

# FOCUS

Focus gives police force professional standards departments (PSDs) and local policing bodies practical guidance on dealing with complaints, conduct matters, and death or serious injury cases. It supports them to handle complaints appropriately and improves standards.

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## ISSUE ELEVEN

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## Applying the local resolution suitability test

Applying the local resolution suitability test correctly is fundamental to ensuring that complaints are dealt with appropriately under the *Police Reform Act (2002)* (PRA).

We reviewed a sample of closed local resolution cases across several police forces to assess whether the local resolution suitability test had been applied appropriately. We found that the test had been applied correctly for most of the less serious complaints. However, in more than a quarter of the cases we reviewed, complaint assessors had failed to appreciate that the substance of the complaint was serious enough to potentially justify disciplinary proceedings, or amount to a breach of Article 3 of the European Convention on Human Rights and therefore, that local resolution was unsuitable.

Furthermore, in some of these cases, the forces had not assessed the complaint purely on its substance, as required by the PRA. We found examples where forces had inappropriately carried out investigative actions to assist local resolution assessments, and a small number of cases where the outcome of the complaint appeared to have been pre-judged.

This edition of Focus provides guidance and case studies to assist complaint handlers in their assessment of whether a complaint is suitable for local resolution.

### When is a complaint suitable for local resolution?

**A complaint is suitable for local resolution if the appropriate authority<sup>1</sup> is satisfied that:**

- a. the conduct being complained about, **even if proven**, would not justify criminal or disciplinary proceedings<sup>2</sup> against the person being complained about **and**;
- b. the conduct complained about, **even if proven**, would not involve the infringement of a person's rights under Article 2 or 3 of the [European Convention on Human Rights](#).

Therefore, complaints are suitable for local resolution only if the complaint handler is satisfied that both parts of this suitability test have been met. The decision about whether the conditions of the test have been met must only be assessed on the substance of the allegation/s alone. It is important not to scrutinise the evidence at this stage or pre-judge the possible outcome. If a complaint does not or may not meet both of the conditions, it is not suitable for local resolution and must be investigated<sup>3</sup>.

1 The appropriate authority is chief officer of the relevant force for all officers and staff below that level. The chief officer's appropriate authority is the local policing body (usually the police and crime commissioner).

2 For these purposes, 'disciplinary proceedings' means misconduct proceedings (meetings and hearings) for officers and any equivalent proceedings for police staff or designated volunteers. It does not include unsatisfactory performance procedures. Complaints that would result in formal performance procedures can be locally resolved.

3 Please refer to paragraphs 5.10-5.12 of our Statutory Guidance for further information.

## Gathering information to decide whether to use local resolution

### Initial scoping

Before determining whether a complaint can be locally resolved, it is appropriate to gather and review the information available to clarify the nature of the allegation. This can include collecting relevant documentation to give

context to the incident being complained about and allow an informed decision. However, this is done solely to ensure that the substance of the complaint is understood fully before the assessment is made. The complaint handler should not take investigative steps at this stage. No analysis of the weight of the evidence should be carried out during this initial assessment. It is only in the subsequent special requirements assessment<sup>4</sup> during an investigation that the weight of the evidence gathered in this exercise should be considered.

### CASE STUDY ONE

#### **Force takes investigative steps inappropriately during assessment of whether complaint is suitable for local resolution**

A man alleged that his landlord, a police officer, had accessed his Police National Computer (PNC) record and disclosed his personal information to his letting agent. He also alleged that the officer disclosed personal information about a third party, and was threatening and unprofessional while off duty.

The complaints were recorded. The force then requested that checks be carried out to determine whether the officer had accessed the PNC as alleged. When it was established that the officer had not accessed the system, the force decided that the complaint was suitable for local resolution.

