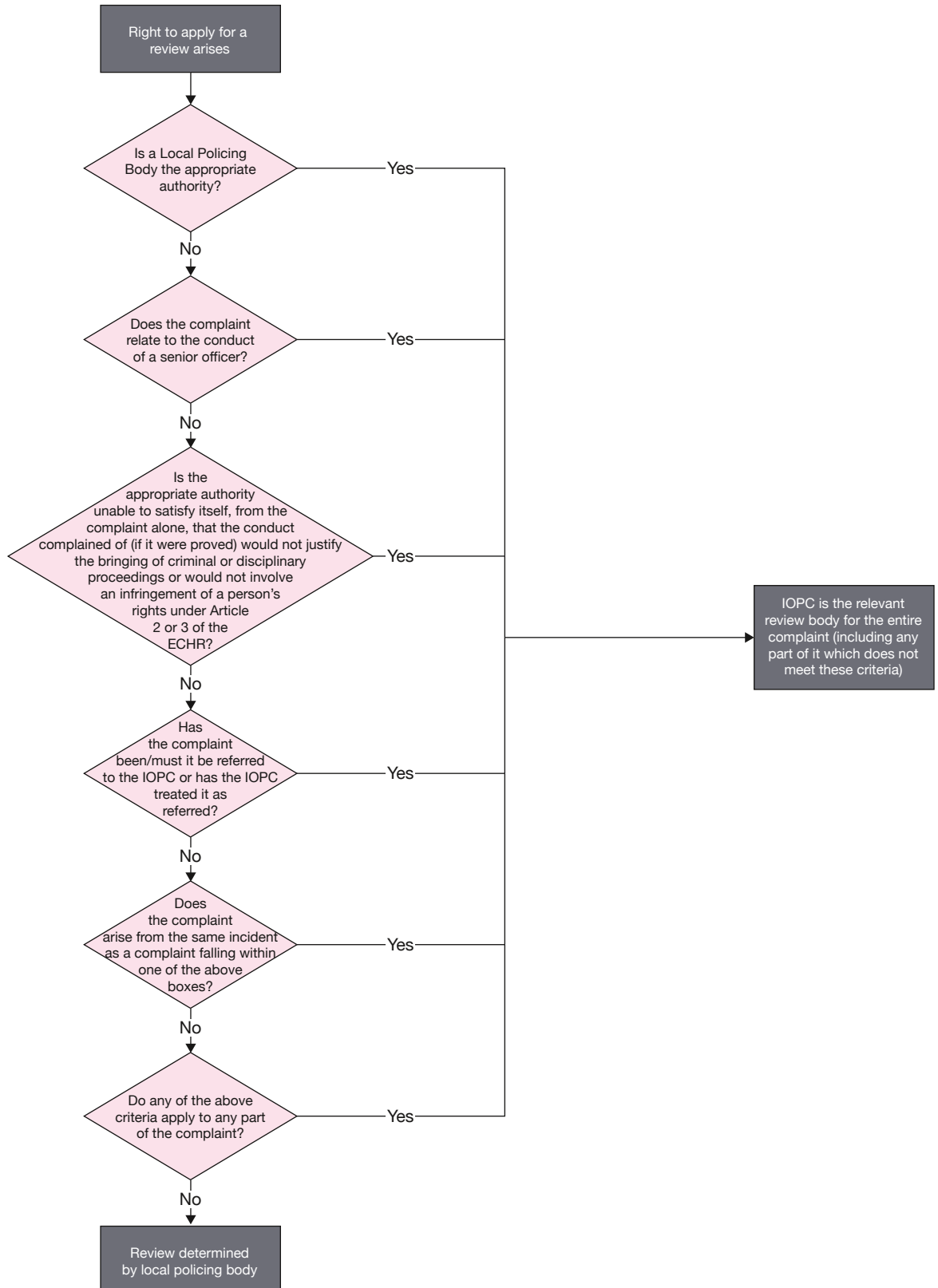
Recordable conduct matters



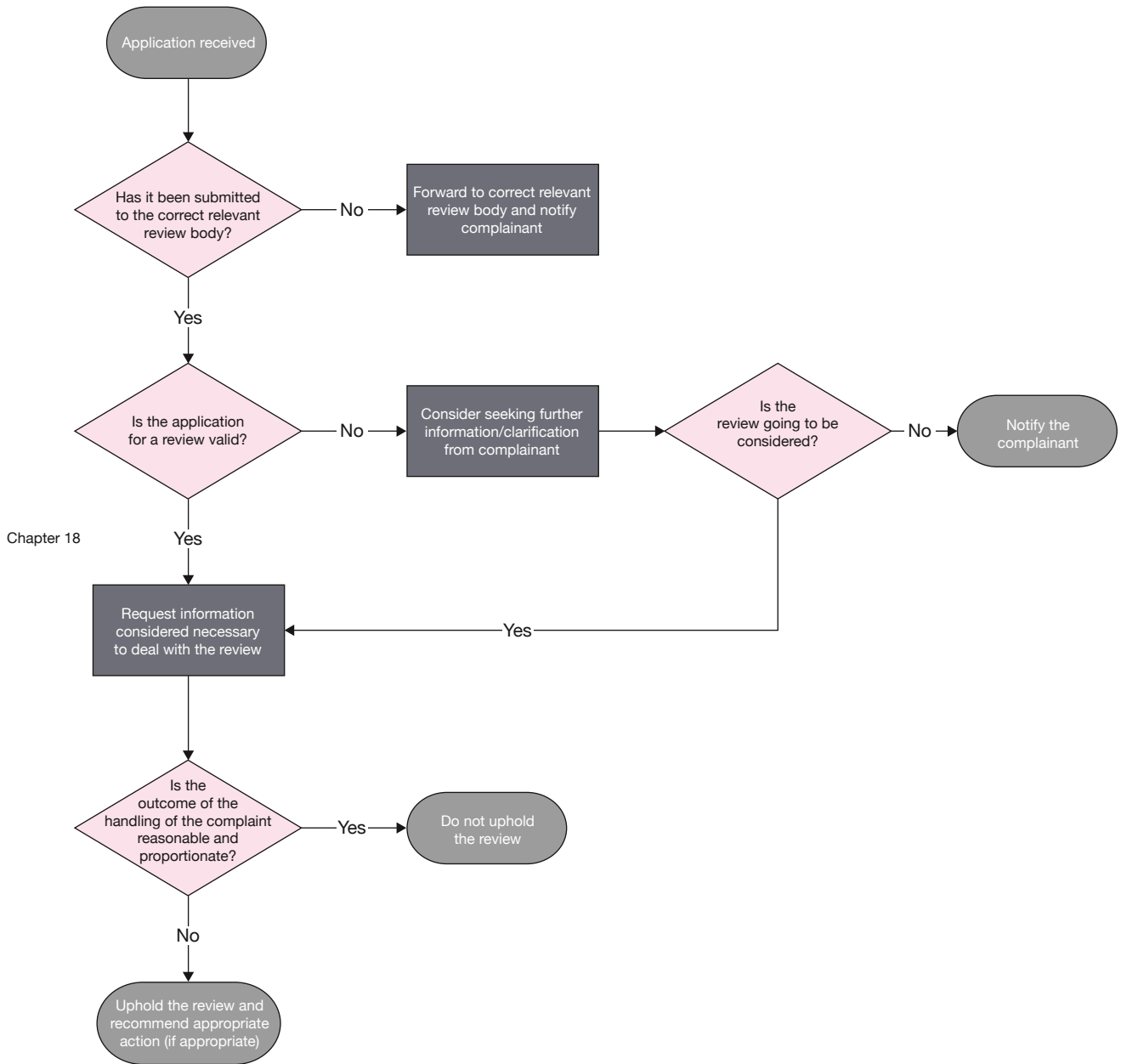
DSI matters



Relevant review body test



Reviews by local policing bodies



Glossary

Acting chief officer

A person exercising or performing the functions and duties of a chief officer in accordance with one of Section 41, 44, 45(4) of the *Police Reform and Social Responsibility Act 2011* or Section 25 of the *City of London Police Act 1839*¹⁸¹.

