

# FOCUS

ISSUE TEN

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

[www.ipcc.gov.uk/page/publications-for-forces](http://www.ipcc.gov.uk/page/publications-for-forces)

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## Quality of investigations

Previous issues of Focus contain further information about decisions made at the beginning of a complaint (issue 4), conducting investigations (issue 5) and decision making at the end of investigations (issue 7). In September 2015, the IPCC revised our [guidelines for handling allegations of discrimination](#) and the principles contained in these guidelines should be applied to all complaint investigations.

### Recording the complaint and beginning the investigation

An investigation into a complaint should focus on resolving the issues the complainant has raised. The complainant is likely to have lowered confidence in the police, otherwise they would not have raised a complaint. The actions of the investigating officer (IO) during the investigation should seek to rebuild the complainant's faith in the police in general, as well as address the substance of the complaint.

Sometimes investigations can be compromised at the very beginning by poor recording of complaints. Good practice is to ensure that complaints are recorded on the systems clearly, accurately and in plain English. This avoids confusion later and ensures that anyone reviewing the investigation, or reviewing subsequent complaints from the same complainant, can see exactly what has been covered in the investigation under the original reference.



Not	But
'Assault' Or 'Excessive use of force'	'Assaulted complainant during arrest by use of handcuffs.' Or 'Assaulted complainant during transit to custody'
'Unlawful arrest'	'Unlawful arrest on 21 May 2016'
'Incivility'	'The arresting officer insulted the complainant in the police car'
'Breaches of code C of PACE'	'Failure to provide medication in custody, in breach of Code C of PACE' and 'Failure to obtain legal advice'

It is best practice to meet with a complainant wherever possible and secure the complainant's agreement that the complaint/s have been recorded accurately. This allows the IO to ensure that they understand all aspects of the complaint and is an opportunity to explain the course of action they will take to address the complainant's concerns.

In addition, a face-to-face meeting provides the opportunity to begin to build a relationship and trust between the complainant and the IO.

This helps to ensure the confidence of the complainant and ensures that the IO is covering all of the complaint points; what may seem a small side issue when first reading the complaint may actually be the complainant's main point of contention.

Clear and unambiguous terms of reference, drawn up and shared with the complainant at the beginning of the investigation, will help to ensure that the investigation addresses all the relevant issues and that all parties know what the investigation will, and will not, cover.

If a complaint is made in the initial complaint letter, but the complainant subsequently decides that they do not want it to be covered in the investigation, any decision about this must be documented clearly, preferably with the complainant's signed agreement. This will avoid any subsequent confusion about whether this complaint has been 'missed' as part of the investigation.

If a complaint has been recorded under the Police Reform Act there is no process for 'de-recording' a complaint and the IO must secure the complainant's written agreement to withdraw the complaint.<sup>1</sup>

If further complaints are raised, or clarified, during contact with the complainant, these should be added to the system. The IO should confirm to the complainant that the additional matters are now included in the investigation.

If additional complaints are made after the conclusion of the investigation these should be recorded separately with a new complaint reference. This will avoid confusion about which issues were covered under which investigation.

## Good practice

We are aware of one professional standards department (PSD) that has produced a checklist for investigating complaints and conduct matters. This reminds the IO, not only about what should happen as part of the investigation, but about how it should happen, how it should be recorded, and how it should be explained to the complainant.<sup>2</sup>

1 You can read more about this in issue eight of [Focus](#).

2 Other PSDs may have produced similar templates or guides. If you wish to see a copy of this particular checklist please speak to your PSD which may hold a copy, or it will be able to contact the Force Liaison and Oversight team.

## Updates

It is a legislative requirement to update the complainant and interested parties every 28 days.<sup>3</sup> Lack of compliance with this obligation, or lack of substance to the update, is a frequent grievance that complainants raise with the IPCC.

It is vital that a complainant's good will is not lost or irreparably damaged by a lack of updates, or by poor updates that fail to tell them anything meaningful. This gives a perception of disrespect and/or being processed, rather than of a human interaction with people who want to learn from their experience.



### Case study one – meaningful updates

Mr F's complaint was allocated to an IO, who made contact and met with the complainant. The IO took a detailed statement from Mr F and agreed the points of the complaint.

On return to the office, the IO began initial enquiries, served notices on the officers involved, arranged to collect CCTV and moved the investigation on at a reasonable pace. However, during this time, he made no contact with Mr F. Mr F called the IO, and the PSD, on the IO's rest day. However, the IO had no 'out of office' on his email or telephone voicemail to explain that he was not available. Mr F did not receive a call back. Eventually, Mr F called the IPCC to report that he had heard nothing from the force, despite having called them.