*The complaint includes an allegation of misuse of police systems and Data Protection Act breaches. If proven, this would justify disciplinary proceedings and, potentially, criminal proceedings. Therefore, the force should have carried out an investigation into the complaint.*

*Establishing whether the officer had accessed the complainant's PNC record is an early step during an investigation. It is not appropriate to subsequently deem a complaint of this nature suitable for local resolution when those lines of enquiry appear to have undermined an element of the complaint.*

<sup>4</sup> [Focus 4](#) provides more detail on deciding whether special requirements apply.

## Establishing early communication with the complainant

It may be difficult to determine whether local resolution is suitable if, for example, limited information is provided in the complaint or ambiguous language is used. The person assessing the complaint should establish effective engagement with the complainant

early on. This will help to clarify the information that has been provided and enable a sound and informed decision about how the allegation/s should be handled. Even if the complaint appears to be clear cut, engaging with the complainant is, in any event, good practice. It provides clear evidence to the complainant that their concerns are being taken seriously.

### CASE STUDY TWO

#### Clarifying the detail of a complaint early on

A man made an allegation of neglect of duty, stating that police had failed to support him and deal with his complaints of harassment over an 18-month period.

The person responsible for assessing the complaint contacted the complainant to clarify his allegations and explore how he felt the police had failed to deal with his allegations and support him. As a result of this early engagement, it was identified that the complaint actually centred on the allegation that the man was not receiving a regular update about the status of criminal allegations he had made to the police.

When this additional level of detail had been provided, the complaint was assessed as being suitable for local resolution. The complainant was given an explanation and an update, and action was taken to reassure him that the police were treating his criminal allegations seriously. The complainant accepted the explanations.

## Multiple complaints

Complaints may include multiple allegations. Some elements may be suitable for local resolution and some may not. Although it is possible to address multiple allegations separately, locally investigating some and locally resolving others, unless the allegations are about entirely different incidents, this approach has the potential to complicate

matters and cause confusion. From the complainant's perspective, they have made one complaint and it may give the complainant the perception that they are being 'processed'. If it is appropriate for a complaint to be split into different parts and dealt with separately, the rationale for this must be explained clearly to the complainant so that they understand the implications and potential outcomes.



### CASE STUDY THREE

#### **When should multiple complaints be subject to one investigation?**

A man made a complaint about his treatment in custody. He set out three things that he was unhappy with. He alleged that the custody sergeant had been abrupt and condescending towards him during the booking in procedure. He also claimed that he had not been allowed a cigarette break, and that two detention officers used excessive force against him, resulting in bruising on his arm.

*Although the allegations of incivility, and not being allowed a cigarette break would be suitable for local resolution, the allegation of excessive force resulting in an injury may, if proved, justify disciplinary proceedings. All three aspects of the complaint relate to the complainant's detention in custody and so should be addressed together with an investigation. Separating them would duplicate effort and may be confusing for the complainant. This approach also risks missing any wider lessons that could be drawn from the complainant's experience in custody.*



### CASE STUDY FOUR

#### **When is it suitable to separate complaints?**

A woman complained that during her arrest, officers pushed her head against the floor when holding her down, which resulted in her forehead being grazed. In this complaint, the woman also alleged that when she returned to the police station two weeks later to collect her belongings, a member of police staff was short tempered and hostile towards her.

*The two aspects of the complaint relate to separate incidents that took place at different times and involved different officers/staff members. This means that they can be addressed separately.*

*The first complaint about excessive use of force should be subject to an investigation, but the second complaint is suitable for local resolution. In situations like this, the complainant should always receive a clear explanation of why their complaint is being split into two parts and handled separately.*

## Suitability

### Article 3

Article 3 of the European Convention on Human Rights states that no one shall be subjected to torture, or to inhuman or degrading treatment or punishment. It is an absolute right and cannot be infringed under any circumstances.

Torture is deliberate human treatment causing very serious and cruel suffering. Inhuman treatment means intense physical and/or mental suffering. Degrading treatment means treatment that arouses in the person fear, anguish or inferiority capable of humiliating or debasing them and possibly breaking their physical or moral resistance.

