

FOCUS

ISSUE THREE

Practical guidance on handling complaints, conduct matters, and death or serious injury matters within the Police Reform Act 2002

www.ipcc.gov.uk/page/focus

Quick links: Inside this issue

The suitability test	1
Article 2 and Article 3	2
Engage with the complainant	4
Action plans	5
Mediation	6
Documentation	7
Referral to the IPCC	8

Reference: IPCC Statutory Guidance section 5

Local resolution

The Police Reform and Social Responsibility Act (PRSRA) 2011 amended the Police Reform Act (PRA) 2002, and changed the way most complaints are handled, including those suitable for local resolution.

Local resolution (LR) is a way of handling complaints by resolving, explaining or clearing up a matter directly with the complainant. The complainant's consent is not needed. Local resolution can be a proportionate, flexible and timely way to resolve many complaints that would not justify formal disciplinary or criminal proceedings.

Complainants now have a right of appeal against the outcome of the local resolution process, if their complaint is about conduct. If the complaint is about a direction and control matter, there is no right of appeal.

The suitability test

A complaint is suitable for local resolution if the appropriate authority is satisfied:

- a. the conduct being complained about, even if proven, would not justify criminal or disciplinary proceedings against the person being complained about; and
- b. the conduct complained about, even if proven,

would not involve the infringement of a person's rights under Article 2 or 3 of the European Convention of Human Rights (ECHR).

For these purposes, 'disciplinary proceedings' only refers to misconduct proceedings (meetings and hearings). Complaints that would result in formal performance procedures can be locally resolved.



Appropriate authority - This is the police force for all officers except the Chief Constable, whose appropriate authority is the Police and Crime commissioner

Article 2 is a limited right

It involves both a prohibition on the State taking life unlawfully, and a duty on the State to protect life. Sometimes, it will be clear that an allegation involves an infringement of a person's Article 2 rights. For example, when a person dies in police custody or following a road traffic incident and their family alleges that a police officer drove carelessly or dangerously. In other cases, it might be less clear. For example:

- a 'near miss' case where someone suffers a near fatal injury as a result of police action or inaction
- where a person attempts suicide in police custody
- where the police are aware, or should have been aware, of a threat to life and fail to take adequate steps to protect life.

Each case must be considered on its facts.

Article 3 is an absolute right

It means that torture, or inhuman or degrading treatment is never allowed. Torture is a higher threshold than inhuman or degrading treatment. Article 3 can include a wide range of treatment, and it depends on the circumstances of the case. The necessity of the force used must be considered and the effect it has, the age of the person it is used against, their health, mental and physical condition. The European Court of Human Rights has made clear that ill treatment has to reach a minimum level of severity before it can be considered inhuman or degrading treatment, or punishment. Treatment such as use of handcuffs, solitary confinement for short periods, and use of reasonable force during arrest will not normally engage Article 3. However, each case needs to be considered on its facts.

The test is whether the conduct complained about, even if proven, would not justify criminal or disciplinary proceedings. Therefore, when considering if the conduct would justify the bringing of proceedings, there should be no consideration of the strength of the evidence, whether the complaint is likely to be upheld, or the likelihood of prosecution.

When assessing a complaint using the suitability test, the complaint should be taken at face value, focusing on the substance of the conduct being complained about. The decision should not be based on the wording of the complaint alone (the relevant appeal body test is applied in this way). It also should not be based on reviewing the evidence available and exploring the likely outcome (the special requirements test on investigations is applied in this way).

The person assessing the complaint's seriousness should consider contacting the complainant to better understand their complaint and to get further information. A mini-investigation to assess the strength of evidence for the complaint (such as getting custody records, incident logs, speaking to the officers concerned, etc) should not be conducted. If the evidence does not support the complaint then the complaint is not upheld following an investigation, it does not make it any more suitable for local resolution.

It is possible for a complaint that uses exaggerated language to be locally resolved, but the right of appeal is to the IPCC. It is also possible for a complaint to be deemed unsuitable for local resolution, but then the appointed investigating officer, upon reviewing the evidence, does not apply special requirements to the subsequent investigation.

Relevant appeal body test and special requirements test -
see IPCC statutory guidance paragraphs 13.11 to 13.17 and 9.29 to 9.34



Case study one: exaggerated language

A man's ex-business partner reported him for harassment, after a dispute over their mutual assets. The subsequent harassment trial found the man not guilty. The man then tried to report his ex-business partner to the police for perjury and wasting police time. Considering the facts, the police did not pursue the case against the ex-business partner.

