

## **Guidance on the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015**

From 8 April 2015 complaints, conduct matters and DSI matters in relation to contractors must be dealt with under the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015 (“the Regulations”).

The Regulations largely reflect the current system in place for dealing with complaints, conduct matters and DSI matters relating to police officers and staff.

However, there are some key differences and the purpose of this advice note is to provide some high level guidance, to sit alongside the IPCC’s statutory guidance, on those key differences. To help in its use, this advice note follows the structure of the IPCC statutory guidance and, where appropriate, refers to relevant paragraphs of the guidance to highlight where the differences lie. The initial two sections (key definitions and general information) cover areas which do not have specific sections in the statutory guidance.

It is likely that many cases involving contractors will also involve police officers and/or police staff so those dealing with these cases will need to be mindful of the differences in legislation and make sure that the correct procedures are followed in respect of contractors.

### **Key definitions**

#### ***Definition of a contractor***

A contractor is a person who has entered into a contract with a local policing body or a chief officer to provide services to the chief officer. This includes a person working for an organisation that has a contract with a local policing body or chief officer. It also includes a sub-contractor.<sup>1</sup>

It will be important for the person dealing with a case to understand the contractual arrangements in place. This is likely to involve looking at the relevant contracts, including any side letter and knowing what arrangements are in place for the

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<sup>1</sup> Section 12(10), Police Reform Act 2002

delegation of any of the functions or duties under the regulations by the chief officer (see below).

### ***Definition of a contractor manager***

The contractor manager is:

- (i) the person who has responsibility for the management of the provision of services to a chief officer, or
- (ii) the person who has direct management responsibility for the person in relation to whom there is a complaint, conduct matter or DSI matter, and
- (iii) who in the opinion of the chief officer has sufficient seniority, skills and experience to carry out this function.<sup>2</sup>

## **General information**

### ***Transitional provisions***

The Regulations do not apply to:

- An investigation which was already ongoing before 8 April 2015 under regulation 35 of the Police (Complaints and Misconduct) Regulations 2012 into a designated detention or escort officer. These investigations should continue to be dealt with under the previous provisions.
- A matter that came to the attention of the appropriate authority before 8 April 2015.<sup>3</sup>

### ***Delegation***

The IPCC has interpreted the regulations as providing two potential ways in which the powers, duties and functions under the regulations can be delegated to others.

- (i) The chief officer may delegate their functions as the appropriate authority to the contractor manager.<sup>4</sup> This means that where the regulations state that something is the duty of, or must be done by, the appropriate authority this can be delegated by arrangement to the contractor manager. For example, in a local or supervised investigation it is the duty of the appropriate authority to

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<sup>2</sup> Regulation 2, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>3</sup> Regulation 3, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>4</sup> Regulation 5, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

keep the complainant/interested persons informed. Another example is where the IPCC receives an investigation report it must send it to the appropriate authority. If the functions of the appropriate authority have been delegated that report would be sent to the contractor manager and it would be the duty of the contractor manager to keep the relevant people informed.

- (ii) The chief officer may delegate all or any of the powers/duties that apply to them personally only to the following ranks of officer (or police staff equivalent):
  - a. If the complaint or conduct matter relates to the conduct of a contractor manager – a senior officer.
  - b. In any other case, someone of at least the rank of chief inspector.<sup>5</sup>

This means that where the Regulations state that something is the duty of, or must be done by, the chief officer, this **cannot** be delegated to the contractor manager. For example, it is the duty of the chief officer personally to make sure that evidence is preserved. This duty cannot be delegated to the contractor manager.

This also means that it is possible that the chief officer and appropriate authority may be different depending on whether any delegations have been made and the extent of such delegations.

The IPCC statutory guidance (paragraph 13.25) includes an expectation that chief officers should have a scheme of delegation to make sure that the right people at the right levels and with the right training are allocated as decision makers and that this should be available on the force website. If different arrangements are to be made about who deals with complaints about contractors, compared with who deals with complaints about police officers and staff, a separate scheme of delegation will be needed and this should also be published.

### ***Duties to preserve evidence***

In addition to the chief officer's duty to preserve evidence for complaints, conduct matters and DSI matters, the contractor also has a duty to preserve evidence. The chief officer may direct the contractor to take steps to preserve evidence.<sup>6</sup>

### ***Standards of professional behaviour***

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<sup>5</sup> Regulation 88, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>6</sup> Regulation 17, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

The Regulations refer to “contractor standards” which are the behaviours and standards they are required to comply with under the contractor’s conduct and performance policies.<sup>7</sup>

The standards which apply will depend on the contract between the contractor and the chief officer or local policing body.

It will be important to be aware of the relevant standards as early as possible in the investigation to inform the severity assessment or a decision that a complaint investigation should be subject to special requirements or that a DSI investigation should become a conduct matter.