#### **The state is under an obligation:**

- > not to subject people to such treatment
- > to ensure such treatment is not inflicted by others
- > to conduct an effective official investigation into allegations of such treatment

When initially assessing a complaint, it is important to remember that the test is whether the alleged conduct could or may (not would) involve an infringement of Article 3, if proven. This assessment must be made on the basis of the complaint itself – not on the basis of any evidence that may suggest what did or did not occur.

The European Court of Human Rights has made it clear that ill treatment has to reach a minimum level of severity before it can be considered inhuman or degrading. This minimum level of severity is subjective and depends on a number of factors. These include the age, sex and health of the person involved, as well as the effect of the treatment and other relevant circumstances. Although a complainant may state that the alleged conduct resulted in them feeling degraded, this does not automatically mean that Article 3 has potentially been infringed. When assessing the complaint, the focus should be on the severity of the alleged treatment and whether it could reasonably be considered as inhuman/degrading or torture.

For example, if a complainant alleges that they felt degraded by an officer's abrupt and brusque manner when dealing with a Fixed Penalty Notice, this would not constitute degrading treatment as defined under Article 3. However, in a scenario where the complainant told the officer that they had learning difficulties and were struggling to understand the notice, if the officer's response was rude and the complainant alleged that they made derogatory comments about their learning difficulties, this is potentially degrading treatment.



## CASE STUDY FIVE

### Treatment in custody and Article 3

A man complained about the treatment of his 12-year-old son in custody. He alleged that the length of his son's detention was excessive and although he was detained early in the morning, he was not given any food until 10pm. He also alleged that despite his repeated requests for clean clothing for his son, the custody sergeant did not provide these, resulting in his son sitting in soiled clothing for considerable time, causing discomfort.

*The alleged conduct is excessive detention of a child, failure to provide him with food and refusing a request for clean clothing. This could be found to be inhuman/degrading treatment and therefore a breach of Article 3. As such, complaints of this kind are not suitable for local resolution and should be investigated.*



## CASE STUDY SIX

### Incivility and Article 3

A man complained about how officers dealt with an altercation between him and another taxi driver about a car parking space. He stated that the officers showed him 'attitude' throughout and were hostile, resulting in him feeling he was being looked down on and degraded.

*This complaint is suitable for local resolution. The alleged behaviour of the officers could not constitute inhuman or degrading treatment as defined under Article 3.*

## Excessive force and assault

The majority of allegations of excessive force and assault are unlikely to be suitable for local resolution, even if a complainant has not sustained any known injuries.

However, there are some limited occasions where allegations of excessive use of force could be suitable for local resolution. This

is because the assessment of whether a complaint is suitable for local resolution is based not on the wording of complaint, but on the substance of the complaint<sup>5</sup>. For example, a complainant might assert that an officer brushing past them hastily in a crowd of people was an excessive use of force, but this is not behaviour that could potentially justify criminal or disciplinary proceedings, nor does it have the potential to be a breach of Article 3.

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5 For further information see [Focus issue 3](#).

## CASE STUDY SEVEN

### Excessive force where there are no serious injuries

A woman complained that officers unlawfully searched her home. She also alleged that during her arrest, officers used excessive force by pushing her over, pinning her down on the floor and twisting her arms, causing considerable pain and bruises. She further alleged that she was falsely imprisoned and maliciously prosecuted.

*Although the complainant did not reportedly sustain serious injuries, this type of use of force could, if proven, justify disciplinary proceedings. It might also be considered inhuman or degrading treatment. Complaints of this type are not suitable for local resolution.*

## CASE STUDY EIGHT

### Excessive force – assessing the substance not the wording

A man made a complaint after an encounter with police officers as he was leaving a football match with a group of friends. An altercation occurred between one of his friends and another group of football fans nearby. Police officers tried to separate the groups and while doing so, one officer guided the man away from the area by placing his hand on his back. The man stated that he had not been directly involved in the altercation and therefore this use of force was excessive and unnecessary. He stated that the officer could simply have told him to move away.

