

OPERATIONAL ADVICE NOTE TO POLICE AND CRIME PANELS

This note is produced to assist police and crime panels in preparing for the introduction of police and crime commissioners. It is not formal guidance issued under the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.¹ It is issued in advance of revised IPCC statutory guidance which will apply to local policing bodies and all 43 Home Office forces in England and Wales.

1. Relevant office holders

1.1. 'Relevant office holders' is a collective term for:

- any police and crime commissioner (PCC);
- any deputy police and crime commissioner;
- in London, the occupant of the Mayor's Office for Policing and Crime (MOPAC) who under normal circumstances will be the Mayor of London;
- in London, any Deputy Mayor for Policing and Crime who may be appointed.

2. Receipt of a complaint

- 2.1. Upon receipt of a complaint about a relevant office holder, the police and crime panel must determine whether it is the correct panel to deal with the complaint. If it is not, it must notify the correct panel of the complaint.²
- 2.2. Where a complaint is made directly to a relevant office holder about his or her own conduct, the relevant office holder must notify the panel of the complaint.³
- 2.3. Where a complaint is made to a chief officer relating to the conduct of a relevant office holder, the chief officer must notify the panel of the complaint.⁴

¹ All footnotes refer to the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 unless otherwise stated.

² Regulation 9(2)

³ Regulation 9(4)

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- 2.4. If the panel, relevant office holder or chief officer decides not to notify the correct panel of a complaint, he or she must notify the complainant of the decision to take no action and the grounds on which the decision was made.⁵
- 2.5. When a complaint is received by the correct panel, the panel must record the complaint.⁶ However, the complaint does not have to be recorded if:
- the complaint has been, or is already being, dealt with by means of criminal proceedings against the person whose conduct it was; or,
 - the complaint has been withdrawn in accordance with regulation 16.⁷
- 2.6. 'Recording' in this context means that a record is made of the complaint (for example in a complaints database). This means that it has to be formally handled in accordance with legislation and under the provisions set out in this guidance. Complaints should be recorded in some form of register which can be readily accessed and examined by the IPCC, if required. This will allow the panel to track progress of the complaint and report on complaints data.
- 2.7. The panel must provide a copy of the record made of the complaint to the complainant.⁸
- 2.8. The panel must also provide a copy of the recorded complaint to the relevant office holder who is subject of the complaint, unless the panel believes that doing so might prejudice any criminal investigation or pending proceedings, or it would otherwise be contrary to the public interest. If the panel decides not to provide a copy of the complaint to the relevant office holder, this decision must be kept under regular review. If a copy of the complaint is provided to the relevant office holder, the identity of the complainant or any other person may be kept anonymous.⁹
- 2.9. If the panel decides not to record a complaint, it must notify the complainant in writing of the decision to take no action and the grounds for making the decision.¹⁰ The notification should explain the reasons for this decision.

3. Conduct matters

- 3.1. For the purposes of the regulations, a conduct matter is any matter which is not and has not been the subject of a complaint but where there is an

⁴ Regulation 9(3)

⁵ Regulation 10(2)

⁶ Regulation 9(5)

⁷ Regulation 9(6)

⁸ Regulation 31(1)(a)

⁹ Regulation 31

¹⁰ Regulation 10(2)

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indication (whether from the circumstances or otherwise) that the relevant office holder may have committed a criminal offence.¹¹

3.2. A conduct matter must be recorded where either:

- the police and crime panel is notified that civil proceedings against the relevant office holder have been or are likely to be brought by a member of the public and which appear to involve or would involve a conduct matter,¹² or,
- a conduct matter comes to the panel's attention in any other case.¹³

3.3. However, if either of the following exceptions apply, it is not necessary to record a conduct matter:

- the matter has already been recorded as a complaint under regulation 9(5) of the regulations; or,
- the matter has been, or is already being, dealt with by means of criminal proceedings against the relevant office holder.¹⁴

3.4. 'Recording' in this context means that a record is made of the conduct matter (for example in a conduct matter database). This means that it has to be formally handled in accordance with legislation and under the provisions set out in this guidance. Conduct matters should be recorded in some form of register which can be readily accessed and examined by the IPCC, if required. This will allow the panel to track progress of the conduct matter and report on data.

