

FOCUS

ISSUE EIGHT

Practical guidance on handling complaints, conduct matters, and death or serious injury matters within the Police Reform Act 2002

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When does a complaint become recordable?

Dissatisfaction/service recovery or complaint?

There will be times when someone approaches the police because they are dissatisfied with the service they have received. It may be clear that the grievance is based on a misunderstanding that can be resolved ‘there and then’ by contacting the person and explaining. There is no need to record their concern as a Police Reform Act (PRA) complaint provided that they are satisfied by that explanation and confirm that they no longer wish to pursue a complaint.

Dissatisfaction should not be used to try to increase the time an appropriate authority has to decide whether to record the complaint. If a person has not had a recording decision within 15 working days (ten to make the decision, five to communicate it), they will be able to appeal the failure to make a decision to the IPCC. It should not be used as a way of closing the complaint without recourse – the person should always be able to continue to pursue a complaint if they are not satisfied that they have received a full explanation for their concerns.

It will only be very low-level grievances, based on a misunderstanding that can be immediately explained, or because there has been a lapse in communication, that can be resolved outside the PRA by dissatisfaction/service recovery. Anything that would require work to resolve the grievance should have a recording decision made on it and be handled within the PRA.



Case study one: delay in processing DBS checks

Due to unexpected illness, the department that processed Disclosure and Barring Service (DBS) checks experienced problems meeting its stated six-week turnaround time. A woman wrote to the force about her dissatisfaction with the ongoing delay. She told them that it was having an adverse impact on the adoption process she was going through.

The force contacted her the day after receiving her letter, apologising for the delay and explaining why they were struggling to turn the requests around.

They acknowledged the impact of the delay and fast tracked her case, sending out her DBS check the following day. The woman confirmed that she was happy with the actions they had taken and did not want to pursue a complaint.

This is a good example of something that can be addressed there and then, to the satisfaction of all. Putting something like this through the complaint system does not help either party – the woman just wants to complete the adoption process and by sorting out the problem swiftly and to her satisfaction, the force recovered her faith in them.

Case study two: incivility

A woman called the police because she was concerned that someone had broken in to her house and was hiding in her cupboard. She later complained that when officers attended the house, they were scathing and treated her with disdain. She said they rubbished the various pieces of evidence that she gave them to prove that someone else had been in her house and treated her with contempt.

The force tried to address this through dissatisfaction, despite the fact that it contained clear allegations of conduct and was not based on a misunderstanding or a communication failure. A month later, the woman appealed to the IPCC. The appeal was upheld on the basis that they had failed to make a decision, and that they had failed to record a complaint of conduct.

Allegation of conduct

Indications that someone intends to make a complaint (where no conduct allegations are made) do not need a recording decision – there is nothing to make a decision on. If contact is received where a person indicates that they wish to make a complaint, or have a complaint about how they were treated, but provide no detail about what conduct they allege occurred, appropriate authorities should ask them for the details so that they can make a recording decision. The contact can be filed as a miscellaneous approach until such time as those details are forthcoming, at which point a recording decision should be made. If, instead of providing the details of the complaint to the appropriate authority, the person approaches the IPCC to make a non-recording appeal, the appeal will be deemed invalid and the details of the complaint held within the ‘appeal’ passed to the force for a recording decision.

Note that, for the purposes of the ‘out of time’ ground for disapplying the legislation, making an approach stating the intention to complain, but without any details, does not ‘stop the clock’.

Carrying out enquiries before making a recording decision

The Police Reform and Social Responsibility Act (PRsRA) introduced a number of grounds for not recording complaints. To decide whether these grounds apply, background research should be done.

There is a difference between carrying out some preliminary research to make sure that the correct recording decision is made and looking into the complaint to answer it outside the legislation.

Carrying out enquiries before making a recording decision does not stop the recording clock. The appropriate authority should still make a decision within ten working days. If it is not clear at that point whether or not one of the exceptions apply, err on the side of caution and record the complaint – it is possible to disapply the legislation later on if it becomes clear it should not be in the system.

Enquiries should be made if it appears that one of the exemptions may apply but further clarification is needed. Enquiries should be neutral, not made only to bolster or justify the application of an exemption.



Case study three: preliminary evidence gathering

A complainant alleges that an off-duty officer was racist and threatened to arrest him following a verbal argument over noise. The complaint was not recorded on the grounds that it was 'vexatious, oppressive or an abuse of procedure'. Before making the recording decision, the relevant incident logs were reviewed. Since neighbours who witnessed the incident supported the officer's account, the conclusion was that the evidence did not support the allegations.

