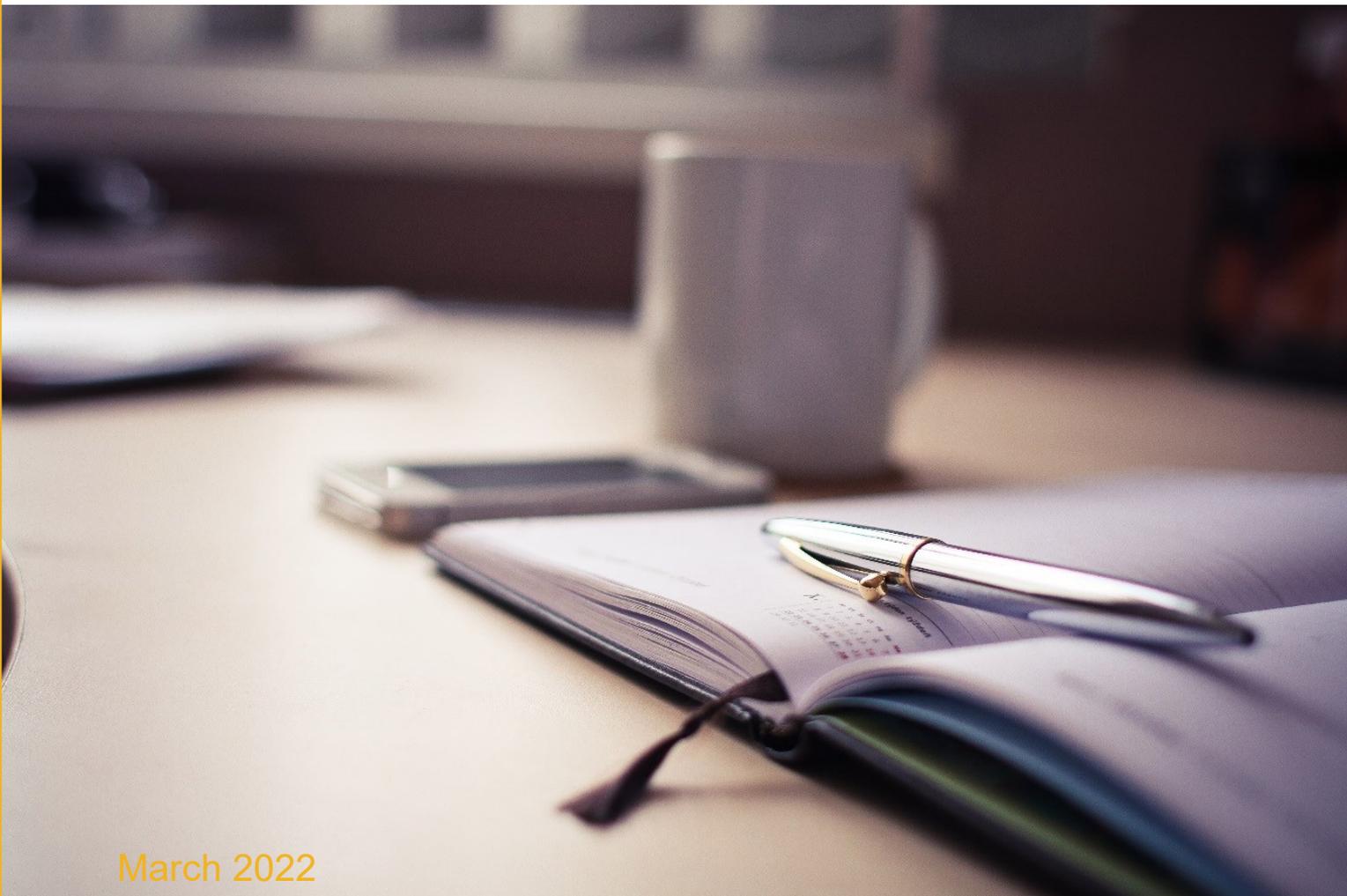


Operational advice note to police and crime panels

on the handling of complaints or conduct matters recorded
against police and crime commissioners



March 2022

Operational advice note to police and crime panels

This note will help police and crime panels handle complaints or conduct matters recorded against police and crime commissioners. It is not formal guidance issued under the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012, referred to hereafter as the '2012 Regulations' unless otherwise stated.