On return from rest days the IO emailed Mr F. The email stated:

"Dear Mr F

I understand you have been in contact with the PSD and with the IPCC. The investigation into your complaint is progressing and I will be in touch in due course.

Regards

IO"

*This is not a meaningful update, nor does it provide the complainant with any confidence that his complaint is being treated with respect. It gives no indication of what, if anything, is happening with the investigation and creates the perception that the update has only happened because Mr F called the IPCC. There is no apology for the lack of contact previously.*

A better update at this stage would be:

"Dear Mr F

Please accept my apologies for not updating you on the progress of the investigation, and the delay in getting back to you over the last few days – I have been out of the office on leave and forgot to put an out of office message on my phone.

Since meeting you I have secured a copy of the CCTV and arranged interviews with the officers. These will take place on 27 July. There was a slight delay in arranging the interviews because one of the officers involved has been on leave.

After the interviews I should be in a position to establish whether there are any other lines of enquiry. I am hoping to complete the investigation by the end of September, but I will update you again after the interviews.

Regards

IO"

*This update:*

- *apologises to Mr F*
- *explains the reasons for the delay*
- *reassures Mr F that investigative work is ongoing*
- *agrees timing for the next update*
- *manages his expectations about how long the investigation might take.*

## Obtaining evidence and carrying out enquiries

All decisions taken during an investigation about whether to follow a line of enquiry, or not, should be recorded, along with the rationale for those decisions.<sup>4</sup> Where appropriate, the rationale for those decisions should also be included in the investigation report.

Certain enquiries should be undertaken as soon as possible – for example, if it is possible that CCTV is available, you should secure this quickly to avoid the risk of footage being deleted. This includes where an investigation is suspended pending criminal proceedings,<sup>5</sup> or where a complainant has not yet made a formal complaint, but indicated that they may. CCTV should not just be viewed by the IO – a working copy should be secured for future viewing.

There is no time limit for how long an investigation should take to complete – this will obviously depend on the specifics of the case. However, all appropriate steps to investigate complaints should be taken in a timely manner. This builds the confidence of the complainant and the officers/staff under investigation, as well as ensuring the integrity of the evidence. When investigating a potentially criminal allegation, IOs should also be mindful of any statutory time limits for bringing a prosecution.

It is only in very rare cases that an account from an officer in response to the complaint would not be required. All accounts from officers should be recorded in such a way that they can be reviewed, even when it is not necessary to interview an officer. Issues will be raised on appeal if the person reviewing the investigation cannot review the evidence on which the investigation's decision is based.

Accounts should be taken at an early stage, once the IO has sufficient evidence to be able

to take a meaningful account. It is rarely necessary, and potentially damaging to the investigation, to wait until all other lines of enquiry have been carried out. If further questioning is required at a later date, the IO can approach the officers as necessary.

When an investigation is carried out under special requirements, it is best practice to require the officers who are subject to the complaint to attend a recorded interview. Alternatively, a statement should be taken from the officer under an appropriate caution. The interview should be robust, address all lines of enquiry and seek to probe the officer's rationale for their actions.<sup>6</sup>

It is vital that IOs, whether in the PSD, or on local divisions/boroughs, have the appropriate level of skills and experience to investigate the complaint to a reasonable standard. They should also have adequate supervision and support. As far as possible, those tasked with investigating complaints on division/borough should have a similar level of training and understanding of the complaint system to staff in PSDs.

All investigations must be signed off by the delegated appropriate authority before the complainant is notified of the outcome. This is as an opportunity to quality check the investigation. Any failings identified at this stage should be rectified before the investigation is closed. The appropriate authority has the final decision about whether, in an investigation subject to special requirements, there is a case to answer for misconduct or gross misconduct or, in investigations not subject to special requirements, whether the complaint should be upheld. In either case, the appropriate authority must also decide whether there may have been any unsatisfactory performance.

4 [Focus issue five](#) provides more detail about proportionate enquiries that should be undertaken.

5 [Focus issue four](#) has more information about the suspension of complaint investigations, and when this can happen.

6 [Focus issue five](#) has case studies with more information about taking accounts from officers. There is also guidance on interviews in paragraphs 9.45 – 9.51 of the [Statutory Guidance](#) and in Home Office Guidance: Police officer misconduct, unsatisfactory performance and attendance management procedures.



