

OPERATIONAL ADVICE NOTE TO POLICE AND CRIME PANELS

This note will help police and crime panels to handle complaints or conduct matters recorded against police and crime commissioners. It is not formal guidance issued under the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (“ELPB”).¹

1. Relevant office holders

1.1. ‘Relevant office holders’ means:

- any police and crime commissioner (PCC). The mayor of Greater Manchester combined authority is regarded as a PCC for Greater Manchester for the purposes of all police and crime commissioner legislation.²
- any deputy police and crime commissioner
- in London, the occupant of the Mayor’s Office for Policing and Crime (MOPAC). Under normal circumstances, this will be the mayor of London
- in London, any deputy mayor for policing and crime who may be appointed
- The deputy mayor for policing and crime for Greater Manchester combined authority.³

2. Receipt of a complaint

2.1 Where the complaint is about a relevant office holder, the police and crime panel must decide whether it is the correct panel to deal with the complaint⁴. If it is not, it must tell the correct panel of the complaint⁵.

¹ All footnotes refer to the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 unless otherwise stated

² Article 3(1) of The Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017 (“2017 Order”).

³ Modifications made by Para 52(2)(c) of Schedule 1 to the 2017 Order to the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.

⁴ Regulation 2 defines police and crime panel to mean – “(a) in relation to a police and crime commissioner or deputy police and crime commissioner for a police area listed in Schedule 1 to the Police Act 1996, the police and crime panel established for that police area under section 28(1) of the 2011 Act; (b) in relation to the Mayor’s Office for Policing and Crime or the Deputy Mayor for Policing and Crime, the committee established under section 32 of the 2011 Act

⁵ Regulation 9(2)

- 2.2 Where a complaint is made directly to a relevant office holder about his or her own conduct, the relevant office holder must tell the panel of the complaint.⁶
- 2.3 Where a complaint is made to a chief officer about the conduct of a relevant office holder, the chief officer must tell the panel of the complaint.⁷
- 2.4 If the panel, relevant office holder or chief officer decides not to tell the correct panel about a complaint, they must tell the complainant about the decision to take no action and the grounds on which the decision was made.⁸
- 2.5 When a complaint is received by the correct panel, the panel must record the complaint.⁹ However, the complaint does not have to be recorded if:
- the complaint has been, or is already being, dealt with by criminal proceedings against the person whose conduct it was
 - the complaint was withdrawn in accordance with regulation 16.¹⁰
- 2.6 'Recording' means that a record is made of the complaint (for example, in a complaints database). This means that it has to be formally handled in accordance with legislation and under the provisions set out in this guidance. Complaints should be recorded in some form of register which can be readily accessed and examined by the IOPC, if required. This will allow the panel to track progress of the complaint and report on complaints data.
- 2.7 The panel must provide a copy of the record made of the complaint to the complainant.¹¹
- 2.8 The panel must give a copy of the recorded complaint to the relevant office holder who is subject of the complaint. This must be done unless the panel believes that doing so might prejudice any criminal investigation or pending proceedings, or it would otherwise be contrary to the public interest. If the panel decides not to give a copy of the complaint to the relevant office holder, this decision must be regularly reviewed. If a copy of the complaint is given to the relevant office holder, the identity of the complainant or any other person may be kept anonymous.¹²
- 2.9 If the panel decides not to record a complaint, it must tell the complainant in writing of the decision to take no action and the grounds for making the decision.¹³ The notification should explain the reasons for this decision.

⁶ Regulation 9(4)

⁷ Regulation 9(3)

⁸ Regulation 10(2)

⁹ Regulation 9(5)

¹⁰ Regulation 9(6)

¹¹ Regulation 31(1)(a)

¹² Regulation 31

¹³ Regulation 10(2)

