

FOCUS

ISSUE FIVE

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

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Conducting investigations

Proportionate enquiries

The basic principles of investigation apply equally to investigating complaints and the investigation of criminal offences. This guidance is based on the College of Policing's *Guidance on Managing Investigations*.

The amount of work needed to adequately deal with a complaint varies significantly depending on the nature of the complaint. Investigators should always use a proportionate approach. The word 'proportionate' does not mean 'less' – it means doing the right amount of work to satisfactorily address the complaint.

When you decide whether a line of enquiry is proportionate you can consider:

- the seriousness of the matter
- public interest
- likely outcome
- the likelihood and difficulty of getting useful evidence

Before any investigation starts, the investigating officer must know what the investigation's objectives are, what questions need answers, and what lines of enquiry will provide enough evidence to answer those questions.

It is good practice to record each allegation within a complaint and think about what lines of enquiry exist for each allegation, what evidence that would produce, and identify which enquiries, or combination of, would satisfactorily answer every part of the complaint.

Theories and assumptions about what might have happened should not be used to fill any gaps at this stage. There should be no judgements about reliability and integrity of the evidence that the lines of enquiry might gather.

This should be a specific, audited process at the beginning of every investigation. This does not have to be a difficult, lengthy process.

There are certain pieces of evidence that should always be collected:

- CCTV. This should always be looked for – it is a truly independent witness. CCTV is often overwritten after a set period, so getting it quickly is very important. It should also be watched as a priority. It is often the most significant evidence and can change the direction of the investigation dramatically. CCTV can provide evidence of people's reactions which can be used to decide which account is more credible, even if the allegation is one of incivility and there is no sound on the CCTV.
- Injury photographs. They support the fact that *something* happened, even if they have been taken by the complainant, the timing cannot be proven, and they cannot *prove* that the injuries were caused by the officer. Unless the injuries can be adequately attributed to another event, they support the allegation that the officer was responsible for the injuries. If the complainant says that he was hit repeatedly with an asp, but his bruising is not the distinctive 'tramline' bruising that an asp causes, this undermines the allegation.
- Officer history. This will never undermine a complaint, but it can support an allegation if there is a history of very similar allegations.
- Officer experience. This will also never undermine a complaint, but it can support an officer's account if the officer has a lot of experience of similar circumstances, all of which were complaint-free.
- Pocket notebook/arrest statements. These are an officer's first account of an encounter, usually written before the officer knows there will be a complaint. Inference can be drawn if the officer's account changes significantly between his pocket notebook entry and his subsequent response to a complaint.
- Incident logs/ custody records. These provide background and subtle details, even if they do not contain any evidence that undermines or supports the allegation. For example, an officer says that the amount of force he used when moving a detainee between cells was reasonable considering the aggression he was faced with. The custody record does not show that the detainee had been aggressive at any other time during his detention and had been civil with other officers. Although this does not definitely undermine the officer's account (it is possible that the detainee was well-behaved until the cell extraction), it can provide supporting evidence that it was the officer who was responsible for causing the confrontation in the cells.

The above lines of enquiry all require minimal effort, but the potential evidence they could return is significant – it will always be proportionate to look at these pieces of evidence. There may be exceptional circumstances when it is genuinely not necessary to obtain this evidence, but if that occurs, the reasons for this must be fully documented.



Case study one: stop and search

An Asian man was walking his dog in a local park when he sat on a park bench to eat his lunch. The park had a reputation as somewhere where drug dealing happened. A police officer approached him, wanting to know what he was doing there. When the man reacted badly to the approach, aggressively pointing out that he was just eating his lunch while walking his dog, the officer decided that this suggested that the man had drugs on him and told him he was going to search him. The man was not happy about this and the officer called for backup because he was concerned for his safety. After he had finished his sandwich, the man was searched and no drugs were found on him. When the backup arrived, the man was told that he was being taken to a police station for a strip search. The officer tried to handcuff him and force was used by the officer to take him to the ground, which resulted in the officer's arm being wrapped around the man's neck, restricting his breathing. He was also punched twice in the arm. At the station, the strip search found no drugs.

Case study one continued

The man complained that the officer did not have a reasonable suspicion for the initial stop and search, that the incident was racially motivated, and that the officer had attacked him without reason and put him in a choke hold while he was talking to one of the backup officers while he was facing away from the first officer. He also said that while he was being deliberately strangled on the floor, the officer made taunting comments to him. He also quoted the backup officers' reactions to the level of force being used. He further suggested that the officer had tried to take him away from the police car to carry on assaulting him and one of the backup officers had had to intervene. The man also told the police that a man working on a nearby building site had been concerned about what he had seen and had approached the officers to ask if he was ok.