3.5. If the IPCC becomes aware of a conduct matter which has not been recorded by the panel, the IPCC may direct the panel to record the matter and the panel must do so.¹⁵

4. Preservation of evidence

4.1. Where a police and crime panel becomes aware of a complaint or conduct matter relating to the conduct of a relevant office holder, the panel must take all appropriate steps to obtain and preserve evidence relating to the conduct in question. The IPCC may give the panel directions for obtaining and preserving evidence. The panel must comply with any such directions.¹⁶

4.2. Where a relevant office holder becomes aware of a complaint or conduct matter relating to his or her own conduct, the relevant office holder must

¹¹ Police Reform and Social Responsibility Act 2011, Section 31 (1)(b)

¹² Regulation 11

¹³ Regulation 12

¹⁴ Regulations 11(4) and 12(2)

¹⁵ Regulation 12(3)

¹⁶ Regulations 8(1) and (5)

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take all appropriate steps to obtain and preserve evidence relating to the conduct in question. The IPCC or the panel may give directions to the relevant office holder to take steps to obtain or preserve evidence. The relevant office holder must comply with any such directions.¹⁷

5. Referrals to the IPCC

5.1. The police and crime panel must refer the following to the IPCC:

- all recorded conduct matters;
- all serious complaints (i.e. a complaint which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence); and,
- any serious complaint or conduct matter where the IPCC has notified the panel that it requires the matter to be referred.¹⁸

5.2 The panel should complete IPCC referral form 7.1 with the details of the complaint or conduct matter it wishes to refer. The completed form should then be sent via secure email to nat_referrals_inbox@ipcc.gsi.gov.uk. This will assist the panel in providing all the relevant information for the IPCC to assess the referral. Advice on sending information via secure email can be found on the IPCC website at: http://www.ipcc.gov.uk/en/Pages/secure_email.aspx

5.3 The referral form should be sent to the IPCC at the earliest opportunity. The regulations stipulate that this must be as soon as is practicable. However, in any event, a referral must be made no later than the end of the day following the day on which it first becomes clear to the panel either that the complaint or conduct matter must be referred or the IPCC notifies the panel it requires the matter to be referred to it.¹⁹

5.4 If the panel wishes to make an urgent referral to the IPCC outside office hours, this may be done by calling 020 7166 3033 and if there is no response, leaving a message with the caller's name and number, the fact he or she is calling on behalf of the panel and to which force area the referral relates. If this number is unobtainable or there is no response within 10 minutes, the alternative number is 020 7166 3031. Both of these numbers will enable direct contact with the on call Senior Investigator for the IPCC.

5.5 The panel must notify the complainant (if there is one) of the referral to the IPCC. The panel must also notify the relevant office holder concerned of the referral, unless the panel considers that to do so might prejudice a possible

¹⁷ Regulations 8(2),(4) and (6)

¹⁸ Regulations 13(1) and (2)

¹⁹ Regulations 13(3) and (4)

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future investigation of the complaint or conduct matter.²⁰ These notifications should be in writing.

5.6 The IPCC will decide whether or not it is necessary for the complaint or conduct matter to be investigated²¹ and will notify the panel in writing of its decision.

5.7 If the IPCC decides a complaint does not need to be investigated, it will refer the complaint back to the panel to be dealt with in accordance with Part 4 of the regulations.²² The IPCC will notify the complainant and the relevant office holder complained against of this decision.²³

5.8 If the IPCC decides a conduct matter does not need to be investigated, it will refer the conduct matter back to the panel to be dealt with in such a manner, if any, as the panel thinks fit.²⁴ The IPCC will notify the relevant office holder of this decision.²⁵

6. Disapplication

6.1. Disapplication of the requirements of the regulations applies to a recorded complaint the police and crime panel decides should not be resolved under Part 4 of the regulations or that no action should be taken in relation to it. The panel may instead handle a recorded complaint in whatever manner (if any) it thinks fit.

6.2. Disapplication applies to recorded complaints (not conduct matters) unless the complaint has been, or must be, referred to the IPCC and has not been referred back to the panel.²⁶

6.3. *Grounds for disapplication*²⁷

6.3.1. The complaint is concerned entirely with the conduct of the relevant office holder in relation to a person who was working in his capacity as a member of the relevant office holder's staff at the time when the conduct was supposed to have taken place.

6.3.2. More than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either:

- no good reason for the delay has been shown, or,
- injustice would be likely to be caused by the delay.

