

FOCUS

ISSUE FOUR

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

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Reference: IPCC Statutory Guidance paragraphs 9.14 to 9.16, 9.29 to 9.38, 9.48 to 9.56, and 13.11 to 13.17

Decisions at the beginning of a complaint

The Police Reform and Social Responsibility Act (PRSRA) 2011 amended the Police Reform Act (PRA) 2002, and changed the way most complaints are handled. The Act changed some of the decision points for complaints (and conduct matters) and introduced some new ones.

This issue includes:

- deciding the relevant appeal body (Statutory Guidance paragraphs 13.11 to 13.17)
- suspending complaints (Statutory Guidance paragraphs 9.48 to 9.56)
- assessing the level of investigation needed (Statutory Guidance paragraphs 9.14 to 9.16 , 9.29 to 9.38)

Deciding the relevant appeal body (the RAB test)

The IPCC is the relevant appeal body under any of these conditions:

1. a non-recording appeal
2. a complaint about senior officers
3. the conduct complained of, if proved, would justify criminal or misconduct proceedings or involves the infringement of Article 2 (right to life) or Article 3 (protection from torture) of the Human Rights Act
4. the complaint has been, or must be, referred to the IPCC
5. the complaint arises from the same incident as a complaint that satisfies any of points 2-4 above

If any allegation within the complaint meets one of these conditions, the IPCC is the RAB for the whole complaint.

For all other complaints, the chief officer of the police force is the RAB.

This decision is based on the wording of the complaint alone. The merit of the complaint or the possible outcomes is irrelevant at this stage.

Senior officers are defined in the legislation as those who hold a higher rank than chief superintendent. An officer's rank at the time of the complaint, not at the time of the incident, determines how the complaint is handled.

For the majority of complaints, the RAB test and the local resolution test will be aligned. If it is apparent from the very beginning that the complaint is suitable for local resolution and this does not change throughout the process, and none of the other criteria are met, the relevant appeal body is always the chief officer. However,

it is possible for a complaint to be presented as a more serious complaint than it actually is. In these instances, while the IPCC remains the relevant appeal body, it is possible to locally resolve the complaint – exaggerated language does not dictate how the complaint is subsequently handled.

This is the same for a complaint that an officer breached Article 2 or Article 3. The substance of the incident might not have met the threshold for a death or serious injury referral to the IPCC, but the right of appeal is still to the IPCC.



Case study one: perverting the course of justice

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 evidence, 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 misconduct proceedings.

The right of appeal against the outcome of this complaint is to the IPCC.

The substance of the complaint is that the decision not to pursue the ex-business partner was wrong. Perverting the course of justice involves someone taking deliberate action, such as fabricating evidence, to alter the course of public justice. Deciding not to carry out a criminal investigation is not perverting the course of justice, even if the decision proves to be wrong. This complaint is suitable for local resolution.

If the complainant had instead said in his complaint that he felt the reviewing officer made a mistake and did not properly consider the paperwork, that would not result in criminal or misconduct proceedings even if proved. The relevant appeal body is the chief officer.



Case study two: police inaction has resulted in a death

The police were called to an argument between a couple. The police separated the couple and the husband agreed to move out and live with a friend. A week later, the wife died of a drug overdose. The coroner delivered a verdict of misadventure, concluding that it was an accidental overdose and there was no evidence of foul play. Her father has since said that the

husband murdered his estranged wife and that, if the police had arrested him on the night of the argument, he would have been on remand and unable to murder her.

The complaint does not meet the referral criteria. There is no indication of any link between the police not arresting the husband and his wife's drug overdose a week later. The complaint says the police are responsible for a person's death, however, so the appeal body is the IPCC.

Who the RAB is has no bearing on any subsequent assessment of the substance or merit of the complaint and what action should be taken on it.

Once the decision is made that the IPCC is the RAB, that cannot be changed back to the chief officer. If the decision is made that chief officer is the RAB, the RAB can be changed to the IPCC if one of the RAB test conditions is met. For example, if a second complaint is made about the same incident that meets one of RAB test conditions 2-4, then clearly the fifth condition now applies to the first complaint.

Appropriate authorities must tell the complainant who they consider the RAB to be (and why, giving details of which conditions are met, if any) when informing a complainant of the right of appeal against a decision. If the chief

officer is the RAB, they must also make it clear to the complainant that there is no right of appeal to the IPCC on the complaint decision or the subsequent appeal decision.

