



Guidelines for handling allegations of discrimination

November 2024

How to use this document

This guidance is designed to help you in handling allegations involving discrimination, but it is important to note that you do not need to read it from start to finish. Rather, it is a reference guide, that covers different stages of the complaints process.

The document begins with an explanation of the various types of discrimination, followed by detailed guidance on handling complaints, including the types of allegations that may arise. It also provides direction on gathering and assessing evidence.

Chapters [6](#) and [7](#) are particularly important: [Chapter 6](#) focuses on complaint handlers, while [Chapter 7](#) addresses decision makers. However, we recognise that in some complaints, this division may feel artificial as the roles can overlap.

We have also included [58 case studies](#), which are drawn from our engagement with practitioners. They offer a range of examples that provide context and clarity around types of complaints, although they do contribute to the length of the document.

Getting started

We recommend starting with the [executive summary](#) to get a quick overview of the topics covered, including new areas and key points for your attention. For detailed information, please refer to the specific sections in the body of the document where you will also find the linked case studies.

The best way to use this document is on-screen, as you will benefit from the clickable links that are built into the text – these are [underlined](#). Being a PDF, the document is searchable, so you can also use the ‘find’ function in your PDF software. Your PDF software may also be able to display a clickable headings menu on the left of your screen. The contents page and chapter divider indexes are interactive, allowing you to jump directly to relevant sections. Cross-references to information in different sections or documents are also clickable, where possible, and are [underlined](#).

This structure ensures that you can easily access the information you need, when you need it, without having to read every page. It is designed to help users quickly navigate the document and find the information you need.

Must-reads

It is important to remember that no two cases involving discrimination are the same. However, our experience shows that certain sections of this report are relevant to many complaints and can guide your approach.

For new complaint handlers or those looking to enhance their understanding of discrimination

If you are new to complaint handling or seeking to improve your knowledge of discrimination, we recommend starting with Chapters 2 and 4. These chapters provide an overview of the different types of discrimination. Chapter 3 offers important guidance on how to engage with the complainant, a critical step before any further action.

For experienced complaint handlers or decision makers

If you are more experienced, we encourage you to explore the content in Chapters 6 and 7. These chapters are broken down by complaint type and evidence considerations. Please keep in mind that not all the content will apply to every case, but both chapters provide valuable insights into handling and assessing complaints.

For example, Chapter 6 addresses how to approach complaints where the actions of the police officer or staff member may have been influenced by bias, assumptions or stereotypes – an area where practitioners have specifically requested more guidance. This content will be crucial when navigating sensitive issues.

Lastly, we want to emphasise the importance of Chapter 7, which includes guidance on learning from complaints and effectively communicating outcomes. Our experience shows that when these aspects are handled poorly, it can undermine all previous efforts, making it a critical element for ensuring effective handling.

By focusing on these key sections, you will be better equipped to handle complex discrimination complaints with confidence.

Contents

- Foreword7**
- Executive Summary 10**
 - Defining discrimination 10
 - Engaging with the complainant 11
 - Understanding the allegation of discrimination.....12
 - Assessing gravity 12
 - Handling the complaint..... 13
 - Lines of enquiry..... 14
 - Probing the officer or staff member’s account..... 14
 - Organisational issues..... 15
 - Outcomes..... 15
 - Reviews 16
- Chapter 1: Introduction 19**
 - Matters to which the guidance should be applied20
 - Who the guidance applies to..... 20
 - Other guidance and legislation..... 20
 - A note about language 21
- Chapter 2: Defining discrimination 23**
 - Standards of professional behaviour..... 23
 - Organisational issues..... 25
 - Unlawful discrimination and human rights..... 25
 - Unlawful discrimination under the Equality Act 2010 26
 - Protected characteristics..... 26
 - Direct discrimination 27
 - Harassment..... 30
 - Victimisation 34
 - Indirect discrimination 35
 - Public Sector Equality Duty (PSED)..... 37
 - Disability discrimination..... 38
 - Criminal offences and hate crime guidance 46
- Chapter 3: Engaging with the complainant 50**
 - Considerations before contacting the complainant 51
 - Contacting the complainant to explore their allegations 52
 - Showing respect and working towards resolution 55
 - Sensitivity to individual needs and equality issues 56
 - Reluctance to disclose protected characteristics 59

Engagement with a complainant whose behaviour is considered to be unacceptable or unreasonable	60
Chapter 4: Understanding the complaint	63
Understanding the allegation of discrimination.....	63
Racism	64
Adultification.....	65
Discrimination on grounds of religion or belief	65
Discrimination on the grounds of sexual orientation.....	66
Transphobia	66
Disability discrimination.....	66
Ageism	67
Sexism	67
Micro-aggressions.....	67
Chapter 5: Assessing complaints and gravity factors	69
Gravity factors.....	69
Handling complaints outside of Schedule 3	73
Recording complaints.....	74
Mandatory referral to the IOPC	75
Voluntary referral to the IOPC.....	76
Deciding whether to investigate the complaint or handle under Schedule 3 to the <i>Police Reform Act 2002</i> otherwise than by investigation.....	77
Appointing a complaint handler	80
Handling under Schedule 3 to the <i>Police Reform Act 2002</i> otherwise than by investigation	81
Deciding to take no further action	81
Investigations - special procedures, severity assessments and notices of investigation	81
Terms of reference.....	82
Chapter 6: Gathering & assessing the evidence	85
Lines of enquiry.....	85
Types of complaint – complaints involving allegations of discriminatory bias, assumptions, and stereotypes	88
Types of complaint - complaints about poor levels of service	89
Types of complaint – complaints about discriminatory use of police powers	90
Types of complaint - complaints not about the conduct of a person serving with the police.....	92
Types of evidence - officer complaint history and other patterns of behaviour evidence.....	92
Types of evidence - comparator evidence	99
Types of evidence – discriminatory language	101

Types of evidence – officer or staff member’s account	102
Chapter 7 – Findings and outcomes	108
Decisions to be made on complaints handled otherwise than by investigation	109
Decisions to be made on complaints handled by investigation	109
Assessing the evidence and making decisions	110
Reasonable and proportionate outcomes	129
Communicating decisions	136
Chapter 8 – Reviews.....	146
Relevant review body.....	146
Conducting the review.....	147
Chapter 9 – Supporting and embedding these guidelines.....	150
Training.....	150
Quality assurance	150
Complaint handling monitoring.....	151
Collecting equalities information	151
Promoting access to the complaints system	152
Annex A – Framework for assessing issues of discrimination	154
Annex B – Other resources	159
Inquiries that have reported on issues of discrimination in policing.....	159
Equality and Human Rights Commission (EHRC)	159
His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) reports	160
IOPC	160
Super-complaints	161
Annex C – Case studies	162
Index to the case studies	162

Foreword



Matters involving issues of discrimination in policing are one of the areas most frequently raised by communities and stakeholders in our engagement work. They deeply affect our communities and based on how the matters are addressed, can shape attitudes towards the police, which often go beyond personal interactions.

If people feel they have been treated differently and unfairly the perceived legitimacy of, and indeed trust in policing, is corroded. It is often in this context that complaints are made, or matters come to the attention of the police. The way in which these complaints are subsequently handled is crucial for restoring public confidence in the police and the police complaints system.

Handling and resolving allegations of discrimination is challenging, especially when it comes to more nuanced forms of discrimination which are less overt.

These revised discrimination guidelines support complaint handlers by providing detailed step-by-step advice supported by practical examples. They set the standards that complainants, families and other interested parties should expect when allegations of discrimination are made against the police. They are also the standards that we will, and local policing bodies should, hold police forces to when we make decisions on reviews and are those that we apply when we carry out our own investigations into allegations of discrimination.

I would like to thank the Race Discrimination National Advisory Group and practitioners that we have engaged with to produce these revised guidelines. The revisions build on the work of our predecessor the Independent Police Complaints Commission (IPCC) which published the 'Guidelines for handling allegations of discrimination' in 2014 as well as Issue 22 of Focus which was published in December 2022. In developing the 2014 guidelines, the IPCC heard from a range of organisations with an interest in all forms of discrimination including community groups, complainants and their representatives, and police forces and police representative organisations, and was also assisted by a reference group (which included representatives from the Equality and Human Rights Commission, the

Discrimination Law Association, the College of Policing and the National Police Chiefs' Council).

It is ten years since the views, experiences and expertise of all those who contributed have shaped and enriched those guidelines. Their knowledge and expertise remain relevant today.

It is crucial for public confidence in the police and the police complaints system that allegations of discrimination are handled properly. The existence of separate guidance underscores its importance. Fairness is a core principle underpinning the concept of policing by consent, and unfair or unlawful discrimination fundamentally undermines this principle.

A handwritten signature in black ink, appearing to read 'Rachel Watson', with a long horizontal flourish extending to the right.

Rachel Watson
Director General

Executive summary

Defining discrimination	10
Engaging with the complainant	11
Understanding the allegation of discrimination.....	12
Assessing gravity	12
Handling the complaint.....	13
Lines of enquiry	14
Probing the officer or staff member's account.....	14
Organisational issues	15
Outcomes	15
Reviews	16

Executive Summary

“Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.”

Standards of Professional Behaviour (Equality and Diversity)

Where discrimination is alleged, it will often be appropriate to consider other standards of professional behaviour as well as, and together with, the equality and diversity standard. In particular, it is common that the standards relating to ‘authority, respect and courtesy’ and ‘discreditable conduct’ will also be relevant where an allegation of discrimination is made.

Defining discrimination

Discrimination means treating someone badly or unfairly because of a characteristic they share with others.

Unlawful discrimination is set out under the *Equality Act 2010* and the *European Convention on Human Rights*. It includes:

- **Breach of Article 14 of the European Convention on Human Rights**: protection from discrimination, where it is alleged that discrimination has affected a person’s ability to enjoy one or more of the other human rights.
- **Direct discrimination**: when someone is treated *less favourably* than another person because of a protected characteristic.
- **Harassment**: unwanted conduct relating to a relevant protected characteristic which violates dignity or creates an intimidating, hostile or degrading environment. Harassment also includes **sexual harassment** and **less favourable treatment of a person because they submit to or reject sexual harassment or harassment related to sex or gender reassignment** .
- **Victimisation**: where a person is treated badly because they have (or are believed to have) complained about discrimination (or have supported someone else to do so)
- **Indirect discrimination**: when a policy or practice which applies to all puts a protected group at a *particular disadvantage* and the policy or practice cannot be objectively justified.

The **protected characteristics** are age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

There are additional protections under the *Equality Act 2010* relating to **disability**:

- **Discrimination arising from disability**: when a disabled person is treated unfavourably because of something arising from their disability and the treatment cannot be objectively justified.
- **Failure to make reasonable adjustments**: police forces, as public authorities, have a duty to make reasonable adjustments to make sure that disabled people are not substantially disadvantaged when accessing police services or in their interactions with police – failure to do so is a form of discrimination.

The Standards of Professional Behaviour also say that *police officers must not discriminate unfairly*. This covers discrimination of other identifiable groups not protected under the *Equality Act 2010*, such as homeless people or sex workers or alternative sub-culture groups such as goths, emos or punks.

These guidelines are focused on complaints, and specifically complaints handled locally by police forces. They apply whether the complaint is handled outside of Schedule 3, otherwise than by investigation or by investigation. As such, the term 'complainant' is used throughout. However, the same principles apply to the handling of death or serious injury or recordable conduct matters and to any interested persons in such investigations.

Engaging with the complainant

Discrimination complaints will often involve a complainant who already has very low levels of trust in the police and who may be anticipating further discrimination in the police response to their complaint. Failure to engage effectively and empathetically with the complainant is likely to reinforce this mistrust and undermine confidence in the complaints process. The complaint handler should:

- Contact the complainant at the beginning of the complaints process to explore why the complainant feels that they have been discriminated against. Questions asked should be tailored to the specifics of the complaint and take into account the information already known.
- Respect the complainant's point of view, approaching the allegation with an open mind and recognising the impact on the complainant.
- Be sensitive to individual needs and equality issues – making suitable adjustments and accommodations to make sure the complainant can engage safely and effectively with the complaints system.
- Consider the potential for secondary victimisation.

Understanding the allegation of discrimination

At the beginning of the handling of the complaint, the complaint handler should take steps to build their understanding of the discrimination alleged, including the types of assumptions, prejudice or bias that might have informed the police officer's or staff member's decisions, actions or behaviour. This should inform the lines of enquiry.

To do this the complaint handler should consider:

- What does the complainant say about why they think they were discriminated against?
- What do you know about the type of discrimination alleged? – through other complaints, training, local knowledge etc.
- What else do you need to find out? – drawing on expertise, research and reports.

Click on the links below to see examples in [Chapter 4](#) of how prejudices, assumptions and biases might present themselves across a range of protected characteristics:

- [racism](#)
- [discrimination on grounds of religion or belief](#)
- [homophobia and biphobia](#)
- [transphobia](#)
- [disability discrimination](#)
- [ageism](#)
- [sexism](#)

Assessing gravity

An important part of handling all police complaints and conduct matters is the assessment of the seriousness of the alleged misconduct. This informs decisions about how the matter should be dealt with. Factors which could raise the seriousness of the alleged conduct in a discrimination case include:

- **Harm or impact** – particularly foreseeable harmful impact, including failure to take account of a person's known vulnerability or known community tensions.
- **Intent** – any indication that the alleged discrimination was intentional or malicious.
- **Serious negligence or recklessness** – for example, failing to follow force policy where the person should have known to do so.

- **Vulnerability** – allegations involving a vulnerable person should be seen as particularly serious
- **Repeat behaviour** – if the alleged behaviour fits with previous patterns of behaviour or previous complaints.
- **Wider context** – whether the matter gives rise to concerns additional to those alleged by the complainant
- **Level of responsibility** – senior officers have a particular responsibility to uphold standards and set an example which should be taken into account in this assessment.
- **Organisational vs individual culpability** – issues of discrimination involving the conduct of individual officers often do not occur in a vacuum. Organisational and systemic issues can influence individual conduct and can certainly impact on the service provided to members of the public and the risk of recurrence.

The College of Policing's 'Guidance on outcomes in misconduct proceedings' gives more information on assessing seriousness.

Click on the links below for more detailed guidance about how an assessment of the gravity of the alleged discriminatory conduct should inform decisions around:

- [handling complaints outside of Schedule 3 to the *Police Reform Act 2002*](#)
- [recording complaints](#)
- [referral to the IOPC](#)
- [whether to handle a matter by investigation or otherwise than by investigation](#)
- [special procedures](#)
- [severity assessments](#)
- [notices of investigation](#)
- [terms of reference](#)

Handling the complaint

Complaint handlers should have a good understanding of equality and diversity issues and have an appropriate level of knowledge, skills and experience to be able to apply these guidelines effectively.

Any [terms of reference](#) should clearly refer to and address any discrimination allegations raised.

Lines of enquiry

Those lines of enquiry which would be followed in the handling of any complaint should be followed to try to find out what happened. It is common in discrimination cases for there to be little or no *direct* evidence, beyond the complaint, available to support an allegation. The handling of the complaint will need to consider what other evidence is reasonable and proportionate to obtain which would be relevant in making a determination or case to answer decision for a breach of the Equality and Diversity Standard of Professional Behaviour. This includes:

Patterns of behaviour

- Officer complaint history should be considered in all cases.
- Other patterns of behaviour evidence (such as trends in stop and search) should be considered where available, proportionate and relevant to the allegation.

Comparator evidence

- Many complaints of discrimination will involve an allegation that someone has been treated as they have because of a protected characteristic. One way of assessing this is to compare the treatment of the complainant with someone who does not have the same protected characteristic. Complaint handlers should look for evidence that supports this type of comparison.

Language

- An assessment of language used, including language used in any records relating to the incident in question or arising from the handling of the complaint.

Probing the officer or staff member's account

It is important to get an account from the officer or staff member and to probe and challenge *why* they acted in the way they did.

Questions should focus on:

- why the police officer or staff member undertook the actions that they did
- what assumptions or assessments were made
- what the reasons were
- what the police officer or staff member knew about the complainant

The police officer or staff member should also be asked to reflect on:

- why the complainant might have felt discriminated against and what could have been done differently to change this
- their experience and training and whether they felt adequately equipped to deal with the situation they faced

Organisational issues

A complaint does not have to be about the conduct of a person serving with the police. It can be made about any matter which has had an adverse effect on the person making the complaint. Organisational issues and organisational learning can and should be considered during the handling of the complaint. If the handling of a complaint finds a case to answer for discrimination, that the service provided was unacceptable and/or identifies individual learning, proportionate consideration should be given to whether the issues identified indicate a broader concern within a team organisation issue.

However, it will not be within the scope of the handling of an individual complaint to answer the broader question of whether a force is institutionally discriminatory.

Outcomes

Discrimination complaints, like all other complaints, are assessed on the balance of probabilities.

In some cases, there will be clear evidence of discrimination which will lead to a case to answer or finding that the service provided was not acceptable. In many cases the complaint handler / decision maker will need to assess the cumulative picture of circumstantial evidence which could include patterns of behaviour, comparator evidence, any language of concern or evidence that the police officer / staff member acted in a way that fits with discriminatory stereotyping.

The assessment should consider:

- The cumulative weight of all the evidence and the credibility of competing accounts.
- Any non-discriminatory reasons given by the officer or staff member to explain the behaviour, and whether these reasons are plausible and credible.
- Whether the complainant would have been treated differently if they did not have that protected characteristic, or belong to that group.

The framework provided in [Annex A](#) is designed to assist.

All complaint handling should try to resolve and rebuild trust. A resolution focused outcome should:

- Show respect for the complainant's point of view and the value of their complaint – even if there is not enough evidence to find that the service provided was not acceptable or to find a case to answer for discrimination.
- Give a clear, evidence-based response to the discrimination allegation (as well as other allegations made).
- Give a clear explanation of what the handling of the complaint found, in terms of what happened and why.
- Openly acknowledge and apologise for any failings found.
- Take appropriate action in relation to any police officer or staff member who has acted inappropriately, including disciplinary action where relevant.
- Show how the individual and the organisation will learn from the complaint to stop the same thing from happening again.
- Reflect on best practice and whether there is anything the police officer or staff member could have done differently that would have improved the experience for the complainant.

It will sometimes be appropriate for a case to answer for discrimination to be dealt with at the more serious end of the spectrum in terms of disciplinary action. However, in cases where the behaviour is clearly unintentional, it may be appropriate for the response to focus on learning and changing behaviour or attitudes.

How decisions are made, justified and set out, and how those decisions set out the issues of discrimination is important when trying to build confidence in the police and the police complaints system.

The IOPC expects that disciplinary panels will have regard for this guidance, alongside the College of Policing's 'Guidance on outcomes in misconduct proceedings', when considering allegations of discriminatory behaviour.

Reviews

The appropriate authority should decide who the relevant review body is, with reference to Chapter 18 of the IOPC's Statutory Guidance. As with all complaints, when assessing whether it is 'unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of criminal or disciplinary proceedings or would not involve an infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights', the assessment should be based on the wording of the complaint and not on the merit or likely outcome. This is a subjective test.

An application for a review offers the opportunity to consider whether the complaint outcome was reasonable and proportionate and, if not, to put things right. The

reviewer should take into consideration these guidelines – to both consider whether they have been followed, and in making their own decisions about whether the outcome was reasonable and proportionate.

Chapter 1

Introduction

Matters to which the guidance should be applied	20
Who the guidance applies to	20
Other guidance and legislation	20
A note about language	21

Chapter 1: Introduction

- 1.1 The Independent Office for Police Conduct (IOPC) has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales and to ensure that it is efficient and effective. The police complaints system plays a vital role, as complaints are integral to police accountability and are essential for continual learning and improvement.
- 1.2 These guidelines are one of the ways in which the IOPC assists local policing bodies and forces to achieve high standards in the handling of allegations of discrimination. They set the standards that complainants, families and other interested parties should expect when allegations of discrimination are made against the police. They also set the standards that we will, and local policing bodies should, hold police forces to when we make decisions on reviews and are those that we apply when we carry out our own investigations into allegations of discrimination.
- 1.3 Discrimination in policing is a serious issue that can erode public trust and confidence. When individuals feel unfairly targeted or treated differently by the police based on their protected characteristics, it can undermine their trust in a system that is there to protect and serve communities.
- 1.4 Discrimination in any form goes against the principles of fairness and equality that policing must uphold, and effectively respond to, when discriminatory practices and behaviours are perceived, observed or reported. Therefore, the ability to effectively identify and address discrimination is essential when handling complaints, particularly for trust and confidence in policing.
- 1.5 While overt acts of discrimination are often easier to identify and address, it is essential to understand that most acts of discrimination can be subtle and implicit. They manifest through biases, attitudes or actions that are not always recognised or acknowledged. This form of discrimination can involve harmful comments, behaviours or decisions that may be unintentional but nonetheless have a harmful impact on individuals or groups. Learning and continual improvement is essential; failing to effectively address allegations of discrimination can perpetuate a perceived culture of impunity within policing. Even well-intentioned individuals can engage in discriminatory behaviour without realising it. Therefore, constant vigilance is vital to ensure that the law and the ethical policing principles that guide policing practices are consistently upheld.

Matters to which the guidance should be applied

- 1.6 These guidelines are focused on complaints, and specifically complaints handled locally by police forces. This applies whether the complaint is handled outside of Schedule 3, otherwise than by investigation or by investigation. As such, the term ‘complainant’ is used throughout. However, the same principles apply to the handling of death or serious injury or recordable conduct matters and to any interested persons in such investigations. Please note, however, that there are differences in how the *Equality Act 2010* applies to the delivery of services and public functions (such as policing) and how it applies to other functions – for example, employment or training – which could affect its application in the handling of recordable conduct matters.
- 1.7 The IOPC also applies these guidelines when conducting independent investigations, or when directing an investigation. However, where the legislation would require different steps in such cases, as opposed to a case that is handled locally, those steps are not spelt out in this guidance, to assist with clarity for complaint handlers and decision makers in police forces.

Who the guidance applies to

- 1.8 We expect all local policing bodies, police officers, police staff members, special constables and all those working in policing to have regard to the guidance. It also applies to those agencies and non-Home Office forces that have entered into Section 26 or Section 26BA agreements with the IOPC, subject to any particular provisions contained in those agreements.

Other guidance and legislation

- 1.9 These guidelines do not detail all of the legal requirements of complaint handling, so should be read alongside the IOPC's ‘Statutory Guidance’. The same principles set out in the Statutory Guidance – of accessibility, reasonable and proportionate handling and learning and improvement – underpin the handling of allegations of discrimination as they do the handling of all complaints.
- 1.10 Whilst the content of these guidelines, on handling allegations of discrimination, could be used to inform good practice in the handling of any complaint, they aim to highlight areas that are particularly relevant to consider in the handling of allegations of discrimination.
- 1.11 The guidance should also be read in conjunction with:

- the Home Office’s guidance on ‘Conduct, efficiency and effectiveness: Statutory guidance on professional standards, performance and integrity in policing’
- College of Policing’s ‘Guidance on outcomes in police misconduct proceedings’
- the College of Policing’s Code of Ethics and Code of Practice for Ethical Policing
- the IOPC’s issues of Focus
- the IOPC’s ‘Guidance on capturing data about police complaints’

A note about language

1.12 Please note that this publication contains language that some people may find offensive and discusses topics that some people may find upsetting. Such language is included to reflect the serious nature of discrimination complaints, and to raise awareness of the potential scenarios and language that complaint handlers may be considering.

1.13 We acknowledge that language changes. The language used in this guidance reflects the approach taken by the IOPC in 2024. Where necessary we have reflected the language of the relevant legislation.

Chapter 2

Defining discrimination

Standards of professional behaviour	23
Organisational issues	25
Unlawful discrimination and human rights	25
Unlawful discrimination under the Equality Act 2010	26
Protected characteristics	26
Direct discrimination	27
Harassment	30
Victimisation	34
Indirect discrimination.....	35
Public Sector Equality Duty (PSED).....	37
Disability discrimination	38
Criminal offences and hate crime guidance	46

Chapter 2: Defining discrimination

Standards of professional behaviour

- 2.1 The police standards of professional behaviour (in Schedule 2 of the *Police (Conduct) Regulations 2020*) set out the expectations that the police and the public have of how police officers should behave. The standard relating to equality and diversity states that:

“Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.”

- 2.2 Where an allegation of discrimination is made against the police it will need to be recorded and assessed against this standard.

- 2.3 Where discrimination is alleged, it will often be appropriate to consider other standards of professional behaviour as well as, and together with, the equality and diversity standard. In particular, it is common that the standards relating to ‘authority, respect and courtesy’ and ‘discreditable conduct’ will also be relevant where an allegation of discrimination is made. These standards require that:

“Authority, Respect and Courtesy:

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.

Discreditable Conduct:

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.”

- 2.4 The handling of matters should give proper consideration to all the standards that are engaged. However, if discrimination is alleged, the equality and diversity standard will always be appropriate to consider and is the focus of this guidance. Recording the allegation as discrimination (even when discrimination may not be explicitly mentioned but it is inferred from the

complaint or there is later found to be an indication of discrimination – see paragraphs [5.48](#) and [5.49](#)), helps build public confidence in the complaints system. It is important to:

- Ensure compliance with relevant policies, guidance, and legislation, including the *Public Sector Equality Duty* (PSED)
- Demonstrate understanding of the nuances of discrimination, that it takes different forms and can be difficult to identify. That it's possible discriminatory behaviour/ practices can still be at the root of a complaint
- Provide appropriate support, as discrimination can have a significant impact on individuals.
- Build trust and confidence, by demonstrating an understanding of the concerns of individuals / groups, who may be reluctant to raise concerns

- 2.5 The Equality and Diversity Standard of Professional Behaviour states that police officers must not discriminate 'unlawfully or unfairly'.
- 2.6 'Unlawful' discrimination would involve a breach of the *Equality Act 2010* or the *Human Rights Act* – see sections below. The *Equality Act 2010* prohibits discrimination relating to the 'protected characteristics' (see paragraph [2.17](#)). The College of Policing's 'Guidance on outcomes in misconduct proceedings' states that: "Discrimination towards persons on the basis of any protected characteristic is never acceptable and always serious." (Paragraph 4.54). If a protected characteristic is identified by the complaint handler / decision maker they should consider whether any of the tests under the *Equality Act 2010* apply, as this could indicate unlawful discrimination.
- 2.7 Discriminating 'unfairly' includes discrimination of other identifiable groups that are not protected under the *Equality Act 2010*. For example, this could include homeless people or sex workers or groups from a particular town/region or from alternative sub-cultures such as goths, emos or punks. It could also include people who do not use English as their first language, such as Welsh language speakers, and it could include young people and children (as under 18s are not covered by the protection from age discrimination under the *Equality Act 2010*).
- 2.8 While the 'protected characteristics' are referred to throughout this guidance, the guidelines should be used as a tool to help the assessment of any allegations of unfair discriminatory behaviour, regardless of whether the allegation refers to a protected characteristic.
- 2.9 Discriminating 'unfairly' also includes behaviour or poor treatment which may not meet the definitions set out in the *Equality Act 2010* or *European*

Convention on Human Rights, but is nonetheless unfair, and is due to someone's characteristics.

Organisational issues

- 2.10 Complaints about organisational issues meet the definition of a complaint under the *Police Reform Act 2002* (see Chapter 5 of the IOPC's Statutory Guidance). In addition, organisational issues may arise in relation to a complaint about conduct – for example, where a complaint about the conduct of an officer reveals an issue about a policy, training or culture. This is discussed in more detail on paragraph [6.29](#).
- 2.11 Discrimination can occur at an organisational level and may be direct discrimination (if formal or informal policies, practices or organisational culture result in less favourable treatment of a particular protected group) or may also come about because of a breach of the *Public Sector Equality Duty* or indirect discrimination (see below).

Unlawful discrimination and human rights

- 2.12 The College of Policing's 'Guidance on outcomes in misconduct proceedings' sets out that when assessing possible harm, decision makers should be aware of and have regard to any indication of infringement on human rights.¹ Article 14 of the *European Convention of Human Rights* provides protection from discrimination. This protection only applies where it is alleged that discrimination has affected a person's ability to enjoy one or more of the other human rights set out in the Convention. For example, Article 14 would apply if an allegation was made that discriminatory actions led to:
- a death in custody, as a death in custody would engage Article 2 (the right to life)
 - inhuman or degrading treatment (Article 3)
 - unlawful deprivation of liberty and security (Article 5)
- 2.13 For the purpose of Article 14, discrimination is when a person is treated less favourably than another person in a similar situation and the treatment cannot be objectively and reasonably justified. The protection against discrimination applies to a wide range of characteristics including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or 'other status'. 'Other status' could include sexual orientation, gender identity, disability, marital

¹ College of Policing, *Guidance on outcomes in misconduct proceedings*, 2023

status, trade union membership, imprisonment, and age (including children or young people) among other things. It is therefore not limited to the protected characteristics listed in the *Equality Act 2010*.²

- 2.14 A determination that a police force has breached the *European Convention of Human Rights* can only be made by the courts. However, the complaint handler and decision maker may find it helpful to use the *European Convention of Human Rights* to help assess a complaint. They may form an *opinion* about whether there may have been a breach, but they must be clear that this is only an opinion, which is informing their decisions about an officer or staff member's conduct.

Unlawful discrimination under the Equality Act 2010

- 2.15 'Unlawful discrimination' under the 'Equality and Diversity Standard of Professional Behaviour' includes behaviour which is prohibited under the *Equality Act 2010*. This Act includes a number of different concepts, which are briefly outlined below. Further comprehensive and up to date guidance can be found on the Equality and Human Rights Commission (EHRC) website and in particular, in the EHRC's [Services, public functions and associations: Code of Practice](#).
- 2.16 A legally binding judgement that a police force has breached the *Equality Act 2010* can only be made by the courts. However, the complaint handler and decision maker may find it helpful to use these concepts to help assess a complaint. They may form an *opinion* about whether there may have been a breach of the *Equality Act 2010*, but they must be clear that this is only an opinion, which is informing their decisions about an officer or staff member's conduct.

Protected characteristics

- 2.17 The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity

² Further information about Article 14 of the *European Convention on Human Rights* can be found at: <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-14-protection-discrimination>

- Race
 - Religion and belief
 - Sex
 - Sexual orientation
- 2.18 'Marriage and civil partnership' is also a protected characteristic under the Equality Act 2010, however, it is not a relevant protected characteristic when considering the provision of services to the public (such as policing). See paragraph [1.6](#) and the EHRC's 'Services, public functions and associations: Code of Practice.' Discrimination on the basis of 'marriage and civil partnership' could still be unfair discrimination (see paragraph [2.7](#)).
- 2.19 Guidance on the definitions of the protected characteristics can be found on the EHRC website: [Protected characteristics | EHRC \(equalityhumanrights.com\)](#). Examples of how prejudices, assumptions and biases might present themselves across protected characteristics are provided in the paragraphs beginning at [4.8](#).

Direct discrimination

- 2.20 Where an allegation is made that a person was *treated differently* by the police *because of* their protected characteristic, it will be relevant to consider the test for 'direct discrimination' under the *Equality Act 2010*.
- 2.21 Direct discrimination is when someone is treated less favourably than another person because of a protected characteristic.³
- 2.22 The key elements of this test are:
- Less favourable treatment
 - a. This means being treated ***differently or worse***. It is not necessary to show actual harm – it only needs to be shown that it is ***reasonable*** that the person would ***prefer not to have been treated differently in that way***.
 - b. 'Less favourable treatment' suggests a comparison: 'less favourable than who?' The 'who' is a person in the same situation who does not have the same protected characteristic

³ There are some differences when considering the protected characteristics of 'pregnancy and maternity' and 'age'. See the EHRC website and the direct discrimination chapter of the EHRC's 'Services, public functions and associations: Code of Practice'.

(for example, you might compare the treatment of a Black person to how a White person would have been treated in the same circumstances). Making this comparison is a key part of the handling of the complaint and is discussed later in this guidance.

- **Because of** a protected characteristic
 - a. This means that the characteristic needs to be a **cause** of the less favourable treatment but **does not need to be the only or even the main cause**. It is enough that it had a significant influence on the outcome.
 - b. Discrimination may relate to more than one protected characteristic (for example: race and religion, or gender and sexual orientation).

2.23 These principles need to be considered together. The question to ask is:

Was the person's protected characteristic(s) a cause of less favourable treatment?

2.24 In order to address this the handling of the complaint must ensure that it gathers evidence to address the following:

- Has there been less favourable treatment?
- If so, was it because of a protected characteristic?

2.25 The decision maker should structure their analysis of the evidence to cover the following considerations:

- **Is there evidence of less favourable treatment?** How inappropriate / unexpected / unreasonable / unexplained or otherwise is the treatment/behaviour?
- **Is there evidence that the person's protected characteristic was a reason?** Set out any evidence that points to and / or away from the person's protected characteristic being a factor.
- **Are there evidence-based non-discriminatory reasons?** Are any non-discriminatory reasons supported by the other available evidence, or could discrimination still be a factor?

2.26 While it will be helpful for decision makers to clearly address each element, it will not always be necessary to separate these points out in the analysis and some evidence may be relevant to answering more than one question. For example, if there is clearly no 'less favourable treatment' based on the evidence, further investigation or explanation of whether the protected characteristic was 'a reason' may not be necessary.

- 2.27 The benchmark for ‘less favourable treatment’, in respect of the *Equality Act 2010* test for direct discrimination, is low. The use of policing powers will usually meet this threshold if the person would prefer that they had not been subject to those powers. For example, a stop and search, decision to arrest, or use of force. Even a stop and account or a decision to follow a vehicle could meet the threshold for less favourable treatment. ‘Less favourable treatment’ could also be poor service. For example, failure to investigate or failure to provide care.

Example – A complaint about direct discrimination

Child A is a 16-year-old Black child. He was leaving a station and was following his White friend who was a few steps in front of him. Child A made a complaint that he was stopped and searched under the Misuse of Drugs Act but his friend was not. He alleged that there was no good reason for the stop and search. Child A believed that he was stopped and searched because he is Black.

Child A’s complaint included an allegation that he was treated less favourably (he was stopped and searched and his friend was not) *because of his race*. This is an allegation of direct discrimination.

- 2.28 Important to note:

- A person can discriminate against another person even if they share the same protected characteristic (for example, a Black person could racially discriminate against another Black person).
- If someone is treated less favourably because they are thought to have a protected characteristic, this is discrimination even if they do not have that characteristic. (For example, if a person is homophobic in their actions towards another person, it is discrimination even if the targeted person is not gay). This is **discrimination by perception**: where a person is treated less favourably because of a protected characteristic they are believed to have (even if they do not have that characteristic).
- It is discrimination if a person is treated less favourably because of the protected characteristic of a person they are associated with, even if they do not share that protected characteristic. For example, a parent of a disabled person could be discriminated against because of their child’s disability. This is **discrimination by association**.

Harassment

2.29 The *Equality Act 2010* prohibits three types of harassment. These are:

- Harassment related to a relevant protected characteristic.
- Sexual harassment.
- Less favourable treatment of a person because they submit to or reject sexual harassment or harassment related to sex or gender reassignment.

2.30 The 'relevant protected characteristics' when considering harassment are⁴:

- Age
- Disability
- Gender reassignment
- Race
- Sex

2.31 Pregnancy and maternity are not protected directly under the harassment provisions. However, pregnancy and maternity harassment could amount to harassment related to sex.

Harassment related to a relevant protected characteristic

2.32 This is:

Unwanted conduct, which is related to a relevant protected characteristic, and which violates dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

2.33 This would include making offensive comments or jokes or insulting gestures that relate to a relevant protected characteristic, even if these are not specifically directed at the complainant themselves, and even if the complainant does not share the protected characteristic.

2.34 It is sufficient for the conduct to have the effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment; it is not necessary for that to have been intentional.

⁴ "Religion or belief" and "sexual orientation" are not covered by the harassment provisions in the *Equality Act 2010* when considering the provision of services to the public (such as policing). See paragraph X.

Example – A complaint about harassment

Ms B complains that while she was detained in police custody, she overheard a group of police officers making comments about how it was clearly another female detainee’s “time of the month” as she had been kicking off and was being “a right little bitch”. Ms B said that she found this upsetting and that it made her more uneasy and fearful about being held in custody.

The comments were not directed at Ms B. However, the conduct complained about relates to a relevant protected characteristic and Ms B has said that the officers’ actions were both unwanted and created an offensive and intimidating environment. Ms B’s discrimination complaint should be considered in light of the test for harassment.

Example – A complaint about harassment online

Mr Y complained that an officer, PC Z, had replied to a post advertising an event on an online forum, and had used racist language as well as threatening to shut down the event. PC Z had identified himself as a police officer and threatened to use his police powers to shut down the event. Mr Y stated that he felt intimidated by PC Z’s comments and that they were discriminatory and demonstrated that he was unfit to be a police officer.

The comments related to a protected characteristic. Mr Y’s complaint of discrimination should be considered in light of the test for harassment.

The complaint handler may also wish to consider the discreditable conduct Standard of Professional Behaviour.

2.35 When considering whether the conduct has this effect, the complaint handler and decision maker should explore:

- What actions does the complainant state occurred? For example, offensive comments, being stopped and searched, inappropriate artwork on display.
- How did it make the complainant feel? Do they regard the actions complained about as violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment?
- What other circumstances are relevant? This can include:

- the personal circumstances of the complainant (for example, their health, cultural norms, or previous experience of harassment)
- the environment where the conduct took place
- Is it reasonable for the conduct to have had the effect of making the complainant feel that their dignity had been violated or creating a degrading, humiliating, hostile, intimidating or offensive environment? The complaint handler / decision maker should consider the wider public confidence or public discourse about police interaction with protected groups in such circumstances. Any reasons for the action will also need to be considered.

- 2.36 When considering a complaint of harassment, the account from the complainant, and the evidence of the complainant's perception, is particularly important (as well as the usual evidence that points to whether the actions complained about have occurred). However, if an officer uses words or engages in behaviour relating to a protected characteristic, where no one asserts that it violated their dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for them, the handling of the complaint should still consider whether the conduct is capable of having such an effect – on either the person who complained or anyone else who was to hear them (for example, members of the public or other officers or staff members).
- 2.37 It is not necessary to obtain evidence such as comparator evidence as the issue is not whether the person was treated differently to another, but how they have been made to feel, and whether it was reasonable to feel that way.

Sexual harassment

- 2.38 Sexual harassment is:

unwanted conduct, which violates dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment and which is of a sexual nature

- 2.39 This can cover verbal, non-verbal or physical conduct.

Example - A sexual harassment complaint

Ms C reports that on a night out, PC D, who was on patrol, made a lewd comment to her about her outfit. She states in her complaint that although she laughed it off at the time, she found the comment degrading.

This is a complaint that PC D created a degrading environment by comments which were of a sexual nature, which is a complaint of sexual harassment.

Example 2 - A sexual harassment complaint

Mrs E complains that PC F has posted comments on his social media account rating the attractiveness of women he has arrested.

This is a complaint that PC F created a degrading environment by comments which were of a sexual nature, which is a complaint of sexual harassment.

- 2.40 When considering whether something is harassment complaint handlers and decision makers should bear in mind the guidance in the paragraphs starting at 2.29 above. Depending on the acts alleged, complaint handlers should also keep in mind the advice in the paragraphs starting at 2.93 below.

Less favourable treatment of a person because they submit to or reject sexual harassment or harassment related to sex or gender reassignment.

- 2.41 This is when someone is treated less favourably than someone else because they have submitted to, or rejected, unwanted conduct of a sexual nature or unwanted conduct which is related to sex or gender reassignment, and the unwanted conduct violates dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

Example – A complaint of less favourable treatment of a person because they have rejected sexual harassment

Ms C reports that on a night out, PC D, who was on patrol, made a lewd comment to her about her outfit and suggested that she got into his police car. In response, she swore at him and he arrested her for being drunk and disorderly. She complained that she was only arrested because she had refused to get into his police car.

Ms C's complaint is that she was treated less favourably because she had rejected the sexual harassment from PC D.

- 2.42 Complaint handlers should consider the guidance in this document about considering both whether something is harassment and whether there is less favourable treatment.

Victimisation

- 2.43 This is where a person is treated badly because they have, or are believed to have, complained or have taken legal action about discrimination (or if they have supported someone else taking action) - or it is believed they are going to. It also applies if it is thought that they will complain. The previous, or potential, complaint should be a reason for the bad treatment, but it need not be the only reason.

- 2.44 Complaint handlers and decision makers will need to make the following assessments:
- As with all complaints, has the complainant been 'treated badly / poorly'? Bad or poor treatment is anything which the complainant might reasonably consider changed their position for the worse or put them at a disadvantage. It can include a threat to do something.
 - When considering the reason for poor treatment:
 - Did the police officer or staff member know, or believe, that the person had previously been involved in a complaint or was going to make a complaint?
 - Was the poor treatment **because** the complainant had previously complained / helped someone with a complaint / it was believed they had or would make a complaint?

Indirect discrimination

- 2.45 Sometimes a policy, practice or procedure can be applied equally across all groups but the result is still that a particular protected group is put at a 'particular disadvantage'. If the policy, practice or procedure⁵ can be 'objectively justified' as a 'proportionate means of achieving a legitimate aim', it will not be discriminatory. However, if the policy, practice or procedure cannot be appropriately justified this would be indirect discrimination.⁶
- 2.46 A 'proportionate means of achieving a legitimate aim' means:
- The aim of the treatment must be legitimate. The aim must not be discriminatory in itself and it must be a **genuine and lawful** reason.
 - The treatment must be a proportionate way of achieving this aim. This means it must be **appropriate** and **necessary in the circumstances**. If there are better and less discriminatory ways of doing things, it will be more difficult to justify.
- 2.47 Indirect discrimination is unlawful even where the discriminatory effect of the policy, practice or procedure is not intentional, unless it can be objectively justified.
- 2.48 It is not necessary for the complainant to be able to demonstrate why the policy, practice or procedure puts a particular protected characteristic at a disadvantage compared to others. In addition, it is not necessary for the disadvantage to apply to all those who share the protected characteristic.

⁵ The *Equality Act 2010* phrases this as 'provision, criterion or practice'. This is not defined by the Act but the Equality and Human Rights Commission states: "it should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A provision, criterion or practice may also include decisions to do something in the future such as a policy or criterion that has not yet been applied, as well as a 'one-off' or 'discretionary decision.'" [Paragraph 5.9, Code of practice for services, public functions and associations: consultation 2024](#), Equality and Human Rights Commission, 2024.

⁶ There could be a complaint of indirect discrimination against a policy, practice or procedure that has not yet been applied.