1. Relevant office holders

1.1. 'Relevant office holders' means:

- any police and crime commissioner (PCC) or any police, fire and crime commissioner (PFCC)
- any deputy police and crime commissioner
- in London, the holder of the Mayor's Office for Policing and Crime (MOPAC). Under normal circumstances, this will be the Mayor of London
- in London, any deputy mayor for policing and crime who may be appointed
- any other person appointed to perform the role of police and crime commissioner or deputy police and crime commissioner, for the purposes of the *Police Reform and Social Responsibility Act 2011* (as amended)

2. Receipt of a complaint

2.1 Where the complaint is about a relevant office holder, the police and crime panel must decide whether it is the correct panel to deal with the complaint. If it is not, it must tell the correct panel of the complaint (Regulation 9(2) of the 2012 Regulations).

2.2 Where a complaint is made directly to a relevant office holder about their own conduct, the relevant office holder must tell the panel for their police area of the complaint (Regulation 9(4) of the 2012 Regulations).

2.3 Where a complaint is made to a chief officer about the conduct of a relevant office holder, the chief officer must tell the panel for the PCC's police area of the complaint (Regulation 9(3) of the 2012 Regulations).

2.4 If the panel, relevant office holder or chief officer decides not to tell the correct panel about a complaint, they must tell the complainant about the decision to take no action and the grounds on which the decision was made (Regulation 10(2) of the 2012 Regulations).

2.5 When a complaint is received by the correct panel, the panel must record the complaint (Regulation 9(5) of the 2012 Regulations). However, the complaint does not have to be recorded if:

- the subject-matter of the complaint has been, or is already being, dealt with by criminal proceedings against the relevant office holder, or
 - the complaint was withdrawn in accordance with regulation 16 (Regulation 9(6) of the 2012 Regulations).
- 2.6 'Recording' 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 that can be readily accessed and examined by the IOPC 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 (Regulation 31(1)(a) of the 2012 Regulations).
- 2.8 The panel must give a copy of the recorded complaint to the relevant office holder who is subject of the complaint. This must be done 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 give a copy of the complaint to the relevant office holder, this decision must be regularly reviewed. If a copy of the complaint is given to the relevant office holder, the identity of the complainant or any other person may be kept anonymous (Regulation 31 of the 2012 Regulations).
- 2.9 Where a panel is unsure whether it is appropriate to give a copy of the complaint to the relevant office holder, they may seek relevant advice from the local authority Monitoring Officer and/or OPCC Chief Executive before doing so.
- 2.10 If the panel decides not to record a complaint, it must tell the complainant in writing of the decision to take no action and the grounds for making the decision (Regulation 10(2) of the 2012 Regulations). This notification should explain the reasons for this decision.

3. Conduct matters

- 3.1 For the purposes of the 2012 Regulations, a conduct matter is a matter where there is an indication (whether from the circumstances or otherwise) that the relevant office holder may have committed a criminal offence (*Police Reform and Social Responsibility Act 2011*, Section 31(1)(b)).
- 3.2 A conduct matter must be recorded where either:
- the panel is told 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 (Regulation 11 of the 2012 Regulations), or

- a conduct matter comes to the panel's attention in any other case (Regulation 12 of the 2012 Regulations)

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 (Regulations 11 (4) and 12(2) of 2012 Regulations)

3.4 'Recording' 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 the legislation (the 2021 Regulations and the *Police Reform and Social Responsibility Act 2011*). Conduct matters should be recorded in some form of register that can be easily accessed and examined by the IOPC, if required. This will allow the panel to track progress of the conduct matter and report on data.

3.5 If the IOPC becomes aware of a conduct matter that has not been recorded by the panel, the IOPC may direct the panel to record the matter and the panel must do so (Regulations 12(3) of the 2012 Regulations).