## Case study two – investigation into potential criminal allegations

Mr G complained that police officers assaulted him during his arrest on 1 May 2015, outside a night club. He complained that he was thrown to the floor and kicked a number of times. He said that this caused bruising to his back and ribs and swelling to his ears. He made his complaint on 3 July 2015.

When recording the complaint, the PSD noted that it may amount to a section 39 assault, and that this offence would become statute barred in November 2015. The case was referred to the IPCC, and we directed that a local investigation take place.

Mr G provided a statement on 5 August 2015 and gave his consent for the force to obtain his medical records. Mr G stated his belief that the incident may have been captured by a CCTV camera. He added that he had been with some friends at the time of the incident, and that they may be willing to provide statements to the investigation. Attempts were made to secure the CCTV from the council, but it had only been kept for three months and so was no longer available.

The two officers involved were served with notices and the investigation was subject to special requirements. At the time of the arrest, the officers had provided statements. The IO relied on these statements in the complaint investigation and no further accounts were taken from the officers. Mr G's account contradicted their accounts. No statements were taken from any members of the public and the medical evidence was not retrieved.

In the investigation report the IO decided that the use of force was proportionate. No explanation, or acknowledgement, was made of the contradictions between the officers' accounts and Mr G's account, and there was no rationale from the IO about why he did not take statements from the witnesses. There was no discussion of the evidence and why the IO had decided to accept the officers' accounts over Mr G's.

The investigation concluded on 14 November 2015 and was signed off by the appropriate authority. The IO's report did not discuss whether a referral to the Crown Prosecution Service (CPS) was considered before the deadline passed.

*As this allegation was serious, and had the potential to be a criminal allegation, the officers should have been interviewed. The rationale for their use of force, its proportionality, and whether they would have done anything differently should have been explored. As the PSD had identified the potential criminal allegation we would have expected these issues to be picked up by the appropriate authority, and the investigation not to have been signed off. We would also have expected steps to be taken to ensure that a referral to the CPS was considered in time.*

*An explanation should have been provided for why medical evidence had not been referred to – or whether it was obtained. Given the location of the incident, and the potential for the CCTV to be deleted, the IO should have made immediate enquiries to secure the CCTV when the complaint was made, not waited until after he got an account from the complainant. Once it was established that the CCTV was no longer available, this should have been explained to Mr G, particularly since he had raised the possibility of its existence.*

*Given the seriousness of the allegation and the location where the incident happened, it may have been proportionate to consider whether members of the public – for example, local security staff – may have witnessed the incident. The fact that Mr G's friends were not approached to give accounts was not explained.*

*It is not clear whether CCTV from the custody suite was considered, although it is likely that this had also been written over owing to the time that had passed. This could have provided an indication of the behaviour (both physically and verbally) of both the complainant and the officers on the evening in question, and may have included remarks about the circumstances of the arrest or any injuries sustained. We would have expected consideration of this to have been recorded.*



### Case study three – gathering and retaining evidence

Officers had attended Mr P's address to arrest his son after an allegation of assault. Mr P subsequently complained that:

1. Officers assaulted him by pushing him.
2. Officers did not explain the grounds for entering the property.
3. Officers swore at him.
4. Officers intimidated him by drawing Tasers and CS spray.

The complaint was allocated to Inspector Q to investigate.

The investigation was not subject to special requirements. Inspector Q obtained statements from the officers and written statements from the complainant and his family. Inspector Q stated in the investigation report that he obtained further clarification from the officers after reviewing their statements.

In the investigation report Inspector Q quoted Section 17 of the Police and Criminal Evidence Act 1984 (PACE), paragraph 18 of Schedule 4 of the PRA and Codes of Practice D, paragraph 4.1. There was no explanation of why and how these sections of legislation applied to the incident in question.

Inspector Q's report stated that the officers denied assaulting or swearing at Mr P, that they did explain the reasons for entering the property, that the force used was legal and that Tasers were drawn because Mr P's son was believed to be violent. Only one reference was made to accounts provided by people other than the officers.

The report did not include any assessment of the conflicting accounts, or other evidence, and no rationale was provided for the conclusions reached (beyond the accounts of the officers). The responses to each allegation were a maximum of five lines.

When Mr P appealed to the IPCC, the further clarification that the officers gave to Inspector Q was not in the papers. It transpired that it was not written down. In addition, paragraph 18 of Schedule 4 of the PRA and Codes of Practice D, paragraph 4.1 were irrelevant and Section 17 of PACE was quoted in the report incorrectly.