Example - A complaint about indirect discrimination

Mr D is a Jewish man and wears a yarmulke (skull cap). He complains that when he was arrested and detained in custody, he was required to remove his yarmulke which he feels was discriminatory. Mr D states that he was told by the custody sergeant that he had to remove the yarmulke because it was policy for all detainees to remove any hats or head gear when entering custody.

Mr D's complaint is that, while the same policy applies to all, he is disproportionately affected as removing his yarmulke challenges and undermines his religious observance. This complaint raises issues of indirect discrimination.

Please see [case study 1](#) in [Annex C](#) for another example of indirect discrimination.

- 2.49 The complaint handler and decision maker should make the following assessments:
- What is the disadvantage that is caused by the policy, practice or procedure?
 - Does that disadvantage affect people with a specific protected characteristic when compared to those without that characteristic? It is important to be clear which protected characteristic is relevant. In relation to, for example, disability this would not be disabled people as a whole but could be people who have a particular disability.
 - Has the policy, practice or procedure disadvantaged the complainant, or will it?
 - What is the disadvantage compared to people who do not share that protected characteristic?
 - Is the policy, practice or procedure a proportionate means of achieving a legitimate aim?
- 2.50 Consideration of indirect discrimination will usually involve a comparison between the effect of the policy, practice or procedure on those with the protected characteristic in question, and the effect on those without it. Statistical analysis can be an important tool to provide an insight into the link between the policy, practice or procedure and the disadvantage that it causes. However, this may not always be appropriate or reliable. It is less likely that evidence such as witness statements, CCTV or body worn video would be necessary to obtain when considering an allegation of indirect

discrimination as it is the consequences of a policy which is under consideration.

Public Sector Equality Duty (PSED)

- 2.51 Under the Public Sector Equality Duty (PSED), police forces are required to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
 - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.
 - Foster good relations between people who share a relevant protected characteristic and those who do not share it.
- 2.52 This duty applies to all protected characteristics as covered by the *Equality Act 2010*, except 'marriage or civil partnership'.
- 2.53 The effective handling of discrimination complaints is central to meeting this duty, but complaints may also be made about breaches of the duty.
- 2.54 Complaints may include an allegation that there has been a breach of the PSED. This may either be directly alleged by the complainant, or it may be that a complaint alleges discrimination and the complaint handler establishes that the form of the discrimination is a breach of the PSED.
- 2.55 Breaches of the PSED are usually organisational, but individual officers also have a responsibility to abide by the PSED and, therefore, can also breach it.
- 2.56 To identify where there has been a breach of the PSED, the complaint handler and decision maker should explore:
- Was it known, or ought to have been known, that the complainant had a protected characteristic?
 - Is there evidence that in reaching decisions and taking actions regard was paid to that protected characteristic and the aims of the PSED?
 - If the complaint concerns an operation, were Equality Impact Assessments and Community Impact Assessments undertaken at the planning stage?

Example - Breach of the Public Sector Equality Duty (PSED)

A team in Force A conducted a planned operation, forcing entry to a residential property which they believed to be the base of a drug dealing operation. The members of the household were known to the force, including the fact that young children and a disabled elderly woman lived at the property, and that most of the residents did not speak English.

Police forced entry and completed a search of the property and the people present in the house. A complaint was made by one of the residents that no consideration had been made about the potential impact of the operation on the children or the disabled individual. They also complained that officers had discriminated against some of the people present because they did not understand the instructions the police officers were shouting, nor did they understand the caution provided to them upon arrest, because they did not speak English.

As part of the handling of the complaint, the complaint handler discovered that the force had failed to complete an equality impact assessment or community impact assessment as part of their planning for the operation. Therefore, the decision maker decided that the service provided was not acceptable, as the force had not had due regard to the need to eliminate discrimination, (for example, by obtaining the services of an interpreter), advance equality of opportunity and foster good relations with the wider community. This could indicate a potential breach of the Public Sector Equality Duty.

Disability discrimination

2.57 Under the *Equality Act 2010*, a disability means a physical or a mental impairment which has a substantial and long-term impact on a person's ability to do normal day to day activities. It covers progressive conditions like HIV, cancer or multiple sclerosis, even if the person is currently able to carry out normal day-to-day activities. 'Long term' means that the condition has lasted, or is likely to last, for more than 12 months. (Further guidance on the definition of disability is available from the EHRC website.)

2.58 The protections against direct and indirect discrimination, as well as harassment and victimisation, apply to disabled people. However, there are **additional** protections under the *Equality Act 2010* relating to disability which mean that, in some circumstances, the police *should* treat disabled people differently to take account of their impairment. The additional protections are:

discrimination arising from disability, and the duty to make reasonable adjustments.

2.59 In summary, the *Equality Act 2010* protects disabled people from the following types of discrimination:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation
- Discrimination arising from disability
- Failure to make reasonable adjustments

2.60 If a complaint includes issues of disability discrimination, it is important for the complaint handler to carefully consider which type of disability discrimination may be relevant.

2.61 The test for direct discrimination, for example, is likely to be relevant to consider if the complaint includes allegations that the disabled person was stereotyped because of their disability or that fear, disdain or prejudiced assumptions relating to their disability influenced the actions or behaviours of the police. (for example where a person is treated less favourably because of their disability).

2.62 The test for direct disability discrimination (and/or the test for harassment) will also apply if it is alleged that an officer or staff member spoke or acted in an offensive or derogative way in relation to a person's disability.

Examples outlining the difference in three forms of discrimination related to disability

Ms A has schizophrenia and is known to the police. She reported to the police that she was sexually assaulted. The police did not investigate and closed the case. Ms A complained that the police took no action and discriminated against her.

Direct disability discrimination

Ms A states that the police assumed that she was making the allegation up, and that she could not be believed, because she has schizophrenia.

In this complaint, Ms A states that she was treated less favourably than she would have been if she did not have a disability – that is, she was not believed, when she would have been if not for her mental health condition. This is an allegation of direct disability discrimination.

Discrimination arising from disability

Ms A states that she explained to officers that the symptoms of schizophrenia included feeling disconnected from your emotions and a difficulty concentrating. However, she states that officers did not take her report seriously because of the effects of these symptoms.

In this complaint, Ms A states that she was treated unfavourably because of something arising from her disability, and she was not taken seriously because of those symptoms. This is an allegation of discrimination arising from a disability.

Failure to make reasonable adjustments

Ms A states that she asked for a particular officer to take her statement as she had had previous encounters with him, and felt comfortable with him, whereas her schizophrenia meant that she often got upset when interacting with people in authority. Ms A states that she saw him in the station when she arrived. Officers refused, saying that it was force policy for female officers to take statements from female victims of sexual assault.

In this complaint, Ms A states that officers did not take positive steps to make sure that she, as a disabled person, was not substantially disadvantaged. This is an allegation of failure to make reasonable adjustments.

Further guidance on the additional protections which apply only to disabled people are outlined below. If the complaint handler is unsure about which form of discrimination applies they should seek advice.

Discrimination arising from disability

- 2.63 Discrimination arising from disability is where a disabled person is treated unfavourably because of something arising from their disability, and there is no good reason for treating them in this way and / or the treatment cannot be objectively justified.
- 2.64 This test will apply where the unfavourable treatment is because of the person's particular abilities or needs, as affected by the disability. There is some cross over between discrimination arising from disability and the duty to make reasonable adjustments (see below). Making reasonable adjustments can be a way to prevent a person being treated unfavourably because of their disability. Read [case study 2](#) in [Annex C](#) for another example of discrimination arising from disability.
- 2.65 Unlike an allegation of direct discrimination, the focus of the handling of the complaint will not be on assessing whether the complainant was treated differently compared to another person. There is no requirement to make this kind of comparison when assessing an allegation of discrimination arising from disability. (Therefore, for example, it will not be relevant to look for comparator evidence.) The requirement is that the person has been treated badly and the treatment was linked to the disability. The person responsible for the treatment must know that the person was disabled, but need not know that the behaviour was caused by the disability.
- 2.66 Instead, the complaint handler / decision maker will need to consider the following assessments:
- **Was the person treated unfavourably?** Is there evidence of unfavourable treatment? How inappropriate / unexpected / unreasonable / unexplained or otherwise is the treatment / behaviour?
 - **Was the unfavourable treatment because of something arising from the person's disability?** Is there evidence that something arising from the person's disability was a reason? Set out any evidence that points to and / or away from something arising from the person's disability being a factor.
 - **Did the police officer or staff member know or could reasonably have been expected to know that the person had a disability?** Is there evidence that the police officer or staff member knew, or could reasonably have been expected to have known, that the person had a disability?

- Can the unfavourable treatment be objectively justified? **Are there evidence-based, non-discriminatory reasons?** Are any non-discriminatory reasons supported by the other available evidence, or could discrimination still be a factor?

2.67 These elements are discussed in more detail below.

Was the person treated unfavourably?

2.68 The first point to consider is whether, on the balance of probabilities⁷, the alleged treatment took place. As with any other type of complaint, this question will be easier to answer in some case than others. For example, where body worn video is available the actions of the officer may be easier to establish than where it is not available.

2.69 The complaint handler / decision maker will then need to assess whether the treatment of the disabled person was unfavourable.

2.70 To be unfavourable, the treatment must put the disabled person at a disadvantage. Examples of unfavourable treatment include being denied a service or given a poor service. Unfavourable treatment could also be a policing action which has negative consequences for the person, such as an arrest or stop and search. Unfavourable treatment can happen even where actions are carried out with the best of intentions but still result in a disadvantage to the disabled person.

Was the unfavourable treatment because of something arising from the person's disability?

2.71 Something arising from a disability is anything that is the result, effect or outcome of the disability. This could be something that the disabled person is not able to do easily, for example walk, or a requirement for additional support, for example with reading.

2.72 The person's needs or abilities arising from their disability need to be a reason for the unfavourable treatment they received but not the only reason. There must be a connection between whatever led to the unfavourable treatment and the disability.

2.73 The complaint handler should look for evidence to help assess what the reasons were for the treatment of the disabled person. This will include probing the accounts from the officer or staff member involved to establish

⁷ The balance of probabilities test is explained at paragraph [7.8](#).

why they took the actions that they did. (Guidance in [Chapter 6](#) on probing the officer's account at [6.89](#) will assist).

Did the police officer or staff member know or could reasonably have been expected to know that the person had a disability?

- 2.74 Even if a person is treated unfavourably because of something arising from their disability, this will not be discrimination if the officer or staff member did not know and could not have been expected to have known about the disability.
- 2.75 In making this assessment the complaint handler and decision maker should consider:
- Whether the person's disability would have been apparent even if it was not brought to the attention of the officer or staff member. For example, if the person is visibly disabled and the complaint relates to a face-to-face interaction.
 - Whether the person's disability was brought to the officer or staff member's attention. For example, if the person told them about the disability. This could be a disputed fact in the complaint, in which case an assessment on the balance of probabilities should be made.
 - Whether any note of the person's disability was made in relation to this, or previous, interactions and whether the officer or staff member could reasonably have been expected to look for and consider this information.
 - Whether the police officer or staff member could reasonably have been expected to try find out if the person had a disability (for example, by asking appropriate questions when admitting a person into custody).

Can the unfavourable treatment be objectively justified?

- 2.76 Unfavourable treatment will not be discrimination if it can be established that treatment was justified as a 'proportionate means of achieving a legitimate aim'. This is a two part test:
- The aim of the treatment must be legitimate. The aim must not be discriminatory in itself and it must be a **genuine and lawful** reason.
 - The treatment must be a proportionate way of achieving this aim. This means it must be **appropriate** and **necessary in the circumstances**. If there are better and less discriminatory ways of doing things, it will be more difficult to justify.

Duty to make reasonable adjustments

- 2.77 Under the *Equality Act 2010*, the police have a duty to make reasonable adjustments for disabled people. This means that they are required to take reasonable, positive steps to make sure that disabled people are not substantially disadvantaged compared to non-disabled people when accessing police services or interacting with the police. The aim being that the service provided to disabled people is as close as it is reasonably possible to get to the standard normally offered to the public at large.
- 2.78 The duty to make reasonable adjustments only applies to disabled people and adjustments are only required to be made in 3 areas:
- Provisions, criteria and practices
 - Physical features (for example, lifts and ramps)
 - Auxiliary aids and services (for example, hearing loops and sign language interpreters)
- 2.79 The duty to make reasonable adjustments is anticipatory. This means that the police must consider possible adjustments for different kinds of disability before an individual disabled person engages with police services as well as responding appropriately to individual requests for adjustments.
- 2.80 In some cases the duty to make reasonable adjustments will impact on policing policies, the physical layout of police premises, or organisational decisions involving costs and priorities. Under the *Police Reform Act 2002*, a complaint is any expression of dissatisfaction with a police force that is expressed by or on behalf of a member of the public⁸. Therefore, complaints about a failure to make reasonable adjustments on an organisational level come under the *Police Reform Act 2002*.
- 2.81 A complaint about a failure to make a reasonable adjustment could also raise issues about the conduct of an individual police officer or staff member. For example, a complaint that a police officer or staff member did not make a reasonable adjustment where it was within their power and discretion. This could include a complaint that:
- An officer or staff member failed or refused to follow a policy or agreed practice that provides for a reasonable adjustment to be made (for example, if a force has a policy to provide British Sign Language translation and an officer does not follow this policy).
 - An officer or staff member failed to give reasonable consideration to a request for an adjustment to be made. This could include failure to

⁸ Section 12, *Police Reform Act 2002*

refer a request for a reasonable adjustment to a person who has the authority to make or approve the adjustment.

Example from case law – Failure to make reasonable adjustments

In the case of Mr ZH, Mr ZH was autistic and had epilepsy.⁹ He could not communicate verbally and had learning disabilities. He attended a familiarisation session at a swimming pool with his carers and would not move away from the edge of the pool. An employee of the swimming pool called the police. When officers attended, Mr ZH jumped into the pool and the officers forcefully removed him, placed him in handcuffs and leg restraints, and put him in the cage of a police van for approximately 40 minutes.

Mr ZH, via his father, brought legal proceedings against the force which included a claim for disability discrimination. The court found that "...the duty was on the police to carry out the reasonable adjustment of seeking information and advice...before acting as they did. The failure to do so resulted in a step by step escalation of the problem, increasing...the safety risks for ZH and indeed the potential risk for others."¹⁰

2.82 When handling an allegation of discrimination about an alleged failure to make reasonable adjustments, the handling and outcome of the complaint should focus on:

- Whether, for example, the force's policy fails to give proper consideration to making reasonable adjustments. (For example, was an equality impact assessment undertaken?)
- Whether the failure or refusal in the policy to make reasonable adjustments available is reasonable and proportionate.
- Whether due consideration was given to making an adjustment.
- Whether the decision not to make an adjustment was reasonable and appropriate in the circumstances.

2.83 In reaching an opinion about whether there was a failure to make reasonable adjustments the complaint handler / decision maker should also consider:

⁹ *ZH v Commissioner of the Police for the Metropolis* [2012] EWHC 604 (QB)

¹⁰ *ZH v Commissioner of the Police for the Metropolis* [2012] EWHC 604 (QB), 137

- Was there a duty to make a reasonable adjustment?
- Was the adjustment (referred to in the complaint) reasonable to make in the circumstances?

2.84 Each of these elements is discussed in more detail below.

Was there a duty to make reasonable adjustments?

- 2.85 As stated above, the duty to make reasonable adjustments arises where a provision, criterion or practice, a physical feature, or the lack of an auxiliary aid or service puts disabled people at a substantial disadvantage compared with non-disabled people.
- 2.86 For a disadvantage to be substantial it must be more than minor or trivial. To measure whether a disabled person was substantially disadvantaged compared with non-disabled people, a comparison needs to be made between the person's actual experience and what the situation would have been if the disabled person did not have the relevant disability.
- 2.87 See [Annex C](#), case studies [3](#), [4](#), and [53](#) for cases relating to making reasonable adjustments and assessing whether a disabled person has been put at substantial disadvantage.

Was the adjustment reasonable to make in the circumstances?

- 2.88 Factors which might be taken into account when considering what is reasonable include:
- Whether taking any particular steps would be effective in overcoming the substantial disadvantage that disabled people face in accessing the services in question.
 - The extent to which it is practicable to take the steps (which could include consideration of costs and the impact on other services).

Criminal offences and hate crime guidance

- 2.89 Discrimination by itself is not a criminal offence. However, discrimination can be considered as an aggravating factor for any criminal offence, as well as being a part of certain specific offences such as the offence of incitement to racial hatred.

Hate crime

- 2.90 Where a criminal offence is perceived (by the victim or anyone else) to be motivated by hostility or prejudice based on a person's – actual or perceived – disability, race, religion, sexual orientation or transgender identity, the

allegation should be dealt with as an allegation of Hate Crime in accordance with the College of Policing's Hate Crime Authorised Professional Practice (APP)¹¹. The APP sets out the investigative process, including relevant legislative considerations such as circumstances where sentence uplifts may be applicable. These guidelines will also continue to apply alongside the APP.

- 2.91 Any allegations against police officers or staff members of criminal offences aggravated by discrimination against a protected characteristic must be referred to the IOPC as they would meet the mandatory referral criteria (see the paragraphs starting [5.14](#)). In the referral criteria, 'aggravated' is taken from regulations 4 and 7 of the Police (Complaints and Misconduct) Regulations 2020. This will include the allegations which are identified as hate crimes.
- 2.92 If conduct falls short of a criminal offence but is still perceived by the victim or anyone else to have been motivated by hostility towards a person's (actual or perceived) disability, race, religion, sexual orientation, or transgender identity, this is categorised as a Non-Crime-Hate Incident (NCHI). Any allegations falling into this category should be dealt with in line with the College of Policing's NCHI APP¹² and the applicable Code of Practice¹³, as well as these guidelines.

Sexual offences and abuse of position for a sexual purpose (APSP)

- 2.93 The primary focus of the handling of allegations of sexual offences and/or APSP by a police officer or staff member should be the offences at the heart of the complaint. Such offences will inevitably undermine public confidence in the police service, and lead to serious breaches of the Standards of Professional Behaviour (for example, 'Honesty and Integrity', 'Authority, Respect and Courtesy' and 'Discreditable Conduct') as well as potential criminal offences, and potential breaches of Article 3 of the *European Convention of Human Rights*.
- 2.94 However, such alleged conduct may also breach the Equality and Diversity Standard of Professional Behaviour. The College of Policing's '*Guidance on outcomes in misconduct proceedings*' states: "Misconduct involving violence, intimidation or sexual impropriety is serious and can significantly undermine public trust in the profession... If the matter involves sexual harassment,

¹¹ [Hate crime | College of Policing](#)

¹² [Responding to non-crime hate incidents | College of Policing](#)

¹³ [Non-crime hate incidents: code of practice - GOV.UK \(www.gov.uk\)](#), June 2023

consider whether the behaviour has been driven by misogyny, which will increase the assessed seriousness”.¹⁴

- 2.95 In addition, allegations of sexual offences and APSP by police officers and staff members disproportionately impact the confidence of women and girls in the police service.¹⁵ Including a consideration of discrimination in the handling of these matters may help to ensure that organisational issues, such as culture, are considered and addressed.
- 2.96 However, any consideration of the discrimination aspect of such matters should not be done in a way that distorts or distracts away from what should be the primary focus.

Communications Act 2003

- 2.97 Where discriminatory comments have been made on a public or private social media post or with a private messaging app, in addition to breaches of the Standards of Professional Behaviour, consideration should be given about whether the posts or messages could amount to a criminal offence. In particular whether it is an offence under section 127 of the *Communications Act 2003*.
- 2.98 Discriminatory messages could amount to an offence if they are deemed to be grossly offensive (or of an indecent, obscene or menacing character). The test is whether reasonable members of the public (not just the recipients or intended recipients) would find the message grossly offensive.
- 2.99 While all messages that contain discriminatory language might be considered offensive, the fact that a message contained discriminatory language does not mean that an offence has been committed - there is a threshold that the offensive nature of the message must cross before it amounts to an offence. The phrase ‘grossly offensive’ is not defined in the legislation – the ordinary English usage of the phrase should be applied.

¹⁴ Paragraphs 4.40 – 4.42, College of Policing, ‘*Guidance on outcomes in misconduct proceedings*’, 2023

¹⁵ See paragraphs 4.60 – 4.62, College of Policing, ‘*Guidance on outcomes in misconduct proceedings*’, 2023 and The Angiolini Inquiry, Part 1 Report (2024)

Chapter 3

Engaging with the complainant

Considerations before contacting the complainant	51
Contacting the complainant to explore their allegations	52
Showing respect and working towards resolution	55
Sensitivity to individual needs and equality issues	56
Reluctance to disclose protected characteristics	59
Engagement with a complainant whose behaviour is considered to be unacceptable or unreasonable	60

Chapter 3: Engaging with the complainant

- 3.1 Discrimination complaints will often involve a complainant who already has very low levels of trust in the police and who may be anticipating further discrimination in the police response to their complaint. Complaint handlers play a vital role in recognising the discriminatory experience and impact, and in exploring concerns effectively to prevent an extension of that discriminatory impact being felt within the complaints process. One of the key principles of reasonable and proportionate handling set out in the IOPC's Statutory guidance is 'customer service focus'. This includes effective engagement with the complainant.
- 3.2 The role of the complaint handler includes:
- Actively working towards rebuilding trust and confidence in policing.
 - Building trust in the complaints system to investigate the complaint fairly and robustly.
- 3.3 If the complainant believes or perceives that the complaint handler does not understand their concerns, they will not believe and trust that the complaint handler can address them. The complaint handler should be part of the solution - not part of the problem.
- 3.4 Open, effective and empathetic engagement with the complainant from the start of the complaints process to its end is essential to building and maintaining confidence in the complaints process. Complaint handlers should be mindful that if a complaint is not dealt with effectively from the point at which it is made, it can lead to the complainant disengaging from the process without a resolution to the issue they raised and losing more confidence in the police.
- 3.5 This initial engagement with the complainant is pivotal to a positive complaint handling experience, setting the tone in which the complaint is handled. Effective engagement, that manages expectations throughout, can increase the likelihood that the findings will be understood and accepted, even if the outcome is that the evidence does not point towards discrimination being a factor. Complaint handlers should ensure that they understand what the complainant wants from the complaint process, and that the complainant understands what they can expect, including what the outcomes might be, and what they mean.
- 3.6 Complaint handlers should also consider Chapter 11 of the IOPC's Statutory guidance for advice on keeping the complainant informed, including the legislative requirements.

Considerations before contacting the complainant

- 3.7 Complaint handlers may wish to familiarise themselves with the type of discrimination alleged, where it is already apparent from the complaint, before contacting the complainant (see [Chapter 4: Understanding the complaint](#)). This may help reassure complainants from the outset that their complaint is being taken seriously.
- 3.8 It is also important that complaint handlers guard against adultification (see paragraphs from [4.9](#)) in their handling of cases involving children, and particularly guard against this where cases involve Black, Asian or minority ethnic children.
- 3.9 Children (those under 18 years of age) should be referred to consistently as children. For example, where a child's name needs to be anonymised, a pseudonym such as Child A should be used. Terms or pseudonyms such as Male A, youth, or juvenile should not be used to describe children under 18 and groups of children should be referred to as 'children' and not as males, females, youths or similar. Where it is necessary to quote a document that has done otherwise this should be highlighted in quotation marks.
- 3.10 It is also important that complaint handlers understand and guard against secondary victimisation, particularly in discrimination cases. As highlighted in the Stephen Lawrence inquiry¹⁶, and discussed in the College of Policing APP on Hate Crime, a complainant may suffer further harm, secondary to the initial harm caused during the incident complained about, because of insensitive or abusive treatment from the police service or others on reporting their concerns.
- 3.11 When institutions or criminal justice system personnel fail to support the victimised individual, victims are vulnerable to secondary victimisation. The College of Policing APP on Hate Crime states that:

“[Actions which may lead to secondary victimisation] may include, for example, perceived indifference or rejection from the police when reporting a hate crime or incident. This harm may amount to secondary victimisation.

Secondary victimisation is based on perception and it is immaterial whether it is reasonable or not for the victim or complainant to feel that way. An open and sensitive policing response can prevent escalation. Police decision-

¹⁶ The Stephen Lawrence inquiry: report of an inquiry by Sir William Macpherson of Cluny, 1999

making and actions should be clearly explained. This is particularly important where the outcome is not what the victim or complainant was expecting.”¹⁷

- 3.12 An understanding of how trauma can affect complainants extends to the handling of discrimination cases. It can help the complaint handler empathise with how the complainant may be feeling.
- 3.13 It is important that the complaint handler considers what may be happening for individuals that they come into contact with and whether they may be experiencing any form of trauma. It is important to consider ‘what has happened to this person’ rather than ‘what is wrong with this person’. Recognising the possibility of trauma and the impact that this may have on the person’s emotional, psychological and social well-being is called trauma-informed practice/approach.¹⁸

Contacting the complainant to explore their allegations

- 3.14 It is particularly important in discrimination complaints that complaint handlers explore the nature of the complaint with the complainant to ensure that they have a clear understanding of the allegation made and **why** the complainant feels that they have been discriminated against. Engaging with the complainant is an important opportunity to get a detailed account from the complainant, which will be key evidence in complaint handling. Taking the time at the outset of handling to understand why someone feels they have been discriminated against can make a massive difference to the quality and effectiveness of how the complaint is handled.
- 3.15 Meaningful contact with the complainant should be made or attempted at the beginning of the complaints process. Investing time in the early stages, to engage with the complainant and understand their complaint, ensures that the direction of travel is right first time, maintains the complainant’s engagement in the process and reduces the need for a second attempt at addressing the complaint - which could seriously undermine the complainant’s faith in the complaints system. It is more constructive to have these discussions at the beginning, and then maintain steady contact throughout the complaints handling. This should happen in all cases, unless there are good, well documented reasons why it is not possible or appropriate.

¹⁷ College of Policing Authorised Professional Practice on Hate Crime, [Responding to hate | College of Policing](#)

¹⁸ For more guidance on trauma-informed practice see [Working definition of trauma-informed practice - GOV.UK \(www.gov.uk\)](#)

- 3.16 The types of questions that could be explored with the complainant include:
- What was it about your interaction with the police that you felt was discriminatory? What made you believe that the words, actions or policy were discriminatory?
 - Do you feel that assumptions were made about you because of your protected characteristic or about people who share a particular characteristic? This could either be by a person or via a policy or procedure. What were these assumptions? How did they impact on the actions of the police?
 - Did you note any differences in the way you were treated compared with others?
 - Did you note any differences in the way that a particular person serving with the police behaved compared with other people serving with the police (either on this or other occasions)?
 - Was there anything about a person serving with the police's language that added to your concern?
 - Did anyone else witness the incident and were any comments or reactions expressed to you at the time or since?
 - What was the impact on you? How did it make you feel?
 - What would you see as a good outcome from the complaints process?
- 3.17 These suggested questions are not exhaustive and not all will be relevant in all circumstances. Referring to questions such as these is most effective when used to frame a discussion with the complainant that is tailored to the complaint. Questions asked of a complainant should be bespoke, and acknowledge the already known details of the complaint.
- 3.18 Complaint handlers should consider the impact on a complainant if they are asked questions which are clearly not relevant to their complaint, or which they have already addressed in their initial complaint. It may, for example, feel burdensome or traumatic for the complainant to have to reiterate or relive the complaint (see paragraphs from [3.10](#)). Therefore, it is important to be clear about why questions are being asked in addition to what has already been provided in the complaint, and how the answers given will inform the handling.
- 3.19 This explanation is particularly important if the complaint handler chooses to explore the complaint through a written set of questions. In those circumstances it might be helpful to include a free-text question, to capture anything that might not initially be obvious, or explicitly stated. Including pointers for the completion of a free-text question may be useful to keep the response focused, but care should be taken not to unduly restrict, or cut short any information the complainant may wish to provide. Even where it is proposed to explore the complaint via a written set of questions the complaint

handler should contact the complainant to explain that they are going to be sending them a list of questions, in order to gather further information about their complaint. They should also explain that they will use this information as the basis of an initial discussion about their complaint.

- 3.20 There will be occasions when the complainant does not wish to have a follow-up conversation with the complaint handler. While the complainant's preferences should be acknowledged (including consideration of the complainant's preferred method of contact and any reasonable adjustments, see paragraph [3.40](#)), dialogue should be encouraged and the benefits of their continued engagement highlighted to the complainant. It should be emphasised that if it is not possible to fully explore the complaint, this may limit the ability to gain further insight into why the complainant felt they were discriminated against, which may affect the ability of the complaint handler to explore those concerns. However, any lack of engagement should not prevent the complaint handler from identifying the relevant lines of enquiry or seeking to understand the complaint using other available resources.
- 3.21 Once the complaint handler has gathered further information, through written questions or other form of approach, and made reasonable attempts to explore the issues with the complainant, this information should be used to make key decisions around how the complaint should be handled.
- 3.22 The information gathered should feed into any terms of reference, determine lines of enquiry, and help frame questions to officers and provide evidence of impact. It is central to the analysis of the evidence. Explaining this to the complainant is key. As with any line of enquiry, where the complainant identifies something but the complaint handler decides that it is not reasonable and proportionate to pursue, a clear rationale should be provided. Where further information has been gathered from the complainants and this is not used during the handling of the complaint, without any rationale provided, this can leave the complainant feeling that they have wasted their time and been ignored, dismissed or misunderstood.
- 3.23 It is good practice to follow up any in-person or verbal engagement with the complainant in writing, either by email or by letter. This helps to manage the expectations of the complainant, sets out what will be considered, and allows the complainant to come back to the complaint handler if they feel any element of their complaint has been missed.
- 3.24 If there is a delay between when a complaint is received and when it will be considered (or a complaint handler is allocated to deal with the case) the appropriate authority should update the complainant about this delay and give a timeframe. An example showing lack of engagement between a complaint handler and the complainant can be found in [case study 5](#). The importance of engagement with the complainant is also woven throughout many of the other case studies, all found in [Annex C](#).

Showing respect and working towards resolution

- 3.25 The complaints process should seek to resolve concerns and rebuild trust regardless of the outcome of the complaint and regardless of how the matter is handled. This focus on resolution should inform all engagement with the complainant, from early contact to explore the complaint, to the final outcome letter or report.
- 3.26 The complainant should come away from the complaints process feeling that their complaint was valued and it was worthwhile making the effort to complain. To do this, the complaint handler must show respect for the complainant's point of view. This includes recognising the impact the matter has had on the complainant. In particular, in the case of discrimination complaints, it also means that the complaint handler must show that they are approaching the complaint with an open mind, accepting that discrimination **could** be a reason for poor treatment, actions or behaviour. Demonstrating this open-mindedness is important for creating a safe space for the person involved to share their experience of discrimination. See [Annex C, case study 6](#), for an example where lack of respect for the complainant led to poor handling of the case.
- 3.27 Where a complainant disengages from the handling of their complaint, but started off engaging positively, complaint handlers should establish the reasons for disengaging. Sometimes it could be that personal circumstances mean that the complainant is unable to pursue their complaint, or they are affected by the trauma of the incident in question. If this is the case, it may not be appropriate to try to encourage them to re-engage. It might be more appropriate to clarify with them the remaining options for dealing with their complaint or what help they could receive. Conversely there could be practical reasons that are impeding communication - such as the complainant no longer has access to emails - yet they still want to continue with the complaint. In these circumstances, other options of contact, such as a conversing by phone or via a friend or advocate, should be offered.
- 3.28 Where the reasons are due to a lack of trust and confidence in the police or the complaints system, assurances should be given that their complaint is being taken seriously and an explanation given of why their involvement is necessary and beneficial.
- 3.29 As with the handling of all complaints, any gaps in contact can quickly undermine confidence in the fairness and robustness of the complaint handling process. This confidence, once lost, is difficult to regain even if the complaint is handled effectively. As noted above, where complaints involve allegations of discrimination it is likely that the complainant already has particularly low confidence in the police complaints system and, therefore, it may be that extra care and attention is needed.

- 3.30 If a complainant is not happy with the progress of their complaint, the complaint handler should return to earlier discussions about the proposed lines of enquiry and what they intend to address - managing expectations of what can realistically be achieved. Sometimes, a reminder of why it is important to pursue their complaint, for example, to encourage reflection, changes of attitude, understanding of impact, and accountability - as well as demonstrating the difference their complaint will make - will be sufficient to persuade a complainant that it is worthwhile to remain involved in the process.
- 3.31 Even if a complainant does decide to disengage, this should not necessarily prevent a complaint handler from carrying out meaningful enquiries. Complaint handlers should consider the information the complainant has provided so far and what would be a reasonable and proportionate approach.
- 3.32 If a complainant decides to withdraw their complaint, the appropriate authority (or the IOPC where a complaint has been referred) must still consider whether it is in the public interest for the complaint to continue to be considered and to be treated as a recordable conduct matter (see Chapter 16 of the IOPC's Statutory Guidance).

Sensitivity to individual needs and equality issues

- 3.33 Discrimination complaints, by their very nature, raise equality issues. Complaint handlers should take particular care that their approach to dealing with the complaint and engaging with the complainant represents a best practice approach to equality and diversity and is consistent with the force's published equality objectives.
- 3.34 Sometimes, a complainant may not be able to fully articulate their complaint well in writing, which is why it is important to follow the above mentioned steps to get to the heart of the dissatisfaction. Forces and local policing bodies should ensure that communication is tailored to meet the needs of the individual, as far as possible. They should ask the complainant and/or interested person how they wish to be kept informed of the progress, and take all reasonable steps to achieve this.
- 3.35 Particular care should be taken to make appropriate adjustments and accommodations to make sure the complainant can engage safely and effectively with the complaints system (including any reasonable adjustments required under the *Equality Act 2010*). Even if the complainant has the opportunity to verbally express their concerns, it is vital to be alive to the fact that they may not use terms such as 'discrimination' or 'racist', even if different and unfair treatment based on their race is at the heart of the complaint.

- 3.36 It is not the complainant’s responsibility to use accurate phrasing or certain terminology. Young people, for instance, might not have the life experience to know how to effectively express their concerns to enable their complaint to be handled in the correct way, setting in motion the legislative requirements. Similarly, in the case that English is not an individual’s first language, a person may not have the range of vocabulary to fully describe the behaviour they are complaining about.
- 3.37 Complaint handlers should possess the relevant skills to probe and be empathetic. It is not about ‘putting words in the mouth’ of the complainant, but is about understanding that the treatment they are alleging could amount to discrimination if proved, and not being reluctant to identify that as a possibility, exploring it with the complainant. It should be recognised that there may be many barriers to making a complaint or allegation of discrimination, including a lack of confidence and trust in the police and police complaints system and/or fear of negative repercussions including counter allegations (such as accusations of “playing the race card”).
- 3.38 Complainants (as well as affected parties and witnesses) also may not use specific words such as “discrimination” or “racism”, “sexism”, “homophobia”, “transphobia” when expressing concerns which could point towards discrimination. Issues of potential discrimination may also be expressed in terms of unfairness, lack of care or respect, hostility, profiling, stereotyping or making assumptions.
- 3.39 Under the *Police Reform Act 2002*, updates must be in writing.¹⁹ However, depending on the complainant’s wishes, it may be appropriate to provide updates both in writing and by another method.
- 3.40 Considerations could include:
- Making reasonable adjustments where a complainant has a disability. The police are required by law to make reasonable adjustments for disabled people.²⁰ This includes taking positive steps to make sure that disabled people are not substantially disadvantaged when accessing and engaging with the complaints system. Complainants with disabilities should be asked about what adjustments would help them to engage effectively with the complaints process.
 - Providing an interpreter or other assistance where a person does not speak fluent English. Although there is no legal requirement to translate documents or provide an interpreter for other languages,

²⁰ Section 20, Equality Act 2010

except where that language is Welsh, there is an obligation under the *Equality Act 2010* to act in accordance with the Public Sector Equality Duty.

- Therefore, if from initial contact complaint handlers become aware (or the complainant notifies them) that they have limited or no command of English and their preference is to communicate in the language of their choice, it is reasonable to consider the use of translation services for the handling of their complaint. This includes making initial contact to better understand the complaint and any subsequent review. Providing such services may assist in eliminating direct or indirect discrimination, advance equality of opportunity and foster good relations. It is possible that, if translation services have not been put in place when they should have been, the complainant will not be able to sufficiently understand the outcome of the complaint. There is also a risk of the complainant's concerns and feelings being lost, and the feeling of mistrust of the police reinforced.
- Appropriate recognition and accommodation of cultural or religious needs where these are raised by the complainant.
- If a complainant has learning disabilities or neurodiversity which affects their ability to express their complaint effectively, it may be appropriate to follow the principles of an Achieving Best Evidence interview or otherwise make sure that the complainant is appropriately supported to make their complaint. This may also be a consideration where the complainant is a child or where the complaint is regarding discrimination on the basis of sex.
- Recognising and valuing the support provided by advocacy services, support workers, and legal advisers where the complainant has used these types of services, particularly where a complainant is under 18 years old or complainants who may be in a vulnerable situation. The assistance of a relative, carer or other representative may be necessary to help a complainant overcome any barriers to making a complaint. They can also help a complainant make their wishes and the details of their complaint clear. However, in some cases, additional support may still be required. For example, it may be appropriate to signpost or facilitate access to other support services.
- It may be appropriate to offer contact with an officer of the same gender or with specialist knowledge about the type of discrimination alleged, depending on the complaint, and where it is possible to do so.

3.41 Great care should be taken to respect complainant privacy and confidentiality, particularly where a complaint may reveal information about

the complainant that is not widely known. (For example, information about a person's mental health, sexual orientation, gender identity etc).²¹

- 3.42 Complainants with low levels of trust in the police may be unwilling to go to a police station or to have a police officer come to their home to discuss a complaint. Alternatively, it may not be, or it may not be felt to be, safe for them to have a police officer or stranger visit them at home. While it is important to try to engage with the complainant to get a good understanding of their complaint, their preferences should be respected, for example if they wish to be contacted through a solicitor or advocate, or only by phone or email. Case study 7 in Annex C shows an instance of insensitive engagement.

Reluctance to disclose protected characteristics

- 3.43 As discussed in Chapter 9, in line with the Public Sector Equality Duty, police forces should have processes in place to collect equalities information about people making complaints. Be mindful that asking a complainant for details of their protected characteristics for reporting purposes, when initially engaging with them in order to progress enquiries, has the potential to be perceived negatively. While the reporting data is important, it may be prudent to leave this to a later stage.
- 3.44 For example, complainants may be reluctant to declare their race when making complaints about discrimination. Complaint handlers should ask themselves whether this in itself could be an indication that the complainant feels that, because of their protected characteristics, their complaint might not be treated seriously, or fairly. If the complainant has had negative experiences in the past, perhaps when reporting a crime, during a neighbour dispute, or premises search, they may believe that this treatment will be extended to the handling of their complaint if they declare their protected characteristics.²²

²¹ Depending on the circumstances, it can be a criminal offence to reveal protected information about a person's gender identity history if that person has a gender recognition certificate.

²² This also applies to the declaration of protected characteristics, or lack of, on reviews. As part of their local oversight role, this might be a matter that is identified by Local Policing Bodies (LPBs), as a pattern or trend. It could prompt further work to understand some of the barriers complainants may face, whether real or perceived.

Engagement with a complainant whose behaviour is considered to be unacceptable or unreasonable

- 3.45 It is for the appropriate authority to decide what measures or restrictions are put in place to manage contact from a complainant, where their behaviour is considered unacceptable or unreasonable. The IOPC's 'Guidance for managing unacceptable or unreasonable complainant behaviour' provides suggestions on how that can be achieved whilst ensuring obligations under the *Equality Act 2010* are fulfilled.
- 3.46 However, any contact strategy should always ensure that the complainant still has access to the complaints system and can be treated fairly during the handling of their complaint.
- 3.47 For all complainants, access should include, but not necessarily be limited to:
- Having the opportunity to expand on why they feel they have been discriminated against, so that the complaint handler can better understand their complaint.
 - Having the opportunity to agree and confirm what the complaint handling will cover so that discrimination allegations are not missed.
 - Having the appropriate avenue to receive regular and meaningful updates on the progress of enquiries at least every 28 days.
 - Receiving an outcome letter, which outlines:
 - The right of review;
 - The complaints that were agreed would be addressed.
 - The enquiries undertaken.
 - The rationale for any enquiries the complaint handler decides not to pursue.
 - How the evidence has been considered and, where appropriate, any further enquiries that have been undertaken to probe or substantiate any information provided - with an explanation of the outcome.
- 3.48 It is possible that restrictions may mean that the complainant cannot engage by one or more methods of contact, but there should always be at least one avenue which can assist a complainant to have appropriate contact.
- 3.49 Where there is a contact strategy in place, it is important that sufficient time is given to the complainant to respond in the way they've been asked to make contact, such as only in writing.

- 3.50 Failure to engage, poor engagement, and/or not providing sufficient time for the complainant to respond has the potential to further exacerbate the situation by reinforcing the mistrust felt, undermining the complaints process.

Chapter 4

Understanding the complaint

Understanding the allegation of discrimination.....	63
Racism.....	64
Discrimination on grounds of religion or belief	65
Discrimination on the grounds of sexual orientation.....	66
Transphobia.....	66
Disability discrimination	66
Ageism.....	67
Sexism.....	67
Micro-aggressions	67

Chapter 4: Understanding the complaint

Understanding the allegation of discrimination

- 4.1 Discrimination can be overt and expressed as open hostility or use of offensive, degrading language. However, it is more than just these things. Direct discrimination includes actions that are informed by biased assumptions or prejudice in respect of a protected characteristic, even if this is done unconsciously.
- 4.2 The handling of this type of allegation will need to test whether discriminatory assumptions, prejudice or bias impacted on police actions or behaviours. To do this, the complaint handler will need to have an understanding of what these discriminatory assumptions might be.
- 4.3 From the beginning, the complaint handler should take steps to develop an understanding of the types of assumptions, prejudice or bias that might have informed the police officer or staff member's decisions, actions or behaviours.
- 4.4 It is not possible to provide a full list of how discrimination might present in any given situation, and what types of bias or prejudice might inform decision-making. This needs to be considered on a case-by-case basis. To do this, the complaint handler should consider:

What does the complainant say?

- As discussed in the previous chapter, it is essential that the complaint handler takes time to understand why the complainant feels that they have been discriminated against. This should include exploring any prejudiced assumptions the complainant feels the police made about them.
- Further guidance on contacting the complainant to explore their allegation is provided in [Chapter 3](#).

What else do you know?