The complaint should have been recorded and the witness accounts used as evidence to inform the outcome of an investigation. Before making a recording decision, the appropriate authority carried out an investigation and made a recording decision based on the evidence available, rather than judging the basis of the complaint alone. There is no clear rationale as to which one of the grounds apply and why.



Case study four: stop and search

A man was spoken to as part of a house-to-house witness appeal. He complained that the officer pounded on the door in an aggressive manner, frightening his partner, and was rude to him when he opened the door. The appropriate authority read the record of the witness appeal and found a comment that they had faced some hostility from the local community because of existing tensions. They then approached the officer who had been complained about and asked her for her recollection of the encounter. She said that the man had been hostile when he opened the door

and told her that he was going to complain because he hated police. The appropriate authority decided not to record the complaint on the basis that it was vexatious.

This complaint should have been recorded – it is an allegation of incivility and, from the preliminary research (looking at the records), there is a possibility that it is vexatious, but not enough to justify not recording it. The further work done of proactively seeking an account from the officer complained of is part of answering the complaint and is also partial – only looking for evidence to support that the complaint has been made without foundation.

Given that repetition is a ground for not recording a complaint, the complainant's previous complaint history can be reviewed before making a recording decision. For persistent complainants, this may highlight that this most recent complaint is a rewording of a previous complaint or the officer complained about has changed. However, this is still about the same issues as previous complaints and is an attempt to have the previous complaint looked at again. It might also highlight that the complainant is now targeting an individual officer unreasonably and this most recent complaint is oppressive or vexatious.¹



Case study five: targeting an officer

The complainant wrote to the police alleging that everything that had happened to her recently was a result of the underhand, devious and scheming influence of PC Jones at her local police station. This includes the parking ticket she recently received. She states that she wants the officer removed from her local area so she can peacefully get on with her life. The complainant has made 18 separate complaints against PC Jones within the last five months. Some have been investigated or locally resolved. In most instances, PC Jones was not involved in the issues she reported. In one instance, the officer was on annual leave and out of the country.

It is possible to show that the current complaint is oppressive. PC Jones does not work in the division that issued the parking ticket, a fact she is well aware of. The complaint history shows that the complainant has a personal issue with PC Jones, which is the motivation for saying that he is responsible for her parking ticket. The previous complaints that were investigated and not upheld, and the evidence available, show that on many occasions the complainant had no interaction at all with PC Jones.



Case study six: neighbour dispute

Following a dispute between two families over parking, the complainant alleges that the police officers attending treated the other family favourably because the neighbour's son was a serving police officer.

There is insufficient evidence to show that the complaint is without foundation or is being made solely to influence the police response to the dispute. There is no history of the other family pursuing complaints against the officer which might support that this was oppressive, or any suggestion in the most recent correspondence that they are complaining knowing full well that the son's status was unknown to the attending officers.

It will also be appropriate, where there has been a lot of contact with a person about an operational policing decision and they are now complaining, to look at the most recent correspondence on the operational policing decision. This will help to understand the issues being raised and consider whether the complaint is being made with a view to challenging the operational decision and is actually an abuse of procedure.

The same also applies for complaints that appear to be trying to use the complaints system to challenge a conviction, as opposed to appealing; or for complaints against senior officers solely because they have ultimate responsibility for the departmental decision the complaint takes issue with.

Anything beyond this very quick, basic and superficial background gathering is starting to become enquiries that should be made once the complaint is recorded.

¹ See issue two of *Focus* for more on vexatious, oppressive or abuse of procedure.

Case study seven: suspended parking

As part of the security surrounding a marathon, the officer in charge of the police operation decided that they would close off some of the roads that were near the route and suspend parking on other roads. They posted notices to that effect. A local resident objected to the parking suspension on her road, as this would mean that she would have to park her car in a neighbouring street and walk to her house. Her letter questioned the need to suspend the parking and asked whether their registration plates could be noted so that they could be allowed to park there. The response from the police fully explained why cars being parked on that road at all were a risk to public safety and gave a full explanation of how the decision had been reached, along with details of the policies and procedures that assisted the decision. The woman continued to correspond with the officer in charge, raising her objections and reiterating her belief that this was an unreasonable decision. Eventually, the officer sent her a final letter, setting out the position and informing her that they would not be corresponding further on this matter. The woman then made a complaint about the officer in charge of the police operation claiming he had made an unreasonable decision.

There is enough evidence in the correspondence between the officer and the local resident to show that the complaint is made with the sole purpose of overturning the parking suspension decision. The woman is making the complaint having been fully informed of the basis on which the decision was made and that it was in accordance with policy. This complaint is an abuse of procedure – it is a clear attempt to use the complaints process to get round other procedures and overturn an operational policing decision.

Not recorded or record and then disapply?