4. Preservation of evidence

4.1 Where a police and crime panel becomes aware of a complaint or conduct matter about the conduct of a relevant office holder, the panel must take all appropriate steps to obtain and preserve evidence about the conduct in question. The IOPC may give the panel directions for obtaining and preserving evidence. The panel must comply with any such directions (Regulations 8(1) and (5) of the 2012 Regulations).

4.2 Where a relevant office holder becomes aware of a complaint or conduct matter about their own conduct, the relevant office holder must take all appropriate steps to obtain and preserve evidence about the conduct in question. The IOPC 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 (Regulations 8(2), (4) and (6) of the 2012 Regulations).

5. Referrals to the IOPC

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

- 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)
- any conduct matter or serious complaint where the IOPC has told the panel that it must be referred (Regulations 13 (1) and (2) of the 2012 Regulations)

- 5.2 In terms of complaints, the panel should make an initial assessment of the complaint (before making a referral to the IOPC). It may be appropriate for the PCP to contact the complainant to fully understand the complaint before an assessment can be carried out. The panel should look at the conduct which is alleged in the complaint and consider whether that conduct, if proven, would constitute a serious complaint (Regulation 2 of the 2012 Regulations). If it would, then the criteria for mandatory referral is met. The panel is not at that stage able to consider the merits of the complaint, but instead should focus on the nature of what is being alleged. It will not be sufficient for a complainant to simply say that a serious complaint or criminal offence is alleged. However, once the complainant goes beyond that and alleges particular conduct, then the assessment should be whether such conduct, if proven, would amount to a criminal offence.
- 5.3 This initial assessment, and the information and evidence considered in that assessment, should be included in the referral papers. Only complaints that are assessed as “serious complaints” should be referred to the IOPC.
- 5.4 Regulation 7 of the 2012 Regulations states that the PCP can delegate this initial assessment to the Chief Executive of the Office of Police and Crime Commissioner (OPCC) or Monitoring officer for the GLA for London Assembly PCP. The Police and Crime Panel (Application of Local Authority Enactments) Regulations 2012 also allows such decisions to be delegated to a sub-committee of the panel or to a local authority officer. The IOPC will only accept a referral where it is evidenced that either the panel or a duly appointed sub-committee or officer has decided that the matter is a serious complaint or a recordable conduct matter.
- 5.5 Where the PCP has delegated the handling of complaints to a sub-committee of the panel or a local authority officer, the IOPC would expect to receive written evidence of the delegation referring either to the *Police and Crime Panel (Application of Local Authority Enactments) Regulations 2012* or to section 101(2) and (3) of the *Local Government Act 1972 (as amended)*.
- 5.6 The fact that a serious complaint or recordable conduct matter is sensitive or urgent does not override the requirement for the panel or a person with delegated decision-making authority to make the determinations above, before making a referral. PCPs should be adequately sighted on the detail of the matter in order to come to an informed decision and decide which criminal offence is alleged. PCPs should consider what arrangements they have in place to avoid delay in referring urgent or sensitive matters. The need to

provide information should be balanced against the timeliness of making the referral.

- 5.7 The panel should complete an IOPC referral form 7.1 with the details of the complaint or conduct matter it wants to refer. It is important that the referral form is completed in full and that the alleged criminal offence(s) the panel consider to be evident is/are clearly outlined within this. Where the form is not completed in full and/or the alleged criminal offence(s) is/are not outlined, the IOPC may require the PCP to provide further or additional information. The referral should also include any supporting documentation available. All information stored and handled by the IOPC is treated in line with government security classifications. The completed form should then be sent by secure email to nat_referrals_inbox@policeconduct.gov.uk.
- 5.8 The referral form should be sent to the IOPC at the earliest opportunity. The regulations say that this must be as soon as is practicable and 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 IOPC tells the panel that it must be referred (Regulations 13 (3) and (4) of the 2012 Regulations).