Adversely affected

A person is adversely affected if they suffer any form of loss or damage, distress or inconvenience, if they are put in danger or are otherwise unduly put at risk of being adversely affected¹⁸².

Where the complaint is about the conduct of a person serving with the police, a person cannot be a complainant by claiming to be adversely affected if they have only seen or heard the conduct, or its alleged effects, unless:

- they were physically present or sufficiently nearby when the conduct took place or effects occurred that they could see or hear the conduct or its effects; or
- they were adversely affected because (or it was aggravated by the fact that) they already knew the person in relation to whom the conduct took place¹⁸³

Appropriate authority

The appropriate authority for a person serving with the police is¹⁸⁴:

- for a chief officer or an acting chief officer, the local policing body for the area of the police force of which that officer is a member; or
- in any other case, the chief officer with direction and control over the person serving with the police

In relation to complaints not concerning the conduct of a person serving with police, the appropriate authority is the chief officer of the police force with which dissatisfaction is expressed by the complainant.

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 while 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.

181 Section 29, *Police Reform Act 2002*.

182 Section 29, *Police Reform Act 2002*.

183 Section 12, *Police Reform Act 2002*.

184 Section 29, *Police Reform Act 2002*.

For further advice and guidance on the application of Article 2, see case law guides produced by the European Court of Human Rights, which are available on its website. 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 their age, gender and state of health.

Article 3 may also be engaged where there is an allegation that the police, or other agency, have failed to protect someone from, or failed to properly investigate, torture, or inhuman or degrading treatment or punishment.

If appropriate authorities are unsure whether a matter engages Article 3, they should take legal advice.

Chief officer

Chief officer means the chief officer of police of a police force¹⁸⁵. For most police forces this will be the Chief Constable, for the Metropolitan Police Service and City of London Police it is the respective commissioners.

Code of Ethics

Produced by the College of Policing under section 39A, *Police Act 1996*, the written guide to the principles that every member of the policing profession of England and Wales is expected to uphold and the standards of behaviour they are expected to meet.

Complaint handler

A complaint handler is any person who has been appointed to handle a complaint. This includes, where a complaint is being investigated, the investigator.

Conduct

Conduct includes acts, omissions, statements and decisions (whether actual, alleged or inferred)¹⁸⁶.

185 Section 29, *Police Reform Act 2002*.

186 Section 29, *Police Reform Act 2002*.

Criminal proceedings

Criminal proceedings include¹⁸⁷:

- Any prospective criminal proceedings, or
- All criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determination of any appeal other than an appeal against conviction to the Crown Court)

Directed investigation

An investigation conducted by the appropriate authority under the direction and control of the IOPC¹⁸⁸.

The IOPC directs 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 IOPC's direction. The IOPC will review policy books and confirm the investigation has met the terms of reference.

Disciplinary action

Disciplinary action is¹⁸⁹:

- a written warning
- a final written warning
- reduction in rank, or
- dismissal without notice

Disciplinary proceedings

The meaning of disciplinary proceedings for the purposes to the *Police Reform Act 2002* is different at different points in the legislation.

For a member of a police force or special constable

Disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process.

The term 'disciplinary proceedings' will also include unsatisfactory performance procedures under the Police (Performance) Regulations 2020, wherever that term is used in section 22 (8), and paragraphs 2 (6B), 6(2E), 6A(10), 19ZG(2), 19ZH(6), 20(1), 22(10), 23(5A), 24(6B), 25(4C), 25(4E), 25(14) and 27 (2), Schedule 3, *Police Reform Act 2002*.

For any other person serving with the police

Disciplinary 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.

187 Regulation 2, Police (Conduct) Regulations 2020.

188 Paragraph 18, Schedule 3, *Police Reform Act 2002*.

189 Regulation 2, Police (Conduct) Regulations 2020.

The term ‘disciplinary proceedings’ will also include any proceedings or management process during which that persons 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 (8) and paragraphs 2 (6B), 6(2E), 6A(10), 19ZG(2), 19ZH(6), 20(1), 22(10), 23(5A), 24(6B), 25(4C), 25(4E), 25(14) and 27 (2) of Schedule 3, *Police Reform Act 2002*¹⁹⁰.

