

Criteria for Investigations

Introduction

1. The decision about which form of investigation should be adopted by the IPCC and decisions to be made about related matters will be a serious ones. The decisions will have implications for all concerned – the complainant, the person who is the subject of the complaint, witnesses, the appropriate authority, the IPCC itself and, not least, the public.
2. The Commission has duty to ensure that people's complaints against the police are properly investigated, using its legal powers to intervene and investigate. In performing that duty the IPCC will assist in increasing public confidence in the police by demonstrating its independence and by securing the integrity and accountability of the complaints system.
3. The Commission has a duty to exercise the powers and perform the duties conferred on it in the manner it considers best calculated for the purpose of securing the proper carrying out of its functions and it may do anything which appears to it to be calculated to facilitate or is incidental to or is conducive to the carrying out of its functions.
4. In considering both the selection and the re-selection of the mode of investigation the IPCC will have regard to its core values:
 - Justice
 - Independence
 - Valuing Diversity
 - Integrity
 - Openness
4. This Code is designed to ensure that everyone affected by its decisions know the principles that the IPCC will apply when making its decisions and carrying out its work. By applying those principles the IPCC will treat all those involved in the process fairly.

General Principles

5. Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which IPCC Commissioners and Staff must approach every case.
6. Commissioners and Staff must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, age, religious beliefs, political views or the sexual orientation of the complainant, the subject of the complaint or any witness influence their decisions. They must not be affected by improper or undue pressure from any source.
7. In determining or re-determining the form of an investigation Commissioners and Staff must always act in the interests of justice.
8. The IPCC is a public authority for the purposes of the Human Rights Act 1998. The IPCC must apply the principles of the European Convention on Human Rights in accordance with the Act.

The Police Reform Act 2002

9. The IPCC has a duty to determine whether a complaint referred to it should be investigated.¹ It has the same duty in relation to recordable conduct matters that are referred to it². The effect of this is clear, the Commission must assess whether a complaint or recordable conduct matter merits investigation. It has no discretion.
10. Where a complaint or recordable conduct matter is referred to the IPCC and the IPCC has determined that the complaint or matter should be investigated then it

¹ Sch. 3, para. 5

² Sch. 3, para. 14

has a duty to determine the form that the investigation should take - it has no discretion³. It does have the discretion to:

- determine the type of investigation to be pursued⁴;
- re-determine the type of the investigation, after it has initially reached a decision on the form it should take⁵;
- discontinue an investigation once one has started subject certain limitations.⁶

11. The investigation may take the form of:

- An investigation by the appropriate authority on its own behalf
- An investigation by that authority supervised by the IPCC
- An investigation by that authority under the management of the IPCC
- An independent investigation by the IPCC

12. In determining the form of the investigation the IPCC must have regard to two factors:

- the seriousness of the case
- the public interest.

Seriousness of the Case

13. Appropriate authorities have a duty to refer to the IPCC any complaint alleging, or any recordable conduct matter involving, conduct that has resulted in death or serious injury⁷.

14. They also have a duty to refer to the IPCC:

³ Sch. 3, para. 15(1)

⁴ Sch. 3, para. 15(3)(4)

⁵ Sch. 3, para. 15(5)

⁶ Sch. 3, para. 21 and the Police (Complaints and Misconduct) Regulations 2004, Reg. 7

⁷ Sch. 3, paras. 4(1) and 13(1)

- alleged conduct which constitutes-
 - (i) a serious assault;
 - (ii) a serious sexual offence
 - (iii) serious corruption;
 - (iv) a criminal offence or behaviour which is liable to lead to disciplinary action which is aggravated by discriminatory action;
⁸or
 - (v) a serious arrestable offence, within the meaning of section 116 of the Police and Criminal Evidence Act 1984, or

- alleged conduct which arises from the same incident⁹.

15. All such conduct can be regarded as constituting a serious case for the purposes of determining the form of the investigation. The fact that the matter that has been referred to the IPCC is a serious case does not mean that the IPCC has to mount an independent investigation what it indicates is that some form of investigation should occur unless the public interest dictates otherwise. Within ‘seriousness’ there is a sliding scale which, at the bottom end will indicate that an investigation by the appropriate authority on its own behalf and at the top end will indicate an independent investigation by the IPCC.