## **Statutory Guidance considerations**

### **Section 1: Introduction**

#### ***Appropriate authority***

The chief officer is the appropriate authority for all contractors who work within their force.<sup>8</sup> (SG paragraph 1.20)

### **Section 3: Complaints**

#### ***Direction and control***

The Regulations only cover direction and control complaints to the extent that they relate to the direction and control of the contractor by the chief officer.<sup>9</sup>

The IPCC has interpreted this to mean that a member of the public could not make a complaint for example about the overall policies of a contractor but they could make a complaint about policies of the police force which relate to contractors, for example a decision that contractors will be used to carry out certain functions in custody suites. (SG paragraphs 3.23-3.25)

#### ***Notifying the correct appropriate authority of a complaint***

Where a complaint is made initially to a chief officer who is not the correct chief officer, there is no obligation under the Regulations to notify the correct chief officer

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<sup>7</sup> Regulation 2, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>8</sup> Regulation 2, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>9</sup> Regulation 9, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

of the complaint.<sup>10</sup> Although there is no legal obligation, it is best practice and good service to forward the complaint.

This also means that there is no right of appeal against a failure to notify the correct chief officer of a complaint. If the IPCC receives an appeal in these circumstances, it will be dealt with as not valid and the complaint forwarded to the correct chief officer.

## **Section 5: Local handling**

### ***Who can carry out local resolution?***

Arrangements for a complaint to be subject to local resolution are made by the appropriate authority (or contractor manager if delegated). The appropriate authority can appoint a police officer, a member of police staff or a contractor to secure the local resolution of a complaint.<sup>11</sup>

## **Section 8: Referrals**

### ***Referral of complaints about direction and control***

The appropriate authority does not need the IPCC's consent before referring a direction and control matter to the IPCC. However, the complaint must be about the direction and control of the contractor by the chief officer (see section 3 above).<sup>12</sup> (SG text box below paragraph 8.26)

### ***Who can make a referral?***

A referral of a complaint or conduct matter can only be made by the appropriate authority (or contractor manager if delegated). A local policing body or contractor cannot make a referral.<sup>13</sup>

A DSI referral can only be made by the chief officer (or their delegate).<sup>14</sup>

## **Section 9: Investigations**

### ***Appointment of a person to carry out an investigation***

The appropriate authority (or IPCC in a managed investigation) may appoint a contractor to carry out the investigation. They may also appoint a police officer or

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<sup>10</sup> Regulation 18, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>11</sup> Regulation 27, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>12</sup> Regulation 22, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>13</sup> Regulations 22 and 33, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>14</sup> Regulation 37, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

member of police staff. A member of staff of the NCA cannot be appointed to carry out an investigation under the Regulations.<sup>15</sup> (SG text box above paragraph 9.3)

### ***Severity assessments***

Under the Regulations, a severity assessment is referred to as a “special procedure”, this should not be confused with the accelerated procedures for “special cases”.

A severity assessment for the Regulations is defined as “an assessment as to whether the conduct, if proved, would amount to misconduct or gross misconduct.” It does not include making an assessment as to what form any disciplinary proceedings might take.

The same applies to revised severity assessments.<sup>16</sup> (SG paragraphs 9.35-9.42)

### ***Notices of investigation***<sup>17</sup>

The standards to refer to in the notice are the “contractor standards”.

The notice should not include the likely form of any misconduct proceedings.

The notice should give a right to seek advice from the trade union or any other body representing the interests of the person concerned (they can also have a contractor friend, see below).

The notice is not required to include reference to drawing an adverse inference if something is not mentioned in interview.

The time limit for providing representations to the investigator is not specified in the Regulations, instead they say “such a period as determined by the investigator”. The ten working days allowed for a police officer to provide representations should be used as a starting point for determining this time period allowing for the discretion of the investigator if a longer or shorter period is required. This enables parity between the way in which police officers and contractors are dealt with. (SG paragraph 9.43 and text box above)

### ***Contractor friend***<sup>18</sup>

A contractor may have another contractor or a trade union official who is not otherwise involved in the matter as a “contractor friend”.

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<sup>15</sup> Regulations 42-44, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>16</sup> Regulation 54, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>17</sup> Regulation 54, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>18</sup> Regulation 58, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

## **Section 12: Action after the investigation**

### ***Disciplinary proceedings***

For contractors, any reference to disciplinary proceedings means any proceedings or management process which considers a person's conduct to determine whether it is misconduct or gross misconduct and what, if any, action should be taken as a result.<sup>19</sup>

### ***Unsatisfactory performance proceedings***

For contractors, any reference to unsatisfactory performance proceedings means any proceedings or management process which considers a person's performance to determine whether it is unsatisfactory or not and what, if any, action should be taken as a result.<sup>20</sup>

## **Section 13: Appeals**

### ***Non-recording appeals***

The Regulations allow a right of appeal against the non-recording of a direction and control complaint.<sup>21</sup> However the complaint must be about the direction and control of the contractor by the chief officer.

As there is no requirement in the Regulations for a chief officer to notify the correct chief officer of a complaint they have received in error, there is no right of appeal in relation to a failure to notify (see above).

### ***Appeals in relation to direction and control complaints***

Direction and control complaints are not excluded from any of the rights of appeal.<sup>22</sup> However, the complaint must be about the direction and control of the contractor by the chief officer (see direction and control above).

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<sup>19</sup> Regulation 2, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>20</sup> Regulation 2, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>21</sup> Regulation 21, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015

<sup>22</sup> Regulations 26, 28, 70 and 77, Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015