



IPCC independent investigations – information for police officers, staff and their representatives

October 2016

Introduction

The IPCC oversees the police complaints system in England and Wales. It is independent, making its decisions entirely independently of the police, government and complainants. Part of our remit is to analyse the actions taken by police officers and police staff after a death or serious injury which occurred during or following contact with the police. We also investigate the most serious complaints and conduct referrals from police forces. All officers must adhere to the **Standards of Professional Behaviour**. Police staff may have specific contracts that set out the expectations of them.

This document sets out key messages for police officers and police staff if they are involved in an incident or allegation that is subject to an IPCC investigation.

Throughout our investigations, it is likely that officers and staff will receive regular correspondence from IPCC investigators. This will cover their status, information about interviews and updates about the investigation. The IPCC seeks to provide a consistent approach so that officers and staff know what to expect from the IPCC. This document explains:

- the process involved in assessing the status of officers and staff during an IPCC investigation
- the process involved in making severity assessment decisions
- the process of serving a notice of investigation
- police witnesses
- how we will contact and update you

This document explains how our investigations affect police officers and staff. Separate regulations set out how we investigate contractors¹.

This document is also not exhaustive and will be updated to reflect any changes to legislation.

Further information is available on our website².

Identifying the status of people involved in our investigations

During the course of our investigations, there are two official statuses we can apply to those involved.

Police officers and staff who had more than peripheral involvement in an incident will be considered witnesses unless the investigator considers there to be an **indication** that the person **may** have:

- committed a criminal offence, or
- behaved in a manner that would justify them facing disciplinary proceedings

¹ [Independent Police Complaints Commission \(Complaints and Misconduct\) \(Contractors\) Regulations 2015](#)

² www.ipcc.gov.uk/page/information-police-officers-staff-and-contractors

If either or both of these indications are present, it means that you can be treated as a subject of that investigation.

At this stage, you should note that the threshold for the investigator to consider an officer or staff member as a subject is low – an ‘indication’³.

The lead investigator will look at the particular circumstances of each case to assess whether there is an indication of criminality or misconduct. In order to carry out this assessment, the investigator will consider the evidence available at that time. In some cases the lead investigator may decide that further evidence is needed before this decision is made and will keep the status of the officer under review throughout the investigation.

When will the status of those involved be decided?

An IPCC investigator will decide from the outset of the investigation whether they consider police officers or staff members involved in the investigation as witnesses or subjects. This decision is subject to review throughout the entire investigation.

The status of a police officer or staff member may change from being a witness to a subject at any point in the investigation, as more evidence is gathered.

Once an officer has been identified as a subject, it is very unlikely that their status will change – unless there is a clear indication that the information used to make this decision was not valid.

Severity assessment

When an investigator decides there is an indication that the officer may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings, they are required to conduct a severity assessment.⁴

A severity assessment looks at whether the conduct, if proved, would amount to misconduct or gross misconduct. ‘Misconduct’ means a breach of the Standards of Professional Behavior. ‘Gross misconduct’ means a breach of the Standards of Professional Behavior that is so serious it would justify dismissal.⁵

The severity assessment also looks at what form the proceedings would be likely to take. For officers, a meeting would be appropriate if the conduct would amount to misconduct. If it would amount to gross misconduct, it would go to a hearing.

An officer may also go to a hearing if their conduct amounts to misconduct but they were subject to a live final written warning at the time of the initial severity assessment, or, if they had been reduced in rank (under the Police (Conduct) Regulations 2004 only) less than 18 months before the initial severity assessment.

³ Paragraph 19B, Schedule 3, Police Reform Act 2002

⁴ Paragraph 19B, Schedule 3, Police Reform Act 2002

⁵ Paragraph 29, Schedule 3, Police Reform Act 2002

Table 1 on page seven explains the possible outcomes of misconduct meetings or hearings. Please note: this may vary for police staff members depending on their contract.