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.

Gross misconduct

A breach of the Standards of Professional Behaviour that is so serious as to justify dismissal¹⁹¹.

Harm test

Information in documents that are stated to be subject to the harm test under the Police (Conduct) Regulations 2020 must not be supplied to the officer concerned in so far as the appropriate authority considers that preventing disclosure to the officer is¹⁹²:

- necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings
- necessary in the interests of national security
- necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders
- necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters
- justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer concerned
- necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
- otherwise in the public interest

Independent investigation

An investigation carried out by the IOPC itself¹⁹³.

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.

190 Section 29, *Police Reform Act 2002*; Regulations 1 & 47, Police (Complaints and Misconduct) Regulations 2020; Regulation 2, Police (Conduct) Regulations 2020; Regulation 4, Police (Performance) Regulations 2020.

191 Paragraph 29, Schedule 3, *Police Reform Act 2002*.

192 Regulation 6, Police (Conduct) Regulations 2020.

193 Paragraph 19, Schedule 3, *Police Reform Act 2002*.

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 IOPC 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 the recordable conduct relates and that person cannot make a complaint; or
- is a person who has suffered serious injury that is alleged to be the result of the conduct complained of or to which the recordable conduct relates¹⁹⁴

In the case of a DSI matter, a person will have an interest in being kept properly informed if it appears to the IOPC 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 injury¹⁹⁵

A relative is defined as any spouse, partner, parent or adult child¹⁹⁶.

A person who does not fall into any of the categories above may still be an interested person if the IOPC or the appropriate authority considers that they have an interest in the handling of the complaint, conduct matter or DSI matter that is sufficient to make it appropriate for information to be provided to them 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 2002* if they have consented to information being provided to them¹⁹⁷.

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 Service district)
- the Common Council (in relation to the City of London police area)¹⁹⁸

194 Section 21, *Police Reform Act 2002*.

195 Section 21, *Police Reform Act 2002*.

196 Regulation 36, *Police (Complaints and Misconduct) Regulations 2020*.

197 Section 21, *Police Reform Act 2002*.

198 Section 101, *Police Act 1996*.

In addition, the Home Secretary may make an order in accordance with Section 107F of the *Local Democracy, Economic Development and Construction Act 2009* that the mayor of a combined authority is to exercise the functions of a police and crime commissioner in relation to a specific area.

Local investigation

An investigation carried out by the appropriate authority on its own behalf¹⁹⁹.

Mandatory referral

A complaint, conduct matter or DSI matter that must be referred to the IOPC.

Member of a police force

In this guidance ‘member of a police force’ means anyone who joins the police as a constable i.e. not as civilian staff, volunteer, or as a special constable.

Misconduct

The definition of misconduct in the *Police Reform Act 2002* is ‘a breach of the Standards of Professional Behaviour’²⁰⁰.

However, where a matter is being dealt with under the Police (Conduct) Regulations 2020, the following definition applies:

‘a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action’²⁰¹.

Misconduct proceedings

For a member of a police force or a special constable, misconduct proceedings means a misconduct meeting or a misconduct hearing²⁰².

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 they may have committed a criminal offence or behaved in a manner that 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)

199 Paragraph 16, Schedule 3, *Police Reform Act 2002*.

200 Paragraph 29, Schedule 3, *Police Reform Act 2002*.

201 Regulation 2, Police (Conduct) Regulations 2020.

202 Regulation 2, Police (Conduct) Regulations 2020.

- 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
- a person designated as a community support volunteer or a policing support volunteer under Section 38 to the *Police Reform Act 2002*²⁰³

Police barred list

The list referred to in section 88B(2) of the *Police Act 1996*. A list of all officers, special constables and staff members who have been dismissed from policing through the Police Conduct and Performance Regulations and the local force procedures for dealing with conduct and performance for police staff.