There are four grounds for not recording a complaint that are also grounds to disapply the legislation to the complaint once recorded. These are:

- already subject of a complaint by same complainant
- the complaint identifies neither the complainant nor any interested person (anonymous)
- repetitious of a closed complaint made by same complainant
- vexatious, oppressive or an abuse of procedure

If it is clear when the recording decision is being made that one of the above exemptions definitely applies (having verified this using the basic background gathering mentioned earlier in this issue), then the complaint should not be recorded and the complainant given the right of

appeal to the IPCC. Recording a complaint with the intention to disapply falsely raises the complainant's expectations and may result in the loss of an independent appeal right to the IPCC². This would create issues of fairness and is a misapplication of the legislation. It is important that complaints that should not be in the system are removed at the earliest opportunity so that the resources can be used more appropriately on those complaints that should be looked at. This is particularly important because disapplying the legislation to a complaint has two separate appeal rights and is a more complicated process.

Deciding that one of the grounds does not apply at the recording stage does not rule out deciding that, due to further evidence gathering to assess how the complaint should be handled, one of the grounds now applies and the complaint should have the legislation disapplied. It is important to clearly explain to the complainant, in the letter seeking their representations on the assessment, what has changed your view of the complaint since it was recorded.

² Except for complaints against senior officers, where the appeal right is always to the IPCC.



Case study five continued: an alternative scenario

The complainant wrote to the police alleging that everything that had happened to her recently was a result of the underhand, devious and scheming influence of PC Jones at her local police station. This includes the parking ticket she recently received. She states that she wants the officer removed from her local area so she can peacefully get on with her life. The complainant has made 18 separate complaints against PC Jones within the last five months. Some have been investigated or locally resolved.

If PC Jones was the complainant's single point of contact (SPOC) for the last six months in response to an ongoing local matter, the complaint history does not show that this complaint is oppressive at the recording stage. This is because the complaints history is not necessarily indicative of a campaign against him, but of a frequency of contact because of his SPOC status.

If it becomes apparent through more extensive evidence gathering that the complainant knows that PC Jones could not be responsible for her parking ticket, then this complaint might be disappplied on the grounds that it is vexatious – it can now be evidenced that the complaint was made without foundation.

When should off-duty conduct be recorded?

Police officers have a right to a private life and to be a normal member of society when they are not on duty. The threshold for a complaint about off-duty conduct to be recorded is in the Standards of Professional Behaviour under discreditable conduct:

'does not discredit the police service or undermine public confidence in it...'

This is a high threshold – you have to be able to say that, if an average person on the street read about the matter in the papers, they would say to themselves 'I now think less of my police force'. Usually, neighbour disputes between a police officer and their neighbours are not matters for the complaints system. Having a disagreement with their neighbour over the height of a hedge has no bearing on a police officer's ability to do their job and it does not reflect negatively on their employer's reputation. Rank will have a bearing on this assessment. There will be instances where the issue raised would not diminish the force's reputation if a police constable or civilian staff member was involved. However, if the person complained about is a senior officer or senior member of staff and is a figurehead, the matter would bring the force into disrepute.

The fact that the complaint is recordable because it would bring the force into disrepute does not have any effect on the subsequent assessments about whether it can be locally resolved or, if investigated, at what level. Those assessments are done entirely on the seriousness of the allegation, not the reputational impact.



Case study eight: swearing during a family dispute

An officer's marriage has ended acrimoniously. While dropping his wife's belongings at her parents' home, the officer and her father become involved in a heated exchange. During this, he told the father to "fuck off". The father tries to make a complaint that the officer swore at him.

This is a personal and private exchange between family members. The officer has a right to a private life. There is no indication that the behaviour of the officer was criminal or of a nature that would undermine his ability to carry out his duties or the reputation of the force.



Case study nine: police officer fails to pay their rent

The officer is in private rented accommodation and one month he pays his rent a couple of days late. The landlord makes a complaint about the officer's organisation and failure to manage his finances.

This is not off-duty conduct that would bring the force into disrepute. Officers are entitled to a private life and late payment of rent, in itself, does not bring the police force, as a whole, in to disrepute.



Case study ten: neighbour dispute

A senior police officer is involved in an ongoing neighbour dispute regarding access to a shared driveway. The officer starts to park his car in a way that means that the neighbour can not get on to his own driveway and leaves his bins where the neighbour has to get out of his car to move them so he can park. If they happen to walk out to their cars at the same time, the officer will confront the neighbour about the legality of his drive.

This is petty and vindictive behaviour that arguably calls into question his judgment and his ability to remain impartial. Because of his senior position within the force, the behaviour could undermine the reputation of the force.