The investigator will also consult the appropriate authority about the severity assessment before the final decision is made.⁶

The IPCC will notify the police officer or staff member about the severity assessment when they tell them that they are considered to be subject to the investigation.

What happens if you are subject to investigation?

When an IPCC investigator decides that a police officer or staff member should be treated as subject to investigation, they will serve a notice to this effect as soon as is practical.

Serving a notice on police officers

The notice must be either:

- given to the officer in person by their police friend, which includes Police Federation representatives, where the police friend has agreed to deliver the notice
- given to the officer in person by the investigator (in an independent investigation this must be an IPCC investigator, in a managed investigation it should be the investigating officer from the police force)
- left with someone at, or sent by recorded delivery to, the subject's last known address (this option will usually apply only if it is not possible for the investigator or police friend to serve the notice in person)⁷

The notice should include the following details⁸:

- details of the allegation and how this conduct is alleged to fall below the Standards of Professional Behavior
- the investigator's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct
- whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing
- the person's right to seek advice from his staff association or any other body, and the role of a police friend
- the right to make representations to the investigator in response to the notice, and the requirement for the investigator to have regard to these if they are made within ten working days
- the misconduct caution

⁶ The 'appropriate authority' refers to: for a chief officer, the local policing body for the police force of which the officer is a member; and in any other case, the chief officer with direction and control over the person serving with the police.

⁷ Regulation 16 (3), Police (Complaints and Misconduct) Regulations 2012

⁸ Regulation 16 (1), Police (Complaints and Misconduct) Regulations 2012

Serving a notice on police staff

The way of serving the notice of investigation may be specified in the staff member's terms and conditions of employment or by local force policy.

The IPCC investigator may serve the notice in person. Alternatively, the investigator may ask that a manager from the police force or a union representative serve the notice in person.

Depending on their contract of employment and local force policy, it might also be appropriate to indicate (in the notice) whether the conduct has been assessed as amounting to misconduct or gross misconduct. The decision about whether to include this will be based on the member of staff's contract.

If there is an indication that the police officer or staff member has committed a criminal offence, they will receive a letter outlining the details.

Being interviewed as a subject to investigation

Officers and staff should expect to be interviewed about the incident by IPCC investigators. In exceptional circumstances, the investigator may make a decision that an interview is not required, but this will only be after the officer or member of staff has had an opportunity to respond to the notice of investigation.

The interview will be under the misconduct caution and, where appropriate, criminal caution. The timing of the interview will be decided according to the needs of the investigation. This is an opportunity to tell us the facts and to provide an account of the incident.

The subject is entitled to representation from a police friend.⁹

If the subject is a serving officer, their police friend must be a serving police officer, a police staff member, or a person nominated by the subject's staff association (the staff association may choose to nominate a lawyer as a police friend).

If the subject is a member of police staff, their police friend may be a trade union representative, a police officer, a police staff member, or any other person nominated by the subject and approved by the chief officer of the force in which they are serving.

The police friend must not be an interested person to the investigation or otherwise involved in the investigation.

The subject is not entitled to any other representation in the interview. However, if the misconduct interview was immediately preceded by a criminal interview the lead investigator may consider allowing the legal representative to remain for the rest of the interview.

Where will the interview take place?

⁹ Regulation 17, Police (Complaints and Misconduct) Regulations 2012

Each interview location and the circumstances of the officer or staff member should be assessed on its own merits. Any representations made by the officer, staff member or their representatives should be considered when deciding where to hold an interview.

Outcomes after an investigation is completed

In the final investigation report, the investigator must conclude whether in their opinion the police officer or staff member has a case to answer for misconduct or gross misconduct, or no case to answer.¹⁰

It is important to note that the investigator's conclusion does not determine whether the police officer or staff member has committed misconduct. It sets out whether the investigator finds that there is sufficient evidence on which a reasonable tribunal properly directed could find that the conduct of the officer amounts to misconduct or gross misconduct. This is done on the balance of probabilities.

