

Race discrimination complaint handling: Prompt sheet

The aim of this prompt sheet is to assist complaint handlers when dealing with complaints that involve race discrimination. This is not an exhaustive list of considerations but should be used as a suite of available tools that can be tailored to the complaint.

Engaging with the complainant

What steps should I take?

- Agree contact method. Written follow-up or updates may be required.
- Have you understood the complaint?
- Explore the complaint sensitively and with empathy.
- Ask the complainant: what happened; what the impact was; and what do they want to happen next.
- Discuss potential outcomes.
- Manage service user expectations.
- Tell the complainant how their information will be used.
- If using a discrimination questionnaire, tailor the list of questions to the incident.
- Make adjustments for vulnerabilities or additional needs (ABE interview, interpreter, seek support from victim or survivor engagement teams, accommodate cultural needs, remove barriers to physical access).

Remember



- Be led by the complainant in terms of seeking their preferred method of contact but leave other forms of communication open should they change their preferences.
- Get to the heart of the complaint and explain how the complaint will be handled.
- Explain the complaints process and manage their expectations.

What do I need to consider?

- Can the complaint be handled as an informal complaint (outside Schedule 3)?
- Who is the Relevant Review Body (RRB)?
- Investigation or handling otherwise than by investigation?
- Which gravity factors apply? (such as: impact; intent; serious failures; repeat behaviour; level of responsibility).
- If investigation, is the Special Procedures (SP) decision documented?

Remember



- The RRB test is based on the wording of the complaint alone and applied at the start of the handling.
- The decision on whether a matter needs to be investigated or not will take into consideration the evidence that you have readily available.
- An allegation does not need to be accompanied by corroborating evidence for there to an indication.
- Gravity factors should be used to assess the seriousness of the complaint at this stage and to examine personal and public impact.
- The <u>Public Sector Equality Duty</u> will be relevant to the assessing whether there is an indication (positive duty to eliminate discrimination, promote equality and foster good relations).
- An allegation of discrimination will always raise the seriousness of a case.
- Think about what outcomes may be reasonable and proportionate when concluding the handling of the complaint.

Evidence gathering

What types of evidence should I consider?

- Complainant's account.
- BWV/ CCTV/ recording of any 999 or 111 calls.
- Custody record/incident log.
- Statements from officers/ police staff.
- Officer's account seek the response to the complaint; clarify points; challenge discrepancies.
- Other statements medical, witness(es), expert opinion.
- Consider relevant policies: force policies, College of Policing APP, guidance or training.
- Consider relevant legislation (such as PACE, Criminal Law Act 1967, Misuse of Drugs Act).
- Officer complaint history.
- Patterns of behaviour evidence (stop and search or use of force records).
- Language used (including tone, microaggressions and stereotypes).
- Behaviour aligned with known stereotypes, bias, common assumptions.
- Comparator evidence.
- Intelligence briefings, including roles and responsibilities.
- Disproportionality information, such as local disproportionality data, census figures, known community issues.

Remember



- Think about what evidence you will need to gather and how it will help you determine the outcomes of the complaint.
- The complainant's account is key to understanding the heart of the complaint.
- Subjects should be given the opportunity to account for and explain their actions and decisions in response to the complaint.
- Consider the evidence as a whole including both its strengths and its weaknesses and the credibility of the different pieces of evidence.

- Do not automatically dismiss evidence that is unsubstantiated or not tangible, for example, witness evidence which is weak, vague or inconsistent with other evidence.
- Where two opposing accounts are equally plausible, do not attempt to resolve that conflict or form a view on the reliability of witness evidence if there is no supporting evidence.
- Evaluate the credibility of the account, not the credibility of the witness.
- Explain your decisions to obtain or not obtain evidence.

Probing the subject's account

What points may be relevant to consider when exploring the subject's account?

- Explore the potential non-discriminatory rationale they may have relied upon.
- What were their first impressions did the subject have any prior knowledge of complainant? What were their concerns?
- Available information Did they rely on intelligence through briefings? What risk assessments were carried out? What grounds did they rely on?
- Test the subject's understanding of the situation based on their training or work experience.
- Explore the subject's cultural awareness/understanding.
- Confirm and probe the subject's understanding of the Equality & Diversity standard of professional behaviour do they understand why it is relevant to this incident?
- Language used (including tone, microaggressions and stereotypes) can they explain why they used certain language or phrasing?
- Encourage the subject to reflect on their decision making, once time has passed.