- Are there any stereotypes or common assumptions made about the protected characteristic group that you are aware of, which might be relevant to consider?
- Does this complaint fit with a pattern of previous complaints about similar issues?
- Is there anything about the policing context in the area or beyond (for example, relations between police and relevant local communities, any high levels of particular types of crime or recent tensions or significant

events), which may impact on or inform these types of assumptions?
This could include national or international events.

What do you need to find out?

- Depending on the seriousness and nature of the allegation, it might be proportionate for the complaint handler to seek expert advice to help to get a better understanding of the discrimination alleged and how it might present and be evidenced. Advice could be sought from an appropriately trained or experienced colleague (for example, officers trained to deal with hate crimes or a relevant policing association for marginalised groups).
- The complaint handler may also be able to usefully draw on findings from relevant inquiries, research or reports about discrimination. Some examples of useful resources are listed at [Annex B](#).
- In more serious cases or critical incidents, it may be appropriate to seek external expertise, for example from an independent advisory group, a relevant community or advocacy organisation, or from a legal or academic expert.

4.5 The complaint handler should draw on this information to inform the lines of enquiry for the investigation. Importantly, consideration of discrimination should not be limited to the initial reason for engaging with an individual. There is a risk that complaint handlers (and decision makers) may not focus on all elements of an incident where treatment could be discriminatory. In particular, that consideration is only given to issues of discrimination in relation to the decision to engage (for example, decision to use stop and search) and not the subsequent quality of the encounter, use of force, and provision of appropriate care, which could be discriminatory even where the initial decision to engage may not be.

4.6 The complaint handler should continue to return to the key question of whether the person's protected characteristic(s) were a cause of poor treatment.

4.7 Examples of how prejudices, assumptions and biases might present themselves for a range of protected characteristics are provided below. Related case studies are referenced, to be found in [Annex C](#). It is important to remember that an individual can be discriminated against for more than one characteristic or a combination of characteristics (otherwise known as intersectionality).

Racism

4.8 'Racism' is a much-debated term. In the context of complaints of race discrimination, it includes any discrimination relating to race, ethnicity, or

nationality. The types of racist assumptions or prejudices that should be considered in the handling of a complaint about discrimination will vary greatly depending on the particular race, ethnicity, or nationality of those involved and the context of the incident. Some examples of cases involving allegations of racism and the use of race-based stereotypes are provided in case studies [8](#), [9](#), [10](#), [11](#), [20](#), [29](#), [32](#), [34](#), [38](#), [39](#), [41](#), [43](#), [44-46](#), [57](#), and [58](#). Find them all in [Annex C](#).

Adultification

- 4.9 The National Society for the Protection against Cruelty to Children (NSPCC) describes adultification in the following way:

*Adultification is a form of bias where children from Black, Asian and minority ethnic communities are perceived as being more ‘streetwise’, more ‘grown up’, less innocent and less vulnerable than other children. This particularly affects Black children, who might be viewed primarily as a threat rather than as a child who needs support (Davis and Marsh, 2020; Georgetown Law Center on Poverty and Inequality, 2019). Children who have been adultified might also be perceived as having more understanding of their actions and the consequences of their actions.*²³

- 4.10 Adultification can impact on children of all ethnicities and can be associated with other factors such as poverty, homelessness or involvement in the criminal justice system. However, it is widely accepted that adultification particularly impacts Black children and is a form of racial bias. It can lead to the safeguarding and welfare of a child not being appropriate considered. Case studies [11](#) and [31](#) in [Annex C](#) explore adultification.

Discrimination on grounds of religion or belief

- 4.11 Religious discrimination is discrimination relating to a person’s philosophical or religious belief. A person can also be discriminated against for holding no such belief.
- 4.12 Religious discrimination often intersects with racism. For example, anti-Semitism could be either an expression of racism, or religious discrimination, or both. Some people also make broad assumptions and stereotypes that race and religion are always related. For example, someone may assume

²³ NSPCC, Safeguarding children who come from Black, Asian and minoritised ethnic communities (2022). The references in the definition are to: Davis, J. and Marsh, N. (2020) Boys to men: the cost of ‘adultification’ in safeguarding responses to Black boys, *Critical and Radical Social Work*,8(2): 255–259 Georgetown Law Center on Poverty and Inequality (2019) Listening to Black Women and Girls: Lived Experiences of Adultification Bias.

that someone who is Asian is Muslim, and discriminate against them based on stereotypes about Muslim people. This would be discrimination by perception. Read case studies [12](#), [36](#), [37](#), and [55](#) in [Annex C](#) for examples of allegations of discrimination on the grounds of religion or belief.

Discrimination on the grounds of sexual orientation

- 4.13 This includes homophobia and biphobia. This may be expressed as intolerance, fear, or hatred; through stereotyping and prejudiced assumptions; failure to acknowledge or give equal weight to same sex relationships; or an inappropriate interest in a person's sexual preference or sexual activities. Examples of allegations of homophobia can be found in [Annex C](#), case studies [13](#) and [40](#).

Transphobia

- 4.14 Transphobia is discrimination motivated by hostility, prejudice or bias against a person who is trans²⁴ or perceived to be trans. This can take many forms, including denial of a person's affirmed gender (including by refusing or failing to use the correct pronouns such as he/she/they); inappropriate interest in surgery status; stereotyping and making prejudiced assumptions; as well as expressions of intolerance, fear or hatred. Case law suggests that non-binary or gender fluid identities fall under the protected characteristic of 'gender re-assignment²⁵'. Case studies [14](#), [19](#), and [49](#) in [Annex C](#) illustrate how allegations of transphobia may be dealt with.

Disability discrimination

- 4.15 Disability discrimination is discrimination arising from or relating to a person's disability. The terms 'disablism' or 'ableism' are sometimes used. It may present as offensive remarks, behaviours which belittle or undermine the disabled person's dignity, or wrongful and prejudicial assumptions about impairments and health conditions. There may be instances where an individual acts with the best of intentions, but their behaviour is, for example, experienced as infantilising (this could include actions such as speaking slowly and emphasising each syllable when talking to an autistic person). Disability discrimination can also arise from failures to make reasonable

²⁴ 'Trans' is an umbrella term to describe people whose gender identity is different from the gender they were assumed to be at birth.

²⁵ *Ms R Taylor v Jaguar Land Rover Ltd [2020] UKET 1304471/2018*. 'Gender re-assignment' is a protected characteristic under the *Equality Act 2010*.

adjustments or to make accommodation for impairments and health conditions (see paragraphs from [2.77](#)). In addition to the case studies referenced in [Chapter 2](#), case studies [15](#), [21](#), [25](#), and [33](#) are also about allegations of disability discrimination. You can read them in [Annex C](#).

Ageism

- 4.16 Ageism is discrimination on the basis of age, or age defined groups such as ‘the elderly’ or ‘young people’. The prohibition of discrimination on the grounds of age under the *Equality Act 2010* does not apply to children (under 18s). However, discrimination against children because of their age could still be ‘unfair discrimination’ for the purposes of the Standards of Professional Behaviour, if the difference in treatment was unjustified. Ageism could present as prejudiced assumptions made about an age-related group or older or younger people being marginalised or patronised. Case studies [16](#) and [17](#) in [Annex C](#) deal with allegations of age discrimination.

Sexism

- 4.17 Sexism is discrimination based on a person’s sex. Sexism is typically thought of as being against women, but it can affect any sex. It might present as stereotyped views about gender roles or male and female attributes, or as a favouring of one gender over another (including misogyny and misandry). Read [Annex C](#), case studies [18](#), [47](#), and [58](#) for examples of allegations of sex discrimination.

Micro-aggressions²⁶

- 4.18 Micro-aggressions are actions that belittle, demean or disrespect people. The “micro” part of the term refers to the fact that an action can be as small as an off-hand comment and still be a micro-aggression, it does not relate to the impact. An action may be unintentional and/or come from a place of ignorance, but still be a micro-aggression. The size or intent does not negate the potentially harmful impact. Some examples of micro-aggressions are: telling someone to “man-up”, describing something you dislike as “gay”, making a disgusted face when someone is eating food from their culture.

²⁶ Some individuals prefer to use the term “micro-incivilities” instead of “micro-aggressions”. This is because “micro-incivilities” comes from research about behaviour, whereas “micro-aggression” is not a term that stems from research and can lead to people becoming defensive owing to the inclusion of the word “aggression” which can seem accusatory.

Chapter 5

Assessing complaints and gravity factors

Gravity factors	69
Handling complaints outside of Schedule 3	73
Recording complaints	74
Mandatory referral to the IOPC	75
Voluntary referral to the IOPC	76
Deciding whether to investigate the complaint under Schedule 3 to the <i>Police Reform Act 2002</i> otherwise than by investigation	77
Appointing a complaint handler	80
Handling under Schedule 3 to the <i>Police Reform Act 2002</i> otherwise than by investigation	81
Deciding to take no further action	81
Investigations – special procedures, severity assessments and notices of investigation	81
Terms of reference	82

Chapter 5: Assessing complaints and gravity factors

5.1 The action to be taken on receipt of a complaint is set out in Chapter 6 of the IOPC’s Statutory Guidance. Complaint handlers should also consider Chapters 9, 10, 11, 12 and 13.

Gravity factors

5.2 An important part of handling all police complaints is the assessment of seriousness. This assessment should be ongoing throughout the handling of a complaint. It informs decisions about whether a case needs to be referred to the IOPC and the reasonable and proportionate way to handle the complaint. It also informs decisions around the type of action required as an outcome and who is the relevant review body.

5.3 Allegations of discrimination must be treated seriously. Fairness is a core principle which underpins the concept of policing by consent, and unfair or unlawful discrimination fundamentally undermines this principle. Chapter 10 of the IOPC’s Statutory Guidance includes guidance on assessing the seriousness of a matter. When making decisions about the seriousness of a case, consideration must always be given to the College of Policing’s ‘Guidance on outcomes in misconduct proceedings’ which states that “Discrimination towards persons on the basis of any protected characteristic is never acceptable and always serious.”²⁷ However, not all allegations of discrimination are at the most serious end of the spectrum. All allegations must be assessed individually.

5.4 Factors to consider that would raise the gravity of the alleged conduct in a discrimination complaint include (but are not limited to):

- **Harm or impact:** what was the impact of the alleged discriminatory conduct? The impact on both any individual person affected and the wider community²⁸ should be considered. Harm is likely to be higher in

²⁷ Paragraph 4.54, College of Policing, *Guidance on outcomes in misconduct proceedings*, 2023. This guidance concentrates on allegations of discrimination on the basis of one of the protected characteristics. While the College of Policing guidance implies allegations of discrimination that do not involve any of the protected characteristics may be less serious, the seriousness of any complaint should be assessed on a case-by-case basis.

²⁸ Complaint handlers should be mindful that ‘community’ does not always refer to a geographic area, but could refer to communities of people that are brought together in different ways – for example, online.

discrimination cases given the traumatising impact that discrimination can have on individuals and communities, as well as the significant impact issues of discrimination have on confidence in policing. These are all relevant considerations when assessing seriousness.

In particular, a matter should be viewed as serious where significant harmful impact could reasonably have been foreseen and reasonable steps were not taken to prevent this. This could include failure to take account of a person's vulnerability or known community tensions. The gravity of the alleged conduct will also be raised if the discrimination can be seen to have impacted on a person's exercise of their human rights (see paragraphs from [2.6](#)). Where discrimination appears unintentional, it will be particularly relevant to take account of the harm caused where police actions foreseeably increased the risk of discrimination or of an incident being experienced as discriminatory.

Where an incident is reasonably experienced as discriminatory by the individual subject to the treatment and/or witnesses or the wider community or public, this is likely to have a detrimental impact on confidence in policing. This could be relevant to consider as an aggravating factor.

- **Intent:** was the discrimination deliberate or conscious? It is not necessary to show intent to find, for example, a case to answer for discrimination. However, an allegation of discrimination will be more serious where there is an allegation or indication that the alleged discrimination was intentional or malicious. For example where actions are underpinned by homophobic/racist/sexist attitudes.

An indication of intent is not limited to where a person openly holds and expresses discriminatory views. It could include where there is evidence that the complainant was specifically targeted because of their protected characteristic.

In some cases, unintentional discrimination may amount to a serious conduct issue. In other cases, unintentional discrimination may be less serious (and so, for example, a case to answer for gross misconduct would not necessarily be an appropriate finding).

Where discrimination appears unintended, a learning or performance outcome, or case to answer for misconduct (and not gross misconduct) could be appropriate. However, the outcome should always be considered in the context of the harm caused (including the impact on public confidence), the seriousness of related conduct and the presence of any other aggravating or mitigating factors (such as repeat conduct or leadership role).

- **Serious negligence or recklessness:** for example, failing to follow policy or provide a duty of care where the officer or staff member should have known to do so. Particularly relevant to the assessment of discrimination allegations will be any serious failure to follow policies or

guidance targeted at addressing discrimination or protecting vulnerable groups, such as hate crime policies or guidance on responding to people in mental health crisis.

- **Vulnerability.** Allegations involving a vulnerable person should be seen as particularly serious. Many factors could give rise to vulnerability.

The College of Policing's 'Guidance on outcomes in misconduct proceedings' sets out certain factors that may give rise to vulnerability, which include any of the protected characteristics as well as other factors that could also overlap with considerations of unlawful or unfair discrimination such as:

- mental ill health
- substance misuse
- social circumstances such as homelessness or bereavement
- cultural differences and the person's ability to communicate in English
- experience of crime, including harassment or domestic abuse²⁹

People may also be particularly vulnerable owing to a combination of intersecting factors (this is sometimes referred to as intersectionality). Consideration should be given to whether a person could be considered vulnerable in a given situation, and whether the officer recognised or should have recognised this, taking account of all the circumstances.

- **Repeat behaviour:** whether a number of previous similar complaints have been recorded or logged (either about the same issue, or, where appropriate, about the same officer or department) Does the alleged behaviour fit with previous patterns of behaviour? Have complaints against the officer or staff member about similar behaviour been made before? Have complaints about the same department or team been made before? The officer or staff member's complaint record should be considered at an early stage as part of an assessment of the seriousness of the allegation.
- **Wider context:** whether the matter gives rise to concerns additional to those alleged by the complainant.
- **Level of responsibility:** senior officers have a particular responsibility to uphold standards and set an example to those they lead. The importance of policing leaders acting as role models of professional behaviour is highlighted in the *Code of Ethics*. This should be taken

²⁹ Paragraph 4.52, College of Policing, Guidance on outcomes in misconduct proceedings, 2023

into account in any assessment of the seriousness of the alleged conduct.³⁰

- **Organisational vs individual culpability.** Issues of discrimination involving the conduct of individual officers often do not occur in a vacuum. Organisational and systemic issues can influence individual conduct and can certainly impact on the service provided to members of the public and the risk of recurrence. It may be relevant to consider any apparent systemic or organisational issues when establishing what happened and why.

Where systemic or organisational issues are a factor, complaint handlers should consider whether there is any organisational learning.

It may also be appropriate to take systemic or organisational issues into account when assessing individual culpability of individual officers (see paragraphs from [6.57](#)).

Under the *Equality Act 2010*, there can be no justification for direct discrimination based on a protected characteristic. Taking this principle into account – being influenced by an organisational approach that is institutionally discriminatory or being ‘only as disproportionate’ or ‘only as discriminatory’ as those around you, is not a defence in respect of potential breach of the Equality and Diversity standard. However, such factors may be appropriate to consider when assessing culpability and the seriousness of the misconduct. This will need to be balanced against the need to ensure appropriate individual accountability for use of policing powers and having due regard for the purpose of the police misconduct system.

Therefore, if individual officers are less culpable for discriminatory outcomes because of organisational factors, the organisational issues will need to be addressed to give assurance that the public will be protected from the risk of recurrence. This might be achieved by considering the conduct of senior/supervising officers where appropriate and/or by making organisational learning recommendations.

- 5.5 The interplay between intent and harm is particularly relevant to consider when assessing seriousness in relation to an allegation of discrimination. However, all the aggravating and mitigating factors discussed in the College of Policing’s *‘Guidance on outcomes in police misconduct proceedings’*

³⁰ For example, where thresholds are being considered – for example, whether to record a complaint, and the complaint includes allegations about the actions of a senior officer, the IOPC considers that it would be appropriate to record matters that would otherwise have met the criteria for recording, had the officer in question not been a senior officer.

apply, and should be considered in the same way they would for all other types of allegations.

- 5.6 Allegations of discrimination will often appear as an aggravating factor in relation to other allegations, for example, an allegation that an officer used excessive force against a person because of their race. The College of Policing's *'Guidance on outcomes in misconduct proceedings'* lists '**any element of unlawful discrimination**' as an aggravating factor to consider when assessing seriousness³¹.
- 5.7 An assessment of gravity will need to consider the seriousness of the allegations together (i.e. both the seriousness of the alleged use of excessive force and the seriousness of the discriminatory conduct). The Home Office *'Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing'* indicates that decision makers considering more than one allegation against the same officer can take the allegations together when making an assessment, finding, determination or decision in connection with the conduct. This has an effect not only on the case to answer decision, but on all decisions where the complaint handler / decision maker is considering whether the seriousness may justify disciplinary proceedings.
- 5.8 Examples are provided in this guidance to show how consideration of these gravity factors might apply to the decision to refer a matter to the IOPC, decisions around identifying recordable conduct, the decision about how to handle a complaint, and the special procedures and severity assessment decisions, as well as decisions about outcomes. Complaint handlers should regularly review, throughout the handling of a complaint, whether the initial views on these decisions remain appropriate.

Handling complaints outside of Schedule 3

- 5.9 The police complaints system allows for the resolution of complaints both under, or outside of, Schedule 3. However, certain types of complaints must be recorded and handled under Schedule 3.
- 5.10 Complaints dealt with outside the requirements of Schedule 3 must be handled with a view to resolving them to the complainant's satisfaction³². The consideration of whether a complaint that includes allegations of discrimination is suitable for handling outside of Schedule 3 is the same as

³¹ Paragraph 4.76, College of Policing, *Guidance on outcomes in misconduct proceedings*, 2023

³² Paragraph 2, Schedule 3, *Police Reform Act 2002*

with all complaints. This is set out in Chapter 6 of the IOPC's Statutory Guidance.

- 5.11 While it is important to always address and acknowledge the importance of the discrimination aspect of a complaint, where there is a clear explanation for the action that has caused the dissatisfaction, this can be provided outside of Schedule 3.

Example A

Ms N called the police to complain that she had gone to attend a local police station and she had not been able to access the station because there was a step. The call handler agreed to pass their concerns onto the relevant department. A member of that department replied to Mrs N, explaining that there was a programme of work to bring older buildings in line with updated accessibility policies, and that adding a ramp to this station was on the list.

Example B

Mr O called the police to complain that he had not been given a crime reference number after he reported a burglary. He stated that he believed this was because the officer did not take it seriously because he was a goth and did not listen to the fact that what was stolen were valuable rare vinyls.

The call handler can see that the officer who attended Mr O's house this morning has updated the incident log, but was then called straight away to assist with searches for a high-risk missing person. The call handler apologises to Mr O that he feels discriminated against, explains the reason for the delay and provides him with a crime reference number. Mr O is satisfied with this explanation and the complaint is closed.

- 5.12 Further guidance on handling complaints outside of Schedule 3 is provided in issues 13 and 15 of Focus.

Recording complaints

- 5.13 As noted above, certain complaints must be recorded under Schedule 3 to the *Police Reform Act 2002*. Guidance on what complaints must, or should, be recorded can be found in Chapter 6 of the IOPC's Statutory Guidance. When deciding whether a complaint is to be recorded consideration should be given to the gravity factors listed above.

Mandatory referral to the IOPC

- 5.14 Where a complaint is made under the *Police Reform Act 2002*, the police must assess whether it needs to be referred to the IOPC. Not all complaints of discrimination will meet the criteria for mandatory referral.
- 5.15 Any of the grounds for referral may apply. However, there is a specific referral ground that relates to discrimination allegations.
- 5.16 Under the *Police Reform Act 2002*, an appropriate authority must refer a matter to the IOPC if it includes an allegation of conduct which constitutes:
- a criminal offence or behaviour which is liable to lead to disciplinary proceedings
 - and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's:
 - age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity
 - race
 - religion or belief
 - sex, or
 - sexual orientation
- 5.17 This criterion is met if the alleged behaviour, without the discrimination element, would amount to a criminal offence or behaviour which is liable to lead to disciplinary proceedings *and* it is alleged that discrimination was a reason for this behaviour.
- 5.18 It is important when assessing this two-part test that initial consideration is made about whether the alleged behaviour, *without the discrimination element*, is serious enough to amount to a criminal offence or behaviour which is liable to lead to disciplinary proceedings. If it does, then the second part of the test is to consider whether it is alleged that discrimination was a reason for this behaviour.
- 5.19 However, it will not be necessary to assess the gravity of the discrimination element at this stage (for instance, to consider intent), only that discrimination is alleged as an aggravating factor. If the complaint does not meet both parts of the test, then it will not meet this part of the mandatory referral criteria.

- 5.20 The appropriate authority should still consider whether any of the other mandatory referral criteria apply, as set out in Chapter 9 of the IOPC's Statutory Guidance. Case study 19 in Annex C demonstrated the application of criteria for referral to the IOPC.
- 5.21 The appropriate authority can seek the IOPC's advice about whether to refer a specific incident or allegation. Where there is doubt about whether a complaint must be referred, the IOPC encourages referral.

Voluntary referral to the IOPC

- 5.22 There may be allegations involving discrimination where there are no underlying criminal offences or behaviour liable to lead to disciplinary proceedings, but the seriousness of the discrimination allegation itself means that it would be appropriate to refer the matter to the IOPC.
- 5.23 The IOPC encourages appropriate authorities to use their ability to voluntarily refer complaints that do not have to be referred, but where the gravity of the subject matter or exceptional circumstances justifies referral. For example, this may be where:
- The complaint could have a significant impact on public confidence or on the confidence of particular communities.
 - It is felt there is a need for independent involvement in the investigation.
- 5.24 This may also be the case where a serious allegation is made of unfair discrimination relating to a group that is not specifically protected under the *Equality Act 2010* and is not, therefore, included in the mandatory referral criteria relating to discrimination (as defined in the IOPC's Statutory guidance). (Such unfair discrimination is discussed from paragraph 2.7). In these cases, the appropriate authority should consider referring the matter to the IOPC voluntarily.
- 5.25 Consideration should be given to the gravity factors on (from paragraph 5.2) when making this assessment. For example, it may be appropriate to voluntarily refer a matter if the case involves a very senior officer and the alleged discrimination could undermine confidence in their role or in the police generally; or there is evidence of a serious systemic issue.
- 5.26 Clear reasons for referring the matter should be explained when a voluntary referral is made. Relevant issues to be covered include not just the nature of the allegations, but any serious concerns or exceptional circumstances affecting the complainant and the wider community, and why independent oversight is felt to be needed. This is important information for the IOPC to

consider when deciding how the matter should be handled and what the appropriate level of IOPC involvement would be.

Deciding whether to investigate the complaint or handle under Schedule 3 to the *Police Reform Act 2002* otherwise than by investigation

5.27 As discussed in Chapter 10 of the IOPC's Statutory Guidance, all complaints that are recorded under Schedule 3 to the *Police Reform Act 2002* must be handled in a reasonable and proportionate manner. Depending on the circumstances, this may mean:

- an investigation of the matter
- otherwise responding to concerns raised and seeking to resolve them, or
- on occasion, notifying a complainant that no further action will be taken

5.28 Decisions on the appropriate handling should be made on a case-by-case basis. However, there are some matters that must be investigated. The situations where a matter must be investigated are set out in legislation³³ and Chapter 10 of the Statutory Guidance. These include³⁴:

- any complaint where the appropriate authority determines that it is reasonable and proportionate to investigate
- any complaint where there is an indication, either from the complaint itself or from handling to date, that:
 - a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, or
 - there may have been the infringement of a person's rights under Articles 2 or 3 of the *European Convention on Human Rights*

5.29 Guidance on making the decision about whether or not to investigate a complaint (including whether or not there is an indication) can be found in Chapter 10 of the IOPC's *Statutory Guidance* and issue 13 of *Focus*.

5.30 These decisions should be taken in the same way in discrimination complaints as they would in any other complaint. However, we know this is

³³ Paragraph 6 & 16, Schedule 3, *Police Reform Act 2002*; Regulation 6, Police (Complaints and Misconduct) Regulations 2020

³⁴ Paragraph 6 & 16, Schedule 3, *Police Reform Act 2002* Also see, Regulation 6, Police (Complaints and Misconduct) Regulations 2020 and page 71 of the IOPC's Statutory Guidance.

one area that complaint handlers find difficult. It may assist complaint handlers to particularly bear in mind:

- An allegation of discrimination will always, rightly, raise the seriousness of a case.³⁵
- As noted in the IOPC's Statutory Guidance:
 - the decision about whether there is an indication should take account of the facts being asserted by the complainant, alongside any readily available evidence.
 - an allegation does not need to be accompanied by corroborating evidence for there to be an indication.³⁶
 - this decision can be taken after seeking further information and clarification from the complainant. As stated in [Chapter 3](#), it is particularly important in discrimination complaints that complaint handlers explore the nature of the complaint with the complainant. As part of their duties under the Public Sector Equality Duty, complaint handlers must be constantly vigilant for evidence indicating a breach of the Equality and Diversity Standard of Professional Behaviour.
 - where there is doubt about whether or not there is an 'indication', this may suggest that it is reasonable and proportionate to investigate.³⁷
- Whether discrimination is alleged to be overt or actions based on stereotypes, biases and assumptions, an allegation that a complainant experienced an encounter as discriminatory should be assessed in the same way as any other complaint.
- Readily available evidence includes evidence that is being used to assess the seriousness of the complaint.
- What steps are reasonable and proportionate to take in order to handle a complaint, taking into account the following factors:
 - the views of the complainant, including why they experienced the conduct as discriminatory
 - the seriousness of the matter, including the gravity factors outlined from [paragraph 5.2](#)
 - the potential for learning for individuals, or local or national policing

³⁵ See paragraph 4.54 of the College of Policing's '*Guidance on outcomes in police misconduct proceedings*' which, as quoted earlier, states: "Discrimination towards persons on the basis of any protected characteristic is never acceptable and always serious."

³⁶ Paragraph 10.7, IOPC Statutory Guidance (2020)

³⁷ Paragraph 10.9, IOPC Statutory Guidance (2020)

- whether there appears to be an indication that, whilst the matter may not be misconduct or gross misconduct, it appears to be ‘gross incompetence’³⁸
- what facts need to be established and whether they are in dispute
- how long ago any incident took place and whether evidence is still likely to be available
- what might be done to remedy any issues
- what outcome the complainant may have indicated they are seeking

5.31 Where a complaint does not have to be investigated, including where it is not considered reasonable and proportionate to do so, the complaint can be handled under Schedule 3 to the *Police Reform Act 2002* otherwise than by investigation.

5.32 Throughout the handling of a complaint, complaint handlers should regularly review whether the initial approach or method of handling remains appropriate. Where they are concerned it may no longer be, the matter should be highlighted to the appropriate authority.

Example A

Mr P complains that an officer stopped and searched him for no reason apart from his race.

The appropriate authority obtains the stop and search record and can see that full rationale has been provided by the officer. The appropriate authority decides that the complaint should be handled otherwise than by investigation.

Example B

Mr P complains that an officer stopped and searched him for no reason apart from his race.

The appropriate authority obtains the stop and search record and very little rationale for the stop and search has been provided. The appropriate authority decides that there is an indication that a person serving with the

³⁸ See Home Office guidance, ‘*Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing*’. This would also apply where there appears to be an indication that a matter regarding a senior officer would amount to ‘gross incompetence’ had the officer in question not been a senior officer.

police may have behaved in a manner that would justify the bringing of disciplinary proceedings and, therefore, the complaint should be investigated.

- 5.33 Case studies [20-24](#), and case study [30](#) in [Annex C](#) provide a variety of examples on making a decision about how a complaint should be handled.

Appointing a complaint handler

- 5.34 The person appointed to handle a matter must not be someone whose involvement in that role could reasonably give rise to a concern about whether they could act impartially. IOPC Statutory Guidance sets out that, when appointing a person to handle a matter the appropriate authority should consider the circumstances, including the subject matter of a complaint, to ensure that they appoint an appropriate handler³⁹.
- 5.35 Where the complaint is being investigated⁴⁰:
- The investigator must have an appropriate level of knowledge, skills and experience to plan and manage the investigation.
 - The investigator must not work, directly or indirectly, under the management of a person being investigated.
 - A person must not be appointed if their involvement in that role could reasonably give rise to a concern about whether they could act impartially.
 - Where an investigation relates to a senior officer, the investigator must not be a person serving with the same force as the senior officer.
- 5.36 For discrimination complaints, it is crucial that the complaint handler has a good understanding of the equality and diversity issues which result in discrimination complaints being made, and should have the knowledge, skills and experience to be able to effectively apply these guidelines throughout the handling of the complaint, and in the outcome letter to the complainant.
- 5.37 The IOPC also expects that the complaint handler would be fully up-to-date with their own discrimination training.

³⁹ Paragraph 11.3, IOPC Statutory Guidance.

⁴⁰ Paragraph 16 and 18, Schedule 3, *Police Reform Act 2002*. Regulation 12, Police (Complaints and Misconducts) Regulations 2020.

Handling under Schedule 3 to the *Police Reform Act 2002* otherwise than by investigation

- 5.38 These guidelines, including the principles of engaging with the complainant and achieving a resolution-focused outcome at paragraph [7.4](#), should be applied to complaints handled otherwise than by investigation as they would to complaints handled by investigation. Guidance on handling complaints otherwise than by investigation can be found in Chapter 12 of the IOPC's Statutory Guidance and issues of Focus. Complaint handlers must consider what steps are reasonable and proportionate to take in order to handle the complaint, with reference to the factors at paragraph [5.30](#).
- 5.39 Unless the complainant is given a reasonable and proportionate explanation for what happened and it is clear that the complainant's perspective has been heard and valued in the process, handling otherwise than by investigation is unlikely to promote confidence or to achieve real resolution, particularly in discrimination cases. The guidance in Chapters [6](#) and [7](#) should be followed when handling a complaint otherwise than by investigation.

Deciding to take no further action

- 5.40 Careful consideration should be made of the guidance in Chapter 10 and Chapter 12 of the IOPC's Statutory Guidance, and issue 14 of Focus, when considering whether it is appropriate to take no further action on a complaint. The IOPC Statutory Guidance states that complaint handlers should seek to resolve a complainant's concerns wherever possible, and it is reasonable and proportionate to do so. Complaint handlers should consider what can be done to address dissatisfaction, to learn and avoid repetition of any mistakes, and to provide a reasonable and proportionate outcome, particularly when the matters alleged have the potential to have had serious effects, either for the complainant or throughout the police service.

Investigations - special procedures, severity assessments and notices of investigation

- 5.41 The process for certifying an investigation as one subject to special procedures and undertaking a severity assessment is no different for discrimination cases than any other case (see Chapter 13 of the IOPC's Statutory Guidance). Special procedures must be followed if at any time during an investigation of a complaint, it appears to the investigator (or the IOPC in a directed investigation) that there is an indication that a member of a police force or special constable to whose conduct the investigation relates, may have committed a criminal offence or behaved in a manner that would

justify the bringing of disciplinary proceedings (see paragraph [5.30](#) with regards to the indication test).

- 5.42 Once the decision is made that the investigation is subject to special procedures, a severity assessment must be conducted.
- 5.43 An allegation of discrimination can raise the seriousness of a case, which can impact on the severity assessment. Examples of undertaking a severity assessment in relation to an allegation of discrimination, having regard for the gravity factors, are provided below.
- 5.44 On the completion of a severity assessment, the investigator must give a written notice to the police officer concerned notifying them that they are under investigation, as per the guidance in Chapter 13 of the IOPC's Statutory Guidance. The notice should inform the officer that the matter is considered to amount to discriminatory behaviour in breach of the Equality and Diversity Standard of Professional Behaviour, but does not need to identify any specific form of discrimination under the *Equality Act 2010* or *European Convention on Human Rights* (if any).
- 5.45 Case studies [25-27](#) in [Annex C](#) relate to assessing whether special procedures apply and making severity assessments.

Terms of reference

- 5.46 While the regulations only mandate terms of reference for investigations that are subject to special procedures, the IOPC expects all investigations to have terms of reference.
- 5.47 The terms of reference for an investigation into a complaint that raises issues of discrimination should explicitly refer to and address any discrimination allegations raised. This includes where discrimination is alleged as an aggravating factor in relation a separate criminal or misconduct allegation. However, it is unnecessary for the terms of reference to specify any specific forms of prohibited conduct under the *Equality Act 2010* or *European Convention on Human Rights*.
- 5.48 Where no specific allegation of discrimination has been made but it is apparent that discrimination may be a relevant consideration, this should be addressed in the terms of reference.⁴¹ For example, this may be where there are documented disparities in the use of a police power or failures in particular types of investigations, which are linked to discrimination.

⁴¹ This is consistent with the investigator's duties under the Public Sector Equality Duty.

- 5.49 If, during the handling of such a complaint, evidence of discrimination is identified then this should be added to any notices and / or recorded matters, and any severity assessments and notices to officer(s) or staff member(s) must be updated.

Example, where discrimination has not explicitly been alleged:

During the course of this investigation, due regard will be given to whether there is any indication that discriminatory behaviour may have influenced the treatment XX received. If such an indication arises, the matter will be referred to the appropriate authority for consideration and assessment.

- 5.50 Where a complaint includes an allegation that involves institutional issues, the complaint handler should set out clearly what will be looked at and how the organisational issues under consideration link to any individual incident/s being investigated. See [Annex C, case study 28](#) for an of example terms of reference.
- 5.51 As noted in paragraph [4.5](#), it is important to give proper consideration to all the elements of the encounter that could be discriminatory. It may be appropriate to make this clear in the terms of reference and in any notice to officers, as well as in the outcome report and decision, with all aspects addressed in any misconduct or learning outcomes.
- 5.52 Subject to the exceptions at Regulation 35 of the Police (Complaints and Misconduct) Regulations 2020, a copy of the terms of reference and any revisions to them should be sent to complainants (as well as any interested persons and any person whose actions are under investigation)⁴². It may also be useful to offer to meet with the complainant to discuss these further if they have any questions about them.
- 5.53 While terms of reference are not required for complaints being handled otherwise than by investigation, the complaint handler should ensure that the complainant is clear what will be covered in the handling of their complaint (as per the principles in [Chapter 3](#)) and ensure that discrimination elements of an allegation are explicitly addressed as such.

⁴² See paragraphs 13.38 – 13.41 of the IOPC’s Statutory Guidance on the provision of terms of reference to the person subject to investigation, in an investigation that is subject to special procedures.

Chapter 6

Gathering and assessing the evidence

Lines of enquiry	85
Types of complaint – complaints involving allegations of discriminatory bias, assumptions and stereotypes	88
Types of complaint – complaints about poor levels of service ...	89
Types of complaint – complaints about discriminatory use of police powers	90
Types of complaint – complaints not about the conduct of a person serving with the police	92
Types of evidence – officer complaint history and other patterns of behaviour evidence	92
Types of evidence – comparator evidence	99
Types of evidence – discriminatory language	101
Types of evidence – officer or staff member’s account	102

Chapter 6: Gathering & assessing the evidence

- 6.1 The principles and guidance outlined in this chapter should be applied for all complaints handled under Schedule 3 of the *Police Reform Act 2002*. All complaints should be handled reasonable and proportionately. Although the legislation distinguishes between those matters that are ‘investigated’ and those that are not, in practice certain investigative steps may be reasonable and proportionate even when not carrying out an investigation under the *Police Reform Act 2002*.⁴³
- 6.2 This chapter outlines guidance for complaint handlers on how to handle the complaint. However, it is important for decisions makers to understand the lines of enquiry available, in order for them to appropriately assess that information.
- 6.3 Similarly, it is recommended that complaint handlers read [Chapter 7](#) to understand how decision makers will assess the evidence and make their decisions, so they can ensure they undertake the appropriate lines of enquiry to properly inform those decisions. Of course, where a complaint has been handled otherwise than by investigation, the complaint handler is also the decision maker.
- 6.4 It will also be helpful for complaint handlers to have the guidance in [Chapter 2](#) in mind when handling allegations of discrimination. This is because knowing what questions need to be answered will help to ensure that appropriate lines of enquiry, evidence gathering and questions to officers / witnesses are pursued. However, complaint handlers must not be constrained by consideration of the types of discrimination under, for example, the *Equality Act 2010*.
- 6.5 Where a complaint has been investigated, the guidance in [Chapter 7](#) will inform opinions provided as part of an investigation report.

Lines of enquiry

- 6.6 Those lines of enquiry which would be followed in the handling of any complaint should be followed to try to find out what happened. The actions taken by complaint handlers as part of engaging with the complainant, understanding the complaint, and assessing the seriousness of the complaint and how it is best handled, should inform the lines of enquiry that are considered reasonable and proportionate. The thinking done as part of

⁴³ Paragraph 12.4, IOPC Statutory Guidance (2020).

understanding the complaint, to consider how the alleged discrimination might present and what stereotypes or prejudicial assumptions might have informed the officer or staff member's actions, should also inform what lines of enquiry are considered to be reasonable and proportionate.

- 6.7 In the case of a complaint that includes allegations of discrimination, there may be additional types of evidence to consider, which may be different to the type of evidence gathered for other kinds of complaint. For example, this may be in complaints involving allegations of discriminatory bias, assumptions or stereotypes, lack of respect or empathy, or where little or no reason is provided for actions and disproportionate use of policing powers.
- 6.8 It is common in discrimination cases for there to be little or no further *direct* evidence available, beyond the complaint, to support an allegation. (Direct evidence might be CCTV footage that showed use of discriminatory language, for example).
- 6.9 This is particularly the case if the allegation is about discriminatory actions arising from prejudiced assumptions or attitudes. It is also rare that an officer or staff member is willing to admit that their actions may be discriminatory.⁴⁴ Therefore, the handling of the complaint will need to consider what other evidence is reasonable and proportionate to obtain which would be relevant in making a determination or case to answer decision for a breach of the Equality and Diversity Standard of Professional Behaviour.
- 6.10 Depending on what is reasonable, proportionate or relevant in the circumstances, lines of enquiry can include:
- Lines of enquiry which would be considered in the handling of any complaint, for example:
 - The complaint, and / or statement, from the person/s involved who experienced or witnessed the policing actions as discriminatory (see [Chapter 3](#)). Where there is no such statement from the person involved, this will not necessarily exclude discrimination as a factor.
 - Identifying and speaking with witnesses.
 - Obtaining CCTV or body worn video.
 - Gathering custody records, incident logs, use of force forms, stop and search records and other relevant contemporaneous records.
 - Where the complaint is about the actions of a person serving with the police, getting an account or response to the complaint from that person.

⁴⁴ See *Nagarajan v London Regional Transport* [2000] 1 AC 501.

- Previous complaints / conduct history of officers or staff members.
- Policies and procedures - both local and national.
- Relevant officer training records and the content of that training.
- Where the complaint is about a policy or planned operation, any community impact assessments and equality impact assessments.
- Where the complaint is about the actions of a person serving with the police, an assessment of their actions against operational policy and reasonable behaviour.
- Comparators showing difference in treatment compared with another person in the same or similar situation.
- Evidence of trends in how an officer behaved and / or used police powers in similar situations.
- An assessment of language used, including language used in any records relating to the incident in question or arising from the complaint investigation. To consider:
 - Evidence of stereotyping: language / actions / approach / justification for actions which appear to be based on assumptions that align with known stereotypes.
 - Evidence of discriminatory language, including negative generalisations and admissions that a protected characteristic was a reason for an action / inaction.

6.11 Some evidence may come to light while following those lines of enquiry above. For example:

- Evidence of use of discriminatory language in logs, including making generalisations or references to a characteristic that is irrelevant to the policing purpose.
- Evidence of hostility, degrading treatment or lack of respect or care, including unwillingness to take account of individual needs and vulnerabilities. (NB - If the protected characteristic being considered is disability, there are additional obligations to consider regarding making reasonable adjustments, see paragraphs from [2.63](#)). This evidence will be particularly convincing in combination with one or more of the other factors above.

6.12 The sections below discuss how a complaint handler might handle certain types of complaints and considerations when gathering certain types of evidence. These are not exhaustive, and are likely to overlap.

6.13 The key questions to keep in mind when establishing what lines of enquiries are reasonable and proportionate are:

- How does the complainant allege that discrimination affected them? For example, is it that they received poor or less favourable treatment, were they made to feel intimidated, was insufficient consideration given to a protected characteristic?
- Was it reasonable to feel that way, and / or did what is alleged happen? For example, did the actions occur / not occur? Was the level of service poor?
- Why? Why does the complainant think it happened? Why did the complainant feel that way? Why were the actions taken (or not taken)?

6.14 Complaint handlers should pursue lines of enquiry that point towards and away from discrimination.

Types of complaint – complaints involving allegations of discriminatory bias, assumptions, and stereotypes

6.15 The IOPC recognises that addressing complaints arising from an individual's experience of how they have been treated can be challenging. This is because their experience may involve a perception that the police's actions were influenced by biases, assumptions or stereotypes. This is why it is important that the complaint handler understands how difference forms of prejudice, bias and assumptions may arise during interactions with the police (see [Chapter 4](#)).

6.16 These types of complaints are often treated as 'lower-level' matters or labelled as lacking 'substance', owing to the apparent lack of tangible or conclusive evidence. They are often regarded as suitable for quick resolution, with minimal exploration of the issues (and often, the burden is inappropriately put on the complainant to provide the evidence). However, these are exactly the types of complaint that may warrant a more in-depth handling, gathering a range of relevant material.

6.17 Types of evidence that might assist in the handling of these types of complaint include:

- Accounts from any officer or staff member whose actions are subject to the complaint. It is acknowledged that policing often involves making decisions based on imperfect or incomplete information. Nevertheless, police actions should not be based on unreasonable assumptions or exaggerations which are not supported by the available evidence. Officers should be able to provide evidence-based reasons for their actions and for their use of powers. (See below section about officer's accounts).

Any officer or member of staff complained about should be provided with an opportunity to respond to allegations of discriminatory

stereotyping and allegations should be clearly put to them. Clear evidence pointing towards an assumption or exaggeration having been made will be central to an argument that discriminatory stereotyping was a factor. If officers can show that their actions were not based on unreasonable assumptions or exaggerations, but were based on a reasonable assessment of the evidence before them, this will be a strong argument against discriminatory stereotyping being a factor.

