

Re-investigation of an IOPC investigation policy

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Introduction

Under legislative reforms which took effect from 1 February 2020, the IOPC was granted the power to re-investigate a complaint, conduct matter or death or serious injury (DSI) matter. The power to re-investigate (Section 13B, Schedule 3 of *Police Reform Act 2002*) is available where a completed report on a directed or independent investigation of a complaint, recordable conduct matter or death or serious injury matter is sent¹ to the IOPC decision maker. This power under section 13B can be used for independent investigations where the final report was sent to the decision-maker before 1 February 2020. It can also be used for independent and directed investigations where the final report is sent to the decision-maker after 1 February 2020. However, section 13B cannot be used to re-investigate a managed investigation.

It also applies to independent or directed investigations where the investigation:

- was itself a re-investigation under section 13B of the *Police Reform Act 2002*
- resulted from an appeal or a review (pursuant to paragraph 25, *schedule 3 of the Police Reform Act 2002*), or
- has resulted in a direction under section 28A of the *Police Reform Act 2002*

It applies to these investigations regardless of when the complaint was made or when the matter came to the attention of the appropriate authority.

Determining whether a re-investigation is appropriate?

It is only appropriate to re-investigate a complaint, conduct or DSI matter where the regional director (RD)/Director for Wales(DfW) is satisfied that there are compelling reasons for doing so. The regional director and Director for Wales act as delegates for our Director General and are the decision makers for re-investigation. To find compelling reasons the decision maker must be satisfied that:

- A. the original investigation was flawed in a manner that had a material impact on subsequent decisions on discipline, performance and/or referral to the Crown Prosecution Service (CPS), and/or
- B. there is significant new information that requires further investigation and a real possibility that the new information, had it been available, would have led wholly or partly to different decisions on discipline, performance and/or referral to the CPS, and
- C. it is necessary to require a re-investigation in the public interest.

If there is a decision to reinvestigate, it will result in the completion of a new investigation report. It will not be necessary to use this power where the IOPC has not discharged all of its functions under the *Police Reform Act 2002*.

The initial assessment

The IOPC may decide to carry out an initial assessment at any time. The following are examples of events that may trigger an initial assessment. However, this list is not exhaustive or prescriptive:

- **new information** which appears to be material or significant
- representations from a third party however these must do more than simply disagree with the original findings and either highlight potential material flaws or new evidence (Representations can be new information or a material flaw that is brought to our attention by a person or organisation outside of the IOPC.)
- different conclusions on the evidence reached by a court or tribunal (e.g. an inquest), which indicate a material deficiency in the original investigation

Where the arguable compelling reason is that new information is available, it will be necessary to consider the nature and quality of the new evidence. For example,

whether it is admissible and capable of belief, and whether it is material to the original decisions made on discipline, performance and/or referral to the CPS.

A '**material flaw**' does not require the investigation to be so flawed as to give rise to grounds for judicial review. However, the following public law criteria will be relevant to consider when assessing whether a review is required:

- a failure to take proper account of relevant evidence and/or affording undue weight to irrelevant evidence (in relation to the selection of material to be presented in the report and/or the analysis of that material)
- a failure to pursue a relevant line of enquiry
- a failure to observe significant procedural requirements
- irrational or illogical decisions during the life of the investigation which affected its scope or the procedures followed. When considering whether this amounts to a material flaw, the proper approach to this question is to consider the connection between the information available to the investigator and the conclusions drawn from that information when making investigative decisions and taking subsequent investigative action or omissions. In cases where on an objective assessment there is no logical connection between the two, the investigative decision might be found to be irrational.

It must be noted that the power to re-investigate cannot be used solely to retake a decision following completion of the investigation report and should only be used where the compelling reasons test is met.

A review will be required where the initial assessment identifies that there is potentially significant new evidence and/or a potential material flaw in the original investigation.