*The investigation should have been subject to special requirements, and formal accounts taken from the officers in response to the complaint. All evidence relied on as part of an investigation should be recorded in a manner that is auditable, and provided to the appeal body on receipt of an appeal.*

## Other evidence and guidance to take into account

It is usually appropriate to consider the history of the officer who is the subject of the complaint. This includes their previous complaint history, and also their experience and the training they have received. The IO should consider the significance of, for example, a number of similar allegations against the officer or whether the officer is an experienced officer with recent relevant training. It is not necessary to consider any previous allegations against the officer, or previous training, that is not relevant to the complaint in question.<sup>7</sup>

The IO should also consider whether the use of external guidance and policies or experts would benefit the investigation – for example, internal use of force trainers – or external experts, such as medical professionals. If advice is obtained then the experts should be asked to give their opinion on a detailed specific question (or set of questions).

The use of experts is discussed in our guidelines on investigating allegations of discriminatory behaviour, which also cover engaging with the complainant and learning and best practice. Many of the principles in this guidance can be applied to investigating all complaints, regardless of whether they involve allegations of discrimination. When investigating allegations of discriminatory behaviour, IOs should record their rationale for any decision to deviate from the guidance.

<sup>7</sup> Further information about the use of an officer's history can be found in our [guidelines for handling allegations of discrimination](#), sections 5.9 – 5.22. The complaint history of the complainant may be relevant at recording stage. It is generally not appropriate to consider the complaint history of the complainant at investigation stage unless potential repetition or abuses of the complaints system are identified. Otherwise, cases should be treated at face value.

## Case study four – use of history

Mr A complained that PS H used a Taser on him without sufficient justification.

PS H was interviewed under caution. He had been wearing a body camera at the time of the incident and his account of Mr A's behaviour (his justification for the use of the Taser) contrasts with what the footage from the body camera appeared to show. PS H's previous use of Taser was reviewed in response to the complaint and it was noted that he had submitted a total of 16 Taser deployment forms in the previous two years.<sup>8</sup> Eight of these related to discharges. The force's use of force trainer noted that a firing rate of 50 per cent was markedly higher than the force average of 15 per cent. One previous complaint about PS H's use of the Taser had been made, but was not upheld and no learning or other action was identified.

This evidence was considered in the investigation report alongside the evidence retrieved from the body camera footage. The footage also captured negative comments on the use of force from members of the public at the scene. PS H's account in interview, another officer's account, officers' pocket note book entries, and the force's local use of Taser policy were also considered. The IO found that PS H had a case to answer for misconduct. A recommendation was made that PS H's Taser authority remained withdrawn until he received further training.

*In this case the officer's history was used as part of the evidence – it is not used on its own, but is part of the picture. The use of body worn video should also be noted.<sup>9</sup>*

## Content of the investigation report and final letter

If the investigation was not subject to special requirements, then a decision should be made at the end of the investigation about whether the complaint is upheld, on the balance of probabilities.<sup>10</sup> However, if the investigation was subject to special requirements, then the investigator can only express his opinion as to whether the officer has a case to answer for misconduct or gross misconduct or no case to answer. This is a different test to that which is applied when considering whether to uphold a complaint which is not subject to special requirements. In reaching their opinion as to whether there is a case to answer, the IO must consider whether a reasonable misconduct panel/meeting properly directed could, on the balance of probabilities, make a finding of misconduct or gross misconduct.<sup>11</sup> This can be confusing to members of the public and it is best practice to explain what this means in the IO's report.

### Example

I am required to give my opinion on whether or not the officer has a case to answer for misconduct or gross misconduct. This means that I must decide whether or not there is sufficient evidence upon which a tribunal could find misconduct or gross misconduct.

8 Officers must complete a Taser deployment form any time a Taser is deployed. 'Deployed' includes drawing and aiming the Taser without firing as well as 'red dotting' (the use of the red dot on the Taser to mark where the Taser barbs would land).

9 More guidance about the use of body worn video in complaint investigations can be found in our [position statement](#).

10 Further guidance about the use of the balance of probabilities test can be found in Focus [issue seven](#).

11 There is then a decision-making process to establish whether the officer does have a case to answer, the initial decision being one for the appropriate authority. Under Regulation 19 of the Police (Conduct) Regulations 2012 if there is a case to answer for gross misconduct the matter must proceed to a gross misconduct hearing. If there is a case to answer for misconduct it may refer the case to misconduct proceedings; or take management action against the officer. If there is no case to answer the appropriate authority can consider no further action, management action, or performance. Read more about this in [issue seven of Focus](#) and our [Statutory Guidance](#) (in particular, paragraphs 11.29 – 11.41).