- Published material about stereotypes. It will not usually be necessary to obtain expert or published evidence to establish that a stereotype exists. Stereotyping inherently involves the widespread belief that certain groups possess specific characteristics. Decision makers, and, where appropriate, misconduct panels should be able to take a widely held stereotype as a given and rely on this, (so long as the officers have been provided with an opportunity to address the allegation and provide any non-discriminatory reasons for their actions).
- If evidence of stereotyping is to be relied upon, and the stereotype is contentious or there are concerns that the decision maker or panel is unlikely to rely on the existence of a stereotype without supporting evidence, then published material can be used as a reference. The preferred material would be EHRC publications, established reports and reviews (for example, for allegations of discrimination on the basis of race, the Macpherson Inquiry or Angiolini or Lammy Reviews), or His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) reports. Any reference material should be introduced and discussed in the investigation report. It would also be best practice to discuss this material, where it has been considered, in the outcome letter for a complaint handled otherwise than by investigation.

6.18 Case studies [8](#), [9](#), [11](#), [16](#), [17](#), [29](#), [30](#), [38](#), [44](#), [46](#), and [58](#) all include consideration of the impact of assumptions and stereotypes. Read them in [Annex C](#).

Types of complaint - complaints about poor levels of service

- 6.19 The first step in handling complaints about not receiving the expected level of service, or decision-making not adhering to the expected standard, is to establish whether there was a poor level of service.
- 6.20 Where this is established, it can be challenging to identify explicit evidence linking police actions or behaviour to a person's protected characteristics. However, this does not prevent exploration of how that particular incident, or type of police interaction, should have been handled. Where a person has

received poor service or unfair treatment, and/or police actions have not been adequately explained, it is understandable that this could be experienced as discrimination.

- 6.21 This is often the first step in assessing whether any deviation from the expected actions or behaviour points towards, or away from discrimination. It will almost always be considered in the context of the other evidence gathered and analysed.
- 6.22 Lines of enquiry which may assist in the handling of such complaints can include:
- The policies, procedures and training that should have been followed.
 - Patterns of behaviour evidence (see below section on patterns of behaviour evidence).
 - Comparator evidence (see below section on comparator evidence).
 - Evidence of officers or staff members' demeanour or attitude.
 - The context of the incident.
 - The reasons offered by an officer or staff member for their actions / inaction.
- 6.23 When considered together, this helps to build a picture of the behaviour that either points towards, or away from discrimination, and outlines whether it can be reasonably inferred that the reason for the service provided was a person's protected characteristic(s).
- 6.24 Case studies [30](#) and [31](#), [Annex C](#), give examples of handling complaints about a poor level of service. This includes the importance of assessing the full range of information and evidence, and how this feeds correctly into any risk assessments.

Types of complaint – complaints about discriminatory use of police powers

- 6.25 Complaints about the discriminatory use of police powers are commonly associated with allegations around disproportionate use of stop and search, and unnecessary use of force. The IOPC's National Stop and Search learning report includes a number of recommendations about the use of stop and search. It is helpful to read the report alongside this guidance to gain a

full understanding of some of the areas of poor practice that were identified and how this might translate into complaints.⁴⁵

6.26 Lines of enquiry which may assist in handling this type of complaint can include:

- The policies, procedures and training that should have been followed.
- Rationale for use of power from officer or staff member/s. (See below guidance on probing the officer or staff member's account).
- Patterns of behaviour evidence. For example, a consideration of disproportionality or repeated previous complaints around the use of stop and search or use of force, as such evidence can help to understand whether the use of such powers could have been potentially discriminatory. This can provide contextual evidence to help understand whether the use of such powers was discriminatory. (See below section on patterns of behaviour evidence).

6.27 Complaint handlers should ensure that they are addressing the reason why a power was used – a discriminatory motivation behind the use of a power has the ability to render proper actions improper.⁴⁶ For example, an officer could have seemingly reasonable and valid reasons to arrest a complainant, but if there is evidence to indicate that in making the decision to arrest, the officer was influenced by the complainant's protected characteristics, that has the potential to render the decision to arrest improper. The complainant's explanation for why they feel that the action was discriminatory can be key to exploring this.

6.28 In addition, a complaint might not be that police powers were used inappropriately because of someone's protected characteristic, but that sufficient consideration was not taken of someone's characteristics when using the power, or that reasonable adjustments should have been made. In these cases, the complaint handler may wish to obtain evidence which demonstrates:

- What the officer or staff member knew or should have known about the complainant, for example, incident logs, PNC records, account from the officer.

⁴⁵ IOPC National stop and search learning report 2022.
<https://www.policeconduct.gov.uk/publications/national-stop-and-search-learning-report> Other relevant reports and resources are available in Annex B.

⁴⁶ See *Ministry of Defence v Jeremiah* [1980] QB 87, 99F, CA; *Chief Constable of West Yorkshire Police v Khan* [2001] UKHL 48, [2001] ICR 1065

- What policies and procedures are in place, and any equality impact assessments.
- Whether the decisions and/or actions taken were reasonable (see, for example, paragraphs from [4.15](#))

Types of complaint - complaints not about the conduct of a person serving with the police

- 6.29 A complaint does not have to be about the conduct of a person serving with the police, it can be made about any matter which has had an adverse effect on the person making the complaint.⁴⁷ Organisational issues and organisational learning can and should be considered during the handling of a complaint. For example, this could include complaints about policies or culture having a particular effect on a particular group of people or a failure to make reasonable adjustments.
- 6.30 Potential organisational issues and learning is equally important to consider where the complaint appears to be about the conduct of an individual / individuals.
- 6.31 Complainants may raise allegations of institutional discrimination in their complaints against the police. It will not be within the scope of the handling of an individual complaint to systematically audit the practices of a police force to assess allegations of this nature.
- 6.32 As stated in paragraph [6.31](#) above, where a complaint includes an allegation of institutional discrimination, the complaint handler should clearly set out what will be looked at and how the organisational issues under consideration link to any individual incident(s) being investigated.

Types of evidence - officer complaint history and other patterns of behaviour evidence

- 6.33 Evidence of a discernible pattern in the treatment of a particular group by an officer or staff member may give rise to, or support, an inference of discrimination. Patterns of behaviour can be important to consider in discrimination cases as one incident may be indicative of an attitude or

⁴⁷ Section 12, *Police Reform Act 2002*. The complainant must have been adversely affected by the matter complained about. A person will be considered to have been adversely affected if they have suffered any form of loss, damage, distress or inconvenience as a result of the matter complained about, if they have been put in danger or otherwise unduly put at risk of being adversely affected (Section 29, *Police Reform Act 2002*).

underlying prejudice that may arise in the person's behaviour across a range of situations.

6.34 Patterns of behaviour evidence could include:

- An officer's complaint history, including any relevant internal grievances and management records.
- Consideration of any trends in how an officer has acted in similar situations – for example, an analysis of stop and search records or use of force history, to identify if it shows a trend of disproportionate use of stop and search by the officer against members of a particular ethnic group.
- Consideration of the supervisory records compiled under Part 5 of the *Police and Criminal Evidence Act 1984 (PACE)* - Code A.
- Records relating to how similar types of crime or incidents were dealt with involving people with the same protected characteristic referred to in the complaint or people who do not share the protected characteristic by way of comparison.
- Body worn video showing other similar types of incidents involving individuals with a common protected characteristic.
- Patterns or trends across a team or force, as evidence of a more systemic issue which may make it more likely a discriminatory motivation may have influenced an officer's behaviour in the incident subject to the complaint.

6.35 Evidence of a discernible pattern or trend demonstrating an imbalance or disparity may indicate discrimination. However, it is not conclusive in itself and should be considered alongside all other relevant evidence pointing towards or away from discrimination being a factor.

6.36 It is not necessary to consider the circumstances of each individual incident, it is the pattern itself which provides evidence pointing towards discrimination.

Officer or staff member's complaint history

6.37 As noted in paragraph [6.33](#), an officer or staff member's complaint history should be considered early in the handling of complaint when assessing the

seriousness of the complaint.⁴⁸ This will affect decisions about how the case should be handled, for example, whether the complaint should be handled otherwise than by investigation or by investigation. It should also inform the scope and lines of enquiry for the handling of a complaint.

- 6.38 In addition to considering the complaint history when assessing the seriousness of the complaint, it may also be relevant to consider, as part of the handling of the complaint, any other discrimination allegations made against the officer or staff member. This includes discrimination allegations that have not been substantiated. An unsubstantiated allegation might reflect that there was not enough evidence to find, for example, a case to answer for discrimination – it does not necessarily suggest that the allegation was found to be false or baseless.
- 6.39 A previous complaint of discrimination against a police officer or staff member would be unlikely to provide strong evidence that their behaviour in a separate, unrelated, incident was likely influenced by a discriminatory motivation. However, as outlined in paragraph [7.73](#), a pattern of previous substantiated complaints that showed a *clear propensity* for the described behaviour, could be relevant in the assessment of the credibility of competing accounts and might assist the decision maker's decisions.
- 6.40 It is not only complaints and conduct matters that specifically include allegations of discrimination that will be relevant to consider. It may also be relevant to take account of previous complaints or conduct matters that are similar in nature to the incident subject to the complaint, to consider whether there is a pattern showing similar behaviour / conduct / attitude towards individuals with the same protected characteristic.
- 6.41 For example:
- If the handling of a complaint is considering an allegation of discrimination on the grounds of sexual orientation regarding a police officer's conduct in relation to victims of crime who are gay, it would be relevant to consider if there is a pattern of complaints / conduct matters involving similar concerns about how the officer has dealt with other victims of crime who are gay - which could point towards a discriminatory approach. (This would indicate a pattern of behaviour. If this pattern was compared to how the officer has treated victims of crime who are not gay, this would provide comparator evidence.)

⁴⁸ It may be relevant to look at the complainant's complaint history early in the complaint handling process to determine whether a complaint has been made previously, as that may affect decisions about how to handle the complaint. It may also be relevant where there is an indication of victimisation in the complaint. However, it is important to remember that the complainant is not under examination.

- If the handling of a complaint is considering an allegation of race discrimination in relation to the alleged use of excessive force on a Black man, it will be relevant to consider previous complaints / conduct matters involving use of force, to identify if there is any pattern in respect of the race of the individuals involved. A pattern of complaints / conduct matters showing a clear propensity to use high levels of force against Black individuals could be considered alongside all other relevant evidence in deciding whether the evidence as a whole points towards the officer's actions having been influenced by a discriminatory attitude.

Other patterns of behaviour evidence

- 6.42 Other patterns of behaviour evidence that might be relevant to consider, includes any evidence of how the officer or staff member has behaved in similar situations with people with the same protected characteristic referred to in the complaint, or people who do not share the protected characteristic by way of comparison.
- 6.43 This will usually involve a review of records to look for trends. For example, statistical data of an officer's previous stop and searches or use of force could be analysed for patterns showing potential disproportionality in the use of police powers.
- 6.44 This can be a time consuming and resource-intensive process. As with any lines of enquiry, the complaint handler should consider the proportionality of obtaining this evidence. An assessment of proportionality should include consideration of:
- The severity and gravity of the complaint, including the impact on the complainant, the wider community or on confidence in the police (see paragraph 5.4).
 - How easy / difficult it is to identify and analyse relevant records to look for patterns.
 - What you are looking to establish through the analysis of patterns of behaviour evidence, and how relevant this is to the allegation made.
 - The potential value of the evidence, in light of other evidence already obtained / more readily available. Will the evidence help the decision maker to make a finding?
- 6.45 Some records might be easily available and there may already be processes in place that allow the information to be reviewed for trends⁴⁹. For example,

⁴⁹ For example, under Part 5, Police and Criminal Evidence Act 1984 (PACE) – Code A (2023)

police officers are required to maintain records of their use of stop and search and use of force, including recording the race of the person / people involved. These records can often be reviewed to identify disproportionality regarding race. This type of evidence should be considered if it is easily available and proportionate to obtain. Across policing, assessing this data against demographic data has been extremely important to surface issues of disproportionality in the use of these powers⁵⁰. As with any potential line of enquiry, where it is decided that it is not proportionate to pursue, the rationale for this should be recorded (and communicated to the complainant, see paragraph 7.143).

- 6.46 In other circumstances, it may still be useful and proportionate to consider a sample of similar cases which might indicate evidence of recurrent issues about how an officer or staff member treats individuals from the same protected characteristic group, or different groups by way of comparison.
- 6.47 Patterns found by looking at small samples should be used cautiously. A small data set could be too easily distorted by an atypical case, making it unlikely that any meaningful comparisons could be made, or reliable findings drawn. Nevertheless, this type of review might still provide useful evidence if repeated concerning behaviours are identified. Case study 18 shows how patterns of behaviour evidence may be considered for an allegation of sex discrimination. Case studies 29, 31, 32, 33, 39, and 43 also reference patterns of behaviour evidence. All case studies can be found in Annex C.
- 6.48 When looking at data on the use of policing powers, disproportionality is assessed by comparing the breakdown of the use of the policing powers by protected characteristic, against the demographic data for the area.
- 6.49 Statistical data and any discernible and persuasive pattern of disparity should be presented as simply as possible so that the decision maker, complainant and any potential misconduct panel can understand, and draw conclusions from, the data.
- 6.50 The IOPC's position is that in most cases which involve simple or routine data sets, and particularly where the pattern is very clear, it may not be necessary for a person with qualifications or experience in analysing statistical material to be involved in the collection, analysis or presentation of such material. However, the more complex the dataset, and issues of interpretation that arise, the greater the need for such data to be presented by someone with relevant qualifications and experience to assist in

⁵⁰ For example, 'Disproportionate use of police powers – A spotlight on stop and search and the use of force', HMICFRS, 2021 <https://hmicfrs.justiceinspectorates.gov.uk/publications/disproportionate-use-of-police-powers-a-spotlight-on-stop-and-search-and-the-use-of-force/>

understanding the data and resolving any issues on interpretation. The complaint handler will need to make this decision on a case-by-case basis, and will need to keep this under review. For example, where the data is complex, the complaint handler may find it necessary to instruct an expert statistician in order to assist a future panel.

- 6.51 Any data limitations and their impact on the conclusions, including how the data has been interpreted, would need to be highlighted to the decision maker.
- 6.52 Statistical information can provide relevant supporting evidence that offers an insight into the behaviour in question and should be considered as part of the wider picture of evidence.
- 6.53 Evidence of disproportionality on its own does not necessarily mean that a discriminatory approach has been taken. However, where disproportionality cannot be explained, it is widely recognised as an indicator of potential discriminatory bias.⁵¹ Where the analysis may point towards a persuasive or compelling pattern of disproportionality, this should lead to further and more intensive consideration of the incident. Officer(s) or staff members should always be given the opportunity to explain any apparent disproportionate behaviour relevant to the incident in question, as well as respond to, and account for, any apparent disproportionality or concerning patterns.
- 6.54 It is important to provide the officer or staff member with the opportunity to provide any explanation for the apparent pattern, if this evidence is to be relied upon in a decision. It should be made clear to the officer or staff member why the pattern is of concern and how it relates to the incident subject to the complaint.
- 6.55 A pattern showing repeated failures or **a clear propensity** for the described behaviour could be used to help assess the credibility of competing accounts.
- 6.56 Patterns of behaviour evidence can also be used to help make a comparison between how a police officer or staff member treated one group of people who share the relevant protected characteristic, compared with another group who do not. More advice on making comparisons is provided from paragraph [6.63](#) and [case study 22](#) in [Annex C](#) shows an example of gathering and analysing statistical information.

⁵¹ See, for example, *West Midlands Passenger Transport Executive v Singh* [1988] ICR 614, 735, CA and *Qureshi v Victoria University of Manchester* (1996) [2001] ICR 863, EAT cited in *Anya v University of Oxford* [2001] EWCA Civ 405, [2001] ICR 847 [9]

Patterns indicating systemic issues

- 6.57 An investigation could also look at patterns or trends across a team or force as evidence of a more systemic issue.
- 6.58 On a force-wide level, statistical information around use of powers can be used to identify and explore instances of clear disproportionality as part of a force's collective responsibility to ensure powers are being used appropriately, effectively and in a way that meets the force's obligations under the Public Sector Equality Duty.
- 6.59 Authoritative material showing that discriminatory conduct or attitudes are widespread in an institution may also make it more likely that the alleged conduct by a particular police officer or staff member occurred, or that discriminatory motivations were involved.⁵² This could include:
- Statistical evidence of significant unexplained disproportionality / disparities in the use of police powers by the police force.
 - Relevant qualitative evidence of widespread problematic attitudes among officers and staff. (For example, see the resources in [Annex B](#)).
- 6.60 This is because if an authoritative source states, for example, that widespread discriminatory views are held by officers in a particular force against people with a particular protected characteristic, then it is reasonable to infer that actions by an officer from that force towards people with the same protected characteristic, would be influenced by those views.
- 6.61 Alternatively, or in addition, such evidence may have some more specific relevance to the discriminatory behaviour alleged.⁵³ Such evidence is valuable, but should always be used with care. The particular reason why it is considered to point towards discrimination being the reason for poor treatment must be specifically identified. For example, if the officer's conduct in the incident under consideration aligns with documented systemic issues - in particular, in cases where the officer's own rationale for their actions is poor.
- 6.62 [Case study 33, Annex C](#), discusses where patterns may indicate a systemic issue.

⁵² See *Chief Constable of Greater Manchester Police v Bailey* [2017] EWCA Civ 425.

⁵³ See *Anya v University of Oxford* [2001] EWCA Civ 405, [2001] ICR 847.

Types of evidence - comparator evidence

- 6.63 Many complaints of discrimination will involve an allegation that someone has been treated in the way they have been treated because of a protected characteristic. One way of assessing this is to compare the treatment of the complainant with someone who does not have the same protected characteristic.
- 6.64 In particular, the test for direct discrimination under the *Equality Act 2010* is 'was the person treated less favourably because of a protected characteristic?' 'Less favourably' implies a comparison. Similarly, the test for indirect discrimination is that a policy, practice or procedure puts people who share a particular protected characteristic at a 'particular disadvantage'.
- 6.65 'The comparator' is the other person, who does not have the same protected characteristic, who the complainant is comparing their treatment against.
- 6.66 Comparator evidence is one form of evidence which may point towards or away from a person's protected characteristic being the reason for poor treatment. Comparator evidence is not necessary where it is clear that the alleged behaviour is discriminatory even without making a comparison. For example, the use of discriminatory language, or where the complaint is one of harassment or victimisation.
- 6.67 Where a comparison is required, there does not need to be an actual person to compare against to be able to assess whether there is evidence pointing towards discrimination. However, the question of whether the complainant would have been treated in the same way if they were White instead of Black, for example, will need to be considered. Case law has established that addressing the reason for the poor treatment, and whether there is any indication the protected characteristic is a reason, can be a better approach where no comparator is immediately apparent.⁵⁴
- 6.68 Where a person can be identified who can be used as comparator, this can be useful evidence to help decide whether there is a case to answer for discrimination or grounds to find that the service was not acceptable because of discrimination.
- 6.69 **An actual comparator** is another person who:
- Was in the same or very similar circumstances to the complainant.
 - Does not share the protected characteristic that the complaint is about.

⁵⁴ For example, see *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHOL 11 or *Chief Constable of Greater Manchester Police v Bailey* [2017] EWCA Civ 425.

- 6.70 Identification of an actual comparator can provide invaluable evidence to help decide whether the treatment was because of a protected characteristic or, whether there was another, non-discriminatory reason for the action taken. The complaint handler should ask the complainant about possible comparators when exploring their complaint – i.e. did the complainant note any differences in the way they were treated compared with others?
- 6.71 Comparators may be particularly relevant to consider in cases where:
- Multiple individuals were involved in an incident, but were treated differently. (For example, a stop and search of a group where some individuals were searched or handcuffed and others were not).
 - Incidents involving allegations and counter allegations between two parties. (For example, neighbourhood disputes, domestic violence incidents or altercations between two parties).
 - Situations involving prioritisation of investigative resources to similar types of cases (such as missing persons reports).
- 6.72 Case studies [30](#), [34](#), [40](#), [43](#), [44](#), and [57](#), [Annex C](#), give examples of how comparator evidence may be considered.
- 6.73 When making a comparison, it is important that the complaint handler takes account of any differences in the circumstances or behaviour of the people being compared.
- 6.74 In the scenario in [case study 34](#) (see [Annex C](#)), if the investigation finds that there was a convincing and legitimate reason why Mrs D was arrested and the neighbour was not – the circumstances of the two women could no longer be considered ‘materially the same’ and a comparison between the two would not support the allegation of discrimination.
- 6.75 Also, in some cases, treating two people *in the same way* can be discriminatory if the circumstances suggest that they should have been treated differently (see [case study 35](#), [Annex C](#)).
- 6.76 It is often not possible to find a comparator where the circumstances and behaviours of the complainant and another person, who does not share the relevant protected characteristic, are materially the same. If there is no actual comparator, a ‘hypothetical comparator’ can be used.
- 6.77 **A hypothetical comparator** is drawn from evidence about how other people have been, or would be, treated in situations that are still similar but not identical to the complainant. This evidence can be used to help form a view about how another person *would probably have been treated* in the same circumstances as the complainant.

- 6.78 Another approach is to construct a ‘hypothetical comparator’ by drawing on elements of the treatment of several people (i.e. by looking at a pattern of behaviour in relation to one group compared with another).
- 6.79 Consider [Annex C](#), case studies [31](#) and [36](#), when thinking about using a hypothetical comparator.

Types of evidence – discriminatory language

- 6.80 Use of overtly discriminatory, offensive language during policing duties or in the workplace, will almost certainly constitute a breach of the Equality and Diversity Standard of Professional Behaviour.
- 6.81 However, there are other ways in which consideration of the language used during, and following, an incident can help inform an assessment of whether actions (or inactions) were because of a protected characteristic. This could be in the words and descriptions used during an incident or the reasons given to explain what happened after the incident, in notes, statements or interviews.
- 6.82 Throughout the handling of a complaint, while reviewing documents, records and during interviews, complaint handlers should look for any signs of discriminatory attitudes in the language used. This includes any use of obviously discriminatory language, but also more subtle indicators that a person may have acted or made a decision based on prejudicial assumptions.
- 6.83 There are terms that are commonly recognised as being offensive and officers and police staff members should be expected not to use them. Examples include (but are not limited to), racially offensive terms, offensive terms for homosexual people, or offensive terms relating to disability.
- 6.84 However, there are other words and phrases which are inoffensive in themselves but, when heard in context, can reasonably be thought of as being discriminatory. For example, reference to a person’s nationality may ordinarily be inoffensive, but the context in which it is used (such as during an arrest), may reasonably lead a complainant to believe that their nationality affected the interaction or encounter in a negative way.

Making generalisations

- 6.85 Speaking in generalisations may be an indication that a person is making judgements based on assumptions, rather than individual circumstances and the evidence and intelligence available to them.

- 6.86 Examples include making generalisations about non-descript groups such as ‘those people’ or ‘people round here’ or ‘people like you/him/her’, as well as about specific groups such as Black people, Gypsies, gay people etc. It is important to consider the context in which the language is used and the nature of the generalisation. Particular attention should be paid to generalisations that have negative connotations or that indicate an ‘us and them’ divide.
- 6.87 Even if it is unclear whether the language is discriminatory, the use of such generalisations should flag concerns that should be explored further. For example, questions put to officers or staff members involved might include ‘who were you referring to when you mentioned ‘those people’?’, ‘what did you mean?’, ‘how did this impact on the approach you took?’

Reference to a characteristic which is irrelevant to the policing purpose

- 6.88 In some circumstances, making direct reference to a person’s protected characteristic (such as race, religion, gender, age, disability etc), will be relevant to a legitimate policing purpose – such as to help identify a suspect or victim, or to provide a service that takes account of a person’s individual needs. However, reference to clearly irrelevant details about a person that distinguish them as ‘different’ may suggest a discriminatory approach, see [case study 37](#) for an example in [Annex C](#).

Types of evidence – officer or staff member’s account

- 6.89 Communication with officers is as important as good communication with complainants, and careful consideration should be given to how it is approached.
- 6.90 Where the actions of a person serving with the police are under consideration, it will usually be reasonable and proportionate for them to provide comment on a complaint or to obtain an account from them.⁵⁵
- 6.91 In cases involving discrimination, it is particularly important to get an account from those subject to the complaint, and to probe and challenge *why* they acted in the way they did. In most discrimination cases, the most effective way to do this will be to speak directly with the officer or staff member.

⁵⁵ See paragraph 12.7 of the IOPC’s Statutory Guidance with regards to complaints handled otherwise than by investigation. Where a complaint is not being investigated, any account taken as part of the handling of the complaint is not admissible in any subsequent criminal, civil or disciplinary proceedings (except to the extent it consists of an admission relating to a matter that is not under consideration as part of the handling) (Paragraph 6, Schedule 3, *Police Reform Act 2002*).

Sometimes it will be appropriate to conduct a formal interview, in other cases a less formal conversation may be appropriate, if properly documented.⁵⁶ In other cases, it might be enough to accept written accounts, as long as they can be probed further and a suitable record is kept.

- 6.92 Officers should always be offered the opportunity to provide their reasons for any actions or behaviour. It can be useful for complaint handlers to frame questions around discrimination in this way – that is, to explain to officers that this is their opportunity to give their reasons for their actions, behaviour, service or decisions.
- 6.93 As noted earlier, it is rare that an officer or staff member is willing or able to admit that their actions may be racially motivated.⁵⁷ Therefore, questions should be put to the officers in an open way, setting out the context of the complaint and the complainant’s views of the incident.
- 6.94 Complaint handlers should ask open questions which should encourage reflection and reduce the risk of receiving defensive responses. Conversely, asking a series of closed questions to which officers can respond with just a ‘yes’ or ‘no’ – such as ‘did you discriminate against the complainant?’ or ‘did you treat the complainant differently because they were Black?’ – is extremely unlikely to lead to anything other than a denial. Closed questions restrict the opportunity for detail, further probing, or follow-up questions.
- 6.95 The questions suggested in the below sections are prompts, that should be used in both investigations and complaints being handled otherwise than by investigation. The questions asked of the officer or staff member should address the specific concerns raised by the complainant that they were treated differently, and explore fully with the officer or staff member the responses they have provided.
- 6.96 The purpose of questioning the officer or staff member is to assess and decide whether the reasons for taking action / no action were made with sound, impartial and fair consideration, and not generated from holding biased beliefs, whether they be unintentional or otherwise.
- 6.97 Asking questions of the officer or staff member directly allows for a more natural discussion to take place where clarity can be sought. Where necessary, it can include reflection on the complainant’s experience, and how they may approach a similar matter in future.

⁵⁶ See Chapter 13, IOPC’s Statutory Guidance for guidance on interviews during investigations under the *Police Reform Act 2002*. Criminal interviews conducted under the *Police and Criminal Evidence Act 1984* must comply with that Act and the relevant case law and codes of practice.

⁵⁷ See *Nagarajan v London Regional Transport [2000] 1 AC 501*

- 6.98 Where it is not possible to have dialogue, it is still important that any questions put to the officer or staff member in writing should not be in the form of ‘closed’ questions. Complaint handlers should still try and draw out why officers or staff members took the action they did, what assessments and assumptions were made and the reasons for this, so that further frank and open communication can take place if needed.

Probing rationales

- 6.99 Questions should focus on:
- Why the police officer or staff member undertook the actions that they did.
 - What assumptions were made.
 - What the reasons were.
 - What the police officer or staff member knew about the complainant.
- 6.100 Complaint handlers should refer back to the thinking done at the beginning of the investigation to consider what stereotypes or prejudicial assumptions *might have* informed the officer or staff member’s actions. Questions should be asked to test whether these sorts of assumptions informed decision-making.
- 6.101 It is not enough that an officer provides a reason for their actions. The complaint handler needs to be satisfied that their reasoning is sound, convincing and fair – and not informed by prejudiced assumptions.
- 6.102 Where weak grounds have been provided for an action – either at the time, or subsequently – this may point towards the action taken being based on assumptions, including discriminatory assumptions. It also increases the risk of an action being experienced as unfair and potentially discriminatory. Conversely, strong grounds being provided is one factor that may point away from discrimination being a factor.
- 6.103 Complaint handlers need to be able to identify when weak grounds have been provided by an officer or staff member, and then challenge the explanation. For example, an officer may offer the explanation that a stop and search was based on ‘intelligence’ about criminal activity, or drugs offences, taking place in a certain area. Where this is the apparent justification, the officer’s reliance on the intelligence needs to be questioned and probed to establish how reasonable it was for the officer to have suspected an individual of being involved in such activity. In [Annex C](#), see the ‘weak grounds’ case study, [case study 39](#), for a complete example, and see [case study 38](#) when considering how to probe rationales.

Probing patterns of behaviour and comparator evidence

- 6.104 As with the handling of any complaint or any investigation, questioning should refer to evidence that supports the allegation that has been made. This should include reference to any relevant patterns of behaviour evidence or comparator evidence found throughout the investigation.
- 6.105 For example: ‘We have looked at your stop and search records for the last three months and the data suggests that you stop and searched a disproportionate number of Black people – can you explain why this would be?’
- 6.106 As discussed above, an awareness of the force’s figures on disproportionality might inform decisions around how a complaint should be handled, therefore, examining an officer’s appreciation of this would be a relevant line of enquiry.
- 6.107 For these types of complaints, it would be appropriate to explore the officer’s understanding of the wider context in which they used their powers. For example, the complaint handler might question the officer about their understanding of the demographics of the area they work in, community issues, historical context, knowledge about the use of stop and search being a contentious issue amongst some communities, or awareness of the force’s (or particular team within the force to which the officer is attached) figures.
- 6.108 This is because officers need to have an awareness of the wider policing context in which they operate, and where they do not have a good understanding, this is where individual or wider learning would be an appropriate outcome.
- 6.109 Where a comparator is available, it will be relevant to ask direct questions about the reasons for any difference in treatment. For example: ‘Why did you arrest this person and not that person?’
- 6.110 Where there is no comparator, it may be appropriate to ask about a hypothetical comparator or to ask the officer or staff member to suggest any comparable situations themselves. For an example, see [case study 40](#) in [Annex C](#).

Reflecting on the complainant’s experience of the incident

- 6.111 The complaint handler should also ask questions that lead the officer or staff member to reflect on:
- How the complainant might have experienced the situation. (For example, [Annex C](#), [case study 41](#))
 - Why the complainant might have been left with the impression that their treatment was unfair or discriminatory.

- What else could have been done that might have prevented the complainant forming this view.
- 6.112 This line of questioning is partly about getting the officer or staff member to reflect on how they can improve their practice. It also has evidential value. Failure to properly think about how an incident might impact differently on different groups of people can lead to discrimination.
- 6.113 Where a complainant has found it difficult to articulate why they consider that they have been discriminated against, it can make it difficult to put those views across to the officer or staff member. However, the complaint handler should still probe the officers' rationale, and ask them to reflect on the incident from the complainant's point of view. For example, the complaint handler is still able to consider whether there is any evidence that the officer or staff members' actions were based on unreasonable assumptions or discriminatory stereotyping, and to probe that in the account.

Asking about training and experience, and reflecting on what could have been done differently and better

- 6.114 Complaint handlers should also ask questions about the officer or staff members' experience and training, and about whether they felt adequately equipped to deal with the situation they faced.
- 6.115 This could include asking about any relevant procedural training they have received, and whether this included reflection on equality and diversity issues, as well as asking about general training in equality and diversity issues.
- 6.116 This questioning may help to reveal any training needs which might underlie the actions of the officer or staff member, or any organisational issues. However, a lack of training should not be used to excuse discriminatory behaviour where the officer or staff member could reasonably have been expected to know the appropriate course of action. Officer experience will also be relevant to this assessment and should be probed as part of this line of questioning.
- 6.117 The officer or staff member should also be asked to reflect on how the complainant came to the view that the police actions were discriminatory and, in hindsight, whether there is anything they could have done differently or better that would have changed this view. See case studies [14](#), [18](#), [30](#), and [40](#) in [Annex C](#) for examples of topics and questions to consider.

Chapter 7

Findings and outcomes

Decisions to be made on complaints handled otherwise than by investigation	109
Decisions to be made on complaints handled by investigation.....	109
Assessing the evidence and making decisions	110
Reasonable and proportionate outcomes	129
Communicating decisions	136

Chapter 7 – Findings and outcomes

- 7.1 The complaints process should try to resolve issues and rebuild the complainant's trust in policing. Fair and effective decisions lie at the core of this and are one of the principles of reasonable and proportionate handling set out in the IOPC's Statutory Guidance. The outcome of the handling of any complaint should seek to acknowledge and remedy any issues identified during handling. It is especially important in the handling of complaints of discrimination that the complainant feels their complaint has been listened to and addressed.
- 7.2 This chapter sets out guidance for decision makers on how to make and communicate decisions on a complaint of discrimination. It sets out how to use each of the different types of evidence discussed in [Chapter 6](#) when making a decision. Of course, where a complaint has been handled otherwise than by investigation, the complaint handler is also the decision maker.
- 7.3 An approach focused on resolution should be evident in the way in which the findings and outcome of a complaint are reported back to the complainant. Even if there is not enough evidence to find that the service provided was unacceptable due to discrimination or establish a case to answer for discrimination, it is essential to acknowledge and address the complainant's perspective of the incident.
- 7.4 A resolution focused outcome should:
- Acknowledge the impact where an individual has experienced an incident as discrimination and any wider impact on community confidence in policing, including any broader historical context that is relevant to the discrimination issues in the case.
 - Be clear and transparent in setting out the discrimination issues.
 - Recognise the different ways in which discrimination issues might be present and evidenced.
 - Provide a clear, evidence-based, response to the discrimination allegation (as well as other allegations made).
 - Give a clear explanation of what the handling of the complaint found in terms of what happened and why.
 - Give a clear and transparent explanation for the decisions made in relation to the complaint.
 - Openly acknowledge and apologise for any failings found and for the impact on the complainant.

- Recognise and address any areas for improvement and learning, even where there is no case to answer or the service has been found to be acceptable.
- Hold any officer or staff member who has acted inappropriately to account.
- Seek to restore confidence and address the risk that the same issue or experience will occur again in the future. It should reflect on what could have been done differently or better to make sure that the complainant did not feel discriminated against. It is important to demonstrate how any individual complained against and/or the organisation will learn from the complaint to stop the same thing from happening again. For example, even where the service has been found to be acceptable there is often learning for the officer to understand why the actions (or inaction) was perceived to be discriminatory, and how that could be avoided in the future (see from paragraph [7.119](#) below).
- Give appropriate consideration to any proposals for resolution suggested by the complainant (there may be things that can be done to resolve the complaint).

Decisions to be made on complaints handled otherwise than by investigation

7.5 Where a complaint has been handled otherwise than by investigation, the outcome of the complaint should include a determination on each allegation, as set out in Chapter 17 of the IOPC's Statutory Guidance. Guidance on making and communicating these decisions is given below.

Decisions to be made on complaints handled by investigation

7.6 What opinions the investigator should provide in an investigation report, and further guidance on the content of an investigation report can be found in Chapter 14 of the IOPC's Statutory Guidance and the ['Communicating decisions' section](#) below.

7.7 The decisions that the appropriate authority should make on receipt of a report is set out in Paragraph 24, Schedule 3 to the *Police Reform Act 2002* and guidance is provided in Chapter 17 of the IOPC's Statutory Guidance. The appropriate authority should also have regard to:

- These guidelines - in particular the points below.

- The Home Office's 'Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing'.
- The College of Policing's 'Guidance on Outcomes in Police Misconduct Proceedings'.

Assessing the evidence and making decisions

- 7.8 As with all police complaints, complaint handlers and decision makers must use the 'balance of probabilities' test when drawing conclusions or making findings about allegations of discrimination. This test requires the complaint handler or appropriate authority to decide whether what is alleged is more likely than not to have happened.
- 7.9 In complaints involving discrimination, decisions should be considered and expressed in terms of evidence pointing towards or away from discrimination - rather than saying there is no evidence of discrimination. (See 'Communicating decisions' section below and Annex A).
- 7.10 Decision makers should consider the evidence under these three questions cumulatively when making a decision on an allegation of discrimination:
- Considering the potential for poor treatment: How inappropriate / unexpected / unreasonable / unexplained is the treatment?
 - Considering the reason why: Was the action, or inaction, complained about because of a protected or other shared characteristic?
 - Considering any non-discriminatory reasons available: Are they plausible and credible based on the evidence? Could discrimination still be a factor?
- 7.11 Where there are convincing, objective, non-discriminatory reasons for a police action, or the police action is wholly compliant with policies, procedures and the standards of professional behaviour, this will point away from discrimination being a factor.
- 7.12 However, the more unacceptable and unexplained the police behaviour is, the more likely it is that a decision maker should find that there is a case to answer or that the service provided was unacceptable, on the basis of an indication that the complainant's protected characteristics could be a factor.
- 7.13 Where a decision maker is satisfied that the actions of an officer or staff member are compliant with policies and procedures (and / or there is no indication that discrimination on the part of the officer motivated decision-making), but it is an organisational issue which has resulted in an unjustified

discriminatory outcome, it could be that police actions indicate indirect discrimination and / or a breach of the Public Sector Equality Duty.

- 7.14 Where the complaint was investigated under special procedures, it will not be appropriate in these cases to find a case to answer for an officer or staff member. However, there should still be learning for the organisation (see from paragraph [7.133](#)). Where the complaint was not investigated under special procedures, the decision maker should determine that the service provided was not acceptable.
- 7.15 In some cases, there will be strong evidence of discrimination. This could include:
- Direct evidence of discrimination, such as CCTV evidence, audio or video recording, or independent witness evidence showing overt discriminatory language or behaviour, or a clear disregard for a person's needs - for example, arising from a disability.
 - Strong circumstantial evidence. For example, strong comparator evidence, such as a person who does not share the protected characteristic, whose relevant circumstances and behaviour were the same, but who was clearly treated differently.
- 7.16 In many cases there will not be any one piece of evidence which is enough to make a determination on an allegation of discrimination, or to find a case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour. However, it may still be possible to build a convincing picture of circumstantial evidence upon which an opinion or decision can reasonably be based.
- 7.17 The decision maker must look at all the circumstances of, and evidence in, the particular case to consider whether it is appropriate and reasonable for discrimination to be inferred from the surrounding facts. The evidence supporting the allegation of discrimination should be weighed against any alternative, non-discriminatory explanation provided by the officer or staff member, or otherwise suggested and supported by the evidence. As with all complaints, the relative credibility and plausibility of competing accounts and explanations should be assessed in light of all the evidence available.
- 7.18 It is important for decision makers to always keep in mind that they will ultimately need to take account of the cumulative picture of evidence. The decision-making framework in [Annex A](#) is designed to assist practitioners. [Case study 8](#) may also assist as it shows how a finding was made by drawing on a range of evidence.

Important points to note:

Intent

- 7.19 To consider that there is a case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour, or to find that there the service was unacceptable, there is no need to establish that the discrimination was intended.
- 7.20 Under the *Equality Act 2010*, direct discrimination on the basis of a protected characteristic cannot be justified, except in very limited circumstances such as providing more favourable treatment to a disabled person as a reasonable adjustment. Discrimination can be unintentional or institutional and, in some cases, can even arise from well-meaning actions.
- 7.21 However, as noted in paragraph [5.4](#), consideration of intent and any justification offered will be relevant to an assessment of seriousness. (This is also relevant to whether a potential breach of the Standards of Professional Behaviour would amount to possible misconduct or gross misconduct and whether a decision maker should find a case to answer). Evidence that the discrimination was intentional and targeted would significantly increase the severity and could, depending on the circumstances, give grounds for criminal offences to be considered.

Impact/detriment

- 7.22 It is not necessary to demonstrate that the complainant has suffered material detriment to find possible discrimination. It is only necessary that the complainant would reasonably have preferred not to have been treated in that way. Nevertheless, the impact of the alleged discrimination on the complainant should always be a central consideration when dealing with a complaint and should inform both the scope of the handling of the complaint and potential outcomes for the case. Read [case study 42](#) in [Annex C](#) for an example.

Case to answer decisions

- 7.23 Guidance on applying the case to answer test in investigations subject to special procedures is contained in the Home Office's guidance 'Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing', which the appropriate authority must have regard to. This guidance must also be read in conjunction with the College of Policing 'Guidance on outcomes in police misconduct proceedings' and with reference to paragraphs from [5.2](#).
- 7.24 Under the *Police Reform Act 2002*, the case to answer test is a two-part test. The first part of the test is whether there is sufficient evidence upon which a

reasonable misconduct meeting or a reasonable disciplinary hearing panel could find make a finding, on the balance of probabilities, that there has been a breach of the Standards of Professional Behaviour.

7.25 The decision maker should carefully consider the content of the investigation report, any relevant evidence and, the views of the complaint handler - which should be detailed in the report. The decision maker should make a decision on each and every allegation, and consider whether the nature and quality of the evidence is sufficient for a reasonable meeting or panel to reach such a finding.

7.26 The Home Office's 'Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing' states that:

"the person deciding whether or not there is a case to answer must evaluate and consider whether the evidence - both in its nature and quality - is sufficient to allow for a reasonable panel at hearing or meeting to properly reach such a finding. If they conclude that it is, then, they must make a finding of case to answer."⁵⁸

This means that establishing that discrimination cannot be ruled out will not be enough to find a case to answer. The decision maker will need to be able to point to evidence that a panel could rely on to find that discrimination is a factor. Decision makers can make a case to answer decision where the cumulative picture of circumstantial evidence points to discrimination being a factor and where the police actions, inactions or behaviour is not sufficiently explained by evidence-based, non-discriminatory reasons. This would satisfy the first part of the case to answer test. See case studies [30](#) and [32](#) in [Annex C](#) for examples of what a cumulative picture of evidence may look like.

7.27 The second part of the test is whether, in the decision maker's opinion, the alleged breaches of the Standards of Professional Behaviour are sufficiently serious to justify disciplinary action. To do this, the decision maker must consider whether any of the alleged breaches of the Standards of Professional Behaviour are sufficiently serious to warrant either disciplinary action or dismissal.

7.28 When considering the seriousness of a breach of the Standards of Professional Behaviour, and differentiating between misconduct and gross misconduct, decision makers should have regard to:

⁵⁸ Paragraph 8.65, Home Office, *Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing*, 2020.

- The College of Policing ‘Guidance on Outcomes in Police Misconduct Proceedings’, including where it states that the impact on individuals and communities should be considered when assessing harm.
- Paragraphs from [5.2](#) of this guidance.
- Chapter 4 of the Home Office’s guidance ‘Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing’ – which makes clear that a written warning should be viewed as a significant sanction, as it has a lasting impact on an officer’s record, and that decision makers must be mindful that disciplinary proceedings are intended to deal with the most serious breaches, such as those which would damage public confidence in the police or bring the reputation of the police into disrepute.