Once the operations team leader/lead investigator nominated IOPC staff member has decided that compelling reasons may apply to the investigation, the RD/DfW will make the final determination as to whether a review is required.

Notifying parties

Before the review can start, the RD/DfW should consider notifying any affected parties associated with the investigation. It is necessary, however, to consider whether any prejudice (i.e. harm or unfairness) to a subsequent re-investigation would result from the notification.

The review

The review will not constitute any further investigation. The person undertaking the review will consider whether, on examination of the original investigation and consideration of any alleged flaws or new information, a re-investigation is required.

The RD/DfW will appoint an appropriate and sufficiently independent person to conduct the review. However, where the RD/DfW was the decision maker on the original investigation, it may be appropriate to appoint a counterpart in another region to act as final decision maker.

The person appointed to conduct the review will consider, whether, on examination of the original investigation and consideration of any alleged flaws or new information, a re-investigation is required.

If the compelling reason relates specifically to '**new information**', as part of the review the original lead investigator and where applicable the original decision maker will be informed. They will also be invited to submit a report about the new evidence for consideration by the person conducting the review.

The following issues should be considered when making a recommendation to the RD/DfW as to whether a re-investigation is necessary. (Note: this list is not exhaustive):

- the seriousness of any allegations in the original investigation
- the strength, reliability and significance of the new evidence or information and reasons why it was not considered in the original investigation
- the potential prejudice to the subjects of investigation
- whether the subjects of the investigation have already faced disciplinary or performance proceedings flowing from the investigation
- any authoritative promises or representations given to the subjects that the allegations would not be revisited
- the impact of a re-investigation on any complainant and/or interested person
- the community impact of the incident under investigation
- the findings of other tribunals which have examined the same incident, for example civil courts, inquests and inquiries
- the extent to which any identified flaw is likely to have affected the outcome of the investigation, disciplinary and performance proceedings and/or referral to the CPS, and
- the further investigative steps required to address or remedy any identified flaw and any resource implications

When making a determination about whether a re-investigation is required, the person conducting the review will record their rationale. They will also record any identified learning in Section H of the 'requiring re-investigation assessment minute', for consideration by the RD/DfW.

External consultation

The RD/DfW must also consider whether it is necessary to consult with affected people to invite them to make representations which could assist in reaching a decision whether to re-investigate. The RD/DfW will make the final decision on whether to consult.

Examples of when it may be appropriate to consult with external parties include:

- where significant time has elapsed since the original investigation, the subjects may be asked to make representations on potential prejudice
- the views of the complainant and/or any interested person may be required in order to assess the likely impact on them of any re-investigation

It may be appropriate to consult with the CPS, coroner or other investigative body which has considered the original investigation or conducted its own linked investigation.

When deciding whether to consult, it is again necessary to consider whether any prejudice to any re-investigation would result from notification to affected people.

It will be inappropriate to consult where affected parties would not be able to make meaningful representations on the decision to re-investigate, i.e. where nothing the affected people could say is likely to lead to a different final decision.

Final decision

The final decision will be made by the RD/DfW based on the criteria set out in the 'compelling reasons' test, including the public interest test.

The rationale should:

- set out all the relevant factors and explain how these have been weighed and balanced in the final decision
- state the public interest factors relied on
- where applicable, demonstrate how representations made by or on behalf of the affected people have been carefully considered, and

- evaluate any representations made according to their relevance and whether they are underpinned by logical argument and/or evidence

If it is determined that a re-investigation is required, the completed 'requiring re-investigation minute' must be passed to the IOPC assessment unit.

The assessment unit will determine the appropriate mode of investigation (independent or directed). The RD/DfW is encouraged to express their own view on the appropriate mode of investigation, based on their awareness of the seriousness of the case and any public interest factors.

Identifying learning

Any consideration of conducting a re-investigation represents an opportunity to identify internal learning, particularly where it appears that we have got things wrong. When learning is identified it is essential that it is communicated to the individuals involved or at wider organisation level.

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