5.8 What information does the IOPC need from the PCP?

- 5.8.1 A referral should always be sent on the IOPC referral form 7.1 to make sure that all of the basic information is provided. Where a complaint has been made, confirmation that the complaint was recorded (including any reference numbers) should be provided alongside the PCP's assessment on why it meets the statutory criteria. Where the assessment was by a sub-committee or other individual, the documented delegation from the PCP should be provided.
- 5.8.2 Where supporting documents are readily available, these should always be sent with the referral form to allow the IOPC to make a reasonable assessment on the type of investigation required. When submitting a referral to the IOPC, the following information should be supplied where available:
- the names of the referring PCP and relevant office holder
 - the contact details of the person with whom the IOPC is expected to correspond
 - the nature of the serious complaint or conduct matter being referred
 - the location of the incident that is being referred
 - the date and time of the incident
 - the name and address of the complainant
 - the date of birth of the complainant
 - the nature and number of allegations
 - the number of police witnesses, if any
 - the number of independent witnesses

- the ethnic origin of the complainant
- complaint form
- incident logs (if applicable)
- custody records (if applicable)

5.8.3 This is not an exhaustive list. The PCP should supply all relevant available information that is likely to assist the IOPC make its decision, along with the 7.1 referral form. Where further information was sought but was not available at the time of referral, this should be noted on the 7.1 referral form alongside timescales (if known) as to when the information may become available. Once it is clear that the matter does meet the statutory test for referral, the referral should not be delayed while further information is sought.

5.8.4 The panel must tell the complainant (if there is one) of the referral to the IOPC. The panel must also tell the relevant office holder concerned about the referral, unless the panel considers that to do so might prejudice a possible future investigation of the complaint or conduct matter (Regulation 13(6) of the 2012 Regulations). These notifications should be made in writing.

5.8.5 Before submitting a referral, if the panel wishes to contact the IOPC during office hours (Monday to Friday 9 am – 5 pm), this may be done by calling the Assessment Unit on 0161 246 8504. Alternatively, if the panel wishes to make an urgent referral to the IOPC outside office hours, this may be done by calling 0845 300 1972. If there is no response, you can leave a message with the caller's name and number, the fact that you are calling on behalf of the panel, and to which police area the referral relates. This number will allow direct contact with the IOPC on-call team.

5.9 Processing the referral

5.9.1 The IOPC will decide whether or not it is necessary for the complaint or conduct matter to be investigated (Regulation 14(1) of the 2012 Regulations). It will tell the panel in writing of its decision. If the IOPC decides that an investigation is necessary, it will decide whether it should be a managed investigation or an independent investigation.

5.9.2 If the IOPC decides that 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 (Regulation 14(2)(a) of the 2012 Regulations). The IOPC will tell the complainant and the relevant office holder complained about this decision (Regulation 14(3) of the 2012 Regulations).

5.9.3 If the IOPC 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 any manner the panel sees fit (Regulation 14(2)(b) of the 2012 Regulations). The IOPC will tell the relevant office holder of this decision (Regulation 14 (3) of 2012 Regulations).

6. Disapplication

6.1 In certain circumstances, the regulations allow a recorded complaint (not a conduct matter) to be dealt with outside of the statutory procedure. This is referred to as “disapplication.” This option is only available where:

- the complaint is not being dealt with by the IOPC, or
- the complaint has not been, or is not required to be referred to the IOPC and the complaint has not been referred back to the panel under Regulation 14(2),

and where the complaint falls within the description of complaints set out in Regulation 15(3), and

- the panel decides it should not be handled under Part 4 of the 2012 Regulations, or
- the panel decides that it should take no action in relation to it

In such circumstances, the panel may handle a recorded complaint in whatever manner (if any) it thinks fit.

6.2 Grounds for disapplication (Regulation 15(3) of the 2012 Regulations)

The PCP may deal with a recorded complaint outside of the Regulations where it considers that:-

- 6.2.1 The complaint is concerned entirely with the conduct of the relevant office holder in relation to a member of the relevant office holder’s staff at the time when the conduct was supposed to have taken place.
- 6.2.2 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 there is either:
- no good reason for the delay, or
 - a likelihood that a delay would cause injustice
- 6.2.3 The matter is already the subject of a complaint.
- 6.2.4 The complaint gives neither the name and address of the complainant nor that of any other interested person, and it is not reasonably practicable to find out a name or address.
- 6.2.5 The complaint is vexatious, meaning it is possible to demonstrate that the complaint is being made without basis and intends to cause worry, upset, annoyance or embarrassment.