Once we have concluded our investigation, it is possible that the appropriate authority may disagree with our finding and decide that a misconduct meeting or hearing should not take place.

It is possible for an IPCC commissioner to issue a direction to the appropriate authority to ensure that a meeting or hearing does, in fact, take place. This is at the commissioner's discretion.

If the case is referred to misconduct proceedings, the decision at the meeting or hearing will be determined on the standard of proof required in civil cases, which is the balance of probabilities. If the meeting or hearing finds the misconduct to be proved, it will then decide the appropriate outcome. The possible outcomes are listed in **table 1**.

¹⁰ Regulation 20, Police (Complaints and Misconduct) Regulations 2012

Table 1 potential outcomes of a misconduct meeting/hearing¹¹

Misconduct meeting	Misconduct hearing
<ul style="list-style-type: none"> • Misconduct not found • No further action • Management advice • Written warning (12 months) • Final written warning (18 months) 	<ul style="list-style-type: none"> • Misconduct not found • No further action • Management advice • Written warning (12 months) • Final written warning (18 months) • Extension of final written warning (exceptional circumstances only) • Dismissal with notice • Dismissal without notice

In the final investigation report the investigator will provide his or her view about whether there is evidence that a criminal offence has been committed. The final investigation report is then submitted to the commissioner, who is required to decide whether there is an indication that a criminal offence may have been committed and whether in the circumstances it would be appropriate for the contents of the report to be reviewed by the Director of Public Prosecutions. If the commissioner is satisfied that these conditions are met, the report will be formally referred to the Crown Prosecution Service (CPS). The CPS decides whether to bring charges against the police officer or staff member being investigated.

What happens if you are considered a witness in an investigation?

All investigations scrutinise the acts, omissions, statements and decisions of the officers and police staff involved in the incident. This is regardless of whether a complaint has been made and whether the officers involved are served notices. For example, during a death or serious injury investigation into a fatal police shooting, the actions of the police officers involved in the incident will be under scrutiny, even if they are being treated as witnesses.

The investigator may wish to make arrangements to interview or obtain an account from the witness.

The investigator will look to achieve best evidence, usually by way of a witness interview and statement summarising the evidence. Statements are normally drafted and finalised in the presence of the witness. The witness is encouraged to actively participate in the drafting to ensure that they are completely happy with the statement before it is signed. Occasionally, the investigator may decide that the witness can provide a statement without the need for an interview – for example, if the witness’s involvement is on the periphery of the incident. The investigator will

¹¹ Annex E, Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures

speak directly to the witness (and their representative, at the witness's request) to discuss how to proceed.

How often will the investigator update subjects and witnesses?

Contacting subjects

Although not required by legislation, the IPCC position is to update officers/staff who are subject to investigation at least every 28 days, unless a different timeframe is agreed by the lead investigator.

The lead investigator is required to notify the officers/staff about the decisions taken after completion of the investigation. This is subject to the harm test. Any information that may prejudice any criminal investigation or proceedings will not be disclosed.

Contacting witnesses

There is no set position about how often the lead investigator will update witnesses. This will be decided by the lead investigator at the beginning of the investigation. It will depend on several factors, including the level of involvement and interest of the police officer/staff member, proportionality and the requirements of the investigation.

Method of contact

The investigator will discuss the most effective form of communication with their single point of contact (SPOC) in the police force PSD. This will depend on a number of factors, such as the size of the investigation, preferences of the officer/staff member involved, and any other relevant factors.

It may be decided that it is more practical for the investigator to contact the officer/staff member directly by email, copying the SPOC into the message.

In a conduct matter, if someone who is subject to an investigation requests that we communicate through their police friend, Federation, union or other representative, then the investigator may decide to send all correspondence through the chosen representative. When the officer/staff member receives their notice of investigation, it will include a tick box where they can indicate their preference.

In a criminal matter, the officer/staff member involved may request that all communication is through their solicitor.