The man then complained that the decision not to pursue his allegations against his ex-business partner was wrong and perverted the course of justice.

An investigation into an allegation that an officer perverted the course of justice could result in criminal and/or disciplinary proceedings. This means that the right of appeal against the outcome of this complaint is to the IPCC.

In this case, the substance of the complaint is that the decision not to pursue the ex-business partner for wasting police time or perjury was wrong. Perverting the course of justice involves someone taking deliberate action – for example, fabricating evidence – to alter the course of public justice. Making a decision not to carry out a criminal investigation is not perverting the course of justice, even if the decision proves to be the wrong one. This complaint is suitable for local resolution.



Case study two: mini investigation

A complainant who was stopped and searched alleged that the officer was racist in choosing to stop him. He also alleged that the officer had threatened to arrest him when he objected to how intimately he was being searched (he alleged that the officer had tried to put his hands down his boxer shorts). The stop and search form was reviewed and neighbours on the street were asked if they had seen the stop. Some neighbours saw the stop, but did not see the officer put his hands down the man's underwear or the man pull away from the officer. The indecent assault aspect of the complaint was felt to be without basis and the rest of the complaint suitable for local resolution.

The entire complaint should have been investigated. If proved, racism and sexual assault, combined with abuse of authority in threatening arrest, would justify criminal or disciplinary proceedings. The evidence gathered would then inform the investigating officer's decision whether to certify the investigation subject to special requirements.

Non-engaged local resolution

Under the new legislation, a complainant does not have to give consent to the local resolution process. This means that where a complaint is suitable for local resolution, the process can go ahead even if the complainant objects.

A fundamental part of the local resolution process is that the complainant has an opportunity to voice their concerns and to be involved in deciding what needs to be done to resolve the complaint. Forces should approach local resolution with the aim of restoring the complainant's faith in their police force.

It should be normal practice to work with the complainant, giving their wishes and preferences due consideration. We recognise that there will be times when a complainant's expectations or requests are not practicable or proportionate and cannot be accommodated. There will also be times when complainants, or their agents, refuse to communicate with the force, but the substance of the complaint is entirely suitable for local resolution. In exceptional circumstances, there might be reasons why working with the complainant is not sensible. In these circumstances, it is possible to locally resolve the complaint

If there is doubt about a complaint being suitable for local resolution, err on the side of caution and conduct an investigation.

without the complainant's full participation, but a clear written record must be kept to show why the force has had to do this, and what efforts were made to involve them before making this decision. Forces should still approach local resolution with the aim of trying to restore the complainant's faith. The action plan should still be effective and relevant to the complaint, and the local resolution should be of the same standard as one where the complainant is fully involved.



Case study three: non-engaged local resolution

A man was arrested, handcuffed and taken from his house into custody. He later complained, via his solicitor, that the officers would not let him change his clothing before leaving the house and then ignored his requests for help when his trousers fell down. The letter of complaint from his solicitor refused access to the complainant and demanded a full investigation into the complaint.

This complaint, even if proved, would not result in criminal or disciplinary proceedings. It should therefore be locally resolved. The force wrote back to the solicitor, explaining why the complaint should be locally resolved, including their proposals for addressing the complaint. The letter invited the solicitor, and the complainant, to take part in the process and asked for their views on the proposals. The solicitor replied, repeating that the matter should be fully investigated and saying that the complaint was not suitable for local resolution. The appointed officer reviewed the complaint again, but decided it was still suitable for local resolution. The appointed officer went ahead and completed the local resolution process.

Appointment of officers to resolve the complaint

It is not always necessary to appoint an officer to resolve a complaint. Sometimes local resolution can be completed on the spot. If an officer is appointed, it must be someone serving with the same police force as the person complained

about, and they should have the right skills to locally resolve the complaint.

Engage with the complainant

During local resolution, the appointed officer should take time to find out exactly what the complaint is about and what the complainant would see as a satisfactory outcome. It is best practice to meet the complainant face-to-face, wherever possible. In some cases the complainant might choose to communicate in another way (email/telephone). While other ways of communicating are perfectly acceptable if agreed with the complainant, a written record should be kept showing clearly what is discussed.

It is important to be objective when meeting complainants and not to pre-judge the circumstances of their complaint or the possible outcome. Ask the complainant; 'What can we do to put things right?'