3. Conduct matters

- 3.1 For the purposes of the regulations, a conduct matter is where there is an indication (whether from the circumstances or otherwise) that the relevant office holder may have committed a criminal offence.¹⁴
- 3.2 A conduct matter must be recorded where either:
- the police and crime panel is told that civil proceedings against the relevant office holder have been or are likely to be brought by a member of the public and which appear to involve or would involve a conduct matter¹⁵
 - a conduct matter comes to the panel's attention in any other case¹⁶
- 3.3 However, if either of the following exceptions apply, it is not necessary to record a conduct matter:
- the matter has already been recorded as a complaint under regulation 9(5) of the regulations
 - the matter has been, or is already being, dealt with by means of criminal proceedings against the relevant office holder¹⁷
- 3.4 'Recording' means that a record is made of the conduct matter (for example, in a conduct matter database). This means that it has to be formally handled in accordance with the legislation (the ELPB and Police Reform and Social Responsibility Act 2011 (PRSRA)). Conduct matters should be recorded in some form of register which can be readily accessed and examined by the IOPC, if required. This will allow the panel to track progress of the conduct matter and report on data.
- 3.5 If the IOPC becomes aware of a conduct matter which has not been recorded by the panel, the IOPC may direct the panel to record the matter and the panel must do so.¹⁸

4. Preservation of evidence

- 4.1 Where a police and crime panel becomes aware of a complaint or conduct matter about the conduct of a relevant office holder, the panel must take all appropriate steps to obtain and preserve evidence about the conduct in question. The IOPC may give the panel directions for obtaining and preserving evidence. The panel must comply with any such directions.¹⁹

¹⁴ Police Reform and Social Responsibility Act 2011, Section 31(1)(b)

¹⁵ Regulation 11

¹⁶ Regulation 12

¹⁷ Regulations 11(4) and 12(2)

¹⁸ Regulations 12(3)

¹⁹ Regulations 8(1) and (5)

4.2 Where a relevant office holder becomes aware of a complaint or conduct matter about his or her own conduct, the relevant office holder must take all appropriate steps to obtain and preserve evidence about the conduct in question. The IOPC or the panel may give directions to the relevant office holder to take steps to obtain or preserve evidence. The relevant office holder must comply with any such directions.²⁰

5. Referrals to the IOPC

5.1 The police and crime panel must refer the following to the IOPC:

- i. all recorded conduct matters
- ii. all serious complaints (i.e. a complaint which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence)
- iii. any serious complaint or conduct matter where the IOPC has told the panel that it requires the matter to be referred²¹

5.2 In terms of complaints, the panel should make an initial assessment of the complaint (before making a referral to the IOPC) to decide whether or not it meets the definition of a “serious complaint”.²² Any information and evidence that is readily available should be obtained to help with the assessment. This initial assessment, and the information and evidence considered in that assessment, should be included in the referral papers. Only complaints that are assessed as “serious complaints” should be referred to the IOPC.

5.3 The panel should complete IOPC referral form 7.1 with the details of the complaint or conduct matter it wants to refer. The completed form should then be sent by secure email to nat_referrals_inbox@policeconduct.gov.uk. It should also include its reasons as to why the matter is a serious complaint, and any supporting documentation. All information stored and handled by the IOPC is treated in line with government security classifications.

5.4 The referral form should be sent to the IOPC at the earliest opportunity. The regulations say that this must be as soon as is practicable. However, a referral must be made no later than the end of the day following the day on which it first becomes clear to the panel either that the complaint or conduct matter must be referred, or the IOPC tells the panel that it requires the matter to be referred to it.²³

5.5 What information does the IOPC need from the PCP?

5.5.1 A referral should always be sent on the IOPC referral form 7.1 to make sure that all of the basic information is provided. Where a complaint has been made, confirmation that the complaint has been recorded (including the

²⁰ Regulations 8(2), (4) and (6)

²¹ Regulations 13(1) and (2)

²² Regulation 2

²³ Regulations 13(3) and (4)

reference numbers) should be provided alongside the PCP's assessment of that complaint and why it meets the serious criteria.

5.5.2 Where supporting documents are readily available, these should always be sent with the referral form to allow the IOPC to make a reasonable assessment of the level of investigation required. When submitting a referral to the IOPC, the following information should be supplied where available:

- the name of the referring authority
- the nature of the serious complaint or conduct matter being referred
- the location of the incident that is the subject of the referral
- the date and time of the incident
- the name and address of the complainant
- the date of birth of the complainant
- the nature and number of allegations, if any
- the number of police witnesses, if any
- the number of independent witnesses
- the ethnic origin of the complainant
- complaint details form
- incident logs (if applicable)
- custody records (if applicable)

5.5.3 This is not an exhaustive list. The PCP should supply all relevant available information that is likely to assist the IOPC when making its decision, along with the 7.1 referral form. Where further information has been sought but is not available at the time of referral, this should be referred to on the 7.1 referral form alongside timescales (if known) as to when the information may become available. Once it is clear that the matter does require referral, the referral should not be delayed (where all of the basic information is available) while further information is sought.