The appropriate authority's decision on who they consider the RAB to be is not binding. The IPCC can only consider appeals if one of the RAB test conditions is met. The chief officer can only consider appeals if none of the RAB test conditions are met. If either appeal body receives an appeal where they believe the other appeal body is the correct RAB, they must send the appeal to the correct appeal body and tell the complainant.

Suspending complaints

It is possible to wait until criminal proceedings are finished before addressing a complaint if taking any action might prejudice any criminal investigation or proceedings. The Crown Prosecution Service and the appropriate authority should always be consulted before putting a complaint on hold. It is not possible to suspend a complaint because of civil proceedings.

There must be good reason to believe that addressing the complaint would create a significant risk of a specific prejudice to the criminal proceedings. A complaint should not be suspended simply because the complainant is facing criminal charges.

The first question to consider is if there is a genuine link between the complaint and the criminal matters and whether there is a real risk that any proceedings would be prejudiced.

If there is a connection between the complaint and the criminal matter, the complaint should

not be automatically delayed. It is necessary to show that addressing the complaint would cause prejudice to the criminal investigation or proceedings. If only one aspect of the complaint is related, that aspect can be held and the rest of the complaint continued.



Case study three: arrest for stolen goods

Police attended a man's house to arrest him on suspicion of handling stolen goods. The man subsequently complained that excessive force was used during the arrest and that one of the officers was rude to him in the back of the van.

There is no reason to delay investigating this complaint. The man is facing criminal proceedings for handling stolen goods. The question of whether the officer used too much force when arresting him, or was rude to him, has no bearing on those proceedings.

If, in addition to facing criminal proceedings for handling stolen goods, the man is charged with assaulting the officer while resisting arrest, there is now a connection: he is facing criminal proceedings for the same incident he has complained about.

The allegation of rudeness is connected to the arrest, but investigating whether the officer was rude to the man in the van would not necessarily prejudice the criminal matter of assaulting the officer during the arrest.

Even if prejudice would be caused, the complaint should not be automatically delayed. If issues of public concern would outweigh any prejudice, the complaint should continue.

Things to consider:

- the relative seriousness of the allegations
- the strength of evidence – is there supporting evidence for the complaint?
- whether the delay will lead to an injustice to the complainant – is the allegation against the officer statute barred ?
- whether a delay will mean key investigative opportunities being missed

This power to hold complaints only applies where the criminal proceedings are against the complainant or other parties. If a complaint includes an allegation of criminal behaviour, the criminal and conduct aspects cannot be separated and both aspects should be investigated together in one complaint investigation conducted under criminal caution where necessary.

Case study four: arrest for speeding

Traffic officers pulled over and arrested a speeding motorist. The motorist complained afterwards that the officer hit him repeatedly with a baton during his arrest, which he felt was unnecessary. He had extensive bruising consistent with the allegation.

Even though the complaint is linked to the speeding charge against the motorist, the force should think about continuing to investigate it straight away. Investigating the way the motorist was arrested may compromise the speeding charge, but assault is a more serious allegation than speeding. There is evidence to support the complaint and the assault may be statute barred if the Crown Prosecution Service thinks the bruising amounts to common assault and not actual bodily harm.

Assessing the level of investigation needed

A complaint investigation must be certified as subject to special requirements and a severity assessment done if the investigating officer believes that there is an indication that the person under investigation may have committed a criminal offence or behaved in a manner that would justify misconduct proceedings.

The severity assessment looks at whether the conduct would amount to misconduct or gross misconduct if proved, and the form any misconduct proceedings would be likely to take. It can take into account the evidence available through a preliminary evidence gathering exercise. A complaint will be unsuitable for local resolution because the appropriate authority considers that there is a prospect of misconduct

or criminal proceedings, if proven. When the investigating officer then considers whether to put the complaint into special requirements, he or she may be satisfied, having considered the complaint and the preliminary evidence in more detail, that there is no indication of criminality or behaviour that would justify misconduct proceedings. In this case, there is no need to put the complaint into special requirements.

The severity assessment may be reviewed at any time. If it becomes clear during the investigation that the conduct would not result in a gross misconduct hearing (even if proved), the officer concerned should not be subject to a full gross misconduct investigation.