The most effective local resolutions will show that the complainant has taken part in the process, particularly with the action plan, and that the appointed officer gave the complainant the right information about the process and its limitations. It is important to manage the complainant's expectations and to explain what might be an unrealistic outcome and the reasons for this.



Case study four: good engagement

The police had contact with a man who had a brain injury. Afterwards, his carer complained that the man was not given the appropriate care during that contact.

The police recognised that the carer was the best person to explain the level of care the man needed, and that the level of care given had potentially fallen short and arranged a meeting with the carer. During the meeting, the police asked the carer what she wanted to happen. Together they agreed some questions to ask the officer involved. The carer was satisfied that answering these questions would resolve the complaint.

Action plans

Local resolution is a flexible process that should be adapted to meet the needs of the complainant and the specifics of the complaint they are making. An action plan should be effective, achievable, relevant to the complaint, and should clearly set out what steps will be taken in resolving the complaint. A successful local resolution should always include a written action plan, which the complainant should be involved in creating. This empowers the complainant to think about what they want to achieve, as opposed to only including the officer's actions. Appointed officers should try to manage a complainant's expectations and discuss what realistic outcomes might be achieved. The plan should be relevant to the complaint and should address all of the matters raised. The appointed officer should make a genuine attempt to resolve the complaint. This includes thinking of relevant and innovative ways to resolve the matter rather than a standard plan. For example, one that tells the officer about the complainant's concerns, but does nothing more specific.

Officers complained about

Local resolution should be promoted throughout police forces, so that officers understand the process and see that local handling is an effective and proportionate way of dealing with certain complaints. Officers should be supported through any complaint made against them and encouraged to be part of the process. Local resolution aims to resolve the complaint, rather than being about blame or wrongdoing. Statements made by any person during a local resolution process cannot be used in any subsequent criminal, civil or misconduct proceedings.

An officer complained about should give a thorough account of their actions or apologise and reflect on their behaviour. The appointed officer should always try to get a full explanation from the officer(s) concerned and should explain the benefits of giving an open and honest account as part of the local resolution process. An officer acknowledging that they know about the complaint, or saying they did not intend for the complainant to

feel that way, gives no real resolution to the complainant.

A 'no comment' response is inappropriate. If an officer is unwilling to take part in a meaningful way, there can be no resolution to the complaint.



Case study five: bereavement

A man died and his family was told. The family complained about the way they were told and how the enquiries surrounding his death were handled, saying there was a lack of sensitivity to the family and their grief.

The officer complained about was told their concerns and she gave a genuine, sincere reply, apologising for the way she had told them of the man's death. She explained her good intentions and that she was mortified she had upset them. She reflected on the incident of her own accord, consulting the force's sudden death policy and learned from the incident.



Case study six: defensive officers

A young man complained that during a stop and search, the officer had said: 'you kids always have drugs.'

The officer was told about the complaint and asked for his response. He spoke to his federation representative and then replied: 'no comment'.

This is an unacceptable answer to a complaint and resolves nothing. The appointed officer needs to contact the officer who was complained about, and his supervisor, again to explain the importance of taking part in the local resolution and providing a meaningful response. If the officer still continues to be obstructive, the appointed officer will need to think about whether this makes it impossible to complete the local resolution, meaning that it needs to be abandoned and an investigation carried out instead.

Mediation

There are some police forces currently trying out mediation schemes. Mediation can be a highly effective way of locally resolving complaints, particularly ones caused by a fundamental misunderstanding. It can be a resource-intensive process, requiring a police officer or member of staff to have specialist mediation skills training, and it might not be suitable in some cases. It also needs full involvement from both the complainant and the officer complained about – it should never be imposed on either party.



Case study seven: mediation

A woman complained that her local officer was taking the side of her neighbours in a dispute. When she reported an incident to the officer, he had taken no further action. When her neighbours reported an incident, he had spoken to her and asked her to sign his pocket notebook to confirm he had spoken to her.

The appointed officer saw the importance of restoring the relationship between the local officer and the complainant. When speaking to the officer, it was clear that the complainant was mistaken in her belief that the officer had taken no further action. The officer was willing to explain the action he had taken to her in person and the complainant was willing to meet the officer.

A meeting was held between the officer and the complainant. The officer explained to the complainant what action he had taken on her report, why it was different to the action he had taken following the neighbours' report, and then explained what might happen if there were any more incidents. After the mediation, the complainant was satisfied that the matter was being handled impartially and understood what options were available to her if she continued to have problems.