The subsequent investigation into this complaint reviewed the stop and search form and took statements from all three officers. Officers were sent to the park to search for witnesses and to identify any local CCTV – none were found. The record of the strip search could not be found. The investigation decided that the officer had no case to answer in regards to both the stop and search and the level of force used.

The complainant appealed to the IPCC and the investigation was sent back to the force because significant and reasonable lines of enquiry had not been followed.

- The complainant had got the details of the witness from the building site, but had not been asked for them. The investigation decided that because he had not come forward to complain about the incident, this was evidence that the witness would not support the complaint.
- The investigation accepted the officer's claim that five minutes sitting on a park bench eating a sandwich while walking your dog in a park was suspicious. It also accepted that a hostile reception to being approached and asked what you were doing when you were clearly eating a sandwich was grounds to suspect that the man was carrying drugs.
- The investigation gave no weight to the evident co-operation with the search from the complainant, despite his irritation. He had asked the officer if he could finish his sandwich before the search and the officer had agreed and waited for him to finish.
- The investigation did not look into the officer's claim that the park was a known drug dealing spot.
- The justification for a strip search, and the fact that the record was now missing, had not been addressed.
- The investigation had dismissed the racism allegation on the basis that there was nothing in the officer's statement to suggest that the stop was racially motivated. The investigation did not review whether the officer had a history of similar complaints or whether there was a pattern in his previous stop and searches.
- There had been no analysis of whether an arm around someone's neck was a reasonable use of force. The extent of the injuries received during the incident had not been looked at. Nor had the investigation identified that both accounts had the complainant facing away from the officer and it was entirely possible that the complainant had not known what the officer was trying to do when he took hold of his arms and had instinctively pulled away – this possibility was not explored.
- One of the back up officers confirmed that she had heard the other shout 'Whoa' and pull the first officer back by the shoulder when they were on the ground. This had not been explored any further and the other officer was not asked about that comment.
- None of the officers had been asked about the taunting comments. The suggestion that the first officer had tried to take the complainant away to carry on assaulting him and had to be stopped by one of the backup officers was not given any attention either.



Case study two: serious assault

A man was arrested for being drunk and disorderly at a nightclub. He alleged that an officer repeatedly stamped on his hand, breaking his knuckles, while being arrested. CCTV footage of the arrest was poor quality and it was not possible to see what happened. CCTV footage of the custody suite showed the man complaining that his hand hurts and the custody record had details of a medical examination, which resulted in him going to hospital. The investigation was declared subject to special requirements and a notice of investigation served on the arresting officer. Pocket notebook entries from the officers, along with radio traffic, gave no sign that the man was hurt during his arrest. The investigating officer got a statement from the doctor who saw the man in hospital and he gave an account undermining the complaint – the man had told him that he had punched the inside of the police van repeatedly on his way into custody in frustration and he had felt a sharp pain then. The investigating officer found out from one of the club doormen that he heard banging coming from inside the van as it drove off and that he did not see any stamping while the man was being arrested.

There is no requirement to go further with this investigation and interviewing the officer would not be proportionate. It is extremely rare that an allegation this serious would not be subject to a full special requirements investigation, including an interview. However, the credibility of the complainant's account has been called into question by the doctor's account and none of the evidence supports that any stamping occurred. On the balance of probabilities, the man's injuries were caused by punching the inside of the van.

Evidence from other officers and members of the complainant's family or his/her friends should not be dismissed as without value - they will always have some. However, evidence already obtained should be considered in deciding whether it is worthwhile to get this further evidence.



Case study three: witness statements

A man attended a football match, after which there was widespread crowd disturbance. The man made a complaint that an officer had shoved him in the back with a baton and told him to move on, and that a mounted police officer had ridden a horse at him and then kicked him. He had attended the match with a relative and two other people. The investigation found that he had no injuries, the CCTV footage did not show any interaction between any of the police and him, but did show him standing some distance away from an altercation in which batons were used before he walked away. None of the officers could remember him and the footage did not show any inappropriate behaviour by the officers involved in the altercation, or the horse riders. One of the other people who attended the match with him said that he had seen the man having an argument with an officer, but did not mention a baton strike, and that he had seen the horse pinning

the man against the fence with the horse then standing on his foot. The investigation decided not to ask his relative, or the other person present, for their accounts as they were satisfied that, on the balance of probabilities, the man had not been involved in the altercation where batons were drawn. Even if the horse had pinned him and then trodden on his foot, it was not possible to show that this was because of misconduct on the part of the rider – it could have been an accident.