Police friend

A person chosen by the officer.

Where the person concerned is a member of a police force

The person concerned may choose:

- a police officer
- a police staff member
- a person nominated by the officer's staff association

who is not otherwise involved in the matter, to act as a police friend²⁰⁴.

Where the person concerned is a former member of a police force

The definition of 'police friend' is different with regards to former officers²⁰⁵. Former officers may choose:

- a police officer
- a police staff member
- any other person nominated by the person concerned and approved by the chief officer of the force in which the person is serving

Where the person concerned is a police staff member or designated volunteer

The person concerned may choose:

- a person employed by a trade union who is an official of that union
- a trade union official certified by that union as having experience or training in acting as a companion for police staff members or volunteers at disciplinary proceedings
- a police officer
- a police staff member; or

²⁰³ Section 12, *Police Reform Act 2002*.

²⁰⁴ Regulation 18, Police (Complaints and Misconduct) Regulations 2020.

²⁰⁵ Regulation 18, Police (Complaints and Misconduct) Regulations 2020 as modified by Schedule 2, Police (Complaints and Misconduct) Regulations 2020.

- any other person nominated by the person concerned and approved by the chief officer of the force in which the police staff member or designated police volunteer is serving who is not otherwise involved in the matter, to act as a police friend²⁰⁶.

Police officer

A member of a police force or special constable²⁰⁷.

Police staff member

Either:

- a civilian employee of a police force, or
- an employee of the Common Council who is under the direction and control of the chief officer²⁰⁸.

Practice requiring improvement

Underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the policing *Code of Ethics*²⁰⁹.

Recording

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

Recordable conduct matter

A recordable conduct matter is a conduct matter that has been recorded under the *Police Reform Act 2002*. 'Recording' in this context means that the conduct matter is given formal status and must be handled under the *Police Reform Act 2002*.

Reflective Practice Review Process

The procedures set out in Part 6 of the Police (Conduct) Regulations 2020, for handling practice requiring improvement.

Regulation 35, Police (Complaints and Misconduct) Regulations 2020

Regulation 35 of the Police (Complaints and Misconduct) Regulations 2020 specifies the exemptions from the duties to provide information imposed on the IOPC, appropriate authority or local policing body (as the case may be) by sections 20 (5) and 21 (10) to the *Police Reform Act 2002*.

These exemptions are when, in the opinion of the IOPC, appropriate authority or local policing body the non-disclosure of information is necessary for:

- a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings

206 Regulation 23, Police (Complaints and Misconduct) Regulations 2020.

207 Regulation 2, Police (Conduct) Regulations 2020.

208 Regulation 1, Police (Complaints and Misconduct) Regulations 2020.

209 Regulation 2, Police (Conduct) Regulations 2020.

- b) preventing the disclosure of information in any circumstances in which its non-disclosure:
 - i. is in the interests of national security
 - ii. is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders
 - iii. is required on proportionality grounds, or
 - iv. is otherwise necessary in the public interest

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

- a) that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings (or appeal against the outcome of such proceedings)
- b) the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings (or appeal)
- c) the disclosure of that information may prejudice the welfare or safety of any third party
- d) that information constitutes criminal intelligence

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. 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 named explicitly, but it may be possible to identify them from the context when several documents are considered together.

Relevant document

Where used in paragraphs 13.43 to 13.45, is a document relating to any complaint or matter under investigation (and includes a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed)²¹⁰.

Relevant review body (RRB)

The relevant body to consider a review made under Paragraph 6A or 25, Schedule 3, *Police Reform Act 2002*.

The IOPC is the relevant review body where:

- i. the appropriate authority is a local policing body
- ii. the complaint is about the conduct of a senior officer (an officer holding a rank above chief superintendent)

²¹⁰ Regulation 1, Police (Complaints and Misconduct) Regulations 2020.

- iii. the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of criminal or disciplinary proceedings²¹¹ or would not involve an infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights
- iv. the complaint has been, or must be, referred to the IOPC
- v. the IOPC is treating the complaint as having been referred (also known as the 'power of initiative')
- vi. the complaint arises from the same incident as a complaint falling within ii-v
- vii. any part of the complaint falls within ii-vi²¹²

In any other case the relevant review body is the local policing body.

