

FOCUS

SPECIAL ISSUE

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

www.ipcc.gov.uk/page/focus

Quick links: inside this issue

Direction And Control

IPCC Statutory Guidance paragraphs 3.23 – 3.25

The appointment of a resolving officer

IPCC Statutory Guidance paragraphs 3.19 and 5.3 – 5.7

The appointment of an investigating officer

IPCC Statutory Guidance paragraphs 9.3 – 9.6

Multiple appropriate authorities

Approaches to the PCC

PCCs and their role in the complaints system

The Police Reform and Social Responsibility Act 2011 (PRSRA) introduced elected local policing bodies to oversee the function of the police force. It also made them the appropriate authority for complaints, conduct matters, or investigations about the conduct of a chief officer.

The roles and titles of the position of elected local policing body are different in London to the rest of the country. When this guidance addresses differences between London and the rest of the country, the correct names will be used. Where there are no local differences, elected local policing bodies are called Police and Crime Commissioners (PCCs).

This guidance addresses areas of the police complaints system where there are differences in process for PCCs. The regular issues of Focus provide guidance on areas of the complaints system which are the same for police forces and PCCs.

This issue also provides guidance on handling common situations where the PCC receives correspondence on the complaints system. This issue will not cover complaints against PCCs – these are dealt with by a separate process.

Direction and control

Full guidance on direction and control can be found in the first issue of *Focus – recording complaints*. A direction and control complaint is about how a chief officer (or someone carrying out the chief officer's functions) carries out operational management decisions, drafts operational policing policies, makes organisational decisions, or sets general policing standards in the police force.

If a complaint is about the actions or decision making of a chief officer, rather than someone with delegated responsibility, the PCC will be the appropriate authority to make a recording decision and handle the direction and control complaint.

If the complaint is about the decisions of someone carrying out the chief officer's functions, then it must be passed to the police force to record. There is no right of appeal against the PCC if they fail to pass the complaint on or fail to record a direction and control complaint.¹

¹ Police Reform Act 2002 (as amended), Schedule 3, paragraph 3(3A) and (3C)



Case study one: police resources

A man went to his local police station at 3pm to report damage to his vehicle in a car park. He was unhappy that the station was closed at this time. He complained in writing to his PCC, saying that, while a contact phone number was provided, he feels his police station should be open for face-to-face, personal communication with the public.

This is a direction and control matter because the opening times of the police station are organisational decisions about the use of police resources.

If the decision on opening times is reserved to the chief officer, then the complaint stays with the PCC for recording. If it is a delegated power, it should be forwarded to the police force.

A direction and control complaint has full complaint status under the Police Reform Act and should be dealt with through local resolution, investigation or disapplication as appropriate. There are no rights of appeal against any decisions made on direction and control complaints.

The appointment of a resolving officer (for both direction and control and conduct complaints)

It is possible to locally resolve a complaint 'on the spot' without appointing a resolving officer. If a complaint against a chief officer can be dealt with on the spot from the information available through initial evidence gathering, this can be done by the PCC (or the member of staff with the delegated authority). This 'on the spot' local resolution should satisfy the complainant – giving a full explanation to the complainant that answers the complaint. However, if a complainant has unrealistic expectations, this does not rule out

the matter being concluded as a non-engaged on the spot local resolution. Issue three of *Focus* discusses this in more detail.

If a resolving officer must be appointed in order to make enquiries, this resolving officer must come from the same police force as the officer complained of. Therefore, for complaints against the chief officer, it must be a person serving with their police force (an officer or member of staff) who resolves the complaint against him/her² with the appropriate skills to address the complaint.

The appointment of an investigating officer (for conduct complaints)

If the PCC decides, on the preliminary evidence, that the complaint does not need to be referred to the IPCC (and it does not want to make a voluntary referral) and is not suitable for disapplication or local resolution, then it must be investigated. An investigating officer should be appointed who will assess the seriousness of the complaint. More details about the different types of investigation can be found in the fourth issue of *Focus* – decisions at the beginning of an investigation.

PCCs outside London must appoint a police officer or member of staff from an external police force who has the appropriate skills to conduct the investigation for them. For the Mayor's Office for Policing and Crime (MOPAC), the investigating officer must be appointed by the Secretary of State³. It is important to note that the provisions within the Police Act 1996⁴ for collaborative working do not include agreements between PCCs and chief officers to transfer direction and control. Direction and control can only be exercised by chief officers and can only transfer between chief officers. Therefore, any police officer or member of staff working for the PCC remains under the formal direction and control of their chief officer and cannot be appointed to conduct investigations into their chief officer.

² Police Reform Act 2002 (as amended), Schedule 3, paragraph 8(1)

³ Police Reform Act 2002 (as amended), Schedule 3, paragraphs 16, 17 and 18

⁴ Police Act 1996, Section 23

Multiple appropriate authorities

There will be times when a complaint includes numerous officers, not all of whom have the same appropriate authority. The complaint may also include numerous allegations of varying seriousness, and possibly include some direction and control issues too. Where this happens, it is important that the legislative requirements are followed, to avoid any future abuse of process arguments or technical issues that make what has been done to address the complaint invalid under the PRA. This should be balanced with a practical approach to addressing the complaint that gives the complainant good customer service.