²⁰ Regulation 13(6)

²¹ Regulation 14(1)

²² Regulation 14(2)(a)

²³ Regulation 14(3)

²⁴ Regulation 14(2)(b)

²⁵ Regulation 14(3)

²⁶ Regulation 15(1)

²⁷ Regulation 15(3)

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- 6.3.3. The matter is already subject of a complaint.
- 6.3.4. The complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address.
- 6.3.5. The complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints.
- 6.3.6. The complaint is repetitious.
- 6.4. If the panel decides to disapply the requirements of the regulations, it must notify the complainant that it has decided to handle the complaint in this way.²⁸

7. Withdrawal of complaints

- 7.1. If the police and crime panel receives signed written notification from a complainant or a person acting on his or her behalf that he or she withdraws the complaint or does not want any further action to be taken in relation to the complaint, then the panel must record the withdrawal.²⁹
- 7.2. If the complaint in question has been referred to the IPCC and has not been referred back to the panel (i.e. it is either still under consideration by the IPCC or the IPCC has decided a managed or independent investigation should take place) the panel must notify the IPCC of the withdrawal of the complaint.³⁰ The IPCC will then determine whether the withdrawn complaint should be treated as a conduct matter and will inform the panel of the decision.³¹
- 7.3. In any other case, the panel must consider whether the withdrawn complaint relates to conduct which should be treated as a conduct matter (i.e. it constitutes or involves, or appears to constitute or involve, the commission of a criminal offence).³² If so, it must then be recorded and treated as a conduct matter.³³ If not, no further action needs to be taken under the regulations in relation to the complaint.
- 7.4. If a complainant has indicated that he or she wishes to withdraw a complaint but does not provide signed written notification, the panel must write to the complainant to ascertain whether he or she wishes to withdraw the complaint. If the complainant responds and indicates that he or she does wish to withdraw the complaint, or if there is no response within 21 days, the complaint should be treated as if a signed written notification of

²⁸ Regulation 15(5)

²⁹ Regulation 16(1)

³⁰ Regulation 16(3)

³¹ Regulation 16(5)

³² Regulation 16(4)

³³ Regulation 16(6)

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withdrawal had been received. If the complainant responds that he or she does not wish to withdraw the complaint, the complaint must continue to be dealt with under the regulations.³⁴

7.5. The panel must notify the relevant office holder complained against if:

- the panel records the withdrawal of a complaint or the fact that the complainant does not want any further action to be taken in relation to his or her complaint;
- the panel determines that a complaint should be treated as a conduct matter;
- the IPCC determines that a complaint should be treated as a conduct matter; or,
- the complaint will no longer be dealt with under the regulations due to the withdrawal.³⁵

7.6. However, if the panel previously decided not to notify the relevant office holder complained against of the complaint because it believed it may prejudice any criminal investigation, pending proceedings or would not be in the public interest, the panel does not need to notify the relevant office holder of the withdrawal.

8. Investigations

8.1. When a complaint or conduct matter has been referred to the IPCC, the IPCC will decide whether it is necessary for an investigation to take place. If the IPCC decides that an investigation is necessary, it will make a decision as to whether it should be a managed investigation or an independent investigation.³⁶ The IPCC will notify the police and crime panel of its decision.³⁷

8.2. An independent investigation is an investigation which is carried out by the IPCC. In independent investigations, IPCC investigators have the powers of a police constable.

8.3. A managed investigation is an investigation which is carried out by a police force under the direction and control of the IPCC.

8.4. Upon notification that a managed investigation will be taking place, the chief officer of the selected police force must, if he or she has not already done so, appoint a person serving with the police to investigate the matter.³⁸ The IPCC will approve the choice of investigator.

³⁴ Regulations 16(7) and (8)

³⁵ Regulation 16(9)

³⁶ Regulation 18

³⁷ Regulation 18(8)

³⁸ Regulation 19(2)

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8.5. Every panel, every relevant office holder and every chief officer has a duty to provide the IPCC, or in a managed investigation the person appointed to investigate, with any assistance and co-operation that is reasonably required for the carrying out of an investigation under the regulations.

9. Discontinuance

9.1. In certain circumstances, the IPCC may determine that an investigation should be stopped. This may be either as a result of an application from a chief officer involved in the investigation or as a result of a decision by the IPCC itself.³⁹

9.2. If a chief officer believes that an investigation should be discontinued, he or she must make a written application to the IPCC including a copy of the complaint (where applicable) and a memorandum containing a summary of the investigation so far and the reasons for the application. This application must be sent to the complainant (where there is a complainant) on the same day as it is sent to the IPCC.⁴⁰

9.3. The police and crime panel will not have a role in the decision-making about a discontinuance - this decision is for the IPCC. Where the IPCC decides an investigation should be discontinued it will notify the panel.⁴¹

9.4. When an investigation is discontinued, the IPCC may make certain directions to the panel. Any direction made will be set out in a letter to the panel. The directions which the IPCC may make to the panel are:

- to require the chief officer to produce an investigation report on the discontinued investigation and take any other subsequent steps;
- if the investigation related to a complaint, requires the panel to disapply the requirements of the regulations, as regards that complaint;
- if the investigation related to a complaint, requires the panel to handle the complaint by way of resolution as set out in Part 4 of the regulations; or,
- to require the panel to handle the matter in whatever manner the panel thinks fit.⁴²