Complaints against contractors

The duty to record complaints about contracted staff lies with the chief officer, or whoever he/she has delegated that responsibility to within the police force. If the complaint about a contractor is made to the wrong chief officer, there is no requirement under the legislation for him/her to forward the complaint on to the correct chief officer, although we would expect them to do so. There is no appeal right if the wrong chief officer does not forward the complaint on to the correct chief officer.

Complaints against retired officers

The fact that the person complained about is no longer subject to the regulations is not an exemption to recording the complaint. In instances where the officer has served with multiple police forces before his/her retirement, there is no requirement for the last appropriate authority he/she served with to be the recording body. For instances of historical conduct being raised, it should be the appropriate authority he/she served with at the time of the alleged conduct that is the recording body. That appropriate authority is usually decided by the rank of the officer at the time of the alleged conduct, not their final rank upon retirement.

Non-recording appeal rights

There are a number of assessments that an appropriate authority must make when assessing an attempt to make a complaint. Not all of these have appeal rights against the decision. If it appears that no decision has been made on an attempt to make a complaint within 15 working days, the complainant has a right of appeal to the IPCC. Even if one of the issues on pages 8 or 9 applies, if no decision has been made, the IPCC will uphold the appeal on the failure to make the decision. Failure to communicate the decision is not a ground for upholding a non-recording appeal.

Are you the correct appropriate authority (AA)? (Police officer and staff complaints only)

If you are not the correct AA, you have an obligation to pass the complaint on to the correct AA. If, having made that decision, you then fail to pass the complaint on, there is a right of appeal against that failure. However, there is no right of appeal against the decision that you are not the correct AA.

For retired officers who have served with multiple police forces, there is no right of appeal against who records the complaint. The common sense approach is that the AA for the force the officer was serving with at the time of the conduct is the recording body, but if his/her last AA records the complaint, there is no right of appeal against this.

Is the person eligible to make a complaint?

In order to be defined as a complainant under the PRA, a person must be either:

1. a member of the public who is the 'victim'
2. a member of the public who was adversely affected by it (because they were physically present to see or hear the conduct/ its effects, or the victim was known to the member of the public)
3. a member of the public who witnessed it
4. someone acting on behalf of someone who fulfils one of the conditions above

Off-duty police officers or staff who raise issues about officers or staff from a different police force are considered to be members of the public. Former police officers or staff members are only considered to be members of the public if the issue they are raising happened after they left the force.

If someone who does not meet one of the above conditions approaches the force with an issue, best practice would be to tell the person why they are not thought to be a complainant and ask them to provide further information if they feel that they do meet one of the criteria before making a formal decision not to record the complaint. If the complaint is not recordable, the force is obliged to consider whether they are raising a recordable conduct matter. If the complaint is not recorded because the force does not consider the person to be an eligible complainant, a right of appeal against that decision must be given.

Has the complaint been made previously and then withdrawn?

There is no right of appeal against this assessment. The outcome of withdrawing a complaint is that the provisions of Schedule 3 cease to apply. Therefore, there are no appeal rights against a decision not to record a previously withdrawn complaint.

Is the subject matter being looked at in criminal proceedings or misconduct proceedings? Or has it been previously?

There is no right of appeal against this assessment. If the matter has been or is being adjudicated on by a criminal court, or by a disciplinary proceeding, there is no requirement to consider recording a complaint.

Was the matter looked at before 1 April 2004?

There is no right of appeal against this assessment. Anything that was looked at under the Police Act 1996 is not something that can be considered again under the PRA. There is an exceptional power that the IPCC has to overrule this. This was brought in to allow the IPCC to take on the investigation into the Hillsborough disaster, but is not an appeal right. There is also no right of appeal against the decision not to ask the IPCC to use this power.

Has the matter been raised previously as a potential complaint, and not recorded?

There is only one right of appeal against the decision not to record a complaint, and only one recording decision is required on a potential complaint. Therefore, if the matter was raised previously as a potential complaint and was not recorded as a complaint, provided that the matter being raised again is identical to that which has already been assessed, irrespective of whether the non-recording appeal right is still live, was not exercised, or was exercised and was not upheld, there is no requirement to make a further recording decision, or to issue a second right of appeal. Clearly, where the appeal right is still live, it would be appropriate to highlight this to the complainant.

For all other reasons for not recording a complaint, there is a right of appeal against that decision.

De-recording a complaint

You cannot 'de-record' a complaint, even when it becomes clear that the person complained about is not actually a police officer or police member of staff. If a complaint should not be in the system and it is not possible to just conclude it, it must be removed from the system. This can be done by disapplying the legislation to it, discontinuing the investigation, subjecting it to Regulation 23, or by the complainant withdrawing it.

Get in touch

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