*Even if it were found that it was unnecessary to physically move the complainant away, this level of force would not result in criminal or disciplinary proceedings, and being moved away from an altercation does not amount to inhuman or degrading treatment under Article 3. This type of complaint would therefore be suitable for local resolution.*

## Dealing with allegations about treatment in custody

Allegations about treatment in custody can vary quite widely, from incivility and neglect of duty, to excessive detention and assault, or excessive use of force resulting in serious injuries. The substance of each complaint needs to be assessed carefully to determine whether it is suitable for local resolution. When assessing complaints that relate to alleged breaches of PACE Code C<sup>6</sup>, where possible,

the complaint handler should consider the expected requirements set out in the Code. Although a complainant may assert that PACE Code C has been breached, it is important that the complaint handler's assessment is based on the substance of the complaint (not the wording) and on whether the alleged conduct, if proven, could constitute a breach. Breaches of PACE Code C – for example, failure to provide medication or food and water – could, if proven, potentially result in disciplinary proceedings and/or involve an infringement of Article 3.

<sup>6</sup> PACE Code C sets out the requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody.



## CASE STUDY NINE

### Allegations of medical care failings in custody

A man complained that when he was taken into custody he disclosed that he had diabetes during the booking-in procedure and would require insulin. He stated that he was not seen by a nurse or provided with insulin during his ten-hour detention, which he said put his health at risk.

*There are specific requirements in PACE Code C on medical care while in custody. A failure to adhere to these could justify disciplinary proceedings. It could also involve an infringement of Article 3 if the failure had a detrimental impact on a detainee's health. Therefore, this case is not suitable for local resolution.*

### Can discrimination allegations be dealt with using local resolution?

An allegation of discrimination will often, rightly, increase the potential gravity of a complaint and make it unsuitable for local resolution.

However, some allegations of discrimination might meet the suitability test for local resolution. For detailed guidance on how to handle discrimination complaints, please refer to our [discrimination guidance](#).



## CASE STUDY TEN

### Checking the substance of a complaint during early assessment

A man stated that he was not happy about how an officer had dealt with him after reporting that his neighbour's CCTV overlooked his house. He alleged that an officer made excuses not to attend his address, would not check his neighbour's camera, and that the police were not interested in helping him. He asserted that the officer was 'ignorant & racist' and that the police force, as a whole, was racist.

During initial action to scope the complaint, the force contacted the complainant to explore his assertion of racism. This established that there was nothing about this specific incident that had given him this perception. He explained that he had concluded that the officer's actions must have been motivated by racism because he could see no other reason for their inaction.

*The complainant has inferred that the motivation for the officer's actions is racism, but himself admits that there is no basis for this perception. The substance of the complaint is that the officer did not attend the man's house and check the neighbour's camera. Therefore, it is suitable for local resolution.*

*Clearly, if during the local resolution of the complaint it was revealed that the officer's alleged inactions may have been motivated by racism, then an investigation would become appropriate.*

## Do some allegations of incivility require investigation?

Allegations that an officer/member of police staff was unfriendly or abrupt would be unlikely to justify disciplinary proceedings or to involve an infringement of Article 3. However,

if the alleged behaviour or language used is derogatory or discriminatory, this might mean that the complaint is not suitable for local resolution. Early engagement with the complainant should help to clarify their exact concerns about the language they allege was used.

### CASE STUDY ELEVEN

#### Woman alleges officer used derogatory language at her home

An officer attended a woman's house following a report of her sons fighting and requested to speak to them. The woman refused to let the officer in, stating that the matter had been resolved. The officer stated that he still wanted to speak to her sons, but she continued to refuse. A disagreement then ensued and the woman alleged that the officer was rude and called her "a fat useless cow" and "scum" and pushed passed her and entered her house without permission. The woman acknowledged that she had said that the police were useless, but she felt that the officer's response to this was completely unnecessary and hurtful.