When a PCC's office receives a complaint that includes the chief officer and a number of other police officers, they can only make a recording decision about the allegations against the chief officer and must pass the other allegations to the force for a recording decision. Communication is very important and the PCC's office and the force should decide whether they want to issue a joint recording decision letter, or two different letters – clearly identifying how the complaint has been divided up.

How the complaint is progressed will depend on whether the seriousness of the allegations vary significantly between the chief officer and the other officers. If the allegation against the chief officer is capable of local resolution and can be answered quickly before the substantive issues within the complaint are then addressed, then it might be appropriate for the PCC's office to give their decision on the chief officer separate to the decision on the main part of the complaint.

On the other hand, if all of the allegations are serious and require an investigation, and the actions of the chief officer cannot be practically separated from the other officers, the most appropriate course of action may be that the entire investigation is handled by an external force (rather than have an external force and the home force running an investigation into the same incident at the same time). Even though there is one investigation being done, it will require two formal decisions at the end – one by each appropriate authority. However, it might be good practice to combine the two decisions into one decision letter.

Approaches to the PCC

There will be times where the PCC will be approached by someone who has already used the police complaints system, or the internal police grievance system, and wants the PCC to review their concerns. In these instances, it is important that the public role of the PCC is balanced with the legislation governing the complaints system and the roles of the other oversight bodies within the police system.

Seeking to appeal to the PCC

There is no right of appeal to the PCC in the police complaints system and any misdirected appeals should be forwarded to the relevant appeal body – either the police force or the IPCC – for assessment.

Seeking to challenge the outcome of a force appeal

The PCC has a monitoring role to make sure that the force's appeal procedures are appropriate and are being followed. This does not extend to a power to amend or overturn individual force appeal decisions on request. The only way of formally challenging the outcome of a force appeal is for the appellant to judicially review their decision.

There will be times when an appellant is not yet seeking to challenge the outcome, but wants further information in order to understand the decision. In those instances, the best-placed person to answer those queries is the person in the force who assessed the appeal. This should be explained to the appellant along with advice on how to contact the force directly. It is important that the PCC does not end up acting as an advocate in these instances because this compromises the monitoring role.

Complaining about the chief officer when the substantive issue is for the force

There will be times where the complaint names the chief officer, but the complaint is actually about something where the authority has been delegated to another officer within the force. Knowing the answer to the complaint – that the chief officer will not have had any knowledge of this particular instance – is not a reason not to record the complaint – it is the answer to the complaint.

Where it is immediately clear that the chief officer has had no involvement and the complainant has misunderstood the situation, contact with the complainant to explain this ‘there and then’ is acceptable and makes sure that the complainant’s concerns gets to the right person to address them with the minimum of bureaucracy.

Where the complaint is not based on a misunderstanding, but it is clear from the existing paperwork that the answer to the complaint is that the chief officer was not involved, the complaint should be recorded. It should be dealt with through an ‘on the spot’ local resolution that explains to the person who was actually involved in the matter and who they should really be directing their complaint to.

If the PCC can show that, at the time of the making the complaint, the complainant is well aware that the chief officer had no involvement; the complaint does not need to be recorded because it is made without foundation and is therefore vexatious.



Case study two: crime report does not lead to a prosecution

A man reported a violent assault on him by another man at a local nightclub. After reviewing all the evidence, including CCTV, the police decided that the man had provoked the assault and gave the attacker an adult caution. The man then wrote to the PCC complaining that the chief officer was responsible for running a force that did not take crime seriously, the decision not to prosecute the offender was wrong, and the chief officer was negligent in allowing his officers to make these decisions.

The complaint alleges the failure of the chief officer and you cannot show from the complaint that the complainant knows that the chief officer would have no knowledge of his case, would not have been involved in the decision making process, and that the responsibility for deciding whether to send a case to the Crown Prosecution Service (CPS) has been delegated. The PCC’s office does know this though and calls the complainant, explaining why the chief officer is not involved in this matter and what action he can take if he still remains unhappy with the decision e.g. a complaint against the officers responsible for handling his allegation. There is then no need to record a complaint – it has been addressed ‘there and then’ and the complainant is satisfied that the chief officer was not involved.

If the complainant does not accept the explanation that the chief officer was not involved in his particular case, then the PCC’s office will need to make a formal recording decision. At this point, given that the answer is already known, the complaint can be dealt with immediately by local resolution and the conversation confirmed in a letter to the complainant, along with the right of appeal, as a non-engaged on the spot local resolution.

The PCC may alternatively consider not recording the complaint if there are grounds that it is vexatious. The complainant now knows the answer to his concerns, but is continuing to pursue a formal complaint which now has no foundation. The same threshold for vexatious complaints still applies though – the PCC’s office will have to show that the complainant knows that the answer he has already been given is the correct one and that he knows he has no basis for continuing to pursue his complaint. In these instances, the quality of record-keeping about the content of the ‘there and then’ dissatisfaction resolution will be key.



Case study three: revoking firearms licence

A man and his wife are going through a divorce and, during a telephone conversation, the man threatens his wife. The wife reported this to the police who decided to revoke his firearms licence. The man entered lengthy correspondence with the department responsible for these decisions, but was eventually told by the chief superintendent with the delegated authority from the chief officer that the decision was final, he had the delegated authority, he would not be asking the chief officer to review his decision (as requested) and further correspondence would not receive a response. The man then complained to the PCC that the chief officer had failed to review his case and had been negligent in his supervision on that department.

