



# Operational advice note

(Mandatory referral criteria update, April 2017)

## Section 1: Introduction

- 1.1. The Independent Police Complaints Commission (IPCC) has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales. One way in which we seek to achieve this is by issuing statutory guidance to assist local policing bodies and forces to comply with their legal obligations and achieve high standards in the handling of complaints, conduct and death and serious injury (DSI) matters.
- 1.2. This operational advice note is intended to supplement the [IPCC Statutory Guidance to the police service on the handling of complaints](#) (the IPCC Statutory Guidance).
- 1.3. The guidance set out in this operational advice note will be incorporated into a revised version of our full statutory guidance, which will be published as soon as possible following the commencement of legislation in the summer of 2018.

## Background

- 1.4. Appropriate authorities are required by law to refer complaints and recordable conduct matters, which fall within the mandatory referral criteria, to the IPCC (IPCC Statutory Guidance, section 8).
- 1.5. As of 22 May 2017, the mandatory referral criteria will be amended to specifically reference, as a part of the existing 'serious corruption' criterion, any abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship. This seeks to clarify the existing position, that such behaviour is an example of serious corruption that must be referred to the IPCC.
- 1.6. The updated mandatory referral criteria are set out below with the new text highlighted in red.

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

- serious assault
- serious sexual offence
- serious corruption **including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship**
- criminal offence or behaviour which is liable to lead to misconduct proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status identified in paragraph 8.18 of this guidance
- a relevant offence
- complaints or conduct matters which are alleged to have arisen from the same incident as anything falling within these criteria.

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

Regulation 4 and 7, Police (Complaints and Misconduct) Regulations 2012  
Regulation 1 and 2, Police (Complaints and Misconduct) (Amendment) Regulations 2017

## **Section 2: Guidance on 'abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship'**

### **What is an 'abuse of position'?**

- 2.1 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
  - any powers conferred on them by virtue of their position as a person serving with the police
- 2.2 To fall under this part of the 'serious corruption' criterion, the abuse of position must be for a sexual purpose or for the purpose of pursuing an improper emotional relationship. If an abuse of position is for neither of those purposes, it may still be referable either as a different form of serious corruption, or because it falls under another part of the mandatory referral criteria.

## **What is meant by ‘for a sexual purpose’?**

- 2.3 The term ‘sexual purpose’ should be interpreted widely to include any relationship, communication, action or gratification of a sexual nature with a member of the public.
- 2.4 It is not necessary for the pursued sexual purpose 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. It is however, necessary for an abuse of position (as defined in paragraph 2.1 of this guidance) to have first taken place.
- 2.5 Examples of a sexual purpose could include:
- pursuing consensual sexual intercourse with a member of the public
  - sexual touching or sexual contact with a member of the public whether or not it is initiated by the member of the public
  - requesting or accepting sexual favours in exchange for not pursuing a police function (e.g. speeding fine or arrest)
  - gratuitous sexual touching (e.g. inappropriate and unnecessary searches)
  - using police information or systems to identify individuals with a view to pursuing a sexual relationship
  - using a professional relationship with a member of the public to pursue a sexual or improper emotional relationship with another member of the public (e.g. a family member)
  - sexually inappropriate communications or unnecessary contact for the purpose of developing a sexual or improper emotional relationship

## **What is an ‘improper emotional relationship’?**

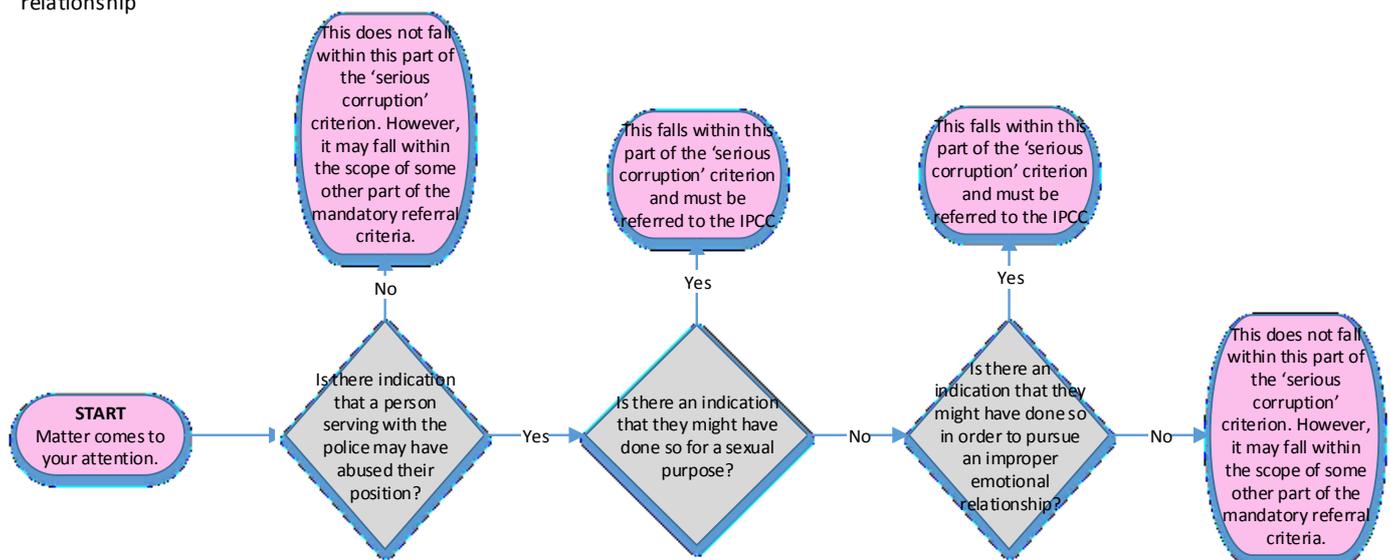
- 2.6 An improper emotional relationship is any emotional or personal relationship between a person serving with the police and a member of the public which a reasonable person would consider to be a serious breach of appropriate professional boundaries.
- 2.7 It is not necessary for the pursued improper 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. It is however, necessary for an abuse of position (as defined in paragraph 2.1 of this guidance) to have first taken place.
- 2.8 Examples of this could arise from:

- An inappropriate friendship with any member of the public, vulnerable or otherwise, identified using police information or police systems.
- An inappropriate friendship with a minor.
- Inappropriate social media interactions with a member of the public.
- Inappropriately exchanging personal contact details with a member of the public.
- A person serving with the police failing to report to their line manager the fact that a member of the public has attempted to pursue an improper relationship with them.

## Applying the definition

2.9 The below flow chart sets out the process for applying the definition of ‘abuse of position for a sexual purpose or for the purposes of pursuing an improper emotional relationship’.

Deciding whether something amounts to an abuse of position for a sexual purpose or for the purposes of pursuing an improper emotional relationship



## **Section 2: Additional guidance on applying the mandatory referral criteria**

### **The statutory offence of police corruption**

- 3.1 On 13 April 2015, a new statutory offence of 'corruption or other improper exercise of police powers and privileges' was introduced by section 26 of the Criminal Justice and Courts Act 2015.
- 3.2 For the avoidance of doubt, any alleged conduct that could arguably fall within the definition of this offence would constitute an allegation of serious corruption and must therefore be referred to the IPCC.