It is crucial that the special requirements assessment is done properly and fully documented. If an investigation is not done under special requirements, this can result in abuse of process arguments and arguments surrounding the admissibility of evidence gathered during the investigation being put forward in any subsequent criminal or misconduct proceedings and may mean that the investigation will have to be done again, under the correct procedures.

There are four possible types of investigation:

Low level

This type of investigation is for conduct, which, if proved, would result in formal performance procedures or management action, at the most. They are not done under special requirements.

Case study five: pattern of poor performance

The complainant was stopped and searched and alleged that the officer threatened to arrest him when he objected to how intimately he was being searched. He alleged that the officer had put his hands down his boxer shorts.

The substance of the complaint is sexual assault, combined with abuse of authority in threatening arrest, which would justify criminal or misconduct proceedings (if proved) so it needs to be investigated. The officer was wearing a body camera and the footage is reviewed by the investigating officer to decide on the level of investigation needed. The footage clearly and definitively shows that the officer did not put his hands down the man's underwear, but the stop was not handled well by the officer and he did threaten to arrest him. The investigating officer also reviewed the officer's complaint history and found that management action had been taken before for a similar reason.

Having viewed the indisputable evidence regarding the allegation of sexual assault, the investigator can conclude that there is in fact no indication that the officer has committed a criminal offence or behaved in a manner justifying disciplinary proceedings. As a result, no special requirements need to be applied. What remains is how the stop was handled, including the fact that the officer had threatened arrest. Given that the officer has had management action for something similar, this investigation may result in formal performance procedures.

Misconduct

This type of investigation is for when the matter is serious enough that it would result in misconduct proceedings (if proved) but not so serious that the officer could lose his job and the officer does not have a live final written warning when this assessment is made. This means that, if proven, the conduct could be dealt with by a misconduct meeting.

Officers must be served formal investigation notices, with the right of reply and the other special requirements, such as negotiation on interview dates and times, followed during the investigation. If the conduct could result in criminal proceedings, the legislation, policies and procedures for investigating crime must be followed. For example, the officer must be given a criminal caution at the beginning of his interview.

Case study six: abusive language

Two officers arrested a man for being drunk and disorderly. The officers had difficulty arresting the man. When the man was under control and restrained, one of the officers was verbally abusive to him. His colleague reported him to his supervisor during the next shift.

The officer's alleged behaviour is against the Standards of Professional Behaviour and cannot be classed as poor performance. Although there will be disciplinary proceedings, the officer's behaviour will not justify dismissal, so it is appropriate to investigate the matter as misconduct.

Gross misconduct

This type of investigation is for when the matter is serious enough that the officer could lose his job if proved. They also occur when the matter is assessed as misconduct, but the officer has a live final written warning when that assessment is made, and therefore he could lose his job if this matter is also proved.

Officers must be served formal investigation notices, with the right of reply and the other special requirements, such as negotiation on interview dates and times, followed during the investigation. If the conduct could result in

criminal proceedings, the legislation, policies and procedures for investigating crime must be followed. For example, the officer must be given a criminal caution at the beginning of his interview.

Case study seven: discriminatory behaviour

At a football match, stewards removed an off-duty officer from the stands because he was being disruptive and inciting violence between the supporters. He made racially abusive comments to one steward and suggestions about the sexual orientation of the other, and about his motives for taking hold of him. He was arrested for the public order offences he committed in the stands and the two stewards subsequently made complaints about his conduct towards them.

The fact that this was off-duty conduct does not diminish the seriousness of the allegations, or of his conduct in the stands. The complaint allegations, if proved, would justify dismissal. They are also criminal in nature – this investigation is a gross misconduct investigation, conducted under criminal caution, done in conjunction with the criminal investigation into the public order offences.

Special cases

When special conditions apply, there are fast track misconduct procedures so that an officer can be removed from the force quickly. Special conditions are for when there is enough evidence (written statements or other documents) to show on the balance of probabilities that the officer has a case to answer for gross misconduct, and it is in the public interest for the officer to no longer be a police officer, a member of a police force, or a special constable.

This type of matter can be fast-tracked straight to a special case hearing without interviews and further investigation.

Case study eight: abuse of authority

A whistle blower came forward with a chain of emails that clearly showed that the chief constable tried to intervene in a criminal investigation of his partner.

It is gross misconduct to try to use your position to influence the course of the justice system and the evidence is clear from the emails alone. Given the rank of the chief constable, it is in the public interest that he should no longer serve with the police force, and that there should be no delay in this.

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