Public Interest

16. The term ‘public interest’ is not defined in the Act. There are however a number of factors that will tend to indicate that one form of investigation is more appropriate than another and whether, once an investigation has begun whether another form of investigation is appropriate or whether the investigation should be discontinued.

Factors indicating the form of an Investigation

⁸ Paragraphs (i) to (iv) are defined by the Mandatory Referrals Guidance.

⁹ Paragraphs 4(1) and 13(1) of Schedule 3 to the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2004

- a. The alleged conduct of a person serving with the police¹⁰ has resulted in death or serious injury.
- b. The alleged conduct was:
 - racially or otherwise discriminatory motivated;
 - involved more than one person serving with the police;
 - pre-meditated;
 - involved the use of a weapon or other implement.
- c. The alleged conduct, if substantiated, is likely to be the cause of significant public concern.
- d. The alleged conduct was part of an ongoing incidence of similar conduct by the individual who was the subject of complaint or within the police force in which the individual was serving.
- e. The alleged conduct is such that the failure of the IPCC to either conduct or manage the investigation will substantially undermine public confidence in the police.
- f. The alleged conduct is such that the failure of the IPCC to either conduct or manage the investigation will substantially undermine public confidence in the complaints system established under the Police Reform Act 2002.
- g. The alleged conduct amounts, if substantiated, to a serious interference with the administration of justice or with the investigation of offences or a particular offence.
- h. The alleged conduct, if substantiated, has resulted in a substantial unlawful financial gain for a person serving with the police or a substantial financial loss for another person.
- i. The alleged conduct, if substantiated, amounts to a substantial interference with human rights.

17. When two or more of these factors appear to exist together in the case when the IPCC first determines the form of the investigation it will be more than less likely

¹⁰ 'a person is serving with the police' if he is member of a police force, he is an employee of a police authority who is under the direction and control of a chief officer of police, or he is a special constable under the direction and control of a chief officer of police. Police Reform Act 2002, s. 12(7)

that the IPCC will wish to conduct or manage an investigation. However, if only one factor is present it will not preclude a decision being made to manage or conduct an investigation. Similarly, the presence of two factors or more will not necessarily result in managed investigation or an investigation conducted by the IPCC.

18. An example of where it is more likely that an investigation will be managed or conducted by the IPCC is where one of the factors is a death or serious injury that has occurred as a consequence of either a positive or a negative action by a person serving with the police. In contrast where a person serving with the police assaults a member of the public or another person serving with the police and the assault does not result in serious injury, did not involve the use of a weapon or implement and was not pre-meditated, while meriting investigation, might be more suitable for an investigation by the appropriate authority, whether or not supervised by the IPCC.

19. Another example of where the IPCC may be more than less likely to determine to conduct or manage an investigation is where it is alleged that two or more person serving with the police have secured a substantial unlawful financial gain as a consequence of corruption or other serious criminal conduct, particularly if it involves a serious interference with the administration of justice or with the investigation of offences or a particular offence. In contrast petty or opportunist theft of property by a person serving with the police, while meriting investigation, might be more suitable for an investigation by the appropriate authority, whether or not supervised by the IPCC.

20. These examples must not be taken as determining the form of investigation in any particular case they are simply used to indicate how a range of factors may be used to indicate the appropriate form of investigation. Each case is unique and must be considered on its own facts and merits.

European Convention on Human Rights

21. Where the alleged conduct of a person serving with the police has resulted in death or serious injury Articles 2 and 3 of the European Convention on Human Rights may be engaged. If they are engaged, the IPCC, as a public authority under the Human Rights Act 1998, has an obligation to determine a form of investigation that is an effective independent investigation that does not have any hierarchical or institutional connection with those implicated in the events. It would only not have to do that where there has been an inquest that satisfied Article 2. An independent investigation into a death conducted by the IPCC itself would satisfy the requirement of independence under Article 2. An IPCC managed investigation into a death involving the police would satisfy the requirement of independence under Article 2 of the Convention provided that it was conducted by an external police force. Not all death or serious injuries that occur following contact with the police will engage Article 2 or 3. For example where the death was obviously from natural causes or the police contact was sufficiently remote from the time of the death or serious injury.¹¹