- 6.2.6 The complaint is oppressive, meaning the complaint is made without foundation and is intended or is likely to result in burdensome, harsh or wrongful treatment of the person complained against.
- 6.2.7 The complaint is an abuse of procedure. This ground is far-reaching and can cover a number of different scenarios where it can be demonstrated that the police complaints system is being misused or manipulated to influence another process or outcome.
- 6.2.6 The complaint is repetitious (as defined in Regulation 4 of the 2012 Regulations).
- 6.3 If the panel decides to disapply the requirements of the regulations, it must tell the complainant that it decided to handle the complaint in this way (Regulation 15(5) of the 2012 Regulations).

7. Withdrawal of complaints

- 7.1 If the police and crime panel receives signed written notification from a complainant or a person acting on their behalf that they withdraw the complaint or do not want any further action taken on the complaint, then the panel must record the withdrawal (Regulation 16(1) of the 2012 Regulations).
- 7.2 If the complaint in question was referred to the IOPC and not referred back to the panel (i.e. it is either still under consideration by the IOPC or the IOPC decided a managed or independent investigation should take place) the panel must tell the IOPC of the withdrawal of the complaint (Regulation 16(3) of the 2012 Regulations). The IOPC will then decide whether the withdrawn complaint should be treated as a conduct matter and will tell the panel of its decision (Regulation 16(5) of the 2012 Regulations).
- 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 involves, or appears to involve, the commission of a criminal offence (Regulation 16(4) of the 2012 Regulations). If so, it must then be recorded and treated as a conduct matter (Regulation 16(6) of the 2012 Regulations). If not, no further action needs to be taken on the complaint.
- 7.4 If a complainant has indicated that they wish to withdraw a complaint but does not provide signed written notification, the panel must write to the complainant to find out whether they wish to withdraw the complaint. If the complainant responds and indicates that they do 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 withdrawal had been received. If the complainant responds that they do not wish to withdraw the complaint, the complaint must continue to be dealt with under the regulations (Regulation 16(7) and (8) of 2012 Regulations).
- 7.5 The panel must tell the relevant office holder complained about if:

- the panel records the withdrawal of a complaint or the fact that the complainant does not want any further action taken on to their complaint
- the panel decides that a complaint should be treated as a conduct matter
- the IOPC decides that a complaint should be treated as a conduct matter
- the complaint will no longer be dealt with under the regulations due to the withdrawal (Regulation 16(9) of the 2012 Regulations)

7.6 However, if the panel previously decided not to tell the relevant office holder complained about 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 tell the relevant office holder of the withdrawal.

8. Investigations

8.1 When a complaint or conduct matter has been referred to the IOPC, the IOPC will decide whether it is necessary for an investigation to take place. If the IOPC decides that an investigation is necessary, it will decide whether it should be a managed investigation or an independent investigation (Regulation 18 of 2012 Regulations). The IOPC will tell the police and crime panel of its decision (Regulation 18(8) of the 2012 Regulations).

8.2 An independent investigation is an investigation which is carried out by the IOPC. In independent investigations, IOPC 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 IOPC.

8.4 Upon notification that a managed investigation will be taking place, the chief officer of the selected police force must, if they have not already done so, appoint a person serving with the police to investigate the matter (Regulation 19(2) of the 2012 Regulations). The IOPC may require the chief officer to seek approval of the proposed investigation before they appoint anyone in this role. Alternatively, the IOPC may require the chief officer to appoint another investigator if the IOPC is not satisfied with the original selected investigator. This subsequent appointment may only happen if the IOPC has approved the appointment of the new investigator.

8.5 Every panel, every relevant office holder and every chief officer has a duty to provide the IOPC with any assistance and co-operation that is reasonably required to carry out an investigation under the regulations. This duty also applies to a person appointed to investigate a managed investigation.