Good quality outcomes

When setting an action plan for local resolution, the appointed officer should discuss with the complainant what they would like to achieve and what would be a realistic outcome. Complainants now have a right of appeal against the outcome of local resolution and it is important to be able to demonstrate a proper outcome.

In the majority of cases, the outcome will involve an explanation, giving the complainant information and an account from the officer complained about. Appointed officers should use innovative ways to resolve complaints and think about whether the matters raised affect force policy or training, and whether an apology from the force is needed (local resolution should never promise an apology from the officer). The appointed officer should also think about whether the incident needs to be looked at again and if the officer concerned needs ongoing monitoring, and whether any organisational lessons that need to be shared. The appointed officer should consider the bigger picture and any wider learning as a result.



Case study eight: inadequate outcome

A man complained about the way a police officer spoke to him when he was stopped for speeding, describing the officer as rude and abrupt.

The officer was told about the complaint, and said that it was his manner and he was like that with everyone. This answer was given to the complainant and no further action was taken.

This answer is inadequate. It raises wider issues about the officer's manner with the public and the local resolution should have looked closely at his complaint history to see if there was a pattern of behaviour that needed addressing through performance measures.

Communication at conclusion

It is essential to explain the outcome to the complainant, including a response from the officer complained about. A complainant might consider that the local resolution has failed if the outcomes are not communicated well. It is unacceptable to only send the complainant a letter telling them the action plan has been completed without any detail of what has been done. This is not meaningful and fails to give the complainant a resolution.

The appointed officer should give the complainant meaningful feedback about the outcome of each action point, including a full response from the officer(s) complained about and any other information gathered as a result.

The appropriate authority then issues the final decision letter, telling the complainant the process is complete and giving the appeal right.



Case study nine: bigger picture

A woman's ex-partner assaulted her and a criminal case was pursued against the ex-partner. The case failed at court because the photographs of her injuries were not on file.

The local resolution of the complaint recognised that this mistake had far-reaching consequences for the complainant. It also made sure the photographs were put on the file. The appointed officer then assisted the woman in finding out about her options to begin the prosecution of her ex-partner again. The resolution also committed to reviewing the procedures to see if they could find ways to improve them to stop the mistake happening again.



Case study ten: poor call handling

A complaint was made about the way the police handled a call, which resulted in an opportunity to catch a burglar in the act being missed.

The outcome explains that the appointed officer listened to the call and spoke to the call handler about it. The call handler agreed that they made a mistake during the call. The complainant was told that the content of the call will be used for training, and will be shared with other call handlers to prevent the same mistake being made again. The complainant was also told that the call handler would be monitored for the next three months and that the complaint had a deep effect; she had learned from the incident.

Documentation

The complete local resolution process should be recorded on a standard local resolution form, which keeps a written record of each part of the process and prompts the appointed officer. An effective local resolution form will:

- be a guide through the process, prompting discussion with the complainant about the process
- make sure a full written record is kept of the action plan and the complainant's wishes
- make sure there is a written record of the outcomes of each action point
- explain how the complainant was told the outcome and any comments they made in reply

Process

Local resolution should happen at the root source, at local managerial level – usually by the line manager of the officer complained about. Senior divisional officers can then be responsible for complaints made within their area and against the officers they manage. The appointed officer should own the local resolution process and see it through to the end, including giving the complainant details of the outcome. A copy of the completed local resolution form should then be given to the Professional Standards Department.

The role of the Professional Standards Department (PSD) is to oversee complaint handling and assure quality. As the appropriate authority, the PSD is responsible for sending the complainant the final

decision letter telling them that the process is complete and about their right of appeal. The complainant and officer(s) complained about should be given a copy of the completed local resolution form as a matter of course.

Abandoned local resolutions

Anyone who has participated in attempting to locally resolve a complaint is disqualified from being appointed to investigate or participate in a subsequent investigation.

Referral to the IPCC

If a police force voluntarily refers a complaint to the IPCC or the IPCC asks a force to refer a local resolution, it cannot continue unless the IPCC decides to refer it back if it deems investigation unnecessary. When the IPCC deems an investigation necessary, an application for local resolution must be submitted to the IPCC for approval. Applications should be made only when there is new information or evidence that was unavailable at the time of the referral and that evidence and/or information suggests local resolution is more appropriate.

Get in touch

IPCC

Tel: 0300 020 0096

Text relay: 18001 0207 166 3000

Email: enquiries@ipcc.gsi.gov.uk

Website: ipcc.gov.uk

