

OVERSIGHT BULLETIN

Issue 3 – October/November/December

ipcc
independent
police complaints
commission

Who have we seen this quarter?

PSD meetings:

Beds/Herts/Cambs
Cheshire PCC
City of London
County Durham
Derbyshire
Devon & Cornwall
Dyfed-Powys
Essex
Gloucestershire
GMP
Gwent
Hampshire
Home Office
Humberside
Kent
Lancashire
Lincolnshire
Merseyside
MPS
NCA
North Wales
North Yorkshire
Northamptonshire
Northumbria
Nottinghamshire
NPCC Complaints and misconduct
Group
South Yorkshire
Sussex
Thames Valley
Warwickshire/West Mercia
West Yorkshire
Wiltshire

National meetings:

North East Regional Heads
North West Regional Heads
Hertfordshire Sancus Event
Avon & Somerset Sancus Event
NPCC Heads of PSD conference
NPCC working group for AASG
HMIC Peel Inspection external
reference group

Welcome to our Oversight bulletin.

We publish a new bulletin each quarter, looking back at issues raised during the previous three months.



What trends have we spotted this quarter?

Among the issues raised by our operational staff, common topics have included:

Failure to refer death or serious injury (DSI) matters

- We are seeing an increase in forces either not referring DSI matters or referring them after a significant amount of time has passed. Forces have a statutory duty to refer all DSI matters to the IPCC as soon as possible after the incident.
- Where a referral is made some time after the original incident, forces should provide an explanation that indicates the evidence that has come to light requiring referral (or re-referral) of the matter (statutory guidance paragraph 8.6).
- DSI referrals are mandatory. This type of referral cannot be made voluntarily.

Special requirements and case to answer

- There has been an increase in the number of complaints where special requirements should have been applied to an investigation. A complaint must be certified as subject to special requirements if the investigating officer believes that there is an indication that the person under investigation may have committed a criminal offence or behaved in a manner that would justify misconduct proceedings.
- The investigating officer must consider the complaint and the preliminary evidence to assess whether there is any indication of criminality or behavior that would justify misconduct proceedings. If there is any indication, then special requirements should apply. Further guidance is available in issue four of Focus. www.ipcc.gov.uk/page/publications-for-forces



Officer interviews

We have upheld a number of appeals after identifying that the officer interviews did not go far enough to examine the specifics of the complaint. The complainant's account should be put to the officer/s during interview, as should the allegations being made. In addition, differences between accounts should be explored during interview and challenged appropriately.



Did you know?

This quarter showed the highest figures of good complaint handling/best practice recorded on our internal logs so far. Your Oversight and Force Liaison contact can provide details of good complaint handling for your force.

Statutory Guidance

FOCUS

- Where a conduct matter or complaint investigation is subject to special requirements, the role of the investigator in reaching conclusions is limited to giving their opinion on whether there is a “case to answer” for misconduct or gross misconduct.
- Finding that there is a “case to answer” means that the investigator is of the opinion that there is sufficient evidence that a reasonable misconduct hearing/meeting **could** find, on the balance of probabilities, that the person under investigation has committed gross misconduct or misconduct. The misconduct meeting or hearing may reach a different conclusion to that of the investigator. The investigator must recognise this possibility. The investigator's own opinion about whether the case should succeed is not relevant and should not be expressed in the investigation report.
- The investigator should also not make a determinative finding for a complaint, on the same issues upon which a case to answer opinion has been reached. Therefore, once the investigator has indicated their opinion about whether there is a case to answer, they should not go on to conclude whether or not the complaint should be upheld.
- When analysing the evidence to determine whether there is a case to answer, investigators may be faced with conflicting accounts of the facts from, for example, a police officer and the complainant. In some limited circumstances an account will be inherently implausible or undermined by other evidence and so it is possible to come to a reasoned conclusion that there is no case to answer. In other cases that may not be so. Therefore, when the report is being prepared, it is a case of “one person's word against the other”. This is often the case in court proceedings and does not mean that there is no case to answer. A misconduct hearing or meeting can take into account witnesses' evidence and cross-examination along with their demeanor in order to make a decision about which account to accept, just as courts do daily. Where two accounts are equally credible, and one account, if proved, means that an officer may have committed misconduct, it will usually be appropriate to find a case to answer. The misconduct hearing or meeting will then decide which of the accounts is preferred.