Determinations on a complaint not investigated by special procedures

7.29 Establishing whether or not the service was acceptable is not the same as making a case to answer decision. There does not need to be a breach of the Standards of Professional Behaviour. The IOPC’s Statutory Guidance states:

“It should be determined that the service provided by the police was not acceptable where handling has shown that the service provided (whether due to the actions of an individual, or organisational failings) did not reach the standard a reasonable person could expect. The person making the determination should apply an objective test: that of a reasonable person in possession of the available facts.”⁵⁹

7.30 The decision-making framework outlined in [Annex A](#) can assist in deciding whether the service provided was not acceptable because of discrimination. Where there was poor treatment, then the decision maker should find that the service provided was not acceptable, even if, on the balance of probabilities, discrimination was not the reason for the poor treatment. It may still be helpful to refer to any relevant tests from the *Equality Act 2010* to help structure a decision.

7.31 More guidance on deciding whether the service provided was acceptable or not is provided in Focus Issue 18.

⁵⁹ Paragraph 17.6 IOPC Statutory Guidance, 2020.

Applying the Equality Act

- 7.32 Where the evidence points towards a form of discrimination under the *Equality Act 2010*, the decision about whether there is a case to answer, or a determination on an allegation of discrimination, should refer to the relevant legal provisions as set out in [Chapter 2](#). It may be helpful for the decision maker to keep those tests in mind when assessing the evidence.
- 7.33 However, the decision maker should not be bound solely by the *Equality Act 2010*. For example, when making a case to answer decision, they should keep in mind that the Equality and Diversity Standard of Professional Behaviour covers ‘unfair’ as well as ‘unlawful’ discrimination. As noted in [Chapter 2](#), when making decisions on the complaint the decision maker should not lose sight of the other Standards which may apply to the matters subject to the complaint.
- 7.34 As also noted in [Chapter 2](#), decision makers should be mindful that it is not for the handling of a complaint under the police complaints system to ultimately *determine* that the police have unlawfully discriminated against a person. A determination of unlawful discrimination can only be made by the courts under the *Equality Act 2010* or the *Human Rights Act 1998*.
- 7.35 As noted earlier in the guidance, indirect discrimination occurs where there is a neutral policy, practice or procedure which applies to everyone but puts people with a protected characteristic at a disadvantage.
- 7.36 Indirect discrimination is not unlawful if it can be justified as a ‘proportionate means of achieving a legitimate aim.’ As the test for indirect discrimination relates specifically to a policy, practice or procedure, it would generally only apply to force policies and procedures, or common practices. Therefore, as noted above, indirect discrimination would not usually suggest, for example, a case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour for an individual officer.
- 7.37 However, if it is found that there are policies, practices and procedures which are discriminatory, it would be appropriate to make a determination that the service provided was not acceptable, if the complaint has not been investigated subject to special procedures.
- 7.38 Similarly, when considering allegations that there has been a breach of the Public Sector Equality Duty, it may be that the actions of specific officers or members of staff are not under consideration. It may, however, still be appropriate to find that the service provided was not acceptable.

What is the potential for poor treatment?

- 7.39 The Equality and Diversity Standard of Professional Behaviour, focuses particularly on 'unfair' treatment, so decision makers should give careful attention to any treatment which could be seen as being unfair. However, poor treatment could also be treatment that is dismissive, unprofessional, rude or hostile, even where it does not lead to unfair outcomes.
- 7.40 Actions or behaviours are unlikely to be considered poor treatment if it is clear, based on the evidence, that any person could expect to be treated that way in the same circumstances.
- 7.41 Evidence drawn on to assess the reasonableness or the appropriateness of police use of powers, or the service provided, will be relevant to the assessment of whether there was poor treatment. It will generally involve a comparison of the policing action against what would reasonably be expected to have happened, drawing on legal requirements, guidance, training and the expectations for the delivery of policing services as set out of the Standards of Professional Behaviour.
- 7.42 However, even where police have seemingly acted in accordance with their powers, if someone has been treated differently and / or worse than another person who does not share the same protected characteristic, or there is evidence that a person's protected characteristic has influenced the decision-making, this might point towards discrimination. For example, it could amount to less favourable treatment as per the definition of direct discrimination under the *Equality Act 2010*.
- 7.43 Where discrimination is a consideration, particular care should be given to assessing whether discrimination is a factor in any part of an incident. For example, where:
- police use of powers or use of force is not well justified or the justification is not supported by the available evidence
 - police use of powers or use of force does not comply with guidance, training or legal requirements
 - the service provided by police is below what would reasonably be expected as established by guidance, training or the standards of professional behaviour
 - the police have acted in a way which is disrespectful, rude, offensive, dismissive, fails to provide appropriate care or take appropriate account of individual needs and vulnerabilities, or
 - the police have treated people with different protected characteristics differently without reasonable justification

- 7.44 As well as looking at individual elements of the incident for indicators of disadvantage or poor or less favourable treatment, it is also important to consider the cumulative treatment of the person. Decision makers should give particular consideration to treatment that is repeatedly and consistently below what would be expected.
- 7.45 The greater the divergence from what might reasonably be expected to be the policing response or actions or behaviour, the more convincing this evidence will be, in and of itself, that the behaviour might be discriminatory. For example, the decision to conduct a stop and search where the decision is well justified and based on specific, reliable, relevant intelligence, has much less potential to be discriminatory (though other elements of the encounter – such as use of force, tone, provision of care - could still be discriminatory, and if they are this could call into question the initial justification for the search).
- 7.46 If the evidence indicates that the policing actions are reasonable and align with law, policy, guidance and the Standards of Professional Behaviour, this may point away from the actions / inaction being motivated by discrimination.
- 7.47 This should be explained with a focus on why the decision maker is satisfied that there were objective, evidence-based non-discriminatory reasons for the police action, rather than focussing on the absence of evidence of discrimination. (See below for advice and examples about how to express outcomes)

Considering the reason why. Was the action, or inaction, complained about because of a protected characteristic?

- 7.48 Establishing whether policing action or inaction was because of a protected characteristic is often the most challenging part of deciding whether there is an indication of discrimination.
- 7.49 The protected characteristic does not have to be the sole or the main cause of the treatment for something to be considered unfair or potentially discriminatory, but it should have an influence which is more than trivial.
- 7.50 It is uncommon to find direct evidence linking police actions or behaviour to a person's protected characteristic.⁶⁰ When making a case to answer decision, where discrimination is not overt or admitted to, it is appropriate for decision makers to consider whether a panel could reasonably draw an inference that

⁶⁰ As stated in *Nagarajan v London Regional Transport [2000] 1 AC 501*, 511-512: "Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances."

the person's protected characteristic was a reason, from an assessment of the surrounding circumstances and/or previous patterns of behaviour. This approach is supported by case law on how issues of discrimination are decided by civil courts and tribunals.⁶¹

- 7.51 When making a determination on a complaint that was not investigated subject to special procedures, the decision maker should consider whether, on the balance of probabilities, an assessment of the surrounding characteristics and / or previous patterns of behaviour could give rise to an inference that the protected characteristic was a reason for the treatment.
- 7.52 Assessing whether a person's protected characteristic was a contributory factor in policing actions, inaction or behaviour, will require the decision maker to consider the cumulative picture of, often circumstantial, evidence.
- 7.53 The list beginning at paragraph [6.10](#) should not be seen as a list of evidence that must be considered in the handling of all complaints of discrimination and should not be seen as a checklist of factors. Some types of evidence listed may not be relevant or proportionate to consider depending on the circumstances. Similarly, the absence of one or more listed pieces of evidence or indicator does not mean that the behaviour was not discriminatory.
- 7.54 It is unlikely that evidence in only one area would be sufficient – unless it is particularly persuasive. (For example, use of discriminatory language). As highlighted earlier, in most cases, it will be appropriate to draw on a combination of evidence to make a conclusion and doing so is likely to strengthen any decision.

Types of complaint - complaints involving allegations of discriminatory bias, assumptions and stereotypes

- 7.55 For complaints involving allegations of discriminatory bias, assumptions and stereotypes (as discussed in paragraphs from [6.15](#)) an absence of what is considered to be 'tangible' or 'conclusive' evidence may sometimes lead to the complaint being seen to lack substance, or be viewed as a barrier to determining that discrimination was a factor. It can also be the reason that a formal outcome is not felt to be achievable, or even considered. It is evident from some of the cases that the IOPC has dealt with, that even when biases are explored and evidence tends to support that they exist, decision makers

⁶¹ As stated in *Anya v University of Oxford* [2001] ICR 847, 21 "The evidence that racial factors contributed to a decision or a course of action may well emerge from **surrounding circumstances and previous history**, not just the alleged act of discrimination of itself, particularly in cases where the decision taken or course of conduct complained about **is capable of being influenced, often not consciously, by idiosyncratic factors or subjective analysis**" (emphasis added).

may be unlikely to acknowledge discrimination on this basis. This can leave a complainant with the impression that their concerns and feelings have not been explored, and the lack of consideration of a formal outcome may appear to dismiss their experience, and the impact of the police contact, as not real or valid.

7.56 Decision makers should rely on, and draw inference from, a range of reliable and relevant material. When taken together, that material could make a persuasive argument that discrimination may have been a factor in the behaviour. Decision makers should consider the following questions in an assessment of potential discriminatory stereotypes:

- Is there evidence suggesting that assumptions or exaggerations were made about the individual? This should be weighed against any counter-explanation or other evidence suggesting that the police actions were reasonable and evidence-based.
- What impact did these assumptions or exaggerations have on the actions or decision-making of the police?
- Is the person's protected characteristic(s) a plausible reason for why that assumption or exaggeration was made? Would the same assumption have been made if the person had different protected characteristics (i.e. if they were White instead of Black, or female instead of male) or had a different combination of protected characteristics?

7.57 It will often be appropriate to consider a combination of behaviours (including decisions, actions, demeanour of officers), as well as comments made at the time of the incident and explanations offered afterwards, to assess whether there is evidence that stereotyped assumptions or exaggerations have been made and to assess whether this has informed policing actions.

7.58 Where there is evidence of stereotyping, it is important to consider whether the evidence points towards stereotyping, leading to unfair or poor treatment. (Examples of stereotypes can be found in [Chapter 4](#)). This assessment will need to take account of all evidence available, particularly any evidence-based, non-discriminatory reasons for police actions.

7.59 In some cases, where there is evidence of discriminatory stereotyping, it may still be apparent that this did not inform police actions or decisions.

7.60 If the handling of the complaint finds that officers or staff members acted in a way that aligns closely to discriminatory assumptions or stereotyping, and discrimination is a more plausible reason for the officer or staff member's actions than any non-discriminatory reasons considered, this would be grounds to find that the service provided was not acceptable or a case to answer for a breach of the Equality and Diversity Standard of Professional

Behaviour. Again, a careful assessment will need to be made as to the cumulative weight of such evidence.

- 7.61 Even when the evidence may point away from discrimination being a reason for an officer's actions, it is still vitally important to acknowledge the types or behaviour that appear questionable or unjustified, or that reveal the existence of stereotypical assumptions. The decision maker should still consider what action would be appropriate to address the use of stereotyped descriptors. Where exaggerated or inaccurate stereotyped descriptors are used to justify police actions in statements and accounts, it can be reasonably expected to further undermine confidence in the fairness of policing actions.
- 7.62 In such cases, actions to consider include:
- Learning for the individual officer and / or learning for the force if it appears to be a systemic issue.
 - Consideration could be given to whether the use of stereotyped descriptors on its own (even without informing other discriminatory actions), is sufficient to amount to a potential breach of the Equality and Diversity Standard of Professional Behaviour or amount to an issue of honesty and integrity or discreditable conduct.

Types of complaint – complaints about poor level of service

- 7.63 As stated above, when making a decision on a complaint about poor level of service, before even considering whether discrimination was a factor, it is important to judge the level of service the complainant received against what would be expected in the circumstances. For example, where a complaint is about the lack of action, or slow response to a report of crime, or concern for safety or welfare, the officer's actions should be compared to the steps they are expected to take to investigate such a crime or incident - with reference to force policy, or guidance.
- 7.64 Where a policy allows for discretion in how to progress a criminal investigation or incident, the decision maker would need to judge whether the decision to follow a particular path was reasonable in the circumstances. For example, such decisions could be judged against:
- decisions made by other officers in similar circumstances, or
 - decisions made by the subject officer when dealing with White victims of crime in similar circumstances and then comparing this to decisions made when dealing with victims of crime who are from a Black, Asian or other minority ethnic background.
- 7.65 Case study 30 depicts decisions and outcomes resulting from the assessment of a range of information and evidence. Case studies can be found in Annex C.

Types of complaint – discriminatory use of police powers

- 7.66 In complaints of discriminatory use of police powers, it will be particularly important to assess the strength of the grounds or justification given for the use of powers. Where the justification for police use of powers is weak (for example, in [case study 39, Annex C](#)) or not supported by other evidence, there is increased scope for discriminatory reasons to have played a part in police actions.

Types of complaint – complaints not about the conduct of a person serving with the police

- 7.67 The same framework, at [Annex A](#), can be used to make decisions on a complaint, or aspects of a complaint, not about the conduct of a person serving with the police.

Types of evidence – complaint or witness statements alleging discrimination

- 7.68 Where there is a complaint or witness statement alleging discrimination, this will be key evidence to consider, and can be drawn on to inform an assessment about whether discrimination was a factor in police actions or behaviour.
- 7.69 As discussed in [Chapter 3](#), it is important to try to understand why the person affected felt that they were discriminated against as this will be important evidence. However, it should be recognised that there may be many barriers to making a complaint or allegation of discrimination, see paragraph [3.37](#).
- 7.70 It is not necessary for the person affected to make a specific complaint of discrimination for discrimination to be considered as a factor (see paragraph [2.4](#)). When, for example, considering whether the actions fit the *Equality Act 2010* test for direct discrimination – was the person treated less favourably because of a protected characteristic – this does not include any requirement for the person affected to feel or to express that they were discriminated against. However, for the actions to amount to harassment under the *Equality Act 2010*, the complainant must have indicated that they felt their dignity was violated or they were placed in an intimidating, hostile, degrading, humiliating or offensive environment.
- 7.71 If no specific complaint of discrimination is made, this would not prevent a decision maker from being able to find a case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour, if other evidence points towards discrimination being a factor in police actions or decision-making. Where this is the case, the decision maker will need to make sure that the appropriate matters have been recorded, and where relevant, any

severity assessments and/or notices were updated, and given to officers (see paragraph [5.46](#)).

- 7.72 A complaint, on its own, is unlikely to be sufficient to show that a protected characteristic was a reason for police actions / inaction. However, if the incident was experienced or witnessed as discrimination, this is an indicator that points towards discrimination potentially being a factor and should be referred to as relevant evidence.

Types of evidence – patterns of behaviour evidence, including officer or staff member’s complaint history and statistical evidence

- 7.73 Potential forms of patterns of behaviour evidence are set out in [Chapter 6](#). A pattern across complaints or conduct matters, or across similar incidents that showed a clear propensity for the described behaviour could be used to help assess the credibility of competing accounts and might tip the balance of probabilities in a case, depending on the other evidence available. It could be used to infer that discrimination could be a factor in the incident subject to investigation.
- 7.74 It will be important to consider how pronounced the pattern is, and how relevant the pattern is to the incident subject to the complaint, as well as any evidence that might help to explain any apparent pattern (such as the type of role the officer has, or multiple complaints made about a single incident).
- 7.75 The clearer any pattern of adverse treatment of a relevant group, the more weight it is capable of attracting in support of the inference that may be drawn from it. On the other hand, an absence of, or a less discernible, pattern of behaviour would not indicate that there was, for example, no case to answer.
- 7.76 The decision maker should remember that they are assessing the conduct of the officer in respect of the specific incident(s). The patterns of behaviour evidence looking at previous incidents can help to show whether the incident subject to the complaint aligns with a pattern that could indicate a discriminatory approach.
- 7.77 If no concerning trends are found, this should not in itself be used as evidence that discrimination did not occur, though this might reasonably be taken into account when assessing the credibility of the officer or staff member’s account or when deciding the appropriate outcome.
- 7.78 A pattern showing clear disproportionality, that cannot be sufficiently explained, will always be a concern, even where a decision maker is satisfied that there is no indication that the specific incident subject to the complaint was discriminatory. Such a pattern for an officer, team or force risks undermining confidence in the fair use of policing powers.

7.79 In such cases it is appropriate to consider:

- Whether the pattern of disproportionality should be raised and addressed through individual learning, reflection or additional monitoring and supervision for the officer.
- Whether the officer's pattern of disproportionality should have previously been identified by the force. Is there learning for the force around proactive supervision and monitoring?
- Whether the officer's pattern of disproportionality is indicative of a wider issue of disproportionality for a team, unit, area or across the force. Is there organisational learning for the force around identifying, understanding and addressing disproportionality?

Statistical patterns of behaviour evidence

7.80 Decision makers should be concerned where individual officers show clear disproportionality in their use of policing powers, if the disproportionality cannot be sufficiently explained with evidence-based, non-discriminatory reasons. Where the incident subject to the complaint appears to fit with a pattern of disproportionality across the officer's previous use of that policing power, this will be relevant evidence that can help to support a decision about whether there is discrimination.⁶²

7.81 Decision makers should take account of the following key considerations when assessing stop and search or use of force data:

- Is the data relevant to the incident subject to the complaint? For example, does the data set relate to the same or similar use of powers as those used in the incident?
- How reliable is the data? The larger the data set, the more reliable any patterns will be.
- How pronounced is the pattern? A pattern of disproportionality should be sufficiently pronounced so it is evident to a lay person without expertise in statistics. (Where the complaint handler has decided that it is reasonable and proportionate to obtain advice from a statistical expert, the analysis itself should still be clear to a lay person.)
- Are there evidence-based, non-discriminatory reasons that explain the pattern? Officers should always have been given an opportunity to comment on any adverse patterns of behaviour evidence if this is to be relied upon in a decision. If the officer has not been given this

⁶² Examples of clear patterns showing disproportionality in an officer's use of stop and search, which raise concern about possible discrimination, are included in the IOPC's 'National Stop and Search Learning Report'.

opportunity, consideration should be given to whether the handling of the complaint requires further work.

- 7.82 Importantly, it is not necessary to show that each stop and search or use of force was inappropriate, unjustified or discriminatory. It is enough to show a pattern of disproportionality for this to be a relevant consideration when assessing potential discrimination.⁶³
- 7.83 When discussing this type of patterns of behaviour evidence in a decision, decision makers should recognise any issues with the relevance and reliability of the data (for example, the data sample size). They should consider this against any explanation offered by the officer, including assessing whether the explanation is plausible and supported by evidence.
- 7.84 In some cases, it will be apparent that the data is not sufficiently relevant or reliable to be able to draw any inference from it - for example, if the data set is very small. If this is the case, decision makers should make it clear that the limitations of the data reduce the weight it can be given when assessing factors which point towards or away from discrimination being a factor. See case studies [43](#) and [32](#) in [Annex C](#) on making findings based on patterns of behaviour and comparator evidence.

Types of evidence – comparator evidence

- 7.85 As noted in [Chapter 2](#), comparator evidence can be helpful when considering an allegation of direct discrimination (to inform a decision about whether there has been ‘less favourable’ treatment), or indirect discrimination (when considering whether a policy, practice or procedure puts people who share a particular protected characteristic at a ‘particular disadvantage’). ‘Less favourably’ and ‘particular disadvantage’ implies a comparison.
- 7.86 When making a comparison, it is important that the decision maker is open and transparent about any differences in the circumstances or behaviour of the people being compared. They should also give a view about whether this undermines or weakens the comparator evidence.
- 7.87 Imperfect comparator evidence may still be relevant to draw upon as part of a cumulative picture with other supporting evidence. However, where the circumstances are so different that they cannot be effectively compared, the decision maker should make clear that this evidence will not be useful to either support or refute the allegation of discrimination.

⁶³ See, for example, *Anya v University of Oxford* [2001] EWCA Civ 405, [2001] ICR 847

7.88 Decision makers should take care not to use a poor comparator as evidence of no discrimination – or conversely as evidence of discrimination. As noted in [Chapter 6](#), decision makers will need to consider the reason for poor treatment to address the question of whether this was because of the complainant’s protected characteristic(s). See [case study 44](#) which shows the consideration of an actual comparator. [Case study 57](#) also looks at comparator evidence, but in a case handled otherwise than by investigation. Find all case studies in [Annex C](#).

Types of evidence – discriminatory language

7.89 Decision makers should consider language as evidence potentially pointing towards discrimination being a factor in police actions, where the language used suggests:

- Any use of overtly discriminatory offensive terms (for example, [case study 45, Annex C](#)).
- Generalisations about a protected group that have negative connotations or that indicate an ‘us and them’ divide.
- Discriminatory stereotypes, assumptions or exaggerations. (See section above on complaints involving allegations of stereotyping).
- Admissions that a protected characteristic was a reason for poor treatment. (See discussion below).
- Unnecessary reference to a person’s protected characteristic - particularly in the context of use of powers or alongside hostile, aggressive, degrading or disrespectful treatment. (See discussion above).

7.90 As noted in paragraph [6.88](#), in some circumstances, making direct reference to a person’s protected characteristic will be relevant to a legitimate policing purpose. However, careful consideration should be given to any direct reference to protected characteristics when assessing potential discrimination.

7.91 Decision makers should consider whether the reference to the protected characteristic was reasonable and justified. If it was unnecessary and/or can be directly attributed to poor treatment received by the person, this could be an indicator of a discriminatory approach.

7.92 For example, an officer can stop and search a person who matches a specific description of a suspect in a crime. The description might include protected characteristics such as sex, race and age as well as other descriptors such as clothing, location, height, build, and observed behaviours such as running from the location of the crime or concealing an item. However, if the only feature linking the person stopped to a suspect is their

protected characteristic, this could be an indicator of a discriminatory approach.

Example:

Officers were in a busy city centre responding to reports of three young Black people on bicycles stealing mobile phones. The officers decided to stop and search an 18-year-old Black man who was walking along the pavement with two other men who were not Black. The officers say the man took an “unusual interest” in the police vehicle. The decision maker in that case was not satisfied that the man’s behaviour was suspicious and noted that the man’s race and age appeared to be the only factors linking this person to the suspects the police were looking for and drew on this (along with other evidence) as evidence pointing towards discrimination as a reason for the stop.

- 7.93 In other cases, the context in which the reference to a protected characteristic is made, could raise concerns. For example, unnecessary reference to a protected characteristic alongside the use of policing powers, could be an indicator that the person’s protected characteristic was a factor in the police actions and decision-making. Particular attention should be paid to any reference to a person’s protected characteristic alongside treatment that is hostile, aggressive or degrading.

Example:

Police arrested a man on suspicion of drink-driving. The man did not speak English well. He refused to provide his fingerprints without first seeing a lawyer. A number of officers were dealing with the man in custody. One officer used considerable force against him, including incapacitant spray at close range, while shouting and swearing at him, and forcibly taking his fingerprints. As the officer left the room, he commented specifically on the man's nationality saying: "I don't know if that's a pastime in Poland or Lithuania or wherever he's from." The officer was charged with racially aggravated assault.

The CPS relied on the reference to the man's ethnicity in the context of the officer's use of force and their apparent aggressive and threatening behaviour, to justify the charging decision for a racially aggravated crime. The decision maker also relied on this evidence to reach a case to answer decision for breach of the equality and diversity and use of force standards of professional behaviour.

Types of evidence – hostility and lack of respect or care as indicators of discrimination

- 7.94 'Respect and empathy' is one of the Ethical Policing Principles set out in the Code of Ethics. Lack of respect, including unexplained hostility, degrading treatment or lack of care or empathy can be seen as evidence which could indicate a discriminatory approach.
- 7.95 The IOPC is aware that it is often the manner in which police use their powers and provide services that most strongly indicates to those involved that discrimination was a factor. This includes tone, approach, actions and attitudes seen as unjustifiably aggressive, hostile, condescending, dehumanising, dismissive or uncaring. Clearly, not all such examples of disrespect and lack of empathy will be discriminatory, however, they are often seen to accompany or underpin discriminatory behaviour.
- 7.96 As such, any evidence of disrespect and lack of empathy should be considered as part of an assessment of relevant evidence in the analysis of an allegation of discrimination. Evidence of a disrespectful, hostile or uncaring approach might not, in itself, be sufficient to show that the person's protected characteristic was a reason for police actions or behaviour. However, such evidence alongside evidence that specifically links the conduct to a protected characteristic as a reason could, in combination, be strong evidence pointing toward discrimination. This could include alignment

with discriminatory stereotypes, evidence of a relevant pattern of disproportionality in the use of powers, comparators showing difference in treatment, and/or discriminatory language or admissions.

- 7.97 Conversely, evidence showing the opposite, while not sufficient on its own to disprove an allegation of discrimination, could nevertheless reasonably be seen as evidence pointing away from a discriminatory approach. This could include evidence showing the opposite include a respectful and empathetic approach, and showing care, compassion and clear efforts to understand, empathise and respond to individual needs,
- 7.98 Please read [case study 46](#) in [Annex C](#) to see examples from the IOPC's National Stop and Search report.

Types of evidence – officer or staff member's account

- 7.99 Decision makers should take care to ensure that any key evidence which will be relied upon has been clearly put to any officer or staff member subject to the complaint and they were given an opportunity to respond. For example, if the decision relies on evidence of stereotyped assumptions, the officer or staff member should have been given the opportunity to provide any counter argument for why such assumptions were not the basis for their actions or decisions. Likewise, if the decision relies on patterns of behaviour evidence showing a disproportionate approach, the officer or staff member should have been given the assessment of the data and the opportunity to explain any disproportionality.
- 7.100 Importantly, it is highly unlikely that an individual subject to a complaint will admit that the reasons for their actions were discriminatory. It can be expected that officers or staff members will usually deny that this is the case. However, individuals can discriminate without intention or awareness that their actions are discriminatory.
- 7.101 In circumstances where there is a denial from an officer or staff member, the plausibility of the alternative reasons offered will need to be assessed, drawing on the other available evidence - such as body worn video, contemporaneous notes, witness statements, and an assessment of reasonableness.
- 7.102 It is not necessary to eliminate all other plausible reasons as to why an officer or staff member took a particular course of action. However, if other, non-discriminatory reasons are more plausible, it is less likely the case to answer test will be met or that, on the balance of probabilities, the service provided will be found to be unacceptable because of discrimination. This could include reasons offered by the officer or staff member themselves, and supported by the other available evidence. Or it could include reasons that

can be deduced from the other available evidence, even where the officer / staff member has not provided these reasons themselves.

- 7.103 Case studies [39](#) and [47](#), found in [Annex C](#), discuss the grounds for stop and search in those cases, including use of weak grounds and the presence of non-discriminatory reasons for the stop.

Reasonable and proportionate outcomes

- 7.104 Consideration should be given to the gravity factors (from paragraph [5.2](#)) when considering the appropriate outcome for the case, as well as any views expressed by the complainant about how they would like the matter to be resolved. Decision makers should also consider the College of Policing's 'Guidance on outcomes in police misconduct proceedings'. As noted in the '[Gravity factors](#)' section, this states that "Discrimination towards persons on the basis of any protected characteristic is never acceptable and always serious."⁶⁴
- 7.105 Proven discriminatory words or acts should be dealt with at the more serious end of the spectrum in terms of disciplinary action. In some cases, it will be entirely appropriate that a person serving with the police should face misconduct proceedings for complaints of discriminatory behaviour.
- 7.106 However, in cases where the behaviour is clearly unintentional and not motivated by lack of respect for specific groups of people, the response should focus on changing the behaviour or attitudes. There may also be circumstances where a person serving with the police has acted in good faith, but the outcome was still unfair to the complainant. It may then be appropriate to find no case to answer for the individual officer or staff member, but still identify individual or organisational learning. In any case, the outcome should be based on the evidence, take account of the attitude of any officers or staff members subject to the complaint, and the effect on the person discriminated against.
- 7.107 The IOPC expects that disciplinary panels will have regard to this guidance, alongside the College of Policing's 'Guidance on outcomes in police misconduct proceedings', when considering allegations of discriminatory behaviour.
- 7.108 Whatever the outcome of the complaint, the complaint handler may identify opportunities for learning and reflection. If the overall service provided was

⁶⁴ Paragraph 4.54, College of Policing, *Guidance on outcomes in misconduct proceedings*, 2023

acceptable, it should not stop any consideration of how the actions taken, or not taken, may have reinforced the complainant's belief that assumptions and stereotypes were at play. It is good practice to include in the outcome report, or letter, any comments made by officer(s) or staff member(s) as part of the complaint handling that helps to show how they have positively reflected, and what they may do differently in the future.

- 7.109 In some cases, the decision maker may find that they cannot rule out discrimination as a possible factor, but there is insufficient evidence to find a case to answer, or to say that the service provided was not acceptable because of discrimination.
- 7.110 For example, there may be clear evidence of inappropriate or poor treatment and inadequate, non-discriminatory reasons, but there may still be insufficient evidence that the person's protected characteristic was the underlying reason. In these cases, the issue of possible discrimination and / or recognition of the discriminatory impact remains outstanding, and the matter should not be left un-addressed.
- 7.111 If discrimination cannot be ruled out, and/or the actions of police were reasonably experienced as discriminatory by the person involved, or by witnesses or the wider community, this should be seen as an issue that needs to be addressed and resolved through the outcomes of the case, with the intention of seeking to restore public confidence. For example, outcomes may include recognising harm at proceedings, where a case to answer has been found for a different Standard of Professional Behaviour, and / or through any individual or organisational learning.

Disciplinary proceedings – in investigations subject to special procedures, where a case to answer has been found

- 7.112 Where a case to answer has been found, the decision maker must subsequently make a decision about whether proceedings should be brought. The process that should be followed is set out in paragraphs 17.53 – 17.60 of the IOPC's Statutory Guidance and in Home Office's guidance 'Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing'.
- 7.113 Chapter 8 of the Home Office's guidance 'Conduct, efficiency and effectiveness: statutory guidance on professional standards, performance and integrity in policing' makes clear there is a presumption that, where there is a case to answer for misconduct or gross misconduct, proceedings will be brought. This is in view of the overriding public interest in police officers being held to account.
- 7.114 Case study 53 in Annex C discusses information presented to a panel.

Remedying dissatisfaction

7.115 As outlined in Chapter 17 of the IOPC's Statutory Guidance, on receipt of an investigation report, or at the conclusion of handling otherwise than by an investigation, the appropriate authority should consider what action can and should be taken as part of the outcome to provide a remedy where something has gone wrong. As well as the suggestions made in paragraph 17.14 of the Statutory Guidance, additional remedies which are particularly relevant to allegations of discrimination may include:

- inviting complainants to input to scrutiny panels
- inviting complainants to watch body worn video footage
- putting in place reasonable adjustments

7.116 If the complaint handler or decision maker is of the opinion that there was a failure to make reasonable adjustments, consideration should be given to how this can be put right and whether reasonable adjustments can now be made. This is part of the resolution of the complaint and should be viewed in the context of the continuing obligation on the force to make reasonable adjustments (as well as providing a remedy).

7.117 However, whether and what adjustments are made is a decision for the police force that falls outside the police complaints framework. If the complainant remains of the view that reasonable adjustments have not been made, there is no process within the police complaints system to ultimately determine what adjustments should be made or to direct that any adjustments are undertaken.

7.118 For example, if the IOPC were to review the outcome of the case, it could not direct the force to make a reasonable adjustment, though it could make a recommendation about action to take. Any determination on what reasonable adjustments should be made is ultimately a matter for the courts.

Learning, best practice and reflective practice

7.119 Potential learning or best practice should be considered in every case, whatever other outcomes there are to the complaint. Where individual learning, performance or reflective practice is considered an appropriate outcome, this can provide an opportunity for an officer or staff member to reflect on how and why their actions may have been experienced as discriminatory and to consider what could be done to address or avoid this in the future.

7.120 Complaint handlers and decision makers should reflect on whether the organisation or any officer / staff member can learn from the complaint by

thinking about what a best practice approach would have been for the incident in question.

- 7.121 Where the decision is that there is no case to answer, or that the level of service was acceptable, there may still be potential for learning and reflection. The question should be asked about how the complainant came to the view that the police actions were discriminatory and whether there is anything that the organisation or any officer / staff member could have done that would have changed this. For example, could the officer or staff member have shown greater care, consideration or politeness, or could they have provided a better explanation for their actions at the time?
- 7.122 Where a case to answer is found, there may still be opportunities for organisational learning, irrespective of whether there are disciplinary proceedings.
- 7.123 Learning and reflection might also be a suitable outcome where the evidence points towards poor treatment, but there is insufficient indication that this was due to a person's protected characteristics. It would be an appropriate tool to address how assumptions may have influenced an officer's actions - and to acknowledge and address the discriminatory impact.
- 7.124 It would also be relevant in cases where officers need to understand why actions may have been experienced as discriminatory. For instance, where force was used and escalated quickly against an individual because they had not been fully informed about the reasons for the encounter.
- 7.125 Learning and reflection might also be used to explain how the wider view of policing may have influenced how the officer's actions were interpreted. For example, in the context of the reporting of disproportionality in the use of stop and search, where officers fail to properly explain and account for their actions, and equally where the complainant has not been given the opportunity to explain themselves. This can impact the perceived legitimacy of the police use of this power and widen the confidence gap between some communities and policing on the use of that policing tactic.

Example 1:

While I have found that the service provided was acceptable, I have suggested that PC A be subject to learning. I believe that it is important that PC A understands that if police actions cannot be properly explained and justified, it is not unreasonable for people to feel that they have been treated unfairly, or indeed, discriminated against, and the impact of this can be significant, particularly for individuals and communities who may already have low confidence in the police.

Example 2:

In my opinion, although there is no case to answer in relation to the allegation of less favourable treatment based on race, there is opportunity for learning and reflection for both of the officers, particularly around their understanding of why this may have been perceived as a racist / discriminatory incident where force was used and escalated quickly against a young Black man, in public, who had not been fully informed about what was happening. I think this is particularly important considering the officers' own evidence that members of the public were mentioning previous high-profile cases as they watched their interaction with Mr B.

Example 3:

In my view, the evidence does not suggest that Mr B received less favourable treatment due to his age or race, but the officers appear to have made assumptions because they have been called to a "fight", both Mr B and Mr C were intoxicated, and officers were struggling to get details about exactly what had happened. However, there is evidence that some officers talked to Mr B in a way that was dismissive and lacked empathy. Mr B has said he felt like he was not treated seriously and that an old White man may not have been treated in the same way. I think it would be important, as part of the reflective practice, for officers to reflect on why their actions may have led to Mr B feeling this way.

Example 4:

I would like to note that disproportionality in the police use of stop and search powers is well-known and widely reported. Further, PC E failed to properly explain himself to Mr F and Mr F was given no opportunity to explain himself to PC E. Essentially, police failed to justify the legitimacy of their actions in this case to Mr F at the time. Therefore, in my opinion, it is entirely reasonable that Mr E interpreted the incident as a case of racial profiling, even though the available evidence does not support this conclusion. I consider there is learning for PC E in this regard.

See case studies [41](#) and [48](#) in [Annex C](#) for more examples of instances where learning was identified.

Reflective practice

7.126 Reflective practice is an integral part of the ethos of the complaints system and is enshrined within the legislation through the Reflective Practice Review

Process (RPRP)⁶⁵. Please refer to the IOPC Statutory Guidance, Focus issue 21 on Reflective Practice and the Home Office's 'Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing' for information on when reflective practice would be an appropriate outcome of the complaint handling process.

- 7.127 A major obstacle to effective resolution, and changes to attitudes and approaches, can be the lack of willingness of an officer or staff member subject of the complaint to consider the impact of their actions, and how they might act differently next time.
- 7.128 The mention of the word discrimination can sometimes result in a defensive attitude from those subject to a complaint. When a complaint is made about discrimination, it can give rise to a fear of being labelled, for example, as racist or homophobic. It is for the decision maker to determine whether the person's actions were motivated by discrimination and sometimes, it will be clear that they do hold discriminatory views. Where this is the case, the level of discrimination will be handled at the most serious end of the scale and would not result in an outcome of referral to RPRP or reflective practice.
- 7.129 The RPRP process is designed to deal with matters where it is felt appropriate that reflection and a change in approach would be the most effective remedy. The process, and reflective practice more widely, requires willing engagement and participation from those subject to the complaint, and should be seen as an opportunity to learn and improve, rather than as a process, or 'tick box' exercise that is imposed on them.
- 7.130 Where reflective practice is considered appropriate, there is an opportunity for the officer or staff member to reflect on how, and why, their actions may have been experienced as discriminatory and, to consider what could be done to address or avoid this in future interactions.
- 7.131 The role of the supervisor in providing leadership and direction is crucial in this process. It is particularly crucial in cases where the way forward is to develop the most effective measures to encourage a change in attitude or behaviour. For complaints about discrimination, it is vital that supervisor has an appropriate level of cultural awareness and understanding of the impact on the complainant. It is important that supervisors seek assistance and advice from both the internal and external resources that are available. Cultural competence is something that is built up gradually and should be revisited periodically. Significant time and effort is needed to ensure a sufficient level of knowledge to deal with issues that may arise. Getting advice from colleagues, specialist discrimination or diversity teams, staff

⁶⁵ Part 6 of the Police (Conduct) Regulations 2020.

associations, or people with lived experience, can greatly assist to deal with an immediate concern. It can also help to improve cultural competence so that next time, the supervisor is better equipped to develop strategies to address the matter with confidence.⁶⁶

- 7.132 Cases related to poor service and opportunities for officers to reflect upon the service provided can be seen in [Annex C](#), case studies [49](#), [50](#), and [51](#), including one instance of group reflective practice.

Organisational learning

- 7.133 Any instance where individuals reasonably experience policing as unfair, lacking legitimacy and / or discriminatory should be considered as a potential opportunity for learning (for example, see case studies [31](#) and [52](#) in [Annex C](#)). Proportionate consideration should be given to whether the issues raised in a case reflect individual, team-wide or organisation-wide issues.
- 7.134 Where the evidence indicates a recurrent or organisational issue making recommendations for organisational learning, and sharing any steps to address these with the complainant, is a powerful and transparent way of ensuring that lessons are learnt. In all cases where there is a case to answer for discrimination, the service was not acceptable, or learning / improvements are identified, proportionate consideration should be given to whether the issues found indicate a broader issue.
- 7.135 For example, consideration should be given to:
- Supervision – was sufficient guidance or supervision provided by supervisors / senior managers? Were inappropriate behaviours challenged?⁶⁷
 - Force policies and procedures – are force policies adequate? Do they protect against the failing found? Are they discriminatory in and of themselves?
 - Force / team practices and adherence to policies – are any individual failures to adhere to policies suggestive of a team or organisational culture or approach?
 - Team or organisational culture – is there anything concerning about the collective approach or language used by the team or organisation?

⁶⁶ The IOPC has produced a toolkit, which includes some examples of approaches other forces have taken. This includes approaches to develop individual cultural competence.

⁶⁷ A failure to challenge inappropriate behaviour could be a breach of the Public Sector Equality Duty by individual officers and/or a breach of the “challenging and reporting improper conduct” Standard of Professional Behaviour.

- Patterns of behaviour - whether a pattern of disproportionality is indicative of a wider issue of disproportionality for a team, unit, area or across the force, or a failure in proactive supervision and monitoring processes.
- Training provision across team / force – if a training need is identified for a particular officer, does this suggest a broader training need across the team or force?
- The equality objectives published by the force under the Public Sector Equality Duty – have these been engaged? Do these need to be revised?
- Were appropriate Equality Impact Assessments and Community Impact Assessments carried out? Are these routinely done?

7.136 The scope of these considerations should be proportionate and will depend on:

- The seriousness of failing found.
- Any intelligence / evidence collected through the handling of the complaint or otherwise known which might suggest a broader issue.
- Whether other similar issues have been raised with the force/team. For example, through other complaints or investigations.

Communicating decisions

7.137 How decisions are made, justified and set out, and how those decisions set out the issues of discrimination is important when trying to build confidence in the police and the police complaints system. Recognising the validity of lived experience of discrimination, as well as the individual, community and inter-generational trauma that can be associated with this, is an important part of acknowledging and addressing issues of discrimination. This should inform how decisions are expressed in investigation reports and decision letters to complainants. The guidance in paragraphs 17.67 – 17.74 of the IOPC’s Statutory Guidance should be followed.

7.138 Whether or not a case to answer is found, or whether or not the service is found to be acceptable, decisions can still be expressed in a way that helps to build trust and confidence in policing and the complaints system.

7.139 It is important to use language that is empathetic and not defensive or dismissive, and that acknowledges how the interaction with police left the complainant feeling - and the impact they say it has had. It is important the complainant feels they have been listened to – their negative experience of interaction with the police may not be their first, and the responses received may feel repetitive if standard phrasing is used.

- 7.140 Where relevant, decisions should reference relevant prohibited conduct contrary to the *Equality Act 2010* or European Convention on Human Rights. They should be laid out to specifically address the particular test in the *Equality Act 2010*, where these apply and dependent on the type of discrimination alleged. See the paragraphs from [7.32](#) and [Chapter 2](#), in particular:
- Direct discrimination: paragraph [2.25](#)
 - Harassment: paragraph [2.35](#)
 - Victimisation: paragraph [2.44](#)
 - Indirect discrimination: paragraph [2.49](#)
 - Breaches of the PSED: paragraph [2.56](#)
 - Discrimination arising from a disability: paragraph [2.66](#)
 - Failure to make reasonable adjustments: from paragraph [2.82](#)
- 7.141 If no *Equality Act 2010* test applies, then it may be helpful to lay out the decisions as per the framework in paragraph [7.10](#) and [Annex A](#). Any consideration of potential breaches of human rights should also be discussed in the investigation report, outcome letter or decision.
- 7.142 The analysis section of outcome reports / letters, investigation reports, and/or decision-making documents, should demonstrate that the discrimination issue has been carefully considered and the evidence pointing towards and away from discrimination has been carefully weighed up
- 7.143 It is essential that as well as evidencing the enquiries and considerations made, a clear rationale is provided for:
- not pursuing any usual lines of enquiry
 - deciding not to follow these guidelines, in part or otherwise
 - not placing any evidential weight on a piece of evidence that was considered
- 7.144 If this information is missing, it can make it difficult for the complainant to understand why certain enquiries or evidence were not considered, and how the outcome was reached. If the missing information makes it difficult for the complainant to understand how the outcome was reached, it could result in the complainant not having confidence in the findings.
- 7.145 Not providing sufficient rationale can also exacerbate any mistrust the complainant may have with the police and the police complaints system. It can add to a complainant's concerns that attempts are being made to hide the facts, or that their concerns are being dismissed without exploring certain lines of enquiry.