Resources

22. One of the factors that the IPCC may take into account in determining the form the investigation shall take is the resources that are available to the IPCC to conduct the investigation that is the subject of the determination. However, in doing so the IPCC must have first correctly identified the factors in the case which indicate whether the investigation should be conducted or managed by the IPCC or whether the investigation should be conducted by the appropriate authority, whether or not supervised by the IPCC. The IPCC is entitled to take into account the competing demands for resources from other cases, so long as those competing demands do not compromise its human rights obligations if, in the case under consideration, fundamental human rights are engaged.

¹¹ See *Jordan v UK* (2001) ECtHR, *McShane v UK* (2002) ECtHR, *Edwards v UK* (2002) 35 EHRR 487, *R (Wright) v Secretary of State for the Home Department*, *R v Secretary of State for the Home Department ex p Amin* (2003) UKHL 51 and *R v Police Complaints Authority ex p. Green* (2004) UKHL 6

23. Having regard to the above the IPCC is likely to determine the form of investigation in the following way:-

- a) An independent investigation will be conducted by the IPCC into incidents that cause the greatest level of public concern, have the greatest potential to impact on communities or have serious implications for the reputation of the police service.
- b) An IPCC managed investigation will be conducted when a complaint or alleged recordable conduct matter is of such significance and probable public concern that the investigation of it merits being under the direction and control of the IPCC but does not merit a fully independent investigation.
- c) An IPCC supervised enquiry will be conducted when the Commission decides that a complaint or allegation of misconduct is of such significance and probable public concern that supervision of the investigation by the Commission is necessary.
- d) A local investigation by an appropriate authority on its own behalf without any IPCC input into the investigation will be appropriate where the Commission concludes that none of the factors identified in paragraphs 20 to 21 exist and the appropriate authority has the necessary resources and experience to carry out an investigation without external assistance.

Re-determining the type of the investigation

24. The IPCC may at any time during the course of an investigation, including one by the appropriate authority, make a fresh determination of the form the investigation shall take.¹² The factors that the IPCC must consider are the same as those that the IPCC will have considered, however, the result of the re-determination must flow from the facts of the case revealed during the course of the investigation and, save for the issue of resources available for the investigation, no external factors

¹² Sch. 3, para. 15(5) – (7)

should be taken into account. The re-determination must be based on the individual merits.

Discontinuation of the Investigation

25. The IPCC may require the discontinuance of an investigation which is being carried out by an appropriate authority on its own behalf or under the supervision or management of the IPCC of any complaint or matter:¹³

- in which the complainant refuses to co-operate to the extent that the IPCC considers that it is not reasonably practicable to continue the investigation;
- which the complainant has agreed may be subjected to local resolution;
- which the IPCC considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints or conduct matters;
- which is repetitious¹⁴; or
- which the IPCC otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.

26. The IPCC may not discontinue an investigation that it is conducting itself unless –

- the complainant refuses to co-operate to the extent that the IPCC considers that it is not reasonably practicable to continue the investigation;
- which the complainant has agreed may be subjected to local resolution;
- the IPCC considers it is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints or conduct matters;
- it is repetitious;
- which the IPCC otherwise considers is such as to make it not reasonably

¹³ Sch. 3, para. 21(1)

¹⁴ It is repetitious if it is substantially the same as a previous complaint (whether made by or on behalf of the same by or on behalf of the same or a different complainant), or it concerns substantially the same conduct as a previous conduct matter; it contains no fresh allegations which significantly affect the account of the conduct complained of; or no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it; and as respects the previous complaint or conduct matter, either the requirements of paragraph 23(7) of Schedule 3 to the 2002 Act were complied with; the complaint was locally resolved; the complainant gave notice that he withdrew the complaint; or the IPCC gave the appropriate authority permission to handle the complaint in whatever way it saw fit. See Police (Complaints and Misconduct) Regulations 2004, Regs. 3(2) and 7(1).

practicable to proceed with the investigation.

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