This complaint is made without foundation and is vexatious – the complainant knows that the chief officer was not involved in his case, does not supervise that department and that the chief superintendent has the delegated authority. It is also an abuse of procedure because the paperwork trail provides evidence that the only reason the complainant is complaining about the chief officer is that he wants the decision to revoke his firearms licence changed. There is no requirement to record this complaint.

Including the chief officer in the complaint

There will also be instances where a ‘scattergun’ approach is taken to naming officers within a complaint, with every person in the rank structure listed as being subject of complaint, sometimes without explanation of what involvement the complainant believes that the officer had.

These should be explored with the complainant to understand why they believe that each person named is involved in their complaint, preferably before making a recording decision. It may be that, while engaging with the complainant to understand what they believe the chief officer’s involvement to have been, that the PCC’s office is able to explain that there will have been no involvement. This may mean that the complainant is content to remove the chief officer from the complaint so the matter can be passed to the force to deal with. If it cannot be clarified before making a recording decision, these allegations should be taken on face value. Belief that the chief officer is unlikely to be involved is not a reason for not recording the complaint.



Case study four: MP expenses

A man tries to approach his MP while they are at a public event and tries to conduct a citizen’s arrest because he believes that he has committed fraud in the way he has handled his expenses. Following his detention, the man complains that the police are involved in a conspiracy to allow his MP to commit fraud, specifically naming the chief officer and all of the senior management structure as having plotted with the MP.

The complaint does not make it clear what the man is alleging that the chief officer (and others) has actually done and this complaint should be explored with the man if possible. If the man’s grievance is solely that he was arrested that day and he has made the allegation of conspiracy to inflate the complaint, then the complaint is made without foundation and is vexatious. If the man genuinely believes that there is a conspiracy, then it is recordable, even if the instances he says are grounds for believing there to be a conspiracy can be explained and the chief officer has had no involvement – that is the outcome to the complaint, not a reason not to record it.

Complaining about the chief officer's leadership of the force after receiving an adverse decision from the police

There will be times where people approach the PCC because the chief officer is ultimately responsible for every decision within the force. Examples include where a complainant is unhappy with the decision that the PSD has made on a complaint, or where a member of an officer's family is unhappy with the disciplinary process that the officer is going through.

The fact that the complaint is generated from a process that has its own challenge mechanisms and the chief officer has had no involvement does not automatically make the complaint an abuse of procedure, but it does make it quite likely. If the PCC office is able to show that the motivation for making the complaint against the chief officer is to overturn a complaint/appeal/disciplinary process/crime report decision, then it is an abuse of the complaints procedure.



Case study five: dismissal

A senior officer was put before gross misconduct proceedings and, following a full hearing, was dismissed without notice. His wife then complained to the PCC that the chief officer had personally intervened in the investigation of her husband to make sure he was dismissed.

She is adversely affected – her financial situation has been affected. However, there is a correct process for challenging an employer's decision on dismissal and it is that process that can decide whether the policies and procedures are correct, and have been correctly followed, or whether there was undue interference. Her husband should be following the correct employment law procedures. His wife is abusing the procedure by trying to progress the concerns of someone who is not able to be a complainant through the complaint system in his stead.

The PCC will still need to consider whether the behaviour complained would constitute recordable conduct under the PRA e.g. serious corruption. If there is an indication of such conduct, then the matter needs to be recorded, regardless of the fact that it was not appropriate to pursue the matter as a 'complaint' under the PRA.