- 7.146 Please see [case study 53](#) in [Annex C](#) for an example of a decision maker's case to answer wording. More examples are set out below.

Expressing decisions where there is no case to answer or the service provided is found to be acceptable

- 7.147 Where the decision maker reaches a finding that there is no case to answer, or the service provided is acceptable, as always, it is necessary to show how the relevant evidence has been carefully weighed up to reach this decision, and to ensure that the complainant's experience is appropriately recognised.
- 7.148 Decision makers should be wary of using the phrase **'there is no evidence of discrimination'** in decisions and communications. This expression is unlikely to provide an explanation that can restore confidence in the fairness of a policing action that was experienced or perceived by an individual to be discriminatory. The phrase may be perceived as dismissive of the individual, or the wider community's experience of the incident as discriminatory - the complaint itself is evidence. Using such a definitive statement could also suggest that evidence has been discounted that may point towards discrimination, but is insufficient to reach a finding. This includes evidence raised in the complaint or other evidence relied on to inform an initial decision to, for example, investigate the discrimination issue (rather than handle it otherwise than by investigation).
- 7.149 There may be no evidence of overt discriminatory language, and it may be appropriate to express this categorically. However, this guidance shows that what constitutes evidence that might show discriminatory bias or stereotyping is broad and often nuanced, and it is difficult to categorically conclude there is 'no evidence of discrimination' in these types of cases.
- 7.150 Even when the evidence against a finding of discrimination is very persuasive, it is preferable to point to what the evidence shows, rather than deferring to an explanation that there is 'no evidence of discrimination' - the complaint itself is evidence. It should be expressed in terms of evidence pointing towards or away from discrimination, as this allows the complaint handler / decision maker to explain conclusions in a manner that is not defensive or dismissive, but empathetic and based in evidence. It should openly consider whether there is any learning that can be taken from the incident that led to the complaint.
- 7.151 Where a person has received poor service or unfair treatment, there is value in explicitly acknowledging that an incident was experienced as discrimination, and that this is an issue in terms of the harm caused. This is particularly important for trust and confidence in policing legitimacy, even if there is no case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour, or the service has been found to not be acceptable but not for discriminatory reasons.

- 7.152 This is something that can be recognised and expressed in decisions and communications. It is also something police officers, staff members and the wider force, should be encouraged to recognise and learn from - through individual and/or organisational learning.
- 7.153 Decision makers should bear in mind that, where there is evidence such as body worn video, the complainant will not usually have had the benefit of watching this before making their complaint. Where evidence has been found that clearly does not support the complainant's account, outcomes should acknowledge and recognise the complainant's perception of the incident or interaction and how it made them feel. Consideration should also be given to paragraph [7.115](#) about remedying the dissatisfaction of the complainant it may be appropriate to invite the complainant to view the body worn video as part of providing the complainant with sufficient information to ensure they are properly informed of the outcome.

Examples where the service was found to be acceptable:

Example 1

I am sorry that you experienced PC X's actions as discriminatory, however, I find that the service provided was acceptable as the evidence indicates that PC X followed the appropriate procedures when arranging the meeting with you. Nevertheless, following your complaint PC X has taken the time to understand why you resisted his help. He has acknowledged the reasons you experienced the encounter as discriminatory and reflected on the impact this has had.

Example 2

Having reviewed the evidence I find that, on the balance of probabilities, the service provided was acceptable. In particular, the footage from the officers' body worn video, which corroborates the accounts of the officers who were present, points away from the officer using discriminatory language during your arrest. We invite you to arrange to view the body worn video footage, as we hope that this will assist you in understanding the actions on the night, as well as this decision.

Examples of decisions where there is no case to answer:

Below are some potential examples of setting out a no case to answer decision, with reference to what the evidence shows.

Example 1

In my opinion, there is insufficient evidence to suggest PC A treated Mr B less favourably on the basis of his race. As described in the report, there appears to have been reasonable grounds to stop Mr B, and PC A's escalation in using force appears to have been borne out of his knowledge of Mr B's previous history with the police, and being intimidated by this.

In my view the evidence does not suggest that a disciplinary panel could find Mr B received less favourable treatment due to his age or race, but the officers appear to have made assumptions because they were called to a "fight", both Mr B and Mr C were intoxicated and officers were struggling to get details about exactly what had happened.

The evidence indicates that the officer used an incremental approach to using force. He chose to use tactical communication followed by attempts at physical restraint, before Taser was used. In my view, the use of Taser is appropriately rationalised, and the explanations provided are plausible and supported by the body worn video (which is objective evidence). It is my view that the evidence indicates that in the circumstances there has been no less favourable treatment due to the protected characteristic of Mr B's race.

Example 2

When considering allegations against Ms R, in [case study 31](#): "Allegations of discrimination where there is no overt evidence are often difficult and finely balanced. In this case, it is difficult to definitively conclude whether Ms R's attitude was influenced in any way by the complainant's ethnicity. As set out in the final report, it was not Ms R's decision to class the missing person investigation as low risk. Ms R does not have any previous complaints of discrimination recorded against her. Ms R has accepted that she could have handled the call better, but has provided an explanation for her actions. Apart from the complainant's belief that Ms R's actions were motivated by discrimination there are no other indicators that Ms R acted in

a discriminatory way in her handling of the case, and it is noted that Ms R did take the appropriate subsequent steps after concluding the call.

Overall, having considered the available evidence, it appears to me that Ms R handled the call badly but there is insufficient evidence pointing towards her actions being motivated by discrimination of the complainant (Mr C) or his daughter and, therefore, a properly directed panel could not conclude that Ms R's actions were motivated by discrimination. I should make clear that this does not in any way undermine the complainant's experience of this call and his perception of racial discrimination. While I conclude that Ms R does not have a case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour, Ms R will undertake a Reflective Practice Review Process with regards to her handling of Mr C's call.

Expressing decisions where there is a case to answer or the service is found to not be acceptable

- 7.154 Where they are relevant, it is particularly important to address the *Equality Act 2010* tests (see above and [Chapter 2](#)) where a case to answer is found. This will assist in guiding disciplinary panels through the evidence.
- 7.155 Where a case to answer is found, or it is found that the service provided is not acceptable, the decision maker should acknowledge the impact that this has on the complainant.

An example of a finding that the service provided by the police was not acceptable

I have considered your allegation with the assistance of the test for discrimination arising from disability under the *Equality Act 2010*. Having considered all of the evidence gathered, it is my opinion that PC A did not take appropriate account of your needs arising from your disability even though you told him about your disability. I, therefore, find that the service provided by the police was not acceptable and the evidence points towards this being because of your protected characteristic. PC A has reflected on his actions and understands the effect that they had on you. He apologises that his insensitive behaviour compounded the distress you were already experiencing.

As you are aware, we have also reviewed our internal training and, as agreed with you, your complaint will be used as one of the case studies in the training to ensure this situation does not happen again.

Examples of finding a case to answer

Example 1

I have considered your allegation in light of the test for direct race discrimination under the *Equality Act 2010*. Having reviewed all the evidence available, I am satisfied that there is credible evidence to support your allegation that your race may have been a factor in the decision by PS B to arrest you such that a disciplinary tribunal could, on the balance of probabilities, make a finding of gross misconduct. I am satisfied that PS B has a case to answer for gross misconduct.

Example 2

In her stop and search record and her subsequent account, PC C has described some behaviours that she alleges were exhibited by Mr D including nervous, defensive, glazed eyes, hands moving towards waistband, disruptive and stalling. Accepting that there is an element of subjectivity here, the body worn video does not bear out these allegations. The decision by PC C to use handcuffs could be seen to be further evidence of a response borne out of racial stereotyping, due to it being an automatic decision allegedly based on past experience of stop and search encounters, and not on the circumstances of her interaction with Mr D.

I have noted the analysis provided in the report of PC C's use of the stop and search powers, and their results by ethnicity. It is well known that stop and search powers are used disproportionately on Black people across the

whole force area. In the case of PC C's use, this disproportionality is even greater. There is no apparent explanation for this, and although the unexplained disproportionality of the use of stop and search powers is a force and police-wide problem, that does not exempt or justify individual officers using their powers in a biased way.

In light of my analysis above and after careful consideration of the areas of inconsistency highlighted, it is my opinion that there is sufficient evidence upon which a misconduct panel, properly directed, could conclude that, there had been breaches of the Standards of Professional Behaviour for equality and diversity, duties and responsibilities, authority respect and courtesy, use of force and honesty and integrity. Therefore, in all the circumstances, it follows that in my opinion the threshold for the case to answer test is met for these allegations.

Example 3

There is evidence that suggests PS E did not treat Mr F with authority, respect and courtesy. The way PS E spoke to Mr F could be considered demeaning and some of the comments he made suggested he thought Mr F lacked intelligence. No appreciation appears to have been given by PS E that Mr F may not have understood the fingerprint process due to not speaking English. There is no evidence that PS E attempted to make reasonable adjustments for Mr F to help him understand the requests being made of him. In my view, it could be found that the way PS E treated Mr F fell far short of what could reasonably be expected of a sergeant dealing with a detainee in custody. Overall, in my opinion there is evidence to suggest that Mr F may have received less favourable treatment from PS E and that PS E may not have made some of the derogatory comments, or used some of the force in the way he did, had he been dealing with a male of Mr E's age who understood and spoke English clearly. In my opinion, PS E therefore has a case to answer in respect of a breach of the Equality and Diversity Standard of Professional Behaviour.

Chapter 8

Reviews

Relevant review body	146
Concluding the review	147

Chapter 8 – Reviews

8.1 Where a complaint has been recorded under Schedule 3 to the *Police Reform Act 2002*, the complainant has a right to apply for a review of the outcome of the complaint. This applies whether the complaint has been investigated by the appropriate authority or handled otherwise than by investigation. The review will consider whether the outcome of the handling of the complaint was reasonable and proportionate.

Relevant review body

8.2 The appropriate authority should decide who the relevant review body is, and this must be communicated to the complainant. Depending on the circumstances of the complaint, the application for a review will be considered either by the local policing body or the IOPC. The test for who is the relevant review body is set out in legislation, and explained in Chapter 18 of the IOPC’s Statutory Guidance. More guidance is provided in issues 13 and 19 of Focus.

8.3 As with all complaints, when the appropriate authority is assessing whether it is “unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of criminal or disciplinary proceedings or would not involve an infringement of a person’s rights under Article 2 or 3 of the *European Convention on Human Rights*”⁶⁸ the assessment should be based on the wording of the complaint and not on the merit or likely outcome. This is a subjective test. As noted throughout this guidance, the College of Policing’s ‘Guidance on Outcomes in Police Misconduct Proceedings’ provides a helpful framework to guide whether the seriousness of the allegations, as worded in the complaint, meets the criteria, or not. Consideration should also be made of paragraph 5.1.

8.4 If the nature of the discrimination alleged is not clear, from the wording of the complaint, then the complaint handler should have explored why the complainant feels they have been discriminated against, as part of the initial contact with the complainant (see paragraph [3.14](#)). In these circumstances, it would be reasonable to take into consideration this further information before assessing and deciding on the relevant review body. However, as with any complaint, it is important that the assessment of the relevant review body test

⁶⁸ Regulation 32, Police (Complaints and Misconduct) Regulations 2020

is not made on the merit of the allegations, or with hindsight after the complaint has been dealt with.

- 8.5 When providing details about the relevant review body there are no legal requirements to provide any information to the complainant, other than the identity of who the relevant review body is, the time limit for applying for a review, and what the complainant should include in their application.
- 8.6 When the IOPC is the relevant review body, the appropriate authority should also explain the reason why. However, in the spirit of promoting access to the complaints system, and to avoid making any assumptions of the complainant's circumstances and contact preferences, it is considered best practice to provide full contact details of the relevant review body at the time of providing a right of review. A few examples of deciding who is the relevant review body are provided in [Annex C](#), [Case study 54](#) and [Case study 55](#).

Conducting the review

- 8.7 An application for a review offers the opportunity to consider whether the complaint outcome was reasonable and proportionate and, if not, to put things right. Conducting a review should not be merely a quality check of what has happened before. The reviewer should come to their own conclusions about whether the outcome is reasonable and proportionate. In order to do so, the reviewer should take into consideration these guidelines – to both consider whether they have been followed and, and in making their own decisions about whether the outcome was reasonable and proportionate.
- 8.8 All documents or evidence created or obtained during the handling of a complaint should be provided to the relevant review body. It is essential that the appropriate authority provides evidence of the enquiries that have been made. It is also essential that it provides any information, including policies and processes that have been considered and any force toolkit used in the handling of complaints involving discrimination, even if it has been decided not to follow parts of it.
- 8.9 Knowing what a toolkit covers, what is expected from the complaint handler, and what online tools and reference material they are encouraged to consider as part of the process, can help the reviewer understand the complaint handler's approach. This would include any decision and rationale not to follow any part of the toolkit. It will also help determine whether the outcome of the complaint was reasonable and proportionate.
- 8.10 The appropriate authority should also provide to the relevant review body information about previous incidents, if they have been considered as part of the evidence gathered.

- 8.11 The key consideration with any review is whether or not the outcome provided to the complainant was reasonable and proportionate. For example, if there was no communication between the complainant and the force, and this lack of contact has impacted upon the handling and outcome of the complaint, this may be a reason to uphold the review. This could be, for example, if the allegations within the complaint were not understood by the complaint handler and this impacted the subsequent handling. Alternatively, if the lack of contact has not impacted the outcome provided to the complainant, the reviewer should not uphold the review and may instead wish to raise this as an oversight issue with the force (see paragraph 18.40 of the IOPC's Statutory Guidance).
- 8.12 Similarly, if failing to provide, for example, a translation service, when it is clear it should have been provided, has led to the complainant being unable to express themselves fully, this may be considered to have impacted the outcome.
- 8.13 As noted earlier in the guidance, it is good practice for any conversations with complainants to be followed up in writing. (For example, these conversations could be about understanding their complaint, agreeing terms of reference, or agreeing what will or will not be looked at.) The reviewer can then consider whether the outcome of the complaint was reasonable and proportionate – for example, when it appears that points set out in a complaint letter have not been addressed as part of the handling of a complaint.
- 8.14 If elements of the complaint have not been addressed, and there is no evidence to justify why, the reviewer should consider if the missed allegations have impacted on whether the outcome of the complaint is considered to be reasonable and proportionate, (see [case study 56](#) in [Annex C](#)). If it does impact on the outcome, the review may be upheld.
- 8.15 Sometimes a complaint of discrimination will be raised in someone's application for a review, which was not raised as part of the original complaint. Any new complaints raised in the review correspondence cannot be considered as part of that review. They should be forwarded to those responsible for the initial handling of complaints, for logging (see Focus Issue 19). However, reviewers should make sure that this is a new complaint and consider whether the complainant was appropriately engaged with to ensure that their complaint was fully understood.
- 8.16 The relevant review body should consider their powers under paragraph 28ZA of Schedule 3 to the *Police Reform Act 2002* to make recommendations with a view to remedying the dissatisfaction of a complainant (see paragraphs 17.15 to 17.21 of the IOPC's Statutory Guidance and the paragraphs from [7.115](#) above).
- 8.17 More guidance on conducting reviews is found in the IOPC's Statutory Guidance and issue 19 of Focus.

Chapter 9

Supporting and embedding these guidelines

Training.....	150
Quality assurance.....	150
Complaint handling monitoring	151
Collecting equalities information.....	151
Promoting access to the complaints system	152

Chapter 9 – Supporting and embedding these guidelines

- 9.1 As stated in [Chapter 2](#), under the public sector equality duty, police forces are required to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the *Equality Act 2010*.
 - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.
 - Foster good relations between people who share a relevant protected characteristic and those who do not share it.
- 9.2 While complaints can be made about breaches to the duty, the effective handling of discrimination complaints is also central to meeting it. Police forces should take active steps to embed this guidance in their complaint handling practices and should make sure that complaint handling forms part of the larger process of policy review and organisational improvement. In doing so, police forces should consider the following elements.

Training

- 9.3 All complaint handlers appointed to handle allegations of discrimination should be appropriately trained so that they are familiar with and able to effectively apply these guidelines.
- 9.4 It is also important that complaint handlers are confident to ask for or to seek out help and assistance, particularly where dealing with areas of discrimination that they may be unfamiliar with. Forces should consider drawing together a list of useful local contacts, both internal (specialist staff or minority policing associations) and external (community/voluntary groups or experts), that can give advice or provide relevant contextual information about particular protected groups and areas of discrimination.

Quality assurance

- 9.5 Recognising the particular challenges around handling allegations of discrimination, it is important that forces have robust quality assurance processes in place to provide appropriate oversight of discrimination cases. This is particularly the case where allegations of discrimination are dealt with outside professional standards departments - on local division - where complaint handlers are likely to have less experience in handling police

complaints and may also have received less specialist training in dealing with allegations of discrimination.

9.6 The process should ensure that forces can check that:

- all aspects of the complaint have been identified and addressed
- enquiries have followed these guidelines, including engaging with the complainant or their representative and the probing of officers' responses
- the rationale for any enquiries the complaint handler decides not to pursue is fully explained and is reasonable and proportionate
- where evidence does not support the complaint, that reflection and learning has considered what impact the officer's behaviour had on the complainant, why it did, and whether a different approach could have alleviated the complainant's concerns at the time of the incident
- whether the right tone and wording has been used in the report and is free from jargon, inherent bias and defensive views by the complaint handler.

9.7 It is important to recognise that just as any complaint is an opportunity for the force or officers to learn in the areas subject to the complaint, reviewing the handling of complaints can lead to learning and improved practice in complaint handling.

Complaint handling monitoring

9.8 As noted in the Statutory Guidance, the IOPC expects police forces and local policing bodies to routinely consider whether any learning can be taken from each complaint, investigation or review. Reviewing closed cases is an effective way of monitoring the quality of the handling of complaints and identifying trends and issues. Reviewing the handling of discrimination cases should be a key feature of any routine monitoring. It is best practice to involve members of the local community in this process to provide external scrutiny, challenge and to support public confidence.

Collecting equalities information

9.9 In line with the Public Sector Equality Duty, police forces should have processes in place to collect equalities information about people making complaints. This is an important part of complaints monitoring – and can give an indication of whether policing or complaint handling policies or practices may be having an adverse affect on particular protected groups. Equalities data will also help to identify if there are particular groups who appear

unwilling or unable to access the complaints system so that action can be taken to address this.

- 9.10 Forces should have processes in place to ask complainants to provide equalities information, explaining the reason why this information is being collected and how it will be used. For example, equalities surveys could be included with initial letters sent to complainants and / or complainants could be asked to provide this information when they are contacted to explore their complaint.

Promoting access to the complaints system

- 9.11 The IOPC's public perceptions tracker has consistently shown that young people and Black, Asian and minority ethnic groups have lower confidence in the police complaints system and are less likely to complain. These are also other groups who may face discrimination. Forces, together with police and crime commissioners, should consider ways of making the complaints system more readily accessible, particularly to groups that might face discrimination, and engaging with their local communities to explore alternative ways for making complaints. The IOPC's Statutory Guidance stresses the importance of access to the complaints system, and Chapter 2 sets out ways that forces can promote access and help to overcome barriers.

Annexes

Annex A – Framework for assessing issues of discrimination	154
Annex B – Other resources	159
Annex C – Case studies	162

Annex A - Framework for assessing issues of discrimination

It is common in discrimination cases for there to be little or no further *direct* evidence – beyond the complaint – to support an allegation. (Direct evidence might be CCTV footage that showed use of discriminatory language, for example).

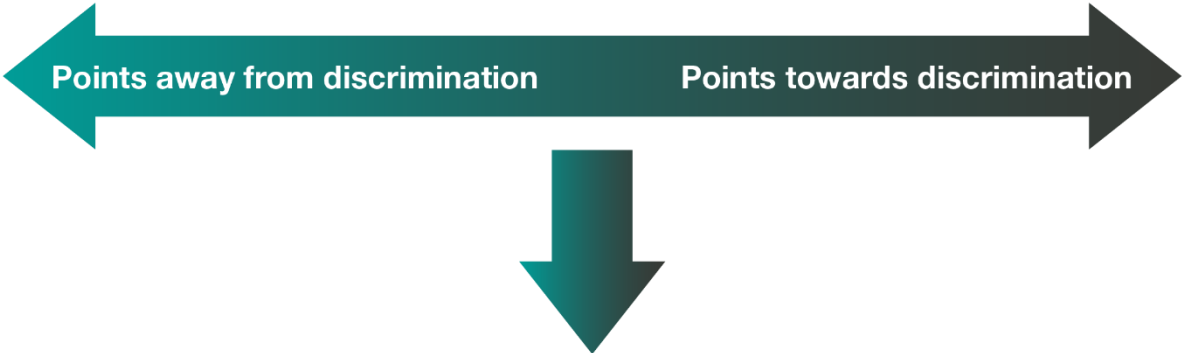
This is particularly the case if the allegation is about discriminatory actions arising from prejudiced assumptions or attitudes. It is also rare that an officer or staff member is willing to admit that their actions may be discriminatory. Therefore, the handling of the complaint will need to consider what other evidence is reasonable and proportionate to obtain, which would be relevant in making a determination or case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour.

The framework below is designed to help decision makers, who will need to take into account a cumulative picture of evidence.



What is the potential for poor treatment?	
<p>Behaviour did not occur.</p> <p>Behaviour was as expected in the circumstances:</p> <ul style="list-style-type: none"> ○ aligns with legal requirements, force policies, training and guidance <i>and</i> ○ reasonable expectations of professional policing ○ a justification was provided which shows that behaviour was lawful, necessary and proportionate 	<p>Behaviour occurred as alleged and was below the expected standards. Evidence of unfairness will be particularly persuasive, but poor treatment can also be treatment that is dismissive, rude or hostile, or a failure to provide care.</p>

What is the potential for poor treatment?	
Behaviour, policy, practice or procedure has no negative effect.	A policy, practice or procedure created a disadvantage.
Consideration was given to other options which would have avoided a discriminatory impact.	Other options were available which would have lessened the risk of potential discrimination.
There was no purpose or intent to violate dignity.	Part of the purpose of, or intent behind, the behaviour was to violate a person's dignity.
There was no purpose or intent to create an intimidating, hostile, degrading, humiliating or offensive environment.	Part of the purpose, or intent behind the behaviour was to create an intimidating, hostile, degrading, humiliating or offensive environment
It was not reasonable for someone to feel that the behaviour violated their dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment. Or they did not report feeling that way,	The complainant felt that their dignity had been violated or that they had been placed in an intimidating, hostile, degrading, humiliating or offensive environment, and it was reasonable for them to feel that way.



Are there indicators that the action / inaction was linked to protected characteristics?

Often there will be no direct evidence and the cumulative picture of circumstantial evidence should be considered.

Absence of indicators and / or indicators pointing away could include:

- no specific or contextual evidence indicating the person's protected characteristic might be a relevant factor

Indicators pointing towards discrimination could include:

- evidence of discriminatory language including negative generalisations
- an admission that the person's protected characteristic was a factor in decision-making
- behaviour in alignment with known stereotypes
- witness / community concern of discrimination
- documented, systematic disparities or discriminatory practices in the treatment of people who share the protected characteristic(s)

- evidence pointing to a non-discriminatory reason for the treatment or behaviour (take care to consider whether the protected characteristic could still be a contributory reason)

- weak, or no, rationale provided for the treatment or behaviour. The more unreasonable and unjustified the behaviour was, the greater the scope for the behaviour to have been discriminatory

- no evidence of poor treatment
- evidence of a respectful and empathetic approach, including

- evidence of poor treatment
- unexplained hostility, disrespect, intimidation, lack of care or

Are there indicators that the action / inaction was linked to protected characteristics?	
efforts made to understand, empathise, de-escalate, provide care and to respect individual needs	dehumanising treatment, where discrimination is a plausible reason
<ul style="list-style-type: none"> relevant patterns of behaviour point away from disproportionality 	<ul style="list-style-type: none"> relevant patterns of behaviour evidence showing disproportionality or repeat discriminatory behaviour
<ul style="list-style-type: none"> comparators showing no difference in treatment – either in the actions of an individual, or in the effect of a policy, practice, or procedure 	<ul style="list-style-type: none"> comparators showing difference in treatment or effect of policy, practice or procedure – either for an individual, or a group of people sharing a protected characteristic
<ul style="list-style-type: none"> lack of evidence that something arising from a person’s disability caused, or contributed to, ‘poor treatment’ 	<ul style="list-style-type: none"> evidence that something arising from a person’s disability may have caused, or contributed to, poor treatment
<ul style="list-style-type: none"> evidence that an officer or staff member did not know, and could not have been expected to know, that a person had a disability 	<ul style="list-style-type: none"> evidence that an officer or staff member knew, or should have known, that a person had a disability
<ul style="list-style-type: none"> evidence of a consideration of the need to make reasonable adjustments when dealing with a disabled person poor rationale provided for not making reasonable adjustments 	<ul style="list-style-type: none"> no evidence of consideration of the impact of a person’s disability on actions and decision-making (where officers knew, or should have known, about the disability)

Are there indicators that the action / inaction was linked to protected characteristics?

<ul style="list-style-type: none"> evidence of due regard being given to the need to eliminate discrimination, harassment and victimisation, advance equality and foster good relations. 	<ul style="list-style-type: none"> No evidence of due regard being given to the need to eliminate discrimination, harassment and victimisation, advance equality and foster good relations.
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How plausible and evidence-based are any non-discriminatory reasons?

<p>Convincing, non-discriminatory reasons supported by objective evidence</p>	<p>No non-discriminatory reasons / non-discriminatory reasons not supported, or undermined, by objective evidence</p>
<p>The behaviour, policy, practice or procedure is a proportionate means of achieving a legitimate aim</p>	<p>The aim of the behaviour, policy, practice or procedure is not legitimate and / or not proportionate</p>
<p>Any policy, practice, procedure or planned operation relied upon has been subject to an Equality Impact Assessment and/or a Community Impact Assessment</p>	<p>The policy, practice or procedure relied upon has not been subject to an Equality Impact Assessment or Community Impact Assessment</p>

Annex B – Other resources

Chapter 4 in these guidelines outlines how complaint handlers should build an understanding of the allegation of discrimination made and that this should inform the lines of enquiry for the handling of the complaint. In some cases, it will be appropriate for complaint handlers to draw on findings from relevant inquiries, research or reports about discrimination.

This could include the areas listed below. This is not an exhaustive list, and other research and reports undertaken or commissioned by voluntary and community sector groups or academic institutions may also provide useful information for complaint handlers.

Inquiries that have reported on issues of discrimination in policing

These include:

- The Stephen Lawrence Inquiry, Sir William Macpherson (published 1999) <https://www.gov.uk/government/publications/the-stephen-lawrence-inquiry>
- The Macpherson Report: Twenty-two years on, House of Commons Home Affairs Committee (published 2021) <https://committees.parliament.uk/work/347/the-macpherson-report-twentytwo-years-on/publications/>
- Angiolini review into deaths and serious incidents in custody (published 2017) <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>
- Lammy Review on discrimination within the policing and criminal justice systems (published 2017) <https://www.gov.uk/government/news/lammy-publishes-historic-review>
- Casey Review: Misconduct in the Met and officer dismissal (published 2023) <https://commonslibrary.parliament.uk/casey-review-misconduct-in-the-met-and-officer-dismissal/>
- Angiolini inquiry into “How off-duty Metropolitan police officer Wayne Couzens was able to abduct, rape and murder Sarah Everard” – Part 1 (published 2024) <https://www.angiolini.independent-inquiry.uk/>

Equality and Human Rights Commission (EHRC)

In-depth, up to date, guidance on the *Human Rights Act 1998* and the *Equality Act 2010* can be found on the EHRC website, including short video explainers. The EHRC ‘Services, public functions and associations: Code of Practice’ applies to the provision of services by the police.

<https://www.equalityhumanrights.com/equality/equality-act-2010/codes-practice/services-public-functions-and-associations-code-0>

The EHRC also commissions thematic research into issues of equality and human rights, including in areas of policing and criminal justice. Recent research reports cover areas including the use of stop and search powers, LGBTQ+ hate crime reporting, the impact of counter-terrorism measures on Muslim communities, and disabled people's experiences of targeted violence and hostility. Also:

- Civil and political right in Great Britain: submission to the UN (published 2020) <https://www.equalityhumanrights.com/human-rights/civil-and-political-rights-great-britain-submission-un>
- Istanbul Convention Baseline Evaluation Report (published 2024) <https://www.equalityhumanrights.com/uk-implementation-istanbul-convention-baseline-evaluation>

EHRC research reports are available from their website at:
<https://www.equalityhumanrights.com/our-work/our-research>

His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) reports

HMICFRS has undertaken thematic inspections of policing practices that have commented on issues that are relevant to handling allegations of discrimination, including reports on police responses to domestic abuse, disability hate crime and the use of stop and search powers.

HMICFRS thematic inspection reports are available from their website at:
<https://hmicfrs.justiceinspectorates.gov.uk/publications/>

IOPC

As well as Statutory Guidance, the IOPC also produces Focus publications, which give police force professional standards departments practical guidance on dealing with complaints, conduct matters and death or serious injury cases.

<https://www.policeconduct.gov.uk/our-work/learning/oversight/focus>

The IOPC publishes information about our investigations, as well as reports on our website.

<https://www.policeconduct.gov.uk/our-work/key-areas-of-work>

Some examples of relevant investigations and reports are:

<https://www.policeconduct.gov.uk/our-work/investigations/inappropriate-conduct-charing-cross-police-station-metropolitan-police>

<https://www.policeconduct.gov.uk/news/iopc-report-flags-concerns-about-police-use-taser>

<https://www.policeconduct.gov.uk/publications/national-stop-and-search-learning-report>

The IOPC also has a Youth Panel. Information about our Youth Panel's work can be found on our website at:

<https://www.policeconduct.gov.uk/about-us/engaging-with-communities/our-youth-panel>

Super-complaints

The police super-complaints system came into operation on 1 November 2018. Super-complaints are made by 'designated bodies', and investigated jointly by HMICFRS, the College of Policing and the IOPC. Previous complaints have included complaints about the police use of stop and search powers, the police response to victims of sexual abuse from ethnic minority backgrounds who may be at risk of honour-based abuse, and police data sharing for immigration purposes. The gov.uk website outlines who and what are designated bodies, the super-complaints currently under investigation, and the final reports published so far.

<https://www.gov.uk/government/collections/police-super-complaints>

Annex C – Case studies

Index to the case studies

Click on the title to jump to a specific case study

1	A complaint about indirect discrimination	C1
2	Discrimination arising from disability	C1
3	A complaint relating to making reasonable adjustments	C1
4	Assessing whether a disabled person is put at a substantial disadvantage	C2
5	Lack of engagement between complaint handler and complainant	C3
6	Lack of respect for complainant followed by poor handling	C3
7	Insensitive engagement	C4
8	An allegation of racism made by a Black man	C4
9	An allegation of racism made by a Traveller woman	C6
10	An allegation of racism made by a Slovakian man	C8
11	Adultification.....	C8
12	An allegation of Islamophobia made by a Muslim woman	C10
13	An allegation of homophobia made by a gay man	C11
14	An allegation of transphobia made by a trans woman	C12
15	An allegation of disability discrimination made on behalf of a disabled woman	C13
16	An allegation of age discrimination made by a young man	C13
17	An allegation of age discrimination	C14
18	An allegation of sex discrimination made by a woman	C15
19	Applying the criteria for referral to the IOPC	C16
20	A complaint suitable for handling otherwise than by investigation	C17
21	A complaint suitable for handling otherwise than by investigation	C17
22	Body worn video footage does not support man’s complaint of discriminatory language	C18
23	An allegation of discrimination based on perception	C19
24	Complaints demonstrate public concern	C19
25	A severity assessment of gross misconduct	C20
26	A severity assessment of misconduct	C21
27	Allegations of discrimination and bruising caused by handcuffs	C21

28	Terms of reference that cover organisational issues	C23
29	Actions based on assumptions and stereotypes	C23
30	Assessing the full range of information and evidence	C25
31	Recording of information and risk assessment completion	C27
32	Gathering and analysing statistical information	C30
33	Where patterns may indicate a systemic issue	C32
34	Considering comparator evidence	C33
35	Considering comparison evidence where both parties are treated the same ..	C33
36	Constructing a hypothetical comparator	C34
37	Reviewing the language used	C34
38	Probing rationales	C35
39	Weak grounds	C36
40	Questioning drawing on comparator evidence	C37
41	Reflecting on the complainant's experience of the incident	C38
42	A case involving stop and search and use of force against a Black man	C39
43	Making a finding based on patterns of behaviour and comparator evidence ...	C40
44	Considering an actual comparator	C41
45	Use of discriminatory language	C43
46	Examples from IOPC's National Stop and Search Learning Report	C44
47	Non-discriminatory reasons were evident, even though not provided by officers	C44
48	Considering the wider context	C45
49	A complaint of poor service	C46
50	Concluding that the service provided was acceptable with opportunities for reflection	C47
51	Group reflective practice for new officers	C48
52	A complaint resulting in organisational learning	C49
53	No complaint of discrimination, but discrimination forms part of the investigation considerations	C50
54	Incorrect relevant review body - allegation could, if proven, result in misconduct proceedings	C51
55	Relevant review body is the local policing body	C52
56	Recorded complaints missed	C52
57	Using comparator evidence when handling a case otherwise than by investigation	C53
58	A complaint of discrimination on the basis of sex and race	C54

Case study 1

A complaint about indirect discrimination

Mr E complained about the contents of a chief officer's press release that outlined plans to reduce the number of police patrols completed in the area where his business is located. Mr E was concerned that this would compromise his safety. He also stated that it discriminated against LGBTQ+ people because the area was a hub for the LGBTQ+ community.

Mr E's complaint was that LGBTQ+ people have been put at a particular disadvantage. This may raise issues of indirect discrimination. It may also be a breach of the Public Sector Equality Duty if the potential impact on the LGBTQ+ community had not been considered in advance.

Case study 2

Discrimination arising from disability

Mx J has Tourette Syndrome which can cause sudden and repeated physical movements or vocal sounds known as "tics".

While Mx J was waiting for their child to come out of school at the end of the day, they exhibited various tics including shouting offensive words and making rude gestures. Other parents at the school pick-up point rang the police, stating that they felt threatened by their behaviour. When police officers arrive, Mx J was still experiencing the same tics and they were arrested for a breach of the peace.

Mx J submitted a complaint against the officers involved, stating that they were unlawfully arrested as they cannot prevent the tics and so they were discriminated against due to matters arising from their disability.

Case study 3

A complaint relating to making reasonable adjustments

Child X was on escorted leave from an adolescent mental health centre with peers and staff members when she left the group. One staff member telephoned the police. In the meantime, Child X flagged down a police car containing two police officers. She informed the officers that she was a vulnerable child with mental health conditions. Child X was asked to enter the police vehicle so she could be taken back to the centre, which she did.

Shortly after, Child X exited the vehicle. The officers briefly tried to engage with her, at which point she spat at the officers. Then the officers attempted to handcuff her, but were unsuccessful. At this point, Child X became more agitated and then kicked PC A. PC A deployed CS spray and Child X ran from him. PC B held on to Child X and the pair struggled. PC A struck Child X with his baton before another unit arrived. Child X was tasered and struck by PC A again with his baton, before being handcuffed and placed in a police van.

Complaints were received from Child X's mother about:

- circumstances and proportionality of the force used on Child X by PC A
- circumstances and proportionality of the force used on Child X by other attending officers and others during the incident
- whether Child X was given appropriate care for her age and vulnerability
- whether Child X was discriminated against on the basis of her age and disability.

During the handling of the complaint, consideration should be given to the policies and processes the officers followed, and whether reasonable adjustments should have been made by the officers in their interactions with Child X.

For example, if Child X did not have a mental health condition, would the force used by officers have been proportionate and in line with use of force policies, training and the national decision model? If it was, it will then be necessary to determine if officers considered reasonable adjustments in their approach to Child X, to ensure the force was proportionate when taking into account her disability.

Case study 4

Assessing whether a disabled person is put at a substantial disadvantage

Ms J was arrested and detained in custody. She was unhappy about her treatment in custody and asked to see a copy of the Codes of Practice in a format that she could read. She requested that this is either in a larger font, or using yellow paper, as she is dyslexic and finds it difficult to read small printed black text on a white background. She states that alternatively she could listen to the Codes of Practice. The custody suite does not have the Codes of Practice available in a format accessible for Ms J. Ms J complains that she had been discriminated against and was put at substantial disadvantage due to a failure to make reasonable adjustments.

As part of the assessment of the complaint, the disadvantage faced by Ms J in this situation should be measured by comparing her actual experience with what her experience would likely have been if she was not dyslexic and was able to use the Codes of Practice in the format available.

Case study 5

Lack of engagement between complaint handler and complainant

A Black man was stopped and searched for possession of drugs twice within the space of 30 minutes, while sitting in his parked car waiting for his colleague outside his house. The man complained that both stops and searches were inappropriate, the use of handcuffs was unnecessary, and that he was treated differently and unfairly. The complaint was assessed as suitable for handling otherwise than by investigation (see paragraphs 10.5-10.9 and Chapter 12 of the IOPC Statutory Guidance). The IOPC received a review against the outcome of the complaint, where the issue about being treated unfairly because he was 'different' had not been addressed within the handling. This review was upheld and returned to the force for an investigation to further address the complaint.

In the review papers, the complainant reiterated that he was treated unfairly and added that this was because he was racially profiled. The case papers confirmed that there had been no engagement with the complainant to allow for the reasons for the complaint to be fully understood. On receiving the complaint, the complaint handler should have explored each of the allegations and, in particular, what made the complainant feel that his treatment was unfair. The complaint handler should have explored the difference that the complainant referred to and why he felt it impacted on why he was stopped and searched.

If the complaint handler had properly engaged with the complainant at the start, the allegation of racial discrimination would not have been missed. This would have impacted on the decisions made for how the complaint was handled, the assessment of seriousness and the types of enquiries conducted. Proper handling of the complaint could have started to rebuild the complainant's trust in the police from the outset.

This example illustrates missed opportunities to fully explore the root cause of the complainant's dissatisfaction. The complaint handler should have recognised that there might be reasons why the complainant may not have been explicit about their 'difference' in the complaint form.

This case study was originally included in the IOPC's Focus Issue 22 on 'Handling complaints involving race discrimination'.

Case study 6

Lack of respect for complainant followed by poor handling

A police force campaign involved visiting members of the public to tell them that they were banned from an event. The local press shadowed the police while they visited

people. A complaint was made that one of the officers called a member of the public a “Black bastard”.

The complaint handler decided that because the media was there and had not separately reported the incident, the alleged incident could not have happened. The officer subject to the complaint provided a two-line email account that simply denied the allegation. The complaint handler did not challenge this. There were nine officers there, but the complaint handler did not speak to any of the other eight officers, or the journalists present.

The complaint handler’s refusal to consider the possibility that the allegation could be true shows a fundamental lack of respect for the complainant and led to a poor investigation that failed to follow basic lines of enquiry.

Case study 7

Insensitive engagement

Mrs F made a complaint of discrimination against the police. Two uniformed police officers went to Mrs F’s home to take down details of her complaint and to discuss how she would like to progress the matter. Mrs F lives on a housing estate which has a tight knit community with a history of poor relations with the police.

Mrs F found the police visiting her home intimidating. She does not want to deal directly with the police and is fearful that other residents who saw the police come to her flat will think she is in trouble with the police or informing on others.

The complaint handler should have considered speaking to the complainant to establish the best way to engage with her - particularly before attending her home. For example, they could have offered to attend in plain clothing.

Case study 8

An allegation of racism made by a Black man

Mr A is a Black man with a mental health condition. Mr A says that he was arrested by the police when he was suffering from a manic episode. His complaint includes that the police used excessive force to restrain him, breaking his arm. He says that the police were violent and rude, and they failed to appropriately care for him while he was in a state of mental health crisis. He feels that the police only responded in this way because he is a Black man.

To address the allegation of race discrimination, the complaint handler should ask themselves:

What types of assumptions, prejudices or bias might lead to a Black man with a mental health condition being treated differently due to his race and resulting in the use of excessive force? Would a White man with mental health problems acting in a similar way be treated by these officers in the same way?

Mr A has made a complaint of race discrimination. He has not complained that he was discriminated against because of his mental health, but it is suggested in his complaint that officers failed to appropriately care for him while he was in a state of mental health crisis. This should be recorded and considered as part of the investigation with attention given to whether Mr A was treated less favourably because of both his race and mental health condition.

This is a serious allegation and the complaint handler is aware that the case has similarities with a number of high-profile cases involving issues of restraint, mental health and race. Given this, the complaint handler contacts a well-respected local race relations advocacy group to seek their views and advice on any recurring issues around race, mental health and policing.

Drawing on this background information and the details of the discrimination complaint provided by the complainant, the complaint handler identifies a number of questions to address through the investigation. These include:

- Were officers aware, or could they have been reasonably expected to be aware, that Mr A was experiencing a mental health crisis?
- What assessments were made to take account of Mr A's mental health condition? How was this reflected in the actions taken? In light of his mental health problems, was it appropriate for Mr A to be arrested and taken to a cell? Would a White man with similar mental health problems have been arrested in these circumstances?
- Were assumptions made that his behaviour was a result of drug taking, aggression or criminality, rather than symptoms of a mental health crisis and a reflection of vulnerability? Would similar assumptions have been made if he was a White man?
- Were assumptions made that the complainant posed a greater threat / risk because he was Black? Were assumptions made that he was particularly strong or more likely to resist or be violent? Would the same assumptions and risk assessment have been made if he was White?
- Is there any indication that the officers involved hold negative views of Black people or that the complainant was targeted because of his race?
- Is there anything about the policing context in the area (for example, relations between police and local Black communities, high levels of particular types of crime, or recent tensions or significant events) that may affect or inform these types of assumptions?
- Making a finding drawing on a range of evidence

Following the investigation, the decision maker is satisfied that there is a case to answer for use of excessive force as there is credible evidence that:

- officers inappropriately and unreasonably assessed the risk to themselves and to the public as higher than it was and did not take sufficient account of Mr A's mental state.
- officers did not attempt to contain or de-escalate the situation before using restraint.
- The decision maker also concludes that there is credible evidence, based on comments recorded at the time of the incident, that officers made assumptions that the complainant had taken drugs and that he might be associated with local gangs involved in illegal drug dealing, which were unfounded.

The decision maker notes that there are a number of gangs made up of predominantly Black males, known to be involved in drug dealing in the area. This context adds credibility to the argument that Mr A was inappropriately assumed to be involved in this type of criminal activity because of his race.