5.5.4 The panel must tell the complainant (if there is one) of the referral to the IOPC. The panel must also tell the relevant office holder concerned of the referral, unless the panel considers that to do so might prejudice a possible future investigation of the complaint or conduct matter.²⁴ These notifications should be made in writing.

5.5.5 If the panel wishes to make an urgent referral to the IOPC outside office hours, this may be done by calling 020 7166 3033. If there is no response, you can leave a message with the caller's name and number, the fact that he or she is calling on behalf of the panel, and to which force area the referral relates. If this number is unobtainable or there is no response within 10 minutes, the alternative number is 020 7166 3031. Both of these numbers will allow direct contact with the IOPC on-call team.

Processing the referral

²⁴ Regulation 13(6)

- 5.5.6 The IOPC will decide whether or not it is necessary for the complaint or conduct matter to be investigated.²⁵ It will tell the panel in writing of its decision. If the IOPC decides that an investigation is necessary, it will decide whether it should be a managed investigation or an independent investigation.
- 5.5.7 If the IOPC decides that a complaint does not need to be investigated, it will refer the complaint back to the panel to be dealt with in accordance with Part 4 of the regulations.²⁶ The IOPC will tell the complainant and the relevant office holder complained against of this decision.²⁷
- 5.5.8 If the IOPC decides a conduct matter does not need to be investigated, it will refer the conduct matter back to the panel to be dealt with in such a manner, if any, as the panel thinks fit.²⁸ The IOPC will tell the relevant office holder of this decision.²⁹

6. Disapplication

- 6.1 Disapplication of the requirements of the regulations applies to a recorded complaint the police and crime panel decides should not be resolved under Part 4 of the regulations or that no action should be taken in relation to it and where there is an applicable ground for disapplication (see para 6.3 below). The panel may instead handle a recorded complaint in whatever manner (if any) it thinks fit.
- 6.2 Disapplication applies to recorded complaints (not conduct matters) unless the complaint has been, or must be, referred to the IOPC and has not been referred back to the panel.³⁰
- 6.3 *Grounds for disapplication*³¹
- 6.3.1 The complaint is concerned entirely with the conduct of the relevant office holder about a person who was working in their capacity as a member of the relevant office holder's staff at the time when the conduct was supposed to have taken place.
- 6.3.2 More than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either:
- no good reason for the delay has been shown
 - injustice would be likely to be caused by the delay
- 6.3.3 The matter is already subject of a complaint.

²⁵ Regulation 14(1)

²⁶ Regulation 14(2)(a)

²⁷ Regulation 14(3)

²⁸ Regulation 14(2)(b)

²⁹ Regulation 14(3)

³⁰ Regulation 15(1)

³¹ Regulation 15(3)

- 6.3.4 The complaint gives neither the name and address of the complainant, nor that of any other interested person, and it is not reasonably practicable to find out a name or address.
- 6.3.5 The complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints.
- 6.3.6 The complaint is repetitious.
- 6.4 If the panel decides to disapply the requirements of the regulations, it must tell the complainant that it has decided to handle the complaint in this way.³²

7. Withdrawal of complaints

- 7.1 If the police and crime panel receives signed written notification from a complainant or a person acting on his or her behalf that he or she withdraws the complaint or does not want any further action to be taken in relation to the complaint, then the panel must record the withdrawal.³³
- 7.2 If the complaint in question has been referred to the IOPC and has not been referred back to the panel (i.e. it is either still under consideration by the IOPC or the IOPC has decided a managed or independent investigation should take place) the panel must tell the IOPC of the withdrawal of the complaint.³⁴ The IOPC will then decide whether the withdrawn complaint should be treated as a conduct matter and will tell the panel of the decision.³⁵
- 7.3 In any other case, the panel must consider whether the withdrawn complaint relates to conduct which should be treated as a conduct matter (i.e. it constitutes or involves, or appears to constitute or involve, the commission of a criminal offence).³⁶ If so, it must then be recorded and treated as a conduct matter.³⁷ If not, no further action needs to be taken under the regulations in relation to the complaint.
- 7.4 If a complainant has indicated that he or she wishes to withdraw a complaint but does not provide signed written notification, the panel must write to the complainant to find out whether he or she wishes to withdraw the complaint. If the complainant responds and indicates that he or she does wish to withdraw the complaint, or if there is no response within 21 days, the complaint should be treated as if a signed written notification of withdrawal had been received. If the complainant responds that he or she does not wish to withdraw the complaint, the complaint must continue to be dealt with under the regulations.³⁸
- 7.5 The panel must tell the relevant office holder complained against if:

³² Regulation 15(5)

³³ Regulation 16(1)

³⁴ Regulation 16(3)

³⁵ Regulation 16(5)

³⁶ Regulation 16(4)

³⁷ Regulation 16(6)

³⁸ Regulations 16(7) and (8)

- the panel records the withdrawal of a complaint or the fact that the complainant does not want any further action to be taken in relation to his or her complaint
- the panel decides that a complaint should be treated as a conduct matter
- the IOPC decides that a complaint should be treated as a conduct matter
- the complaint will no longer be dealt with under the regulations due to the withdrawal³⁹

7.6 However, if the panel previously decided not to tell the relevant office holder complained against of the complaint because it believed it may prejudice any criminal investigation, pending proceedings or would not be in the public interest, the panel does not need to tell the relevant office holder of the withdrawal.

8. Investigations

8.1 When a complaint or conduct matter has been referred to the IOPC, the IOPC will decide whether it is necessary for an investigation to take place. If the IOPC decides that an investigation is necessary, it will decide whether it should be a managed investigation or an independent investigation.⁴⁰ The IOPC will tell the police and crime panel of its decision.⁴¹

8.2 An independent investigation is an investigation which is carried out by the IOPC. In independent investigations, IOPC investigators have the powers of a police constable.

8.3 A managed investigation is an investigation which is carried out by a police force under the direction and control of the IOPC.

8.4 Upon notification that a managed investigation will be taking place, the chief officer of the selected police force must, if they have not already done so, appoint a person serving with the police to investigate the matter.⁴² The IOPC may require that no appointment is made by the chief officer unless the IOPC has given notice that it approves of the proposed investigator. Alternatively, the IOPC may require the chief officer to appoint another investigator if the IOPC is not satisfied with the original selected investigator. This subsequent appointment may only happen if the IOPC has approved the appointment of the new investigator.

8.5 Every panel, every relevant office holder and every chief officer has a duty to provide the IOPC, or in a managed investigation the person appointed to

³⁹ Regulation 16(9)

⁴⁰ Regulation 18

⁴¹ Regulation 18(8)

⁴² Regulation 19(2)

investigate, with any assistance and co-operation that is reasonably required to carry out an investigation under the regulations.

9. Discontinuance

- 9.1 In certain circumstances, the IOPC may decide that an investigation should stop. This may be either because of an application from a chief officer involved in the investigation or as a result of a decision by the IOPC itself.⁴³
- 9.2 If a chief officer believes that an investigation should be discontinued, they must make a written application to the IOPC including a copy of the complaint (where applicable) and a memorandum containing a summary of the investigation so far and the reasons for the application. This application must be sent to the complainant (where there is a complainant) on the same day as it is sent to the IOPC.⁴⁴
- 9.3 The police and crime panel will not have a role in the decision-making about the discontinuance – this decision is for the IOPC. Where the IOPC decides an investigation should be discontinued, it will tell the panel.⁴⁵
- 9.4 When an investigation is discontinued, the IOPC may make certain directions to the panel. Any direction made will be set out in a letter to the panel. The directions which the IOPC may make to the panel are:
- to require the chief officer to produce an investigation report on the discontinued investigation and take any other subsequent steps
 - if the investigation related to a complaint, requires the panel to disapply the requirements of the regulations, as regards that complaint
 - if the investigation relates to a complaint, requires the panel to handle the complaint by way of resolution as set out in Part 4 of the regulations
 - to require the panel to handle the matter in whatever manner the panel thinks fit⁴⁶
- 9.5 The panel must comply with any directions given to it.⁴⁷

10. Action in response to an investigation report

- 10.1 When the IOPC receives an investigation report (either from the investigating police officer in a managed investigation, or its own investigator in an independent investigation) it will decide whether the report should be referred to the Crown Prosecution Service (CPS).⁴⁸

⁴³ Regulation 24(1)

⁴⁴ Regulations 24(3) and (4)

⁴⁵ Regulation 24(7)(a)

⁴⁶ Regulation 24(9)