Get in touch

IPCC

Tel: 0300 020 0096

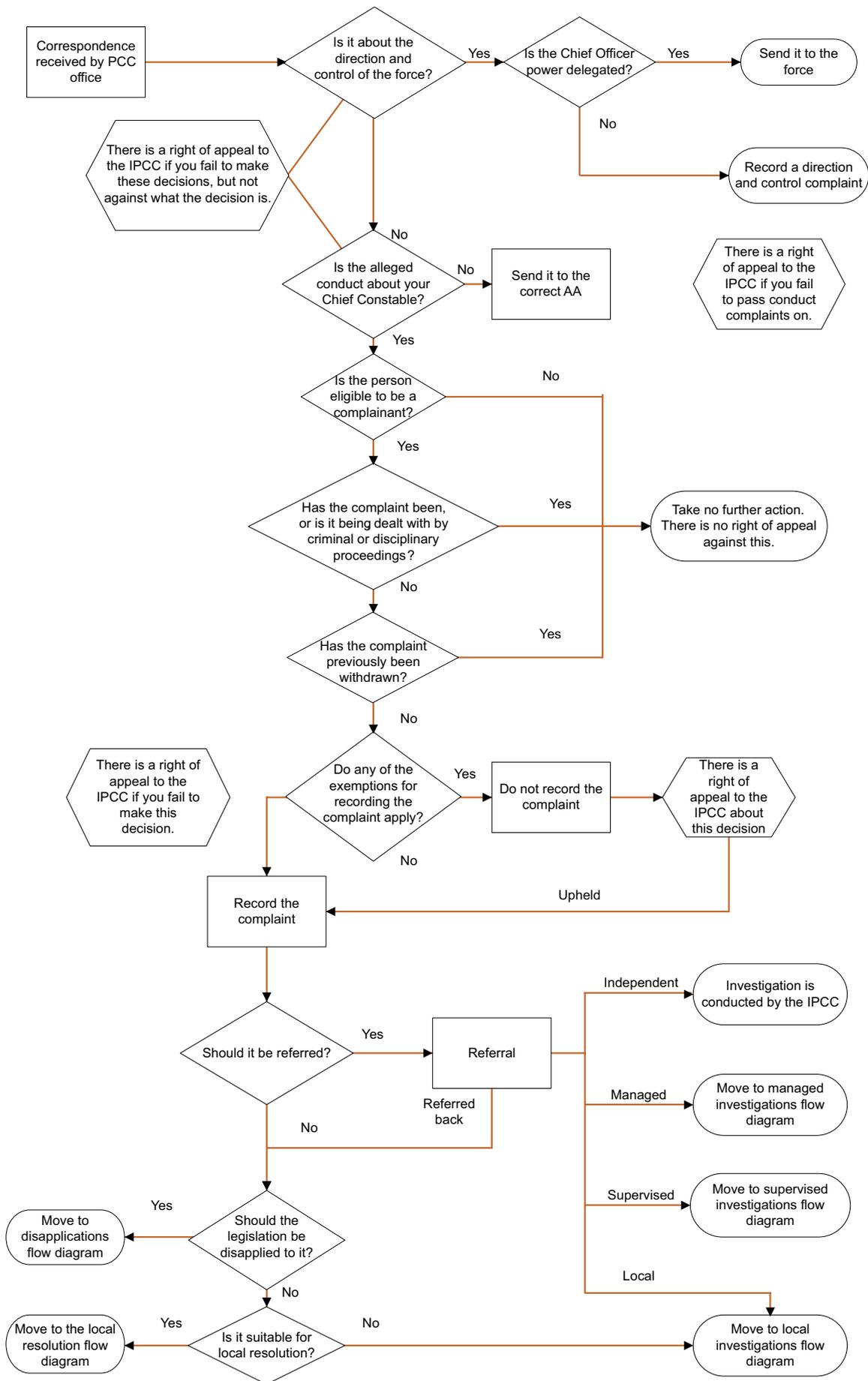
Text relay: 18001 0207 166 3000

Email: enquiries@ipcc.gsi.gov.uk

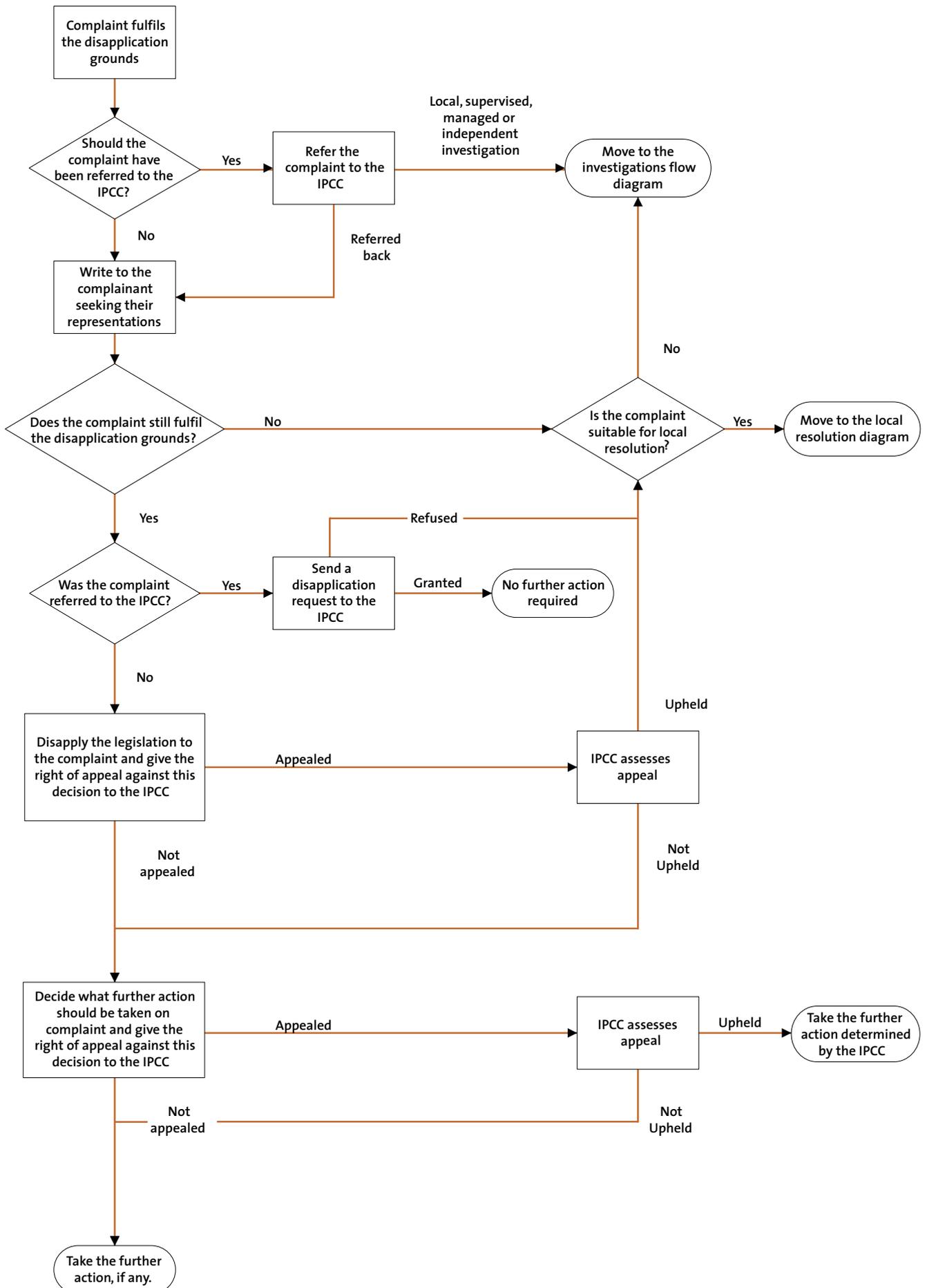
Website: ipcc.gov.uk



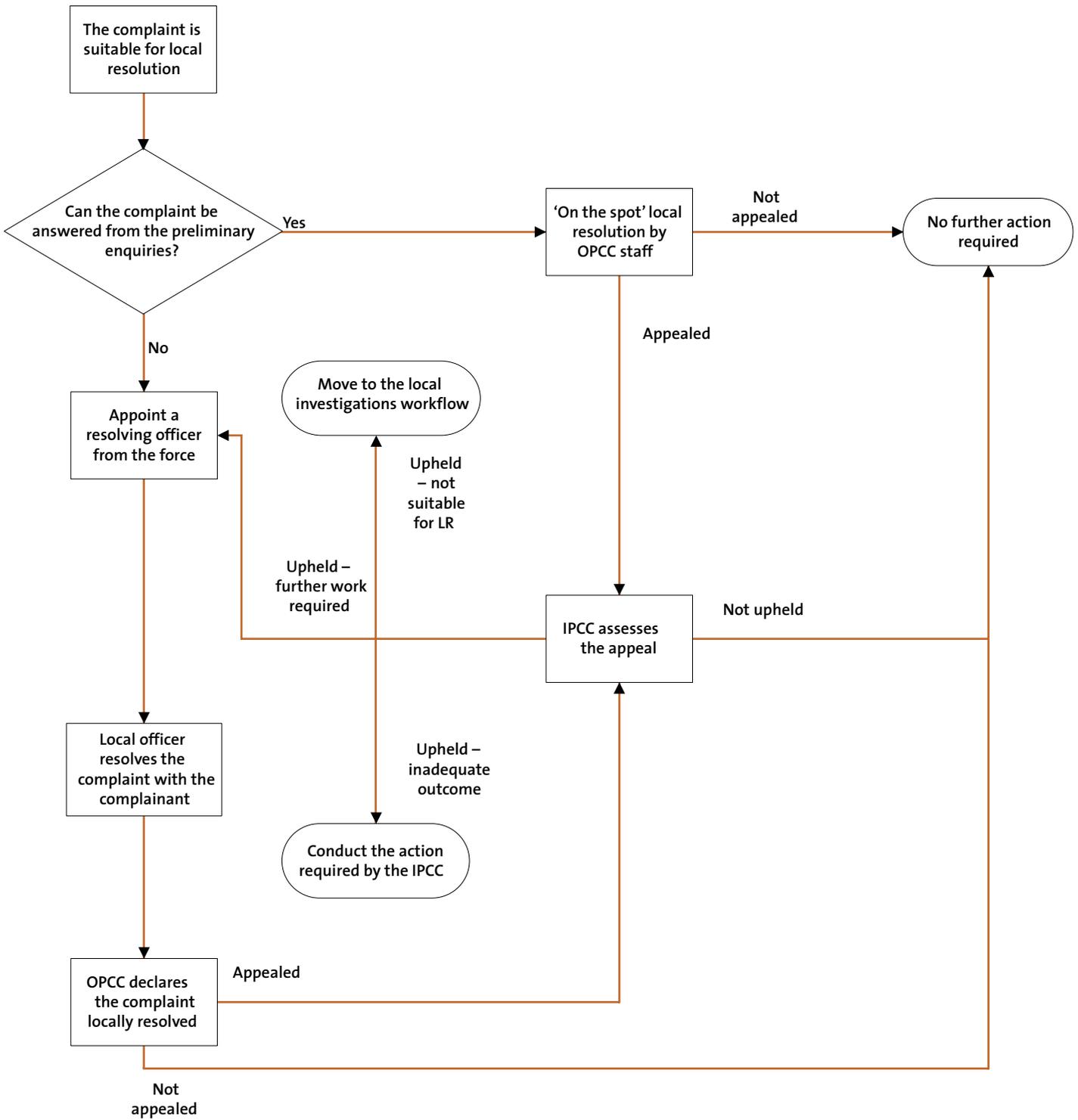