Relevant statement

Oral or written statement relating to any complaint or matter under investigation²¹³.

Section 21A, Police Reform Act 2002

The IOPC must not disclose certain information, or the fact that it has been received, unless the relevant authority consents to the disclosure.

The investigator in a directed investigation must not disclose certain information, or the fact that such information has been received, to anyone other than the Director General of the IOPC unless the relevant authority consents to the disclosure. The information concerned is:

- intelligence service information
- information about a warrant issued under part two or part six of the *Investigatory Powers Act 2016*
- information from a government department that is identified by that department as information the disclosure of which may, cause damage to the security, economic interests or international relations of the UK or jeopardise the safety of any person²¹⁴

Senior officer

A member of a police force holding a rank above chief superintendent²¹⁵.

Serious injury

A fracture, deep cut, deep laceration or injury causing damage to an internal organ or the impairment of any bodily function²¹⁶.

211 In this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

212 Paragraph 30, Schedule 3, *Police Reform Act 2002*; Regulation 32, Police (Complaints and Misconduct) Regulations 2020.

213 Regulation 1, Police (Complaints and Misconduct) Regulations 2020.

214 Section 21A, *Police Reform Act 2002*.

215 Regulation 1, Police (Complaints and Misconduct) Regulations 2020.

216 Section 29, *Police Reform Act 2002*.

Severity assessment

An assessment as to:

- whether the conduct, if proved, would amount to misconduct that is so serious as to justify disciplinary action or gross misconduct; and
- if the conduct were to become the subject of disciplinary proceedings, the form which those proceedings would be likely to take²¹⁷

Special procedures

Special procedures apply only to investigations that relate to a complaint against, or the conduct of, 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.

Investigators must apply special procedures:

- in a complaint investigation, when 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 behaved in a manner that would justify the bringing of disciplinary proceedings
- in all investigations into recordable conduct matters²¹⁸

Throughout the investigation, the investigator must consider whether such an indication exists even if they initially decided it did not.

Standards of professional behaviour

Standards set out in Schedule 2, Police (Conduct) Regulations 2020.

Unsatisfactory Performance Procedures (UPP)

The procedures set out in the Police (Performance) Regulations 2020.

Voluntary referral

A complaint or recordable conduct matter that is not required to be referred to the IOPC, but where the gravity of the subject matter or any exceptional circumstances justifies referral²¹⁹.

217 Regulation 1, Police (Complaints and Misconduct) Regulations 2020. In this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

218 Paragraph 19A, Schedule 3, *Police Reform Act 2002*. In this case, for members of a police force or special constables, disciplinary proceedings means any proceedings under the Police (Conduct) Regulations 2020, apart from the Reflective Practice Review Process. It does not include unsatisfactory performance procedures. For any other person serving with the police it 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.

219 Paragraphs 4 and 13, Schedule 3, *Police Reform Act 2002*.

Withdrawn complaints

A complaint that is withdrawn in accordance with regulations 38 and 39, Police (Complaints and Misconduct) Regulations 2020 following an indication or notification from the complainant²²⁰.

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 conduct’ (and thus be able to be a complainant) if they acquired their knowledge of that conduct in a manner that would make them a competent witness capable of giving admissible evidence of that conduct in criminal proceedings, or if they have in their possession or control anything that would be admissible evidence in criminal proceedings of the conduct²²¹.

220 Regulations 38 & 39, Police (Complaints and Misconduct) Regulations 2020.

221 Section 12, *Police Reform Act 2002*.

Get in touch

Contact the IOPC for further advice, or if you need a copy of this issue in another language or format.

This guidance was published by the Independent Office for Police Conduct (IOPC) in February 2020, and was correct at the time of publication.

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» We welcome calls in Welsh. This document is also available in Welsh.

Rydym yn croesawu galwadau ffôn yn y Gymraeg. Mae'r ddogfen hon ar gael yn y Gymraeg hefyd.