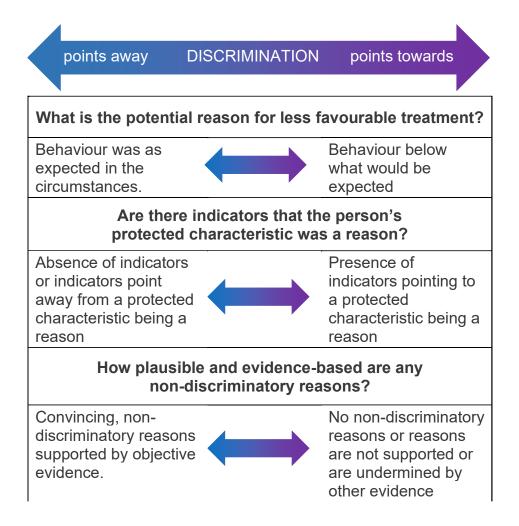
Remember



 Probing the subject with further questions based on what the complainant has said, to clarify points or to challenge discrepancies in the subject's account, is best practice in all types of complaint handling.

- It can be a vital tool for exploring whether discriminatory assumptions or bias may have motivated the behaviour in question.
- Use open questions to drill down into the subject's responses.

Evaluation of evidence



How should I evaluate the evidence?

- Consider what evidence points towards or away from discrimination.
- What weight will you attribute to the evidence?
- Assess the plausibility of non-discriminatory explanations.

- What is the potential for poor treatment? (for example, unfair or less favourable treatment or outcomes, poorly justified or unjustified actions, non-compliance with guidance or training, tone and demeanour)
- How far does the behaviour diverge from what is reasonably expected?
- Do the actions align with discriminatory stereotyping or assumptions?
- Does the evidence support the allegation?
- What is weak and what is strong evidence?
- How pronounced are any patterns of behaviour?
- Consider the cumulative picture of evidence.
- Consider whether the situation could have been handled differently or better?
- Consider the evidence; credibility, reliability, accuracy and weight.

Remember



- Consider the totality of the evidence and the impact of one piece on another.
- Avoid simply repeating the evidence without demonstrating whether it points towards or away from discrimination.
- Include a clear rationale as to why you believe particular pieces of evidence to be strong and how they link to the outcomes reached.
- For further information please refer to Focus issue 22 (Handling complaints involving race discrimination) and the IOPC discrimination guidelines.

Writing Up

How should I write up my decision?

- Express the decision in terms of evidence pointing away from or towards discrimination.
- Where allegations intersect, this should be discussed in the findings and outcome.
- Use empathetic language and show understanding.
- Recognise the impact on the complainant and validity of their lived experience.

• Tone: balanced, not defensive, dismissive nor blaming, but be robust.

Remember



- Use easily understandable language set out the discrimination issues clearly.
- Avoid saying there is no evidence of discrimination acknowledge how discrimination may be present.
- Don't simply repeat the evidence explain, refer to the evidence and analyse.
- Explain if evidence is direct or circumstantial and discuss its weight and credibility.
- Return to assessment and impact of gravity factors.

Outcomes

What outcomes may be suitable?

- Use remedies. Is there learning, explanation or an apology needed?
- You could offer mediation, a debrief, invite the complainant to attend a scrutiny panel, or invite them to watch video footage.
- Learning RPRP, individual learning from reflection, organisational learning.
- Are failings because of indirect discrimination? If so, how has this impacted on the service received by the complainant?
- Consider any proposals for resolution suggested by complainant.
- Was the service received acceptable or not? Explain your decision.
- For more serious cases (special procedures investigations) is there a case to answer? If not, explain why not (see Focus 13)
- Review rights is it clear for the complainant how to submit a request for a review and to which review body?

Remember



- Outcomes should focus on learning, reflection, resolution, improvement and explanations.
- Potential learning or best practice should be considered in every case, whatever other outcomes may be reached.
- Even if you find that the level of service was acceptable and the evidence points away from discrimination, it is important to acknowledge the impact of the encounter on the complainant and how they experienced it.
- If a complaint is handled outside of an investigation, think about using remedies that address the cause of the dissatisfaction. Be flexible and focused.
- Findings of indirect discrimination may be linked to discriminatory policies, practices or procedures (for example, local/national guidance, Public Sector Equality Duty).

Useful links

- IOPC Focus
- IOPC Statutory guidance
- IOPC Discrimination Guidelines
- Home Office Guidance on Professional Standards, performance and integrity in policing
- College of Policing Guidance on outcomes in police misconduct proceedings

If you would like more information or have any queries about this information sheet, please contact <u>oversight@policeconduct.gov.uk</u>

This document is also available in Welsh. Mae'r ddogfen hon ar gael yn y Gymraeg hefyd.

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