COMPLAINTS AGAINST CHIEF CONSTABLES – INITIAL STAGES



COMPLAINTS AGAINST CHIEF CONSTABLES - DISAPPLICATIONS



COMPLAINTS AGAINST CHIEF CONSTABLES – LOCAL RESOLUTION

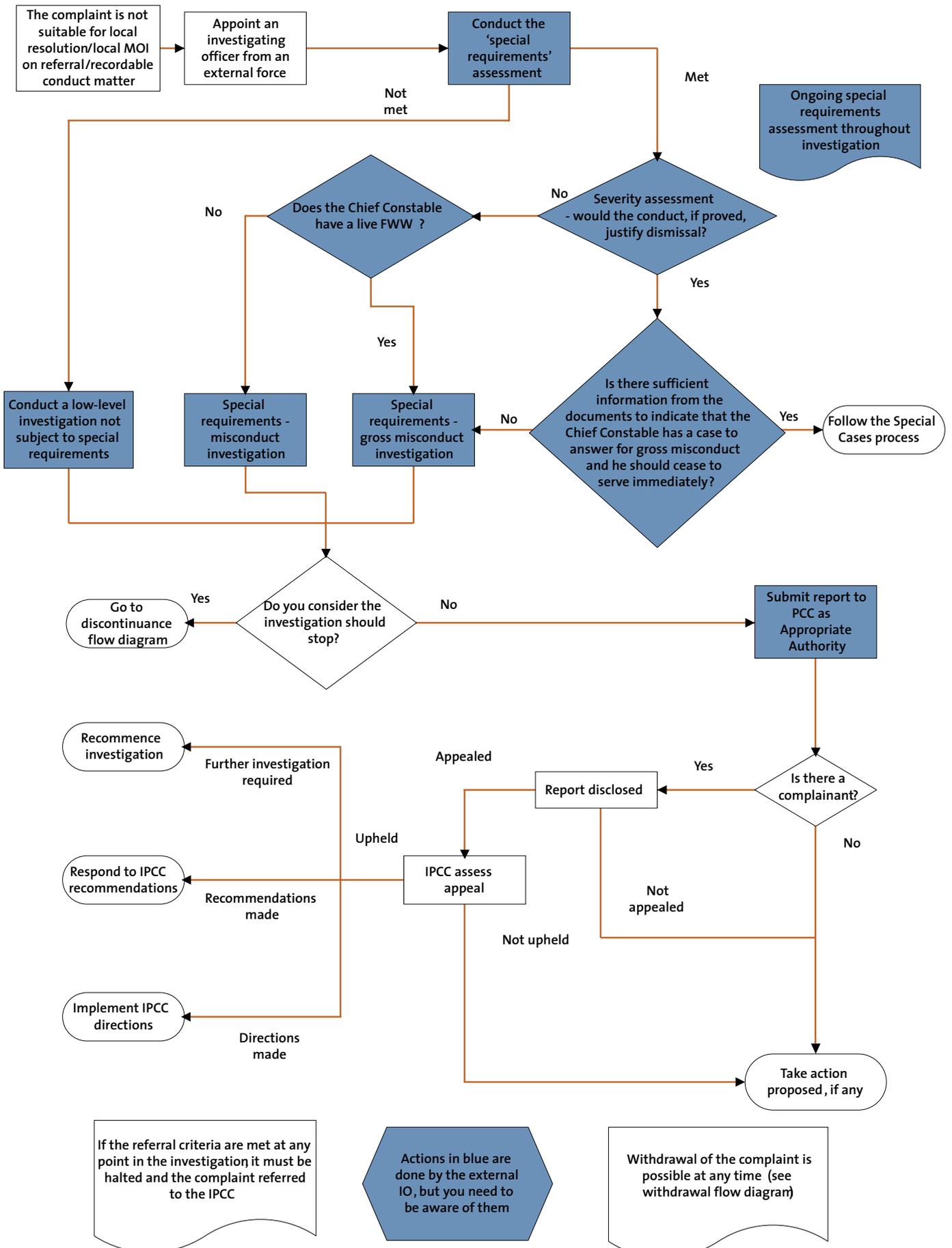


If the referral criteria are met at any point in the local resolution, it must be halted and the complaint referred to the IPCC

If the complaint becomes unsuitable for local resolution, the local resolution must be halted and an investigation commenced (see local investigation workflow)

Withdrawal of the complaint is possible at any time (see withdrawal flow diagram)