9.5. The panel must comply with any directions given to it.⁴³

³⁹ Regulation 24(1)

⁴⁰ Regulations 24(3) and (4)

⁴¹ Regulation 24(7)(a)

⁴² Regulation 24(9)

⁴³ Regulation 24(11)

10. Action in response to an investigation report

- 10.1. When the IPCC receives an investigation report (either from the investigating police officer in a managed investigation, or its own investigator in an independent investigation) it will make a decision as to whether the report should be referred to the Crown Prosecution Service (CPS).⁴⁴
- 10.2. If the report is referred to the CPS, the IPCC will notify the police and crime panel and any other person entitled to be kept informed of the referral. It will also be the duty of the IPCC to notify the panel and any other person entitled to be kept informed if the CPS makes a decision to bring criminal proceedings in respect of any matters dealt with in the report.⁴⁵
- 10.3. The IPCC will publish its investigation report and send a copy of the report in relation to the relevant office holder to the appropriate panel. The harm test will be applied to the investigation report prior to publication and disclosure.⁴⁶ The IPCC may delay the sending or publication of a report, or withhold any part of a report from sending or publication, if the Commission considers that it is necessary to do so, for the purposes mentioned in regulation 33(1)(a) or (b).

11. Delegation of powers and duties

- 11.1. The Elected Local Policing Bodies (Complaints and Misconduct) Regulations and the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 enable a police and crime panel to delegate powers and duties. Wherever any power or duty is delegated, there should be a clear record of that delegation. The record should set out to whom the delegation has been made, when it was made, its basis and any limitations.

12. Duty to provide information to the IPCC

- 12.1. It is the duty of every police and crime panel, every relevant office holder and every chief officer to provide the IPCC with any information, documents, or evidence required by the IPCC for it to carry out its functions.⁴⁷
- 12.2. Anything which is provided as a result of this duty must be provided in the form, manner and timescale set out by the IPCC.⁴⁸ However, the regulations recognise that in some cases it may not be possible to provide the required information within the set timescale (in which case it must be provided at the earliest time practicable) and in some cases it may never be practicable to provide the information.⁴⁹

⁴⁴ Regulation 26

⁴⁵ Regulations 26(2)(c) and (6)

⁴⁶ Regulations 26(7) and (8)

⁴⁷ Regulation 35(1)

⁴⁸ Regulation 35(2)

⁴⁹ Regulation 35(3)

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12.3. In these situations, the person to whom the request is made must inform the IPCC whether and why there may be a delay or that it is not practicable to provide this information. Information or documents which are required to be provided may be provided electronically, where authorised or required by the IPCC.⁵⁰

13. Access to premises

13.1. A police and crime panel, relevant office holder and chief officer must allow a person nominated by the IPCC access to any premises occupied for the purposes of the panel, relevant office holder or chief officer's functions (and documents or other things on those premises) for the following purposes:

- any investigation carried out by the IPCC or under its management under the regulations; or,
- any examination by the IPCC of the efficiency and effectiveness of the systems put in place to handle complaints and conduct matters concerning the relevant office holder.⁵¹

13.2. Where the IPCC's requirement for access is for the second purpose stated above, it will give the panel, relevant office holder or chief officer at least 48 hours notice of the request for access. If there are reasonable grounds for not allowing the IPCC access at the time requested, access should instead be allowed at the earliest practicable time after those grounds cease to exist.⁵² The person to whom the request is made must inform the IPCC of the reasons why access cannot be granted to the IPCC at the time it requested.

14. Keeping of records

14.1. The police and crime panel must keep a record of:

- every complaint made to it, regardless of whether the complaint is recorded under regulation 9 of the regulations;
- every conduct matter that it records;
- every exercise of a power or performance of a duty under the regulations.⁵³

14.2. Panels should also adhere to the guidance set out in the IPCC's statutory guidance on data collection and monitoring in respect of matters dealt with under the regulations.

⁵⁰ Regulation 35(4)

⁵¹ Regulations 36(1) and (2)

⁵² Regulations 36(3) and (4)

⁵³ Regulation 34

15. General duties

- 15.1. The police and crime panel has a general duty to ensure that it is kept informed about complaints and conduct matters against a relevant office holder for the panel's police area and what is done under the regulations to deal with them. The panel must also ensure that it is kept informed about any obligations to act (or not act) that have arisen under the regulations and have either not yet been complied with or have been contravened.⁵⁴

⁵⁴ Regulations 6(1) and (2)