*The allegation is that the officer made derogatory remarks. If proved, this could justify disciplinary proceedings. This complaint is not suitable for local resolution.*

## Allegations of failure to investigate after someone reports a matter to police

When someone complains that officers have failed to investigate a matter they have reported, an assessment is required about whether the complaint is suitable for

local resolution. Not all of these types of complaints will require an investigation. It is important to consider the alleged inaction in context, as far as is possible based on the available information. It may be evident at the assessment stage that the alleged inaction is obviously disproportionate to the matter that has been reported to police.



## CASE STUDY TWELVE

### Expectations about lines of enquiry in response to reports to the police

A man complained that officers had failed to investigate his report of a criminal offence at his block of flats. He stated that he reported that the caretaker's cleaning stand had been moved by children and placed outside his front door after midnight, and that this was a criminal offence. The man was dissatisfied that officers did not:

- > review all of the CCTV recordings on his floor and the floor above
- > obtain accounts from the caretaker and residents from both floors
- > investigate what he considered to be a criminal offence

*The actions that the man expected officers to carry out are evidently unreasonable and disproportionate to the nature of the incident he reported. The alleged inactions, if proven, would not justify disciplinary proceedings. Local resolution would be an appropriate way of dealing with this complaint. This would involve providing the complainant with an explanation of why the actions he anticipated were not taken.*



## CASE STUDY THIRTEEN

### Failure to investigate

A man complained that officers witnessed him being punched in the face, but failed to arrest the suspect. He alleged that the officers told him that they had instead taken the suspect home because of pressures on police resources that evening. The complainant also alleged that after the assault, no follow-up appointment was made, the incident was not formally recorded on the force's system and the matter was not investigated.

*The officers' alleged inactions appear to be contrary to expected lines of enquiry, in response to an assault and so could justify disciplinary proceedings, if proven. When assessing the complaint, the force acknowledged the seriousness of the allegation and noted the concerns it raised. The force requested that immediate action be taken in connection with the allegation of assault. References were also made in the case papers to an inspector being "shocked and disappointed" that the officers had seemingly failed to investigate the alleged assault, and stating that the suspect should have been arrested. This complaint is not suitable for local resolution.*

### Complaints about neglect or failure of duties and responsibilities

This type of complaint can cover a wide range of conduct matters. Deciding whether they are suitable for local resolution will depend

heavily on the individual circumstances. Like failure to investigate allegations, when applying the suitability test, it is important to consider the alleged neglect or failure in context, its relevance, and the impact this has allegedly had on the matter in question (if possible, based on the information available at this stage).

## CASE STUDY FOURTEEN

### Local resolution used in response to complaint about lost watch

A woman complained about how a member of police staff dealt with returning her property. She alleged that the staff member failed to find her watch, causing her unnecessary anguish. Her watch was found later and the woman asked for an explanation as to why the initial searches failed to locate it.

*This complaint is suitable for local resolution because the conduct complained of would neither justify disciplinary/criminal proceedings nor involve an infringement of Article 3, even if proved. Although the complainant stated that the alleged conduct had caused her anguish, ill treatment has to reach a minimum level of severity before it can be considered inhuman or degrading. As a result of the local resolution, the complainant received an apology from the staff member involved. The staff member was also given advice about the most effective way to search the property system in future.*

## CASE STUDY FIFTEEN

### Police response to alleged sexual assault

A woman attended a police station and used the phone on the wall to contact police following a sexual assault. She told the operator what had happened and that she was concerned the man had followed her. She alleged that the operator told her to go home, call police back, and they would arrange for someone to attend and see her. In her complaint, the woman stated that she was vulnerable and distressed and needed immediate assistance and protection. She felt that her call was not handled properly.

*The alleged inaction to safeguard the woman in response to her initial call could justify disciplinary proceedings. It could also constitute inhuman treatment to a vulnerable victim. This complaint is not suitable for local resolution.*

Please refer to [issue three of Focus](#) for more advice on applying the local resolution suitability test.

## Get in touch

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