COMPLAINTS/CONDUCT MATTERS AGAINST CHIEF CONSTABLES – LOCAL INVESTIGATION

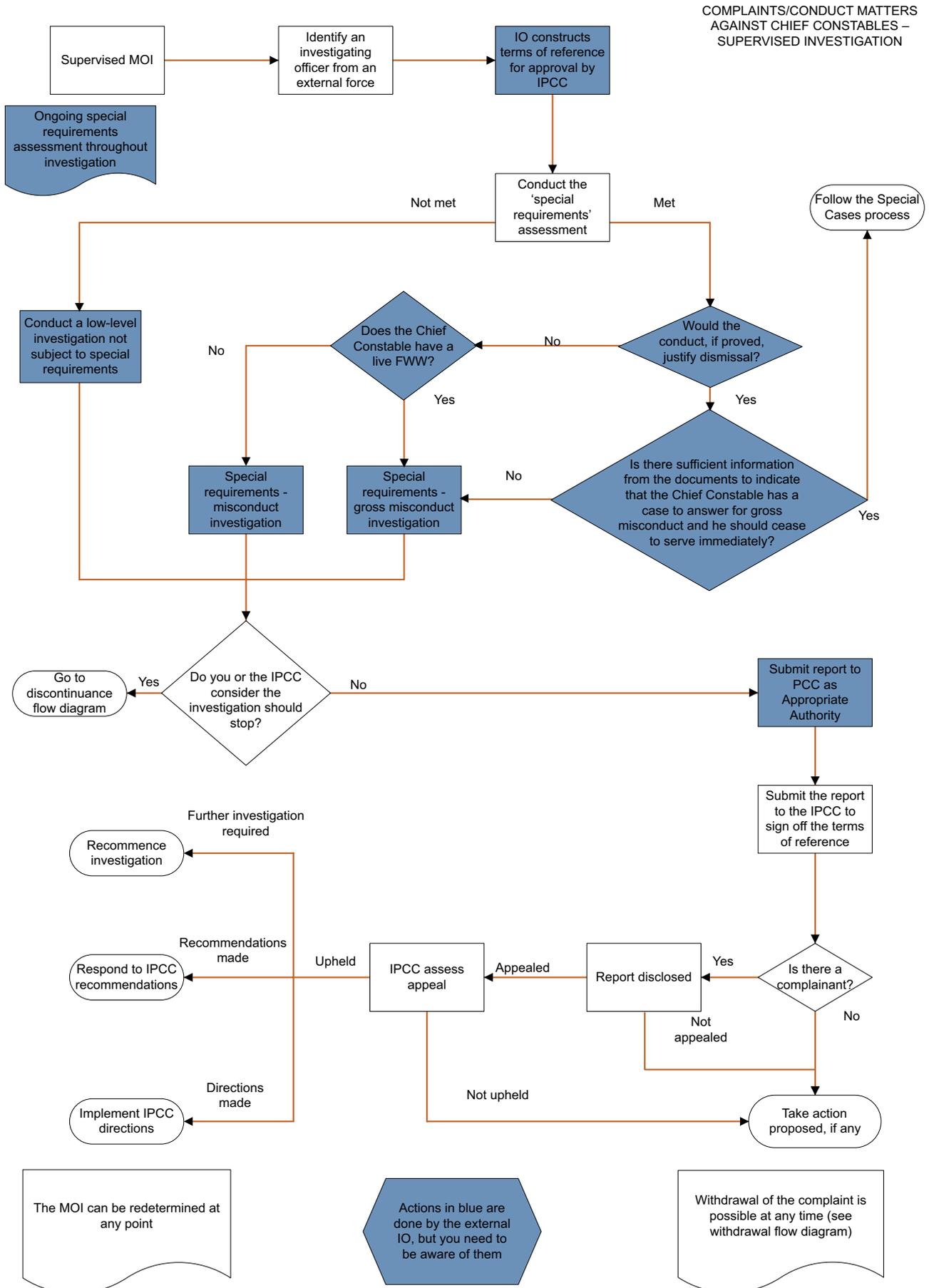


If the referral criteria are met at any point in the investigation it must be halted and the complaint referred to the IPCC

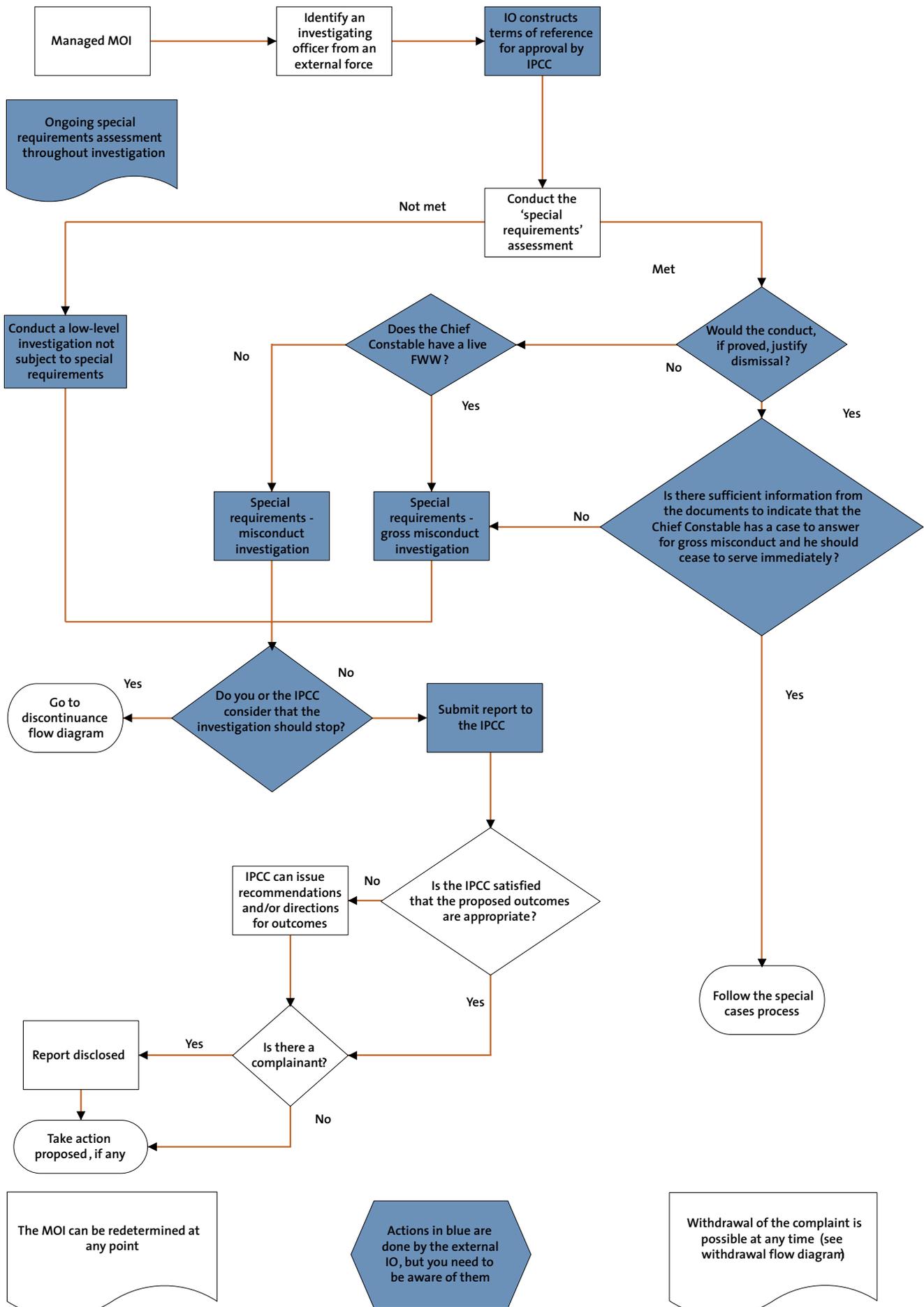
Actions in blue are done by the external IO, but you need to be aware of them