The evidence that the decision maker has relied on to find a case to answer for use of excessive force is also relevant to the assessment of the complaint of racial discrimination. In this case, the decision maker draws on independent reports and research to support an opinion that the behaviour of the officers closely aligns with the behaviours associated with discriminatory assumptions or stereotyping in police responses to Black men in mental health crisis.

Considering the combination of evidence, and in the absence of plausible non-discriminatory reasons for the officers' behaviour, it could be reasonable for the decision maker to conclude that there is a case to answer for gross misconduct for discrimination and as well as use of force.

Case study 9

An allegation of racism made by a Traveller woman

Mrs C, a Traveller woman, complained about a police search of her caravan in connection with a man who did not live there. The contents of the caravan were completely turned over and some of her things were damaged. She said that one of the officers involved in the search said, 'now you know what it's like to have your house burgled'. Mrs C argues that the police actions were racist against her because she is a Traveller. She says that the officers were aggressive and threatening and that her children, who were present, were terrified and are still frightened from the experience.

The complaint handler met with Mrs C to explore the reasons why she felt she was discriminated against. She said that because she is a Traveller, the officers assumed she was a thief and treated her and her children like criminals, even though they were looking for someone else. She says that they have no respect for Traveller property, there were no grounds for the search, and that if she lived in a house they probably would not have even stepped through the door.

The complaint handler has experience of working with Traveller communities in the local area. She draws on this knowledge and the detailed information provided by the complainant to identify the key considerations in this case. These include:

- What was the rationale for the search and was it reasonable? Was the search lawful and conducted in accordance with procedure? Were there alternatives available to searching the caravan?
 - Did the officers believe that there was a connection between the complainant and the criminal suspect they were searching for? Was the suspect also a Traveller and if so, were assumptions made that he was likely to be known to Mrs C on this basis? Would the same assumptions have been made if Mrs C and/or the suspect were not Travellers?
 - Would officers have searched a house (i.e. not a caravan) in the same circumstances? If 'yes', are there examples of this? If 'no', why not?
 - Did the officers make any comment similar to the alleged "now you know what it's like to have your house burgled"? If so, why was the statement made and what was meant by it?
 - Were assumptions made that the complainant was a thief or involved in criminal behaviour? If so, what was the basis for these assumptions? Would similar assumptions have been made if Mrs C was not a Traveller?
 - Was any property damaged? If so, was this recorded and addressed in line with relevant policies? If it was not recorded, why not?
 - What consideration was given to the impact of the search on children present in the planning and execution of the search? What actions, if any, were taken to limit any negative impact on them?
 - Is there any indication that the officers involved hold negative views of Travellers?
 - Is there anything about the policing context in the area (for example, relations between police and local Traveller communities, high levels of particular types of crime, or recent tensions or significant events) that may impact on or inform these types of assumptions? Does this complaint fit with concerns or complaints previously raised around searches of Traveller caravans?
-

Case study 10

An allegation of racism made by a Slovakian man

Mr P, a Slovakian man who is resident in the UK, was stopped by police for riding his bicycle on the pavement. The man objected to the stop and shouted and swore at the police officer. He was arrested for a public order offence. The officer asked Mr P why he was riding so fast, and he explained that he was working as a bike courier. The officer asked him where he was from. When the man said that he was from Slovakia, the officer further arrested him for an immigration offence.

The officer said that he thought at the time that Mr P might be lying about the country he came from. He admits that this arrest was unjustified, but says this was just his own stupidity and not discrimination.

The complaint handler discusses the case with a colleague with considerable experience in immigration law enforcement. The colleague advised that a person's nationality may be a relevant consideration when assessing whether there are reasonable grounds to suspect an immigration offence. However, making a decision to arrest a person for any offence purely on the basis of their nationality, or assumed nationality, would be discrimination.

Drawing on this advice, the complaint handler identifies the following key considerations:

- Why was Mr P asked about his nationality? Was it because he spoke with a foreign accent? What was the purpose of this question?
- Did the officer genuinely believe that Mr P “might be lying” about the country he came from? If so, what was the basis for this belief? Would he have formed such a belief about a White British man in similar circumstances?
- Did the officer make a decision to arrest based solely on the complainant's nationality or assumed nationality? Have any other reasons for the arrest been provided? If so, are these reasonable and credible? To what extent have they been influenced by Mr P's nationality?
- Would the officer have arrested a White British man in similar circumstances for an immigration offence? If not, is there any reasonable justification for the difference in treatment?

Case study 11

Adultification

Child S – a young Black girl - was arrested for common assault. Information was obtained that suggested that Child S may have taken drugs. She was taken to a cell and was extremely agitated. Multiple officers restrained her and conducted a strip

search in order to remove her clothing and put her in anti-harm clothing. It was not known to officers at this time that Child S was a child.

Child S was then left handcuffed in a rear stack position. Officers remained outside the cell to monitor her and identified a short time later that she had stopped breathing. They removed the restraints and placed her in the recovery position, at which point she began to breathe again. An ambulance was called, but Child S refused to be examined when they arrived. The paramedics did not have any concerns about Child S, but remained in the custody suite just in case.

Officers became aware at this point that Child S was a child and the Custody Sergeant arranged for a family member to act as an appropriate adult.

Child S's mother later made a complaint that her daughter was subject to unreasonable use of force and a strip search, without the presence of an appropriate adult, and that this would not have occurred to a young White girl.

In this case the complaint handler should:

- Review whether the use of restraint was appropriate in the circumstances – what was the risk assessment involved? Is there evidence pointing towards / away from discriminatory reasons for the use of force?
- Consider whether there is any evidence of adultification of Child S by the officers involved – especially linked to the known stereotype of Black people being bigger and stronger than White people – and this being used as rationale for employing restraints.
- Consider obtaining comparator evidence - for example, of other people who have been strip searched in this custody suite.
- When probing the officers' accounts, ask them about their impressions of Child S and their decision-making about the strip search of Child S.

When asked about the incident, officers claimed that none of them knew she was a child due to her physical size and athleticism. Child S' athletic build and her assumed age fed into the Custody Sergeant's risk assessment. Because she was young and athletic the Custody Sergeant recorded on the custody record that he considered the risk of positional asphyxia to be low.

Officers were found to have a case to answer in relation to a breach of the Equality and Diversity Standard of Professional Behaviour on the basis of the stereotypes and assumptions made about Child S, which are known race-based stereotypes.

A case to answer was also found for the officers who put Child S in the rear stack position and left her alone in the cell. This was on the grounds that they did not follow proper policy and procedure or take into account the well documented risks of this position resulting in positional asphyxia.

Case study 12

An allegation of Islamophobia made by a Muslim woman

Mrs E, a Muslim woman, was stopped and questioned at the airport under Schedule 7 of the *Terrorism Act 2000*. She says that she feels that she was targeted because she wears a burka, as the other woman she was travelling with, who was wearing western clothes, was not stopped. She states that the officers asked her questions about where she was going and the reasons for her travel, but that she was also asked inappropriate questions about her faith and religious practices – such as ‘do you pray five times a day?’.

Mrs E feels she was targeted because she is a Muslim and wears a burka. She feels that the police wrongly associated her expression of faith (including the way she dresses and how often she prays) with terrorism.

The complaint handler is referred by his supervisor to the EHRC research site⁶⁹. The complaint handler draws on the evidence included in the report about how Schedule 7 stops are experienced by Muslim communities, as well as the information provided by the complainant to identify the key considerations in this case. These include:

- Why was Mrs E stopped, while the woman she was travelling with was not? Was there any objective reason for wanting to question Mrs E and not the other woman (for example, any intelligence such as known association with those convicted of or reasonably suspected of terrorism offences)?
 - Were questions asked about her religious observance, including how often she prays? If so, what was the reason for this? What is the relevance of this type of questioning?
 - Was a link made between how devoutly religious she is and the risk of terrorism? i.e. was she considered a greater risk because she wears a burka or because she prays five times a day?
 - Would another person in similar circumstances, but from a different religion, be considered a greater threat as a result of being more devoutly religious? If no, is there a non-discriminatory reason for the difference in treatment in this case?
-

⁶⁹ [Our research | EHRC \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/research-and-policy/our-research)

Case study 13

An allegation of homophobia made by a gay man

Mr I, a gay man, was arrested and held in custody for questioning. While in custody, the police searched his house. He was released on bail and his parents collected him to take him home. He arrived home to find a number of his possessions had been left strewn around his home following the search – mostly gay pornography and some sexually explicit, personal photographs.

He states that he felt shocked and violated by the conduct of the search and was embarrassed in front of his parents. He feels that this would not have happened if he was heterosexual.

The complaint handler could see that the incident was embarrassing for the complainant and that the actions of the officers, if proved, were clearly inappropriate. However, she was unclear how to approach the discrimination allegation and had little experience in dealing with allegations of homophobia.

The complaint handler was aware of an active local network of LGBTQ+ police officers within the force and she approached the chairperson for advice on the issues raised in this complaint. The chairperson advised that it was not uncommon for homophobia to be expressed through unreasonable or even voyeuristic interest in a person's sexual activities, as appeared to be the case in this instance.

Bearing these issues in mind, the complaint handler should consider whether a heterosexual man would have been treated in a similar way in these circumstances – such as having personal photographs or pornography removed and left lying around. Key considerations would include:

- Were sexually explicit photographs and gay pornography left out after the search as described? If so, in what circumstances were these items found, moved, and not replaced during the search?
 - How was the search different or similar to other searches undertaken by the officers involved?
 - Have any similar issues been raised in the past about these officers?
 - If so, have these all arisen in relation to searches of a gay person's home, or have similar issues been raised in searches of straight people?
 - Were the actions of the officers suggestive of an unreasonable or voyeuristic interest in the complainant's sexual activities?
 - Is there any evidence that the officers involved hold negative views about homosexuality or homosexual people?
-

Case study 14

An allegation of transphobia made by a trans woman

Miss K, a trans woman, reported a sexual assault to the police. When doing the video interview, she was asked to explain her gender history as the first question in the interview. She was then called 'he' instead of 'she' throughout the interview and the interview was cut short by the interviewing officer without explanation. She was left feeling that she was not trusted or listened to, which made the trauma of the assault worse.

Miss K made a complaint, with the support of an LGBTQ+ advocacy organisation. She complains that the interviewing officer was transphobic in how he dealt with her.

The complaint handler had little knowledge of transgender issues. The complainant did not engage due to her lack of trust and confidence in the police and so the complaint was not discussed in more detail with her. The complaint handler asked the LGBTQ+ advocacy organisation to provide some general background information about transphobia and sought their views on why they believe that the officer's actions were discriminatory in this case.

Drawing from the complaint and the advice provided by the advocacy organisation, the complaint handler identifies the following key points to consider:

- Why was the complainant asked about her gender history as part of the victim interview? Was this relevant to the investigation? Was the relevance explained? Why was this asked first? Was any thought given to the impact this line of questioning might have on the victim?
- Why was the pronoun 'he' instead of 'she' used during the interview? Would this have happened to a cisgender⁷⁰ woman?
- Did the complainant express any concerns about her treatment at the time? What was the response to these?
- Was victim support provided in line with force policy? If not, why not? Would a different level of support have been provided to a cisgender woman reporting a sexual assault?
- What training or previous experience do the officers have in dealing with allegations of sexual assault? Did this training include any reflection or guidance on appropriately supporting trans victims? Do they have previous experience in dealing with trans victims of crime?

⁷⁰ 'Cisgender' – sometimes shortened to 'cis' – is a term to describe people whose gender identity is the same as the gender they were assumed to be at birth.

Case study 15

An allegation of disability discrimination made on behalf of a disabled woman

The complainant, Mrs M, is a carer for her adult daughter, Miss M, who is autistic. Miss M can communicate, but not easily, and is often non-verbal following periods of stress.

Mrs M believes that a professional carer physically assaulted her daughter. Mrs M reported this to the police, but they took no action. The officer who attended told her that this was because her daughter could not speak for herself and would not be able to stand up in court. Mrs M wrote to the police and crime commissioner which led to a review of the case and the arrest of the carer, but no action was taken against the original complaint handler.

Mrs M feels that her criminal allegation was not considered to be serious because the victim is a disabled person. She feels that her daughter's vulnerability means that the assault allegation should have been seen as more serious, not less. She is also concerned that her daughter was not listened to because of her communication difficulties, but neither was she allowed to represent her daughter's interests.

The different response to the allegation of assault on review provides a useful comparison. Focusing on this, the complaint handler identifies the following key considerations:

- What was the reason for the decision not to pursue the investigation in the first instance? Was the reason in any way related to Miss M's disability? What options were considered to overcome any issues she might face in giving evidence?
- How were the same issues overcome or discounted in the revised investigation?
- Was Miss M treated in accordance with victims of crime policy? Would she have been treated differently and better if she had reported a similar crime, but was not disabled?
- What consideration was given to Miss M's disability and her vulnerability in assessing the severity of the alleged crime, and the response to her and her mother?

Case study 16

An allegation of age discrimination made by a young man

Mr G, an 18-year-old man, was out drinking at a pub with a group of four friends. They got into an argument with another group of four or five men who were older, perhaps mid-30s, and wearing suits. The fight got physical and both groups were pushed out onto the street where the fight continued until the police turned up.

Mr G states that when the police arrived, they only spoke to the other group of men and did not listen to anything he or his friends had to say. Officers arrested Mr G and two of his friends but none of the other group, even though Mr G told the police that they had started the fight.

Mr G complains that he was treated unfairly by the police and was not listened to. He feels that the police automatically saw him and his friends as the troublemakers because of their age and the way they dressed.

Mr G does not use the term 'discrimination' in his complaint, however, it is clear that the allegation includes the claim that he was treated differently and less favourably than the other group of men, in part, due to his age (a protected characteristic). The complaint handler should record and deal with this as an allegation of direct discrimination.

Mr G has drawn a comparison in his complaint between how he and his friends were treated compared with the other group of men. The complaint handler should ask themselves whether Mr G and his friends would have been treated differently if they were older and dressed differently. This comparison should provide the focus for the key considerations in this case:

- What led to the police attending the incident? What information or intelligence did officers receive about the fight before they arrived? Did this include any information about either of the two groups?
- What did the officers hear and see when they arrived? What was their impression of the two groups involved? How were the two groups described in records made by police officers or call handling staff at the time of the incident?
- Were the assessments made about the incident and the involvement of the two groups reasonable and based on evidence?
- Were different assumptions made about Mr G and his friends compared with the other group? Where these assumptions based on the age and appearance of Mr G and his friends?
- Why did officers arrest Mr G and his friends? Why were others involved in the incident not arrested? What is the reason for the difference in treatment? If Mr G and his friends were older and dressed differently (i.e. in suits) would they have been treated in the same way?

Case study 17

An allegation of age discrimination

Ms F had a long running dispute with her neighbour. She complains that PCSO H, who is the local PCSO, has attended on a number of occasions, and has failed to take any action or even speak to her neighbour. This is despite the latest incident

involving alleged criminal damage to Ms F's greenhouse. Ms F complains that she feels that PCSO H has just dismissed her an "old biddy".

The investigator looks at the complaint history of PCSO H. There are a number of complaints about a failure in duty in the handling of neighbour disputes. This is not unexpected, given the responsibilities of a PCSO, however, on consideration it is noted that a disproportionate number of the complaints were from people over the age of 60. The demographics of PCSO H's local area did not skew towards an older demographic.

When speaking to PCSO H, the investigator asks him:

- What action had he taken with Ms F's complaints
- If he had not taken any action, why not?
- If he knew of any reason for the disproportionality in the complaints?

PCSO H says that he had not taken any action as he believed Ms F was only making allegations against her neighbour because she was lonely and "had too much time on her hands". He could not explain the disproportionality.

The investigator was of the view that PCSO H should have recorded Ms F's allegation as a crime and spoken with her neighbours. They identified that the rationale provided by PCSO H fitted with stereotypes of older women as "busy-bodies". This, and the disproportionality identified in PCSO H's complaint history, pointed towards Ms F's protected characteristic being the reason for the poor treatment. In this case, age was the reason for failing to act on Ms F's criminal allegations. The investigator ensured that the criminal allegations were passed to the appropriate department for progression.

Case study 18

An allegation of sex discrimination made by a woman

Mr X raped Ms L, a work colleague, following a night out. Ms L reported to police that she had been drinking and agreed to go back to Mr X's house to 'sleep it off' She went to sleep on the sofa and was woken by Mr X raping her.

Ms L complains that her report of rape was not properly investigated. She also states that when she reported the incident to police, the officer who took her initial account told her that it was dangerous for women to drink at night and that she should have caught a cab home. She feels that the officer's comments were sexist and suggested that she was to blame for the assault.

The complaint handler arranges to meet with Ms L to explore in more detail why she feels that she was discriminated against. Ms L states that she felt that the officer's

comments showed a dismissive and judgemental attitude. From that moment on, she felt that the officer seemed reluctant to deal with her case, as if it was not worth pursuing or investigating properly.

The complaint handler is aware of some guidance around avoiding 'rape myths' circulated to the force by a local women's support charity. The complaint handler uses this information to help reflect on the issues in this case.

Key considerations in this case include:

- Did the officer make any comments about the dangers of drinking alone or that Ms L should have taken a cab home? What was the purpose and reason for these comments? Would similar comments have been made about a male victim of crime who had been drinking?
- Is there any evidence available of the officer making this type of comment, or any inappropriate comments associated with 'rape myths' or victim blaming in previous sexual assault cases?
- Was the rape investigated in line with force policy and best practice? Was Ms L provided with victim support in accordance with force policy? If not, why not?
- Does the officer have an awareness about the concept of 'rape myths' or 'victim blaming'? Has the officer received any training or guidance on these issues?

Considering patterns of behaviour evidence

The complaint handler reviewed a sample of interview transcripts for sexual assault investigations undertaken by the officer. Eight interviews were reviewed, with the following concerning statements found in two other cases:

"We get a lot of girls come down here to the beach and then regret having had intercourse the following day."

"In my experience a woman who can't get her story straight won't ever get the man convicted."

This pattern of inappropriate comments about female sexual assault victims is relevant evidence that supports the complaint of sex discrimination made by the complainant.

Case study 19

Applying the criteria for referral to the IOPC

A trans woman reported to police that she had received verbal abuse from her neighbour about being transgender. She was visited by two neighbourhood police officers. She reported more incidents to these officers and told them that the abuse

was getting more frequent and more serious in nature, with the neighbour shouting abuse and even death threats at her. The complainant says that she told officers that she feared for her safety, but nothing was done. She says that the officers suggested that she 'tone down' her outfits when she was out in the local area.

She complains that the officer's comments were transphobic and reveal a discriminatory attitude that had led to the police failing to investigate her repeated reports of escalating hate crime. She says that she is now fearful to leave her home.

In this case, the allegation of a failure to investigate repeated reports of hate crimes could lead to disciplinary proceedings. The complainant has alleged that this failure resulted from discrimination, so it meets the criteria for mandatory referral.

Case study 20

A complaint suitable for handling otherwise than by investigation

Ms J, an Asian woman, was walking to a conference venue to attend a work-related conference. Near the venue, a large pro-Palestinian demonstration was taking place. There was a significant police presence, and the police were directing members of the public away from the area. Ms J says that she was approached by a police officer when she tried to make her way to the conference venue and was told that she would need to join the demonstration from another street, as the police had blocked off this approach. She explained that she was not looking to join the protest but to access the conference venue. The police officer asked her to contact the venue so they could send a person out to come to get her. She did this. When she got inside the venue, she found that the other conference attendees, who were White, had not had the same problems getting through the police line as she had.

Ms J complains that she was treated differently because of her race and that it was immediately assumed that she was trying to join the demonstration, or worse, that she was likely to cause trouble. She does not know the name of the officer who spoke to her, but she wants an apology from the force. Ms J asks that the officers involved in policing the demonstration on that day be made aware of the difference in treatment that she received, as she feels that acceptance of this type of racism undermines policing. Given the remedy Ms J has suggested, it is likely that this complaint is suitable for handling otherwise than by investigation.

Case study 21

A complaint suitable for handling otherwise than by investigation

The complainant has multiple sclerosis which means that she is often in pain. She was a victim of domestic violence. She says that her multiple sclerosis impacted on how she experienced the crime. It also made it difficult for her to engage properly

with the subsequent criminal investigation because the pain causes confusion and distraction. She told the officer investigating the domestic abuse that she has multiple sclerosis, but she feels that he did not understand the impact of this and did not take proper account of her condition. She states that the police force should have strategies or policies in place, to ensure appropriate service provision and support for those who have multiple sclerosis or other disabilities that cause chronic pain.

This complaint is likely to be suitable for handling otherwise than by investigation. The complainant has indicated that the officer's insensitive behaviour is a result of a lack of knowledge or training. The complainant says that she would like someone to explain to the officer the impact that multiple sclerosis has on a person. It does not appear that the conduct would lead to disciplinary or criminal proceedings.

Her complaint also includes organisational issues to be considered.

In this case, handling otherwise than by investigation could be an appropriate process to explore the complainant's suggestions for how her complaint should be addressed.

Case study 22

Body worn video footage does not support man's complaint of discriminatory language

A man complains that his arrest for breach of the peace at a pub was unnecessary and unlawful. He states that during his arrest, one of the officers was extremely hostile and used discriminatory language.

The incident log and body worn camera footage were reviewed. Officers were called to the pub because the man was acting aggressively and had threatened bar staff. The footage showed that, as the officers arrived, the man was shouting at staff and threatening to punch them. The officers approached him, and the footage captured their efforts to calm him down. The man continued to threaten staff and then lunged at one of them, at which point officers arrested him. During the incident, one officer shouted at the man to move away from the bar, but at no point could any officer be heard using discriminatory language.

The initial evidence gives no indication that the man's arrest may have been unnecessary or that discriminatory language was used. Therefore, a formal investigation is not required. However, if the complainant subsequently clarified that the language was used in the police car and was not covered by the body worn camera, then the complaint of discriminatory language would need to be investigated.

This case study is taken from the IOPC's Focus Issue 13 on 'Handling complaints – decisions and thresholds'.

Case study 23

An allegation of discrimination based on perception

Ms K writes to PSD to make a complaint about the fact that PC L has not updated her after he attended her report of a burglary. She believes that PC L's failure to take any action was because of her race.

The incident log is reviewed and it is clear that the officer who attended, PC L, has not given an update to Ms K after his initial attendance.

Ms K's complaint is discussed with her as part of the initial engagement. During this discussion, Ms K explains that the reason why she feels that PC L's actions were motivated by her race is because when he attended, he appeared hostile and was not respectful stating that he did not have time to talk to her. She does not believe that she would have been treated the same way if she had been White.

The appropriate authority decides that the complaint should be handled by investigation, as there is an indication that a person serving with the police may have behaved in a manner that would justify the bringing of disciplinary proceedings.

Case study 24

Complaints demonstrate public concern

A police force received a number of very similar complaints over the course of a week. The complaints were made by witnesses and the parents of those involved. They complained that officers were grabbing young Black people off their bicycles while they were riding them. Nobody had been injured, but there was concern that this practice could cause serious injury and could constitute harassment.

The incident logs available suggested that a number of young people had been riding in a very unsafe way, including darting into traffic and cycling on one wheel. When police were dispatched, the young people rode away and refused to dismount. The police then grabbed them while they were cycling to get them off their bikes.

Although the complaints did not meet the indication test, the appropriate authority decided that it was reasonable and proportionate to investigate them because there was potential learning from the complaints, and because of the concerns raised by the community.

The decision to investigate the complaints was reasonable and proportionate because of the local interest and the potential for identifying learning.

This case study is adapted from a case study in the IOPC's Focus Issue 13 on 'Handling complaints – decisions and thresholds'.

Case study 25

A severity assessment of gross misconduct

Mr Q is a White man who has a mental health condition. He was found in a public place with non-life-threatening wounds from self-inflicted injuries. Police officers detained him under section 136 of the *Mental Health Act 1983*.

He says that the police officers handcuffed him and took him to accident and emergency as a 'place of safety', where they waited with him for a number of hours for assessment.

Mr Q complains that despite the injuries to his arms, he was kept in handcuffs throughout, and police officers refused to let him go to the toilet. He says that he was verbally abused and felt belittled for having a mental health problem, with police officers calling him names such as 'nut nut' and 'mental bastard'.

Mr Q says that he felt embarrassed to be kept in handcuffs in sight of everyone else at the hospital when he was not under arrest for a crime. He feels that he was criminalised for having a mental health problem. He complains that the handcuffs were unnecessary and caused him pain, and the verbal abuse he received from the police officers reflected their prejudice about mental health.

The complaint against the two attending officers includes reports of excessive use of force, by applying and keeping handcuffs on Mr Q, aggravated by overt discrimination and harassment relating to his mental health issues (a disability). The reported treatment in this case could amount to a breach of Article 3 of the *European Convention on Human Rights*, which prohibits inhuman and degrading treatment. Article 14 would also be engaged, which protects against discrimination in the application of human rights. Depending on the other evidence available, it is arguable that a severity assessment of gross misconduct would be appropriate for the officers in this case.

Case study 26

A severity assessment of misconduct

Mrs W is an 85-year-old woman. She rang the police and reported a burglary at her home and two officers attended her address to obtain details of what had happened.

Mrs W and her adult daughter, Miss V, were both at home at the time of the burglary. While taking Mrs W's account, the officers speak to her markedly loudly and slowly, and address most of their questions to Miss V who had told them she'd slept through the incident. An account is taken from both, and the intruder is identified and arrested the following day.

Mrs W has complained that the way the officers spoke to her patronised her and made her feel as though they were treating her like a child. Mrs W believed she was only spoken to in this way due to her age.

The investigator reviews the officers' complaint records. There are no previous complaints of discrimination.

This is a complaint about a potential breach of the Equality and Diversity Standard of Professional Behaviour. Based on the complaint and the evidence available, a severity assessment of misconduct would be appropriate for the officers in this case. This is because the alleged behaviour could amount to unfair treatment based on age, with Miss V available as a comparator, but if proven it would not warrant dismissal; the officers still carried out the necessary lines of enquiry to solve the crime, and they have no history of discriminatory behaviour to indicate intent to cause harm or repeat behaviour.

Case study 27

Allegations of discrimination and bruising caused by handcuffs

The complainant, a 28-year-old man, alleged during his arrest for drunk and disorderly behaviour and assaulting a police officer, one of the officers involved used a racial slur and the arrest was racially motivated. He complained he had suffered bruising to his wrists because the handcuffs were too tight. Photographs showing extensive bruising to the wrists were included with the complaint.

The force obtained the complainant's full account. This included allegations he was forced to the ground while wearing handcuffs, causing bruising. They also asked the complainant to provide more information on why he felt the arrest was racially motivated. The complainant stated there was no reason at all for the arrest and he felt it was due to an underlying bias against him.

The investigator downloaded the officers' body worn video. This covered their interaction from leaving their car, the arrest, and escorting the complainant back to the car. It confirmed the complainant appeared drunk, was argumentative and had struck an officer. There was no evidence of a racial slur. The body worn video also confirmed he was not taken to ground. The readily available evidence did not support this aspect of the complaint. The force assessed that, while an investigation was still justified to respond to the range of allegations made, special procedures did not apply at that stage.

The investigator obtained the custody CCTV. This included footage of the complainant twisting his arms and pulling forcefully at the handcuffs, causing reddening to his wrists and arms.

Original officer statements, their responses to the allegations, notebook entries and call logs were obtained. All were consistent with each other and the footage. The officers' actions were assessed against local and national policies and found to be of the expected standard. The complainant's account, including the reasons why they felt they were discriminated against, officer accounts, and findings were considered in line with the IOPC's guidelines for handling allegations of discrimination. As the investigation developed, the complainant was given progress updates and summaries of the evidence.

The investigation concluded the service provided by the police was acceptable. The evidence confirmed the officers had acted in accordance with their training and national and local policies, and there was nothing arising from the incident that challenged the policies' effectiveness or the officers' application of them. None of the evidence available supported the complainant's description of events.

The police officers provided convincing, non-discriminatory reasons for their actions. These were supported by the evidence, including the body worn video footage. The decisions reached throughout the investigation were rationalised and regularly explained to the complainant by phone and letter. The complainant was invited to view the footage of their arrest and period in custody to aid their understanding of the final decisions reached.

Following the initial assessment that special procedures were not appropriate, the subsequent investigation did not find any evidence of actions indicating disciplinary or criminal proceedings may be an outcome. Nor did they identify any obvious individual or organisational learning. Reasonable lines of enquiry were pursued. The complainants' expectations and engagement were managed through regular contact and the investigator's offer to view footage of their arrest and detention.

This case study is taken from the IOPC's Focus Issue 18 on 'Reasonable and proportionate outcomes'.

Case study 28

Terms of reference that cover organisational issues

Mr Z complains that the police have failed to deal with his repeated allegations of disability hate crime. He states that the failings were signs of institutional discrimination by police against disabled people, whereby disabled people are denied access to justice for hate crimes. Terms of reference for the investigation into this complaint might include:

“The investigation will include consideration of the following:

- the recording and handling of Mr Z’s reports of disability hate crime, with reference to policy, guidance and legislation
 - the consideration given to the fact that Mr Z is disabled
 - the impact of relevant organisational policies, practice or culture”
-

Case study 29

Actions based on assumptions and stereotypes

Police were called to assist security staff at a football match who suspected that a man had entered the stadium without a ticket. The officer who attended immediately took hold of the man who verbally protested at the use of force and appeared to be trying to get the attention of a friend. The officer told the man to stop trying to talk to his friend and immediately placed him in handcuffs. He kept the man in handcuffs and called for more officers to attend, to assist with the removal of the man. When the other officers arrived, they quickly established that the friend the man had been signalling had his ticket for the football match. The officer who had used force gave a number of separate accounts of the incident, when responding to further questions from the investigator. In the final account, the officer said he stopped the man from speaking with his friend because he may have been involved in a gang, and may have been calling other gang members who could turn up to assault the officer and his colleagues.

There was no evidence indicating the man was involved in a gang. The complaint handler formed a view that the officer’s explanation was based on an assumption that did not appear to be evidence-based. The man was Black, and the complaint handler formed the view that the assumption was potentially discriminatory as there appeared to be no basis for this comment, other than a stereotyped view of Black people as more likely to be involved in gangs. The officer was subject to unsatisfactory performance procedures (UPP) and the concern around stereotyping was raised in the proposed learning.

Approach to the handling

In this case, the interaction with the police clearly left the complainant feeling that he had been discriminated against because he was a Black man. For example, the quick escalation to using force, which appeared unjustified and disproportionate, and references to the man being involved in a gang, which seemed to be based on an assumption. The role of the complaint handler was to explore whether the officer's actions pointed towards, or away, from unfavourable treatment.

There were plausible grounds for stopping the man, based on the report to police from the security staff. This is a strong, non-discriminatory explanation for the initial stop that points away from unfavourable or unfair treatment. The officer stated that the use of force was necessary because the man was allegedly ignoring his attempts to engage with him and made a quick move away from him, as if to flee. However, there was objective evidence available of the encounter in the form of body worn footage, which did not support the officer's view that the man was trying to escape. Therefore, the reasons given for the immediate use of force were considered weak, and provided an indicator that the treatment of the complainant might be less favourable than would be expected in the circumstances.

There were a number of other important considerations that were factored into the decision. These include the dismissive approach, lack of empathy, failure to recognise the impact of the officer's demeanour on the man, and the reasons given for refusing to engage with him and gain his cooperation.

When considered holistically, the evidence pointed towards the complainant having received treatment that was less favourable than would be expected. The complaint handler then needed to determine whether this was because of the complainant's race. To do this, they gathered and explored the wider contextual evidence. The complaint handler:

- took steps to fully understand the complainant's concerns that decisions were based on stereotypical assumptions and specifically, obtained details of any actions or language used that may align to common negative stereotypes, based on the man's race.
- reviewed previous complaint / conduct matters involving use of force, to identify if there was any pattern showing the race of the individuals involved.
- put the above evidence to the officer, to give them the opportunity to provide their non-discriminatory reasons for any alleged discriminatory actions or behaviour, then assessing their plausibility.

The investigation looked at how stereotypical assumptions had affected the officer's response to the incident, based on his inconsistent description of the man's behaviour, the unexplained leap to his involvement in a gang and the imminent threat that this posed. This was a clear exaggeration that was contradicted by other objective evidence.

Decisions and outcomes

As discussed above, there was evidence that both pointed towards and away from less favourable treatment in this case. On balance, the complaint handler decided that the evidence pointing away from less favourable treatment because of race, outweighed the evidence that pointed towards it, even though there was evidence to support both views. This was largely down to the justification for the stop, and no indication of any patterns of behaviour showing a propensity for less favourable treatment of Black people in the comparator evidence and officer's complaint history. The complaint handler concluded that the threshold for a case to answer was not met.

While the complaint handler decided the behaviour did not amount to misconduct, opportunities for learning and reflection were identified. UPP was recommended in order to provide the officer with the platform needed, to learn from the incident and, to explore some of the issues identified in the complaint. These include stereotypical biases, lack of care and respect, refusal to accept that anything could have been done differently, and use of force. Some of the officer's responses and explanations did not stand up to scrutiny when considered alongside the other evidence and seemed to rely on discriminatory stereotypes. This is why it was important to address these issues through formal performance procedures.

This case also demonstrates the importance of discussing the evidence and communicating outcomes in an empathetic manner, sincerely acknowledging how the interaction left the complainant feeling and not dismissing the experience of feeling discriminated against. It was important to acknowledge why the man experienced the encounter as discriminatory, acknowledge that the officer compounded this by referring to an unfounded potential link to gang activity, and recognise that this reinforced the belief that assumptions and stereotypes were at play.

As this case also demonstrates, a reasonable and proportionate outcome should recognise why an officer's actions were not good enough, even if there is insufficient evidence to support a case to answer for disciplinary action.

This case study was originally included in the IOPC's Focus Issue 22 on 'Handling complaints involving race discrimination'.

Case study 30

Assessing the full range of information and evidence

A member of the public reported to police that they had been refused service in a restaurant because of the family's race. They stated that the owner had pushed them out of the restaurant and used derogatory language towards them. They then complained about the police's response to this report. They complained about the officer's demeanour, lack of evidence gathered, failure to speak with the

complainant's partner who was also present, biased attitudes, failure to comply with policy, and lack of professionalism. The force assessed the complaint as suitable for handling otherwise than by an investigation (see paragraphs 10.5-10.9 and Chapter 12 of the IOPC Statutory Guidance). It was reviewed by the IOPC who identified several missing enquiries, which meant that police actions were not compared against the expected standards. There was no discussion of how the relevant policies had been applied, no probing of the officers' explanations, or consideration of previous history or experience. The complaint was returned to the force to carry out an investigation.

Approach to the handling

The force decided to handle the complaint outside of an investigation. Where a complaint might not meet the threshold for requiring investigation, the appropriate authority or complaint handler must consider what enquiries are necessary to address the complaint and, whether the complexity of the enquiries would be better handled by an investigation. The decision to investigate can also be made during the handling of a complaint outside of investigation. This is generally when additional evidence or more information from the complainant influences the gravity of the complaint and determines it is appropriate to investigate. If a matter is handled outside an investigation, this can limit the scope of the handling.

An appropriate approach in this case would have been to first establish what actions the officer was expected to carry out. For example: taking the victim's account, speaking with his partner, checking the CCTV at the premises, and turning on their body worn video. As part of this, their actions should have been compared to any applicable force or national policy, guidance, or training they received relevant to the handling of hate crimes or incidents. It would also have been relevant to consider the officer's experience of dealing with these types of incidents and their training history, which might form part of the explanation for their actions.

Next, the complaint handler would need to consider any deviations from standard practice and seek the officer's reasons. In the original handling, the officer explained that they didn't seek the account of the victim's partner because she would have just corroborated that of the victim, and that they didn't check the CCTV because the owner told them it was not available. The original complaint handler did not explore this further at the time. There are possible comparators in this scenario – the victim and their partner, and the owner of the restaurant. An examination of the treatment of each party might assist to determine whether there was evidence of less, or more, favourable treatment.

For example, was the officer's explanation for not speaking with the victim's partner consistent with policy and / or training? Did it suggest a dismissive attitude towards the victim and their partner? Was it based on a poor assumption, and could this be informed by discriminatory stereotypes? Or could this be due to inexperience or lack of training? Similarly, was the decision to take the owner's comments about the CCTV at face value standard procedure? Or was this indicative of the officer placing

more weight on his conversation with the owner? If so, what were the reasons for this and are they plausible?

Decisions and outcomes

Taking into account the information outlined above, alongside the other available evidence (such as, statements and body worn video), a cumulative picture is built. This can be used to assess whether the officer's actions and decisions point towards, or away from, discriminatory behaviour.

If the non-discriminatory reasons were more plausible and supported in evidence by the expected service standards, this would point away from discrimination being a factor. If the reasons were less convincing and did not adequately explain why policy or procedures were not followed, this could potentially point towards discriminatory behaviour.

The complaint handler will need to look at other evidence to understand why this failing occurred. If it appears there is a lack of understanding of process or training, this might be better handled through procedures designed to address performance. This might include reflection on how the incident was experienced as discriminatory by the complainant. If the officer's explanation demonstrated a complete disregard of standard procedure and a lack of respect or empathy, this would more strongly indicate the potential to be discriminatory - particularly if they did not display the same behaviour towards the owner (a comparator). If this was supported by a pattern of behaviour in previous incidents or complaints, this would further support the potential for discrimination being a motivating factor.

This case study has been adapted from a case study included in the IOPC's Focus Issue 22 on 'Handling complaints involving race discrimination'.

Case Study 31

Recording of information and risk assessment completion

Mr C complained that when he reported his daughter, Child C, as missing, the police failed to properly investigate. He states that his concerns were not taken seriously because his daughter is Black. He alleges that the call handler, Ms R, appeared annoyed on the phone, did not take the time to listen to him and did not accurately record information about Child C's health issues. Child C was found by a British Transport Police officer the next morning, sleeping in a train station in a different city, and returned home.

In this case, it would be appropriate to consider:

- How the call handler handled the call

- What the rationale was for classing Child C as low risk
- Whether Child C's health issues, and age, were properly recorded and given appropriate consideration
- Whether any previous complaints had been made against the call handler in similar situations
- How other missing persons reports were handled by the same officers

When considering how other missing persons reports have been handled, the circumstances of the other missing persons reports may not be identical to the incident in question, but they may provide sufficient comparison to help explore the discrimination allegation. Questions for the complaint handler and the decision maker to consider would include:

- How were other cases risk assessed and handled compared with the case subject to complaint?
- Is there any evidence that missing persons who were not Black were given greater priority or treated more seriously, in comparison with the case subject to the complaint?
- If yes, were there evidence-based, non-discriminatory reasons in those cases for this difference in prioritisation or risk assessment?

The recording of the call and the incident log indicated that the call handler, Ms R, had handled the call poorly and she had given incorrect information to Mr C about what would happen next with his report.

When asked why she had seemed frustrated with Mr C she explained that the call centre was particularly busy on that day. She stated that she did not know why she had told Mr C that Child C would not be treated as a missing person.

The incident log recorded that, although she provided Mr C with the wrong information, she had in fact taken the correct steps in passing the report to the missing persons team, and she had accurately recorded the information that Mr C had provided.

There were no previous complaints of discrimination against Ms R.

Ms R had not undertaken the risk assessment. The risk was assessed as low by a sergeant in the missing persons team, PS W. The rationale was recorded on the missing persons report. The rationale for the low-risk grading did not appear to consider Child C's age and included comments about her potentially being out drinking with friends. The complaint handler noted that these comments could indicate potential adultification.

Child C's health condition had been recorded, but Mr C's concerns about this were not fully taken into account. There was no evidence that research had been done to ascertain what the effects of this health condition would be on Child C.

When providing his account, PS W explained that he knew someone with the same health condition as Child C and it did not seriously affect them. When asked about his comments and whether he had fully considered Child C's young age, he stated that it was not uncommon for teenagers to test the boundaries. No previous complaints of discrimination had been made against PS W.

When considering how other missing persons reports had been handled, the complaint handler found evidence of other cases where there had been insufficient consideration of the concerns of family members when making decisions about risk gradings. This included cases where the family member who made the report and / or the missing person did not share Mr C's or Child C's protected characteristics. It included cases where the initial risk assessment was conducted by PS W, and cases involving other sergeants within the missing persons team.

The decision maker considered:

- Ms R's rationale for her actions, which did not point towards discrimination.
- The incident log documented that Ms R's had taken the correct steps.
- PS W's rationale for the content of the risk assessment which, while inappropriate, did not point towards discrimination.
- The evidence from how other missing persons reports had been handled could be used to formulate a hypothetical comparator. This indicated that it is likely the same risk assessment would have been made had Child C not been Black.
- There was no pattern of behaviour indicated from either Ms R's or PS W's complaint history.

The decision maker concluded there was no case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour for either Ms R or PS W, but that both should undertake a Reflective Practice Review Process.

Given the concerns found during the investigation, organisational learning was identified. Recommendations were made on training in conducting risk assessments in missing persons cases, and in particular, ensuring that sufficient consideration was made of the concerns of family members.

Case study 32

Gathering and analysing statistical information

Officers stopped and searched an Asian man and woman and used handcuffs on the man. The officers carried out the stop and search under the *Misuse of Drugs Act 1971*. No drugs were found during the search. The complainants alleged that the stop and search, and use of force, were unjustified and resulted from discrimination on the basis of their race.

The investigator made early enquiries to understand the reasons for the stop and search and use of force. The rationale provided by the officers was that they could smell cannabis in the vicinity of the complainants. Making a stop solely on these grounds contrasted with the force policy and national guidance, which stated that it was not good practice to base grounds for a stop on a single factor. The officers were asked to provide their reasons for not following the standard procedures. They explained that they were aware of the policy but felt the actions of the man and woman were suspicious. When probed, they offered no further explanation of what specific actions were felt to be suspicious, only that the complainants were seen getting out of a type of car commonly used by Asian drug dealers in the area.

When asked about the use of the handcuffs, the officers stated that the complainants became agitated after they were stopped by the police. The officers tried to diffuse the situation and gain their cooperation by speaking with them, explaining the purpose of the search. However, the man became physically resistant towards the officers, repeatedly pulling his arms away and so, they placed him in handcuffs.

There was body worn video footage available, which recorded a conversation between the officers in the lead up to the stop and search, that indicated that officers were already of the view that the man might be involved in drug dealing. This was because he was seen getting out of an expensive car. The footage also showed that when the man challenged the officers, saying that he had only been stopped because he was an Asian man driving a nice car, officers told him to “stop playing the race card”. It also showed that the man physically resisted officers during the stop and search, and that officers used appropriate communication and de-escalation techniques before resorting to using force.