The man appealed to the IPCC and the IPCC did not uphold his appeal – agreeing that proportionate lines of enquiry had been followed and that, even if his relative and the other person had supported his account, the CCTV did not support the allegation to the extent that the balance of probabilities would not be changed by their evidence. A subsequent judicial review agreed with the IPCC's and the police's assessment of the proportionality of obtaining the further evidence.

The lines of enquiry that are identified during the initial scoping stage are not a checklist – an investigation cannot assume that once those are complete, the investigation is finished. Lines of enquiry are driven by the investigation and the evidence found during it. If the complaint remains unanswered, or further lines of enquiry are opened up that would provide useful evidence, then those lines of enquiry should be followed. The action plan for the investigation should be under constant review, either to identify new lines of enquiry or because the remaining lines of enquiry are now no longer needed. At all times, any decisions should be fully audited in a timely manner.

Staying within the remit of the complaints system

Complaints are often made because people are unhappy with the outcome of operational policing. It is important that the complaint investigation remains within its jurisdiction and does not formally review matters which are outside the scope of the complaints system.



Case study four: volume crime handling

A man reported his motorcycle stolen. The motorcycle was not found and his insurance company settled a claim on it. Some years later, the motorcycle was sold at auction and it was then that it was recovered. The matter was investigated and no further action was taken against the new owner as it was decided that they were an innocent purchaser. The new owner settled matters with the insurance company. The man then complained that he had not been contacted when the motorcycle was found to allow him to buy it back and should not have assumed the purchaser was innocent.

The complaint investigation concentrated on reviewing the operational policing decision to close the investigation into the purchaser. This was disproportionate to the complaint – the complaint was actually very straightforward to answer. By settling the insurance claim with his insurers, the man no longer had any financial interest in the motorcycle and was not the ‘injured party’ when it was found – it ‘belonged’ to the insurance company. There was therefore no requirement to update him when it was recovered and only the insurance company could raise issues with the decision that the purchaser was innocent.



Case study five: public order

Animal rights protestors attended an organised protest outside a factory that had an injunction in place, preventing protesting outside designated protesting zones. During the protest, one of the protestors was arrested. She complained that she was wrongfully arrested – she had not been protesting in the wrong place – she had been walking away from the protest and the force used to arrest her was unlawful. The investigation into this complaint was complicated unnecessarily because the force failed to spot the assumption she had made – that her arrest was for protesting in the wrong place.

The core evidence in this case was that the arrest was not because she had been protesting in the wrong place. She was moving away, with a group of people and a loud hailer, walking past the transport options for leaving the protest and towards an area she was not permitted to protest in. She was asked by officers to return to the designated area and she refused. The language she used in refusing to return to the designated area meant she committed a public order offence. It was for that public order offence that she was arrested.

Therefore, the examination of the precise boundaries of the exclusion zone, whether the injunction had been properly applied for, whether the injunction was reasonable, and whether the injunction had been adequately notified to the protest were irrelevant to answering the complaint – the reason she had been arrested was for the public order offence, not for protesting in the exclusion zone. What remained was to decide whether the officers’ belief that she was trying to reach the exclusion zone to protest was reasonable and whether the level of force used in her arrest was unreasonable.

Other matters

If, during the course of an investigation, other conduct issues are found, these should be addressed. If they are nothing to do with the complainant, then they can be recorded as separate conduct matters, but if they concern the complainant, they should be reported within the final report. The complainant has the right to know the full outcome of their complaint.



Case study six: pocket notebook falsification

A man made a complaint that a police community support officer had given him a fixed penalty ticket for parking on zigzag lines, and while doing so, had made racist comments to him that 'You Pakis are all the same'. During the investigation, the officer was asked for his pocket notebook. When the notebook was received, it was clear that the officer had tried to change the date on which the notebook had been issued to the same day as the incident. Further enquiries found that the pocket notebook had been given to him the day after the incident, not on the day of the incident. When questioned about this, the officer

admitted that he had lost his previous pocket notebook some time before the encounter and that, when he had been told about the complaint the following day, he had got a new notebook and tried to retrospectively record the encounter.

The complainant had a right to know what the officer had done, even though they would have had no way of knowing about it, and therefore did not know to complain. This was part of the officer's conduct surrounding the encounter.

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