Withdrawal of the complaint is possible at any time (see withdrawal flow diagram)

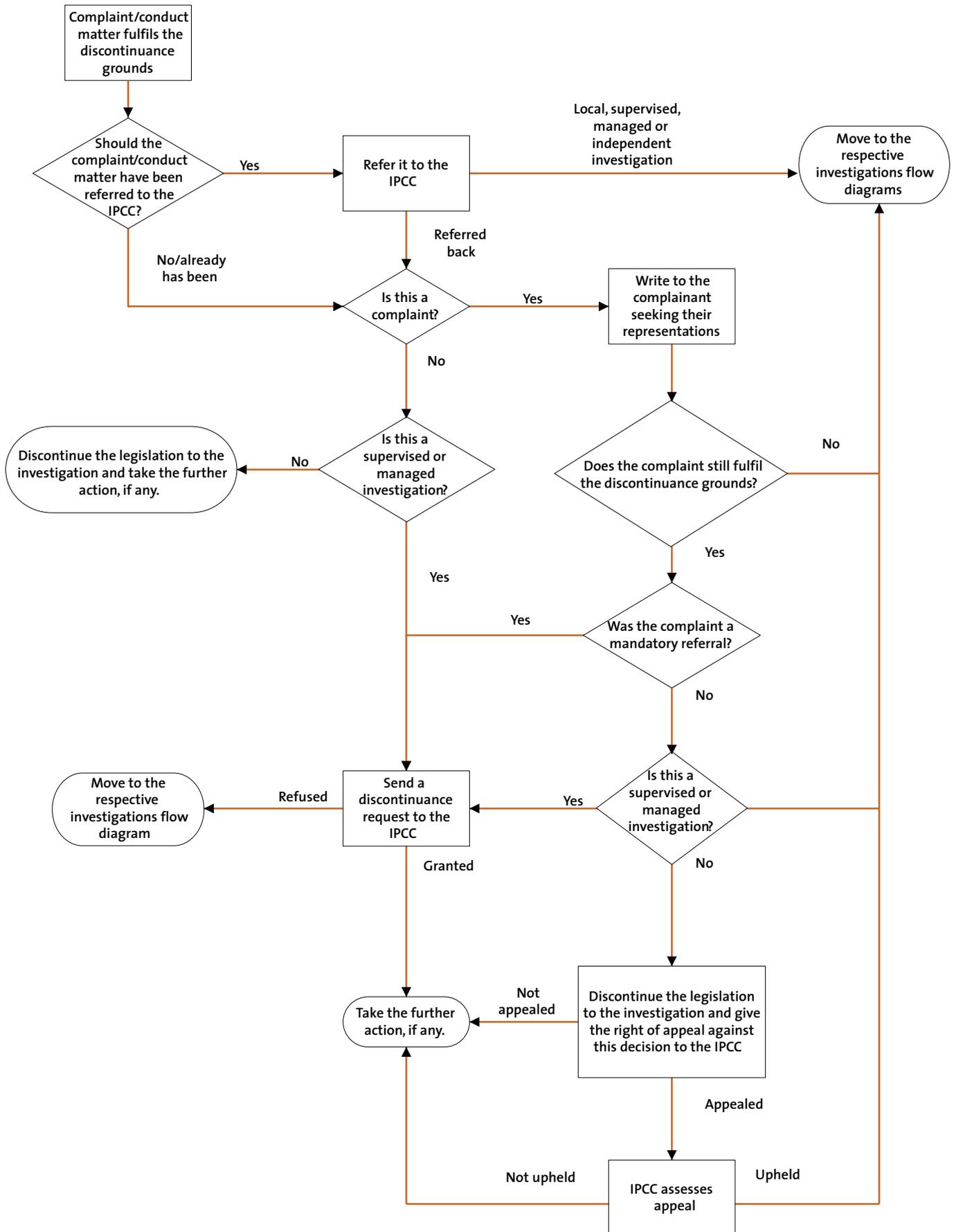
COMPLAINTS/CONDUCT MATTERS AGAINST CHIEF CONSTABLES – SUPERVISED INVESTIGATION



COMPLAINTS/CONDUCT MATTERS AGAINST CHIEF CONSTABLES – MANAGED INVESTIGATION



COMPLAINTS/CONDUCT MATTERS AGAINST CHIEF CONSTABLES - DISCONTINUANCES



COMPLAINTS AGAINST CHIEF CONSTABLES – WITHDRAWALS