Approach to the handling

As well as the above initial enquiries, the investigator carried out a number of actions to explore the possibility of a pattern of disproportionality. Firstly, they analysed the officer’s use of stop and search powers, use of handcuffs and find rates - broken down by ethnicity - and compared this to the resident population data.

When gathering the statistical data for the stop and search aspect, the investigator aimed to analyse a representative sample of stop and search records over a period of 6-12 months. This included the date of the stop and search subject of the

investigation. When deciding what a good representative sample would be, the investigator took into account the number of total stop and search encounters, over the period in question. In this case, the officer had conducted a large number of stops and searches, and so the investigator felt that 20% of the total number was sufficient to yield a significant finding. If the number of searches had been low, it would be appropriate to consider all, or the majority of, the stops, in order to provide a more reliable analysis of patterns and trends.

Demographic data taken from the area in which the officer worked (from the latest available census and covering the sample data period) indicated that 25% of the residents in the area were from an Asian ethnic background and 57% of the population were White.

The investigator reviewed a sample of 47 stops and searches over the period selected. Of these, 39 (83%) were carried out under Section 23 of the *Misuse of Drugs Act 1971*. Of the 39 stop and searches, 30 (76%) involved individuals from an Asian ethnic background. The remaining 24% involved White individuals.

For the use of force allegation, the investigator reviewed a sample of the officer's use of force records, particularly where handcuffs were used. The numbers in this initial data set were very small. This meant that they could be too easily distorted by an atypical case, making it unlikely that any meaningful comparisons could be made, or reliable findings drawn. Therefore, the review extended to include all instances of the officer's use of force over the designated period. This was still a relatively small data set, but was less likely to be distorted by an atypical case and was still reviewed for its merits as contextual information. The data did not reveal any patterns on disproportionate use of force against individuals from minority ethnic backgrounds.

The investigator noted the pattern of disproportionality in the stop and search, but not the use of force records. They referred to this as relevant contextual evidence, while also recognising the limitations in this data set. (For demographic data, it is important to consider the relevance of the census information and recognise any variations, such as visitors to the area. These variations may not be quantifiable, when comparing data on the composition of the resident population and the information contained within the stop and search history.) The officer was given the opportunity to explain why they appeared to disproportionately stop and search Asian individuals, but they did not provide any response to this question.

Decisions and outcomes

The pattern of behaviour derived from the statistical data, combined with:

- the smell of cannabis being the initial reason for the stop (weak grounds)
- the quick leap to the suspicion that the couple had drugs, based on the type of car being driven (poor assumptions)
- lack of respect

- the poor explanation given for the deviation from policy and guidance

The cumulative weight of these points provides evidence that the complainants may have been treated poorly by the police and that this may have been due to their race.

While there was no pattern of disproportionality in the statistical analysis and the officers provided a sound rationale for applying the handcuffs, the complaint handler considered the wider context of the encounter. They concluded that because there is evidence available to suggest the stop and search could have been unjustified, and this was the catalyst for the escalation to the use of the force, the use of force could also be unjustified.

The decision maker found a case to answer for a breach of the equality and diversity standard for the officers involved with the stop and search. They also found a case to answer on the application of the handcuffs, both for a breach of the use of force standard and the equality and diversity standard. This is because the use of force was a direct consequence of the stop and search and could not be considered in isolation. The decision maker noted the limitations of the stop and search and use of force data in this case and did not rely on the analysis in making their decision. They still found it to be relevant contextual information which a panel may take into account, along with explanations offered by the officer.

As a wider outcome, the force committed to identifying and exploring instances of clear disproportionality as part of their organisational responsibility, to ensure powers were being used appropriately, effectively and in a way that met their obligations under the Public Sector Equality Duty. This action reflects a recommendation made in the [IOPC National Stop and Search Learning Report](#).

Case study 33

Where patterns may indicate a systemic issue

A complainant reported a disability hate crime to the police. He states that the police officer who responded and took his criminal complaint refused to record a hate crime, saying that the incident seemed more like a public order issue involving 'normal' drunken behaviour. The complainant feels that the officer's disregard for the impact on him as a disabled person and his unwillingness to see the matter as a disability hate crime was discrimination.

The complaint is assessed as being suitable for handling otherwise than by investigation.

The complaint handler questions the officer about the incident. The officer does not appear to have a good understanding of the hate crime reporting policy as it relates

to disability hate crime. He states he has not received training or guidance on this. A review of the crime records for the force area in the last 12 months show that no disability hate crimes were recorded across the force area. This pattern could be evidence of a systemic issue, and this should be explored further as part of the handling of the complaint.

Case study 34

Considering comparator evidence

Mrs D, a British Pakistani woman, was involved in a dispute with her neighbour who is White. During a heated exchange the police were called. The neighbour made an allegation that Mrs D had assaulted her. Mrs D made a counter allegation of assault. The police arrested Mrs D, but not the other neighbour. Mrs D alleges that the police were racist. She says that she felt the police identified with the neighbour because she is White and that is why they only arrested her.

In this case, the comparator is the neighbour who is of a different race and who was not arrested. The two women both made allegations of assault relating to the same incident. If the investigation finds that there were similar grounds for arresting both women, the comparison of their treatment will provide evidence that supports the allegation that Mrs D was treated less favourably because of her race.

Case study 35

Considering comparison evidence where both parties are treated the same

Mr S, a young Black man, reports that he and his friend were subjected to racist abuse on a bus and then beaten in a racist attack by a group of eight young White men. When the police arrived on the scene. Mr S told them that he had been the victim of a racist attack. He was the only injured party and had received a serious head injury. The police treated the incident as a fight where both groups were seen as equally responsible and told them all to go their separate ways. No crime was recorded. Mr S complains that the failure of the police to treat him as a victim of hate crime was racist and that his attackers should have been arrested.

In this case, both parties were treated in the same way (i.e. no one was arrested). However, this does not disprove discrimination. The complaint is that the White group should have been treated differently but were not. An investigation would need to assess whether it was reasonable for the officers to decide *not to* treat Mr S and his friend as victims and the White group as suspects, and not to record a hate crime on the basis of race.

The hypothetical comparison the complaint handler should consider is:

If police encountered two White men, one with a serious head injury, surrounded by a large group of Black men who had caused the injury, would the police treat them as equally responsible and not see the White men as victims?

Case study 36

Constructing a hypothetical comparator

Mr R, a Muslim man, makes a complaint that while detained in custody he was subjected to repeated degrading comments and treatment because he is a Muslim. He states that whenever he made a request, he was made to feel he was being difficult. For example, when he asked for a halal meal, he says the custody sergeant openly scoffed at him. When he asked for a glass of water, he received a cup of water that was barely one quarter full and when he asked for more, he says he was told 'What do you think this is? A hotel?'. Finally, when he asked for a prayer mat, he states that the custody sergeant said, 'anything else for your highness?'

The CCTV footage from the custody suite supports Mr R's version of events. The custody sergeant admits that he may have grumbled about having to respond to the requests made by Mr R but says that this was because Mr R was making so many requests and it was a busy night, not because of Mr R's race or religion.

The CCTV footage from the custody suite shows that Mr R did make many more requests than the other detainees. However, it also shows that the requests made by the other detainees, who were all White, were responded to without any negative remarks. There was no actual comparator who made a similar number of requests as Mr R. However, the different treatment of the White detainees can be used to construct a hypothetical comparator, to help assess how a White detainee who made a similar number of requests to Mr R would likely have been treated.

Case study 37

Reviewing the language used

A complainant reports that a police officer failed to investigate her allegation of domestic violence properly. She feels that the officer was unsympathetic to her because she is a practicing Muslim and wears a hijab. The officer's pocket notebook entry refers to the victim as a 'young Muslim woman who was wearing a headscarf'.

It could, depending on the circumstance, be appropriate to note a victim's religion if this is relevant to the reported crime or to the provision of victim support. It is more difficult to see how the reference to the victim's headscarf is relevant information to

record in this case. The description of the victim is not necessarily discriminatory in itself but suggests that the officer may be thinking about the victim as different. It is reasonable to question whether this differential thinking has led to different treatment. For example, the complaint handler could check if the officer makes such detailed descriptions of each victim he engages with.

Case study 38

Probing rationales

As part of an investigation into a complaint of discrimination and use of excessive force, the investigator is looking to test whether a police officer made prejudiced assumptions that the complainant, Mr C, posed a greater threat or risk because he is Black.

Questioning should look to probe what the basis of the risk assessment was, whether this was reasonable in the circumstances, and whether the actions taken were appropriately for the level of risk identified. This might include questions such as:

- What was your first impression when you arrived at the scene and saw Mr C?
- How did you assess the risk of harm to you and your colleagues / to members of the public / to the complainant? What things did you consider?
- How did you take into account the level of risk in the way that you approached Mr C? What were your options and how did your thoughts about the likely risk affect what you decided to do?
- When you decided to restrain Mr C, what did you think this would involve? Were you surprised by his response?
- Did anything happen to change your risk assessment at any stage?

If the risk assessment is found to be unreasonable in a way which is consistent with the stereotype view of Black men as being more violent / unpredictable / aggressive, the investigator will need to weigh up the likelihood that the reason for this relates to Mr C's race, as opposed to any non-discriminatory reason offered for the officers' actions.

Case study 39

Weak grounds

Officers were on routine patrol and noticed a Black man sitting on a bike. Officers stopped and searched the man under the *Misuse of Drugs Act 1971*. No drugs were found. The man complains that the grounds of the search were unreasonable and unlawful, that unnecessary force was used and that he was racially profiled.

The officers are asked to provide their reasons for the stop and search. They state that push bikes were increasingly being used in crime by individuals in that particular area. They did not have any intelligence that this particular individual was involved in illegal drug dealing or the concealment of drugs. They describe the complainant as hostile, evasive and waiting on the road without plausible explanation. One of the officers also states that they had noticed the complainant put his hands in his pocket and that he did this again at a later point. This reinforced his decision to search the complainant.

Approach to the handling

This explanation is considered alongside other available evidence. The officer provides a list of cases around the time where there was a link between a person on a push bike and illegal drug offences – alongside some local information about illegal drugs in the area. The body worn video shows that the complainant was relaxed, not trying to flee on spotting the police or showing any concerning behaviour. It shows the complainant putting his hands in his pocket to retrieve his phone.

It also shows the officer asking the complainant why he was stopped in the road. The complainant challenged the question and the officer stated that he found the fact that he was sat on the bike unusual. The body worn video displays an awkward conversation, but no evidence of the complainant being hostile. There was also little discussion before the officer made the decision to search the complainant under the *Misuse of Drugs Act 1971*. This was only a few seconds after the officer approached the complainant.

In this case, the grounds for the stop and search were very weak. The footage does not support the description of the behaviour and demeanour of the complainant given by the officer as hostile and evasive. The officer's local knowledge of push bikes being used in criminal activity is not enough to support stopping this particular individual and the officer does not provide a good enough explanation of why he thought the complainant was concealing drugs.

The complaint handler reviewed the officer's last 30 stop and search records to check whether the strength of the grounds was consistent across stop and searches of people of different races. They concluded that the officer's grounds for stop and searches were consistently weak, regardless of the race of the individual being stopped and searched.

Overall, the evidence shows that the officers were unreasonably suspicious of the complainant, and the grounds given at the time were so weak that they did not provide sufficient explanation to show that the stop and search was fair and legitimate. This pointed strongly to less favourable treatment.

Decisions and outcomes

In this type of case, the complaint handler would need to consider the impact of the lack of plausible grounds.

If there was a deliberate misapplication of the intelligence, and this was supported by a pronounced disproportionate pattern of behaviour towards individuals from minority ethnic backgrounds, this would indicate the significant potential for less favourable treatment because of a person's race. As such, there may be sufficient evidence to conclude that there was a breach of the equality and diversity standard.

Where there is an indication that the officers lacked understanding and judgement of how to properly apply police intelligence to specific interactions, this would have less potential for discriminatory behaviour based on race if the evidence suggests that this behaviour was common, irrespective of the person's race, as was found in this case via the review of stop and search records. A potential outcome in this scenario would be individual learning for the officers on how to use intelligence to make appropriate decisions and, how to apply personal responsibility when using the powers available to them. It might also be reasonable to ask the officers to reflect on how individuals may experience stop and searches, and that challenges to their actions and authority should not automatically be viewed as hostile behaviour. Their reflection should also consider appropriate ways for dealing with such challenges to avoid the unnecessary escalation to the use of force.

This case study is adapted from one originally included in the IOPC's Focus Issue 22 on 'Handling complaints involving race discrimination'.

Case study 40

Questioning drawing on comparator evidence

Mr W, a gay man, made a report of domestic violence to police. He reported that his partner had punched him repeatedly in the face and had broken his nose. Mr W complains that when the police arrived they seemed unclear who the victim was, even though he reported the assault and there was a recorded history of domestic violence against him by his partner. Mr W believes that the response was sexist and homophobic, and if he had been a female victim in a heterosexual couple he would not have been treated in the same way.

It is likely that the officer in this case will have responded to many domestic violence incidents involving heterosexual couples, with cases involving a female victim and male perpetrator being more frequent. Questioning should explore any differences in approach in this case, compared with the approach taken in those cases. This might include questions such as:

- What is your experience of dealing with domestic violence incidents? What is your experience of responding to domestic violence incidents involving same sex couples? Or male victims?
- What was your first impression when you arrived at the scene? Was it clear to you who had reported the incident? If not, how did you find out who the victim was?
- Was this incident unusual? What was different about it? Did you take a different approach to your usual response? If so, why?
- Are there different risks or needs to take into account when the victim is male? Or where both the victim and perpetrator are male?

Asking about training and experience and what could have been done differently

Relevant questions to ask about training in this case could include:

- Have you received equality and diversity training? If so, when? Did the training include any discussion of homophobia or LGBTQ+ issues?
- Have you received any specific training around handling incidents of domestic violence? Did this training include any discussion of responding to domestic violence involving same sex couples? Or responding to male victims of domestic violence?
- Have you responded to incidents involving same sex couples or male victims previously? If so, what action did you take on that occasion?
- What do you think you could have done differently in this case that would have given Mr W confidence that he would be treated appropriately as the victim?

Case study 41

Reflecting on the complainant's experience of the incident

Mr Y, a young Black man, complains that officers stopped and searched him because of his race. He states that he asked the officer repeatedly why he was being searched, but the officer gave him no good reason and just told him that he 'looked suspicious'. Mr Y says that this infuriated him and that he started to shout and swear at the officer and was arrested for a public order offence.

Mr Y says that he has been stopped many times before and is never given a good reason. He says that on this occasion the officer did not give any reason for the stop, and the frustration he expressed in response to this was reasonable and his arrest was unjustified.

The officer whose actions are under investigation should be asked questions about his reasons for the stop, the search, and for the arrest, and whether he explained these reasons to the complainant. Some useful questions to ask might be:

- When you stopped Mr Y, how did you think he was going to feel about being stopped by a police officer?
- If he had been stopped many times before, do you think this might affect how he responded? Did you take account of this possibility?
- Why do you think that Mr Y feels he was discriminated against?
- Is there anything that you could have done differently that might have left him with a different impression?

Identifying opportunities for learning

Following an investigation, the complaint handler is satisfied that the officer had a legitimate and evidenced based reason for the stop and search and for the arrest. However, the officer admits that he did not provide a clear explanation for the stop to Mr Y at the time. In these circumstances, it was not unreasonable or unforeseeable that the Mr Y would form the view that he was discriminated against, and this should be acknowledged.

It would be appropriate for the findings and outcome in this case to reflect this failure and missed opportunity to help Mr Y to understand why he was stopped and searched and that there were legitimate reasons for taking this action.

Case study 42

A case involving stop and search and use of force against a Black man

Officers in a police vehicle were alerted over the police radio to a Black man – Mr G – nearby who had allegedly been seen by another officer undertaking a suspected drug deal. The man was known to the officers and was a named individual who had appeared on their briefing slides that day as a person of interest, suspected of being involved in local drug dealing. Officers decided to conduct a stop and search. They approached Mr G and immediately grabbed his arms without explaining why they were approaching him. He pulled back asking what was going on and officers sprayed him with PAVA. Officers handcuffed Mr G while they conducted the search, which was negative.

Mr G submitted a complaint that he believed officers used force against him because he is a Black man, and that they would not have treated a White man in the same manner.

In this case, the investigator explored the following questions:

- What information did the officers receive about drug dealing, and how did they receive this?
- Was Mr G known to either officer? If so, what was the nature of this?
- Why did the officers stop and search Mr G?
- Why did the officers use handcuffs on Mr G, and was this in line with policy?
- Why did the officers use PAVA on Mr G, and was this in line with policy?
- Was the force used proportionate, necessary, and justified?

The body worn video footage shows that the officers stopped and searched a White man under the *Misuse of Drugs Act 1971* around 10 minutes before they stopped the complainant. The body worn video shows that he was handcuffed and told why he had been stopped before the search took place. No drugs were found, and no other force appears to have been used. The investigator explored this as comparator evidence.

The decision to stop and search the man was found to be based on specific, relevant evidence-based intelligence. The decision maker formed the view that any person in the same circumstances, with the same specific intelligence available about them, could expect to be stop and searched – so this was not less favourable treatment and the decision to stop and search did not breach the Equality and Diversity Standard of Professional Behaviour. However, the decision maker decided that there was a case to answer for excessive use of force. The evidence pointing towards excessive use of force is also evidence pointing towards less favourable treatment. The use of force could be discriminatory even though the decision maker was satisfied that the decision to stop and search was not. The decision maker in this case would need to consider the other evidence available to decide if the level of use of force was because of a protected characteristic.

Case study 43

Making a finding based on patterns of behaviour and comparator evidence

Police stopped Mr V, a young Asian man, when he was walking home from morning prayers before dawn, during Ramadan. He says that the police asked him what he was doing out at that time. When he tried to explain, the officers were rude and did not listen, and decided to search him for drugs. He believes that he was targeted because of his race.

The investigator reviews the stop and search record which shows that insufficient grounds and a poor rationale were recorded for the stop and search. The officer was interviewed but failed to provide a reasonable justification for the stop and search.

The investigator looked at the racial breakdown of the officer's stop and searches over the previous six months and compared this to overall stop and search figures for the force area where he works. This showed that the officer had stopped a higher proportion of people identified as Asian or Black, compared to the proportion recorded for the force area. When interviewed, the officer suggested that the decision to target gang activity in the area would account for the higher stop rate of those from Black, Asian and minority ethnic groups.

The investigator also looked at the rationales recorded on a sample of the officer's stop and search records to look for any patterns. Half of the records reviewed where the person stopped was Asian did not have a sufficient rationale compared with 20% of the records where the person stopped was White. The analysis also showed that the percentage of searches that led to arrest for Asian suspects was significantly lower than for White suspects. This evidence suggests that the officer was less likely to have reasonable suspicion for these searches.

To provide their opinion in this case, it is essential that the investigator looks at the whole picture built up by the different pieces of evidence. Each on their own may not be sufficient to consider that there is a case to answer. However, together they may provide enough points of concern to satisfy the investigator (and later the decision maker) that a disciplinary tribunal could find that it is more likely than not, that race was a factor in the stop and search of Mr V.

This needs to be weighed against any non-discriminatory reasons for the stop given by the officer. The officer has offered a reason why he may have stopped a disproportionate number of people identified as from Black, Asian and minority ethnic groups. However, he has not provided an adequate non-discriminatory reason for this particular stop and search encounter.

Case study 44

Considering an actual comparator

Mr Y was walking with a friend Mr Z when they were stopped and searched by separate officers. Mr Y was a young Black man and Mr Z was a young White man of the same age. Officers watched the two men for a short while before stopping and searching them, during which time Mr Z could be seen patting his pockets.

Mr Y was stopped and searched for weapons but was not told why he was suspected of carrying a weapon. During the stop and search PC B tasered Mr Y, who fell and hit his head. Mr Y was arrested by PC A and taken to hospital. No weapons were found

in the possession of Mr Y or his friend. Mr Y complained that his arrest was unnecessary and unlawful, and that he was tasered because of his race. He states that force was not used on his friend.

The complaint handler viewed the body worn video before contacting the complainant. The footage showed that officers exited their police vehicle and approached both men at speed. They did not try to talk with the men, apart from PC A telling Mr Y that he wanted to search him for weapons.

The complaint handler explored with Mr Y why he thought the actions of the officer were due to his race. Mr Y argued that officers formed the view that he may have been involved in criminal activity or in possession of a weapon because they stereotyped him as a young Black man in casual clothing.

Mr Y told the complaint handler that he tried to explain where he was going and that he did not have anything he should not have, but that he felt PC A did not want to listen to him. Mr Y stated that PC B, who was searching Mr Z, turned his back on Mr Z and tasered Mr Y without warning.

In their accounts, the officers stated that they had been briefed about robberies in the area, and that intelligence had stated the suspects were Black men. However, the complaint handler obtained a copy of the briefing provided, and there was no intelligence of any suspect matching Mr Y's description.

PC A also stated that Mr Y was uncompliant from the start of the interaction and that he did not restrain Mr Y until he told him that he was being detained. However, body worn video shows that PC A touched Mr Y's arms with both of his hands repeatedly, before informing him that he was detained for a search.

PC B stated that he felt Mr Y posed a real threat to PC A and that is why he decided to use his Taser on him. He did not provide any rationale for why other forms of de-escalation were considered and rejected. The complaint handler pointed out in the investigation report that neither PC B's account, nor the body worn video footage, make it clear why PC B formed the conclusion that Mr Y was a threat, especially since it was Mr Z who could be seen patting his pockets before the stop and search. The complaint handler gives their opinion that PC B turning his back on Mr Z could indicate that PC B did not consider him to pose the same level of threat as Mr Y.

The decision maker decided that there was a case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour for both PC A and PC B. They stated that it was clear that Mr Y had suffered poor treatment – being stopped and searched and Tasered. They then concluded that they could not rule out that Mr Y's race was a contributing factor and it appeared that Mr Y was subject to "less favourable" treatment when compared to Mr Z.

The decision maker drew on:

- the difference in treatment between Mr Y and his friend

- the poor rationale for the stop and search – although both Mr Y and Mr Z were stopped, there was a lack of objective evidence linking them to the intelligence beyond Mr Y’s race. This could suggest that biases and stereotypes – namely that Mr Y was part of a gang and in possession of a weapon – were applied to Mr Y because of his protected characteristics.
 - the actions of PC B, in escalating quickly to violence were in line with actions based on stereotypes, and a weak rationale was provided for those actions
-

Case study 45

Use of discriminatory language

Mr H, a Black man, was arrested and checked into a police custody suite. Mr H states that a detention officer called him a “Thomas the Tank Engine Bitch” in reference to his hair which he had styled in cornrows. Mr H stated that the language used towards him was due to his race.

The complaint handler took witness statements from the custody staff on duty. These corroborated the complainant’s account that a detention officer referred to Mr H as “Thomas the Tank Engine” because of his hair. They state that they did not, however, hear Mr H be referred to as a “bitch”.

When the complaint handler asked the detention officer about the comment, they stated that the only thing they recalled saying to Mr H is “please step back” when the detention officer entered his cell. They said that they also asked Mr H to be respectful to the custody staff as he had been banging on the cell door.

The decision maker found that there was no case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour. The decision maker found that this language was clearly disrespectful, not acceptable, and was used because of Mr H’s race and appearance. However, taking the gravity factors into account, the decision maker was of the opinion that the comment was made due to cultural insensitivity and so would not (if proven) warrant a sanction of a written warning or above (which is the threshold to bring about disciplinary proceedings). It was decided that the detention officer should undergo the Reflective Practice Review Process . Following completion of the Reflective Practice Review Practice, which included reviewing the impact of microaggressions and the need for cultural competence and sensitivity, the detention officer apologised to Mr H for the distress caused to him.

Case study 46

Examples from IOPC's National Stop and Search Learning Report

Below are some examples from the IOPC's National Stop and Search Learning Report on the use of disrespectful, combative or offensive and stereotyping remarks in the course of the use of policing powers against Black, Asian and other minority ethnic individuals⁷¹. These types of comments could also reasonably be drawn on as evidence of unexplained hostility that potentially points toward race discrimination:

- A 14-year-old Black child, who was stopped by police officers on suspicion of being in possession of drugs, was handcuffed to prevent him from escaping, fighting, or swallowing drugs, as the officer believed that was how drug dealers usually react to being stopped and searched. No drugs were found. When the child's grandmother challenged the officer that this was happening because the child is Black, the officer accused her of being racist.
- Officers allegedly shouted at a 15-year-old Black child, "you're lucky I'm in uniform" and "none of us are f***ing racists so shut up with that racist sh**" when he asked officers whether his ethnicity had played a part in him being stopped and searched after allegedly smelling of cannabis.
- An officer said to a Black man "I don't know if you're a criminal or not, but when you start to set your phone up and call people over it sets a bit of a scene for me" and "this shows the type of person you are" when he attempted to film himself being stopped and searched.

Case study 47

Non-discriminatory reasons were evident, even though not provided by officers

Ms A attended a police station to report that she had been the victim of a robbery. The wait time before speaking to one of the public access officers was a few hours. While Ms A was waiting to speak to a public access officer, a man attended the station and was spoken to straight away. Ms A complained that she was discriminated against on the ground of sex and that she was purposefully made to wait longer because she's a woman.

When asked about their treatment of Ms A, and their process for prioritising who they speak to first out of those waiting to be seen, the public access officers denied any wrong-doing. They stated that they do not prioritise their workload based on the sex

⁷¹ "Black or other minority ethnic" is used here, as the evidence base did not involve any Asian individuals.

of the individual seeking to speak to them. However, they did not provide any other explanation for their decision-making in this case.

During the investigation, it was discovered that the man who entered the station after Ms A, but was seen before her, had attended the station to sign-on bail, a process which takes a matter of few minutes.

The complaint handler sought further clarification from the public access officers who were on shift when Ms A attended the station. They confirmed that the man was there to sign-on bail. It is normal process for people signing on bail to be addressed as soon as possible because the process is extremely quick. This limits the number of people in the waiting area and avoids breaches of bail. CCTV footage confirmed that the man was in and out of the station in a matter of a few minutes, and that there were other men in the waiting area who arrived before Ms A, who were seen after the man who was signing on bail.

The decision maker was satisfied with the explanation that the man was addressed first because of his reason for attending the station and was satisfied that this was the most likely reason for the 'poor treatment' (being made to wait), rather than Ms A's sex. The decision maker found that there was no case to answer for a breach of the Equality and Diversity Standard of Professional Behaviour.

Case study 48

Considering the wider context

A 17-year-old Black child complained about the police handling of a situation in which officers dispersed him and his friends from the city centre, and gave no explanation for why they were not allowed to congregate in the area.

In this case, reports had been made to the police by members of the public, raising concerns about a large gathering of children. The police were permitted to use specific dispersal powers to move the children away from the area to reduce the likelihood of causing alarm or distress - or the occurrence of crime or disorder. The force investigator recognised that the officers could have better explained the reasons for their actions and acknowledged the individual and wider community impact. The force recommended an outcome of reflection and learning for the officers involved.

An IOPC reviewer made the following comments in their assessment:

“It is important to consider the wider context of policing and race, and how this may have impacted the complainant's reaction to being told to leave the area, and further interactions with the police following the arrest of his friend, for a reason that the complainant was unaware of. Being under 18 at the time and Black, with the context

of the multiple news reports of policing and police violence, it is reasonable to assume that he, and other young Black men and boys could be wary of police and may be more resistant to engaging with officers. The complaint handler has also obtained a lived experience account, which highlights the lack of cultural awareness and officers not recognising the impact of Black men being disproportionately policed and therefore likely to challenge the police. Rather than listen to them and understand the reasons, officers tend to see this as a challenge to their authority and resort to using powers, with matters escalating quickly.”

The lived experience account was obtained from a member of the community engagement team, with experience of the historical context and current climate of policing and Black communities, both locally and nationally. The incident occurred during the time of the Black Lives Matters protests, which were widely reported. Therefore, the impact of this and views about the police response were considered as relevant contextual information.

This case study was originally included in the IOPC’s Focus Issue 22 on ‘Handling complaints involving race discrimination’.

Case study 49

A complaint of poor service

Mr B, a transgender man, complains that he received poor service from the police when he called 101 to report harassment from his neighbours due to his gender identity. Mr B says that the neighbourhood officer who attended to take his statement treated the matter as a “neighbourhood dispute”, rather than a hate crime or hate incident. He also stated that the officer “outed”⁷² him to his neighbours and that the overall incident had left him with low confidence in the police’s ability to recognise and investigate hate crimes.

Following an investigation, it was established that the officer did not “out” Mr B to his neighbours. However, the officer told the investigator he had limited experience of working with the LGBTQ+ community and had not received much training on best practice when engaging with transgender people. The officer told the investigator he felt he could benefit from more training, as he had “lost his confidence” in his ability to provide a good service to LGBTQ+ people.

The investigator obtained the force’s lesson plans on equality and diversity and found that there was only one slide which focussed on sexual orientation and gender

⁷² Told his neighbours that he is transgender.

identity, in a presentation for a two-day course. They also consulted with the force's specialist hate crime team to suggest improvements to the training, including adding a section on investigating homophobic, biphobic and transphobic hate crimes.

The decision maker identified practice requiring improvement for the neighbourhood officer, with a recommendation that the officer attend the equality and diversity training again, to improve his knowledge on working with the LGBTQ+ community and investigating hate crimes more effectively.

The complainant was very happy with the outcome and also offered to meet with the force to discuss his lived experience of being transgender.

Case study 50

Concluding that the service provided was acceptable with opportunities for reflection

Officers attended reports of a fight between two men on the street, at night. Both men belonged to the Traveller community. When officers arrived, both men appeared drunk. One man was on the ground and complained of an injury to his back and significant pain. Officers called for and then cancelled an ambulance and drove the man to hospital themselves. By the time they arrived at the hospital, the man could neither walk nor stand up and was later assessed to have a serious back condition, and potentially life altering injuries. The man complained that officers lacked empathy and were dismissive of his injuries and aggressive, which he believed was because he is a Traveller.

Approach to the handling

Analysis of the body worn video footage supported the officers' observations that the men appeared drunk. While reference could be heard to describing the complainant as 'difficult' and 'typical', the footage showed that the officers were attentive to his injuries and treated him with care.

When questioned, one of the officers acknowledged that he may have referred to the man as being difficult because at certain points, he was being obstructive and preventing the officer from providing the necessary care. The officer explained that he referred to the complainant's behaviour as typical of someone who had consumed excess alcohol. He accepted that he may have been perceived as aggressive while trying to seek compliance from the man. The officer reflected and could see how the comments, together with his demeanour, may have appeared discriminatory.

The video footage confirmed the officer's recollection of events and showed that the man resisted at times, shouting and gesticulating at the officers to keep away from him. It also showed that the officer raised his voice on occasion to attend to the

man's injuries. When the complaint handler discussed the incident with the complainant, the man explained that he didn't want to be touched because he was in pain.

Decisions and outcomes

On balance, the evidence suggested that the officers acted reasonably in the circumstances they were faced with, and the complainant did not receive less favourable treatment. While negative references were made to the complainant's behaviour, the officers provided plausible non-discriminatory reasons for their comments. This did not result in a poor service, and officers acted with care, and sought medical assistance. The decision maker therefore concluded that the service provided by the officers was acceptable.

In this case, there were opportunities for learning and reflection. Although the service was found to be acceptable, the complaint handling process had allowed the officer to understand why the complainant resisted his help, acknowledge the reasons why he experienced the encounter as discriminatory, and reflect on the impact this had had.

However, the complaint handler did not share this with the complainant. If they had shared this information, it would provide reassurance to the complainant that the officer had learned from the interaction. The complaint handler may also have considered inviting the complainant to view the body worn video footage, as part of a complaint debrief. This would offer a practical way to show the reasons behind the officer's change in manner, when the complainant did not allow officers to assist him.

This case study was originally included in the IOPC's Focus Issue 22 on 'Handling complaints involving race discrimination'.

Case study 51

Group reflective practice for new officers

The professional standards department was made aware of concerns about inappropriate language being used by several probationary officers in one training group.

Following an investigation, two of the probationary officers were dismissed for sharing discriminatory images in a WhatsApp group. The investigation identified practice requiring improvement for the remaining officers and made a referral for reflective practice review process. It was felt that a reflective process was appropriate as it was an opportunity to discuss what had happened and the reason why some of their colleagues had been dismissed.

The reflective discussion was held as a group and was designed to help them reflect on the incident. The group explored the boundaries of appropriate and inappropriate language and reflected on how the messages might be perceived by others. They also discussed responsible use of WhatsApp and other social media platforms, and the impact of misuse on public confidence in the police. The discussion also served as a learning opportunity for the new officers to understand the reasons for the dismissal of two of their peers.

This case study is taken from the IOPC's Focus Issue 21 on 'Reflective Practice'.

Case study 52

A complaint resulting in organisational learning

Ms W complained that her ex-husband, who is a serving police officer, was in a WhatsApp group with other officers, and she had seen that discriminatory content would often be shared.

During the investigation of the complaint, the investigator found evidence of numerous misogynistic, racist and homophobic comments.

The force's policy on social media and messaging services states that officers must not post any discriminatory, abusive, oppressive, harassing, bullying, victimising or offensive material, or post material that is otherwise incompatible with the ethical policing principles, whether on-duty or off-duty.

The decision maker found that five officers had a case to answer for gross misconduct for a breach of the Equality and Diversity and Discreditable Conduct Standards of Professional Behaviour.

A further two officers had a case to answer for misconduct for a breach of the Challenging and Reporting Improper Conduct Standard of Professional Behaviour.

Given the nature and extent of the allegations and evidence, the investigation also considered the culture of the team in which the officers were based, as well as potential wider organisational issues. The investigation also considered whether there was any organisational learning arising from those officers' explanations of why they failed to challenge the behaviour.

As a result, the investigator recommended that the force:

- review its training and guidance on the use of social media and the Code of Ethics, including:

- whether policies adequately covered how toxic masculinity, sexism, misogyny, racism and homophobia can create an intimidating, hostile, degrading, humiliating and offensive environment
 - makes clear to officers and staff that information posted on their private profiles should conform with the Association of Chief Police Officers' 'Guidelines on the Safe use of the Internet and Social Media by Police Officers and Police Staff 2013' and the Code of Ethics
 - that staff are duty bound to challenge and report behaviour which does not align with the Code of Ethics and/or the *Equality Act 2010*, and how to do so
 - specialist training for supervisors.
 - re-iterate its position as an anti-racist organisation with a zero-tolerance position on racist behaviour, sexism, misogyny, homophobia and all forms of discrimination. It should embed this message through its training and guidance, as well as through on-going support for staff and police officers to challenge such behaviour
 - review how internal reports of such behaviour are dealt with
-

Case study 53

No complaint of discrimination, but discrimination forms part of the investigation considerations

Two officers, PC F and PC G, attended reports of a man with a knife and no top on running around a park. Mr H, the man in question, who is autistic, approached the officers and told them he had taken the knife from a man at a property nearby. Mr H said the man had threatened him with the knife because he (Mr H) would not perform a sexual act for the man. Mr H explained he took the knife from the man and left the property in distress, fearing for his life.

The officers did not record or further explore Mr H's account of a sexual assault, and instead gave him words of advice about his own actions. They took Mr H back to the property where the alleged offence took place, which was by then unoccupied, and retrieved Mr H's clothing. The scene was not secured by the officers.

Later that day, Mr H and his father attended the local police station, where Mr H informed police he had been raped at knifepoint and his mobile phone had been stolen. Specialist officers started an investigation into the rape and other offences, but assessed that much evidence had been lost due to the actions of PC F and PC G.

A complaint was made about how the officers handled the incident. No allegation of discrimination was made in the complaint, but the potential for discrimination to be a contributing factor to the officer's actions was looked at, as part of the investigation.

The decision maker wrote in her report, "These failings, if proven or admitted, could in my view be found to represent a complete failure by PC F to meet his duties and responsibilities as a police officer in relation to Mr H, a vulnerable sexual assault victim. The College of Policing's 'Guidance on outcomes in police misconduct proceedings' states misconduct in respect of a vulnerable person should be taken particularly seriously. I also believe the panel could find this breach was aggravated by a discriminatory attitude on the part of PC F, namely Mr H's perceived 'mental health issues' meant PC F dismissed his account and/or did not treat his account as credible. As such I believe this aspect alone could be made out as a case to answer for gross misconduct for a breach of the Equality and Diversity Standard of Professional Behaviour." The same outcome was found for PC G.

The misconduct panel heard the officers were dismissive of the allegations, and, despite being aware of the man's disability, the officers failed to make reasonable adjustments for him, such as adjusting their questioning style to give him more time to respond. Instead, the complainant was treated as a suspect and the officers were disrespectful in their dealings with him.

They were found to have breached the standards of professional behaviour in relation to duties and responsibilities, orders and instructions, authority, respect and courtesy, and equality and diversity. A potential breach of the standards of professional behaviour in relation to honesty and integrity was not proven. Both PC F and PC G were given a final written warning.

Case study 54

Incorrect relevant review body — allegation could, if proven, result in misconduct proceedings

A man complains two police officers refused to investigate a hate crime that had been committed by his neighbour in front of the two officers. The man states that their refusal to investigate the matter was based on discriminatory views.

The complaint is investigated without special procedures. The appropriate authority writes to the complainant and notifies him the relevant review body is the local policing body. It gives no rationale for this decision. The complainant submits a review application to the local policing body.

The relevant review body decision by the appropriate authority was incorrect. The complaint was that the police had refused to investigate an alleged hate crime and were motivated by discrimination. This allegation, based on the complaint alone,

could, if proven, result in misconduct proceedings. The IOPC should be the review body.

Case study 55

Relevant review body is the local policing body

Mr A complains that his local police community support officer always tries to organise meetings with Mr A's community group on a Saturday morning. He states that the support officer then gets frustrated when Mr A's group do not attend. Mr A states that he believes the support officer is discriminating against the community group, but that this is due to a lack of understanding of the Jewish faith. He asks that this is raised with the support officer and that the force's cultural competence training is considered.

The appropriate authority correctly decides that the relevant review body is the local policing body. This is because the complainant states it is a lack of understanding that led to the actions of the support officer.

Case study 56

Recorded complaints missed

The police were called to an argument at a wedding. They arrested a man for breach of the peace and assault. The case was later dropped with no charges. The man complains he was unnecessarily arrested, the arrest was racially motivated, and officers had not spoken to witnesses who would have told them he was not the instigator.

Enquiries are made and it was found witnesses had not been spoken to. The complainant is given the outcome of the investigation in a report, together with a right of review.

The investigator failed to address both the complaint concerning his arrest and the discrimination aspect of his complaint. The complainant was not contacted to further discuss, understand why he felt discriminated against, and what actions, behaviour or words made him feel like this.

The investigator failed to secure any evidence about this part of the complaint, and it was not mentioned within the investigation report. Furthermore, the investigator also failed to assess whether the investigation should be subject to special procedures. The complaint, in its entirety, should have the IOPC as the relevant review body, and not the local policing body.

This case study is taken from the IOPC's Focus Issue 19 on 'Reviews'.

Case study 57

Using comparator evidence when handling a case otherwise than by investigation

Mr B reported that his neighbour had verbally abused him, and provided CCTV footage in which, in his opinion, the viewer could clearly hear this abuse. The officer who investigated this report concluded that no further action would be taken due to insufficient evidence available to identify a suspect. Mr B complained that his allegation was not handled properly due to the fact that he is Indian and the investigating officer discriminated against him based on his race. Mr B stated that he believed his neighbour should have been arrested under a public order offence.

The incident log from Mr B's original call indicated that Mr B said he was not sure if the CCTV footage was clear. This contradicted Mr B's claim that the CCTV was clear.

The case was dealt with otherwise than by investigation.

The complaint handler reviewed the footage provided by Mr B. While they could hear some offensive language, it was not clear, and the individual who was speaking could not be seen on the footage. Due to the individual not being visible on the footage, and the audio not being clear enough to identify a specific voice, the complaint handler agreed with the investigating officer's conclusion.

The complaint handler also looked at comparator evidence. They examined a selection of similar reports of crime over the last 12 months and what happened in their associated investigations. The victims and suspects involved in these cases were of various ethnicities. Similar evidential difficulties were found across these cases, as in the case of Mr B, and similar investigative decisions were made in those cases.

After reviewing the comparator evidence, the CCTV footage, the content of the incident log and the investigating officer's explanation for his actions, the complaint handler concluded that there was insufficient evidence to conclude that Mr B was treated less favourably because of his race. The service was found to be acceptable.

Case study 58

A complaint of discrimination on the basis of sex and race

Ms D, a Black woman, was working as a live-in nanny for an Asian family. An altercation occurred between Ms D and her employer, Mr F. This resulted in police attendance at their home address. Ms D reported that she had been assaulted by Mr F. The attending officers did not put this allegation to Mr F, and although Ms D pointed out her injuries to the officers, they maintained that the matter was a civil dispute and not a criminal issue.

Ms D later attended a police station to report being assaulted by her employer. She was identified as having injuries and treated at hospital.

The complaint states that officers behaved in a discriminatory manner towards Ms D on the basis of her race and sex. This is because, the complaint states that the officers treated Mr F in a much more professional and helpful manner, and dismissed Ms D's report of assault without putting it to Mr F or listening to Ms D's account. Officers dismissed Ms D's report of being injured, without considering that bruising may be more difficult to see due to her having black skin.

Despite both Ms D and Mr F calling the police, the officers threatened to issue only Ms D with a ticket for wasting police time. Body worn video shows that, upon leaving, the officers told Ms D that they did not want to be called back. In contrast, they told Mr F to call if he had any issues. The officers also never appeared to consider the power imbalance between Ms D and Mr F. While they labelled Ms D as belligerent and unco-operative, they did not consider that her behaviour may have been indicative of her discomfort and fear in talking to officers in the presence of her employer.

Following a review of the evidence available, the complaint handler's opinion was that while there was no evidence of officers using overtly racist or sexist language, their language and tone towards Mr F was significantly different to that used to address Ms D. They also noted that there was other evidence pointing towards discriminatory behaviour, namely the difference in treatment by officers of Mr F and Ms D, including their dismissive attitude towards Ms D compared to Mr F. Furthermore, the actions of the officers pointed towards stereotypes associated with Black women affecting the actions of the officers. For example, one of the officers described her as "wailing and screaming", when the body worn video footage did not show Ms D acting this way.

The decision maker agreed with the complaint handler's view. They concluded that the officers should be subject to Level 1 of unsatisfactory performance procedures.

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