⁴⁷ Regulation 24(11)

⁴⁸ Regulation 26

- 10.2 If the report is referred to the CPS, the IOPC will tell the police and crime panel and any other person entitled to be kept informed of the referral. It will also be the duty of the IOPC to tell the panel and any other person entitled to be kept informed if the CPS decides to bring criminal proceedings in respect of any matters dealt with in the report.⁴⁹
- 10.3 The IOPC will publish its investigation report and send a copy of the report in relation to the relevant office holder to the appropriate panel. The harm test will be applied to the investigation report before publication and disclosure.⁵⁰ The IOPC may delay sending or publishing a report, or withhold any part of a report from sending or publication, if the IOPC considers that it is necessary to do so, for the purposes mentioned in regulation 33(1)(a) or (b).⁵¹

11. Delegation of powers and duties

- 11.1 The ELPB and the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 enable a police and crime panel to delegate certain powers and duties.⁵² Wherever any power or duty is delegated, there should be a clear record of that delegation. The record should set out to whom the delegation has been made, when it was made, its basis and any limitations.

12. Duty to provide information to the IOPC

- 12.1 It is the duty of every police and crime panel, every relevant office holder, and every chief officer to provide the IOPC with any information, documents, or evidence required by the IOPC for it to carry out its functions.⁵³
- 12.2 Anything which is provided as a result of this duty must be provided in the form, manner and timescale set out by the IOPC.⁵⁴ However, the regulations recognise that in some cases it may not be possible to provide the required information within the set timescale (in which case it must be provided at the earliest time practicable) and in some cases it may never be practicable to provide the information.⁵⁵
- 12.3 In these situations, the person to whom the request is made must inform the IOPC whether and why there may be a delay or that it is not practicable to provide this information. Information or documents which are required to be

⁴⁹ Regulations 26(2)(c) and (6)

⁵⁰ Regulations 26(7) and (8)

⁵¹ These purposes are where the non-disclosure of information is necessary for the purpose of-

- (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings
- (b) preventing the disclosure of information in any circumstances in which its non-disclosure –
 - (i) is in the interests of national security
 - (ii) is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders
 - (iii) is required on proportionality grounds
 - (iv) is otherwise necessary in the public interest

⁵² Regulation 7

⁵³ Regulation 35(1)

⁵⁴ Regulation 35(2)

⁵⁵ Regulation 35(3)

provided may be provided electronically, where authorised or required by the IOPC.⁵⁶

13 Access to premises

13.1 A police and crime panel, relevant office holder and chief officer must allow a person nominated by the IOPC access to any premises occupied for the purposes of the panel, relevant office holder or chief officer's functions (and documents or other things on those premises) for the following purposes:

- any investigation carried out by the IOPC or under its management under the regulations; or,
- any examination by the IOPC of the efficiency and effectiveness of the systems put in place to handle complaints and conduct matters concerning the relevant office holder.⁵⁷

13.2 Where the IOPC's requirement for access is for the second purpose stated above, it will give the panel, relevant office holder or chief officer at least 48 hours notice of the request for access. If there are reasonable grounds for not allowing the IOPC access at the time requested, access should instead be allowed at the earliest practicable time after those grounds cease to exist.⁵⁸ The person to whom the request is made must inform the IOPC of the reasons why access cannot be granted to the IOPC at the time it requested.

14. Keeping of records

14.1 The police and crime panel must keep a record of:

- every complaint made to it, regardless of whether the complaint is recorded under regulation 9 of the regulations;
- every conduct matter that it records;
- every exercise of a power or performance of a duty under the regulations.⁵⁹

14.2 Panels would also assist the IOPC if they adhered to the guidance set out in the IOPC's statutory guidance on data collection and monitoring in respect of matters dealt with under the regulations.

15. General duties

15.1 The police and crime panel has a general duty to ensure that it is kept informed about complaints and conduct matters against a relevant office holder for the panel's police area and what is done under the regulations to

⁵⁶ Regulation 35(4)

⁵⁷ Regulation 36(1) and (2)

⁵⁸ Regulation 36(3) and (4)

⁵⁹ Regulation 34

deal with them. The panel must also ensure that it is kept informed about any obligations to act (or not act) that have arisen under the regulations and have either not yet been complied with or have been contravened.⁶⁰

⁶⁰ Regulation 6(1) and (2)