The case to answer tests to be applied are as follows:

- **Case to answer** = (in the investigator's opinion) there is sufficient evidence upon which a reasonable tribunal, properly directed, could find misconduct/gross misconduct.
- **No case to answer** = (in the investigator's opinion) there is insufficient evidence upon which a reasonable tribunal, properly directed, could find misconduct/gross misconduct.

Further guidance is available on page 76 of our Statutory Guidance.



Messages

- › **Abuse of authority for sexual gain** – following the publication of the HMIC PEEL legitimacy inspections¹, we have written to all forces highlighting that these cases should be treated as serious corruption. They therefore meet the criteria for mandatory referral to the IPCC. All investigations that involve abuse of authority for sexual gain should be referred to us. Chief Constable Martin Jelley has indicated that forces should look back at cases over a three-year period. We also wrote asking forces to refer any open matters that have not been referred already. For matters that have been investigated and closed, we have created a template for forces to complete. Your Force Liaison will explore this issue with you further over the coming weeks.
- › **Where forces have queries about an appeal decision we have made**, the first point of contact should be the casework manager who made the appeal decision.
- › **Since Monday 14 November 2016**, when we communicate method of investigation (MOI) decisions, we have been providing our rationale for all local investigation decisions both to forces and complainants.
- › **On 8 February 2017**, we published our public confidence survey results on our website. On the same day, Dame Anne Owers wrote to chief constables and police and crime commissioners about the results.



Queries:

The team responded to 155 telephone and email queries in October, November and December. Among the topics discussed, queries included:

Who is the appropriate authority for complaints against a CC, DCC or ACC?

- › If a complaint is about the actions or decision making of a chief officer (chief constable or acting chief constable) rather than someone with delegated responsibility, the police and crime commissioner is the appropriate authority to make a recording decision. For complaints against deputy chief constables, the appropriate authority is the chief officer of the police force. Chief officers are responsible for making recording decisions for all complaints against senior officers.

Who provides the complainant with the final investigation report after independent investigations?

- › It is the responsibility of the IPCC, not the police force, to share the final investigation report with the complainant/family in the appropriate circumstances.



Oversight projects

Discrimination guidelines follow-up review

The Oversight Team has now completed work on the Discrimination Review Project. The team revisited Greater Manchester Police, West Midlands Police and West Yorkshire Police – the same three forces that were involved in our original discrimination guidelines project. We wanted to assess the impact of the revised guidelines and assess what improvements forces had made since the guidelines were published and forces were trained by the Oversight team. We also examined the action plans provided by forces, and any appeals that we have received.

¹ PEEL legitimacy inspections are run by HMIC. They draw together evidence from its annual all-force inspections. The evidence is used to assess the effectiveness, efficiency and legitimacy of the police.



Look forward

- > Your Oversight Force Liaison will speak with individual forces in more detail about local DSI reports.
- > The Oversight team continues to conduct file sampling on decisions relating to local resolution and chief officer appeals. We will report our findings on the assessment of appeals at forces and the application of the local resolution suitability test shortly.



You told us!!

Following a request from one force, we have published a [guide outlining what officers, subjects and witnesses can expect during an IPCC independent investigation.](#)



Want to know more?

What else would you like to see in these updates? Get in touch and let us know!



Contact us

Email: Force_oversight@ipcc.gsi.gov.uk

Appeals made to chief officers and local resolution suitability tests

We have been visiting forces to look at how they are handling appeals made to chief officers rather than to the IPCC. This work will help us to gain an understanding of their practices when completing their reviews. We are conducting file sampling at forces that have wide variations in their upheld rates when compared to the IPCC's assessments for the same force. We have also been developing our understanding of the way that forces decide to address complaints by local resolution. Our review includes forces with levels of local resolution at the high, low and average rates across the annual complaint statistics. As a result the Oversight team has visited Thames Valley, Sussex, County Durham, Cleveland, and will soon be visiting South Wales. Overall the team has completed 16 days of file sampling since December as part of these projects.



Not sure where to look for guidance and information?

Speak to your Oversight Force Liaisons, In addition, we have published lots of useful information on our website. The following information can be found either on the home page of our website or under the Research & Statistics tab:

- > Annual police complaint statistics
- > Police force complaint data
- > Mental health in police custody – police cells as places of safety
- > Death and serious injury – annual deaths statistics reports, deaths in police custody, near miss research
- > Public confidence
- > Focus
- > Alternative formats – Information available in a range of alternative, including other languages and sign language videos
- > Statutory guidance – and many useful legislative links