9. Discontinuance

- 9.1 In certain circumstances, the IOPC may decide that an investigation should stop. This may be either because of an application from a chief officer involved in the investigation or as a result of a decision by the IOPC itself (Regulation 24(1) of the 2012 Regulations).
- 9.2 If a chief officer believes that a managed investigation should be discontinued, they must make a written application to the IOPC, 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 IOPC (Regulations 24(3) and (4) of the 2012 Regulations).
- 9.3 The police and crime panel will not have a role in the decision-making about the discontinuance – this decision is made by the IOPC. Where the IOPC decides an investigation should be discontinued, it will tell the panel (Regulation 24 (7)(a) of the 2012 Regulations).
- 9.4 When an investigation is discontinued, the IOPC may make certain directions to the panel. Any direction made will be set out in a letter to the panel. The types of directions the IOPC can make are listed below:
- 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, require the panel to disapply the requirements of the regulations
 - if the investigation relates to a complaint, require the panel to handle the complaint by way of resolution as set out in Part 4 of the regulations
 - to require the panel to handle the matter in whatever manner the panel thinks fit (Regulation 24(9) of the 2012 Regulations)
- 9.5 The panel must comply with any directions given to it (Regulation 24(11) of the 2012 Regulations).

10. Action in response to an investigation report

- 10.1 When the IOPC receives an investigation report (either from the investigating police officer in a managed investigation, or its own investigator in an independent investigation) it will decide whether the report should be referred to the Crown Prosecution Service (CPS) (Regulation 26 of the 2012 Regulations).
- 10.2 If the report is referred to the CPS, the IOPC will tell the police and crime panel and any other person entitled to be kept informed about the referral. It will also

be the duty of the IOPC to tell the panel and any other person entitled to be kept informed if the CPS decides to bring criminal proceedings about any matters dealt with in the report (Regulations 26(2)(c) and (6) of the 2012 Regulations).

- 10.3 The IOPC will publish its investigation report and send a copy of the report about the relevant office holder to the appropriate panel. The harm test will be applied to the investigation report before publication and disclosure (Regulations 26(7) and (8) of the 2012 Regulations). The IOPC may delay sending or publishing a report, or withhold any part of a report from sending or publication, if the IOPC considers that it is necessary to do so, for the purposes mentioned in regulation 33(1)(a) or (b) of the 2012 Regulations.

11. Delegation of powers and duties

- 11.1 Police and crime panels are permitted to delegate certain 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 who is given delegation, when delegation was given, when it was made, its basis and any limitations.

12. Duty to provide information to the IOPC

- 12.1 It is the duty of every police and crime panel, every relevant office holder, and every chief officer to provide the IOPC with any information, documents, or evidence required by the IOPC for it to carry out its functions (Regulation 35(1) of the 2012 Regulations).
- 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 IOPC (Regulation 35(2) of the 2012 Regulations). 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). They also recognise that in some cases, it may never be practicable to provide the information (Regulation 35(3) of the 2012 Regulations).
- 12.3 In these situations, the person to whom the request is made must inform the IOPC whether and why there may be a delay or that it is not practicable to provide this information. Required information or documents may be provided electronically, where authorised or required by the IOPC (Regulation 35(4) of the 2012 Regulations).

13 Access to premises

- 13.1 A police and crime panel, relevant office holder and chief officer must allow a person nominated by the IOPC 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 IOPC or under its management under the regulations, or

- any examination by the IOPC of the efficiency and effectiveness of the systems put in place to handle complaints and conduct matters about the relevant office holder (Regulation 36(10) and (2) of the 2012 Regulations)

13.2 Where the IOPC'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 IOPC access at the time requested, access should instead be allowed at the earliest practicable time after those grounds cease to exist (Regulation 36(3) and (4) of the 2012 Regulations). The person to whom the request is made must inform the IOPC of the reasons why access cannot be granted to the IOPC 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 (Regulation 34 of the 2012 Regulations)

14.2 Panels would also assist the IOPC if they adhered to the guidance set out in the IOPC's statutory guidance on data collection and monitoring of matters dealt with under the regulations.

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 and have either not yet been complied with or have been contravened (Regulation 6(1) and (2) of the 2012 Regulations).