In many cases there will not be clear evidence for or against a complaint. Nonetheless, it is important that an IO's analysis is robust – ambiguous conclusions do not assist faith in the process for complainants, or the officers/staff members involved.

All conclusions should be based on an analysis of the evidence, and this analysis should be presented in the IO's report. The evidence should be discussed. It is not sufficient to simply repeat people's accounts, or copy directly from evidence such as incident reports and then state that the officers involved have no case to answer, or that the complaint is not upheld<sup>12</sup>, without any discussion of the evidence.

The investigation report should not contain information that is not relevant to the complaint – for example, any irrelevant previous convictions of the complainant<sup>13</sup>. Not only is the information irrelevant to the complaint, its inclusion creates the impression that the IO is attempting to discredit the complainant, or has not approached the investigation with an open mind.

It is important that investigations not only consider the conduct of the officers involved in the complaint, but consider, where appropriate, whether the actions of the officers are indicative of wider issues in the force. The IO should not concentrate solely on proving or disproving misconduct. They should also explain why events happened in the way that they did, and whether there are any lessons for the force.

Even an exemplary investigation can be let down if the IO's report, or the covering letter to the complainant, is poor. Reports and letters should:

- Be clear and concise and written in plain English.
- Be tailored to the complaint and complainant – not restricted to templates – and empathy shown, where appropriate.
- Ensure the accuracy of all the basic facts, like dates, and contain correct spelling (particularly of people's names).

- Demonstrate a genuine desire to answer the complainant's issues.
- Address all the points of complaint.
- Restrict – or explain – the use of jargon. The police complaints process, and the work of the police service, is complicated and it is easy to slip into using language that is not easily understood by members of the public, or those under investigation.
- Explain the lines of enquiry, and, where necessary, explain why particular lines were not followed.
- Explain the evidence and the legislation, rather than simply copying sections into the report.
- Where there are performance, misconduct or criminal outcomes, explain what these mean and what the next steps are.
- Explain the right of appeal, the deadline to appeal and who to appeal to.
- Where it has been necessary to withhold information, subject to "the harm test" (for example, a source of intelligence), explain the reason for this in plain English.



### Case study five – putting things right

Mr H's car was seized following an accident. Among his complaints, Mr H said that he was not given a receipt for his car, or the items in it. His solicitors state that this was in breach of section 21 of PACE.

The IO confirmed that no receipt had been provided, but said that this was in line with force policy. Therefore, his conclusion was that the officer in the case had no case to answer for misconduct. However, the IO also identified that Mr H's solicitor was correct – the failure to provide a receipt was in breach of section 21 of PACE. The IO recommended that the force policy be altered to reflect this.

<sup>12</sup> For investigations not subject to special requirements.

<sup>13</sup> There may be rare circumstances where a conviction of a complainant may be relevant as part of the overall picture – for example, where the complainant was convicted for assaulting a constable during the same incident, or where there is a recent conviction for perverting the course of justice by making false allegations against police officers. We would still suggest exercising caution where reference to previous convictions of the complainant is considered.

### Case study six – force-wide learning

Ms J complained that police officers searched her home while she was absent. Part of her complaint was that officers failed to provide her with any documentation about the search. Paragraph 6.8 of PACE Code B states that if the occupier of a searched premises is not present, copies of the notice and warrant should be left in a prominent place on the premises or in an appropriate part of the premises.

The IO took accounts from all the officers present at the search. All admitted that no notice was left, but they stated that they were not aware of this requirement. The officer in charge of the search had not led a search before.

The IO apologised to the complainant. She concluded that no officer had a case to answer for misconduct, but identified performance issues and recommended management action. The IO also identified that it was a matter for wider concern that none of the attending officers had been aware of this requirement. She recommended that a reminder be issued to all officers about the requirements of PACE Code B and paragraph 6.8 in particular.

### Case study seven – empathy

After the death of his son, Mr A complained about the actions of the officers, and police staff members, who attended the scene.

The IO found performance issues for one staff member and in the letter he sincerely expressed his condolences and apologised that Mr A had to complain. The IO sought to reassure the complainant that individuals, and the wider force, would learn from his complaint.

### Case study eight – attention to detail

Mrs F complained that the officer who stopped her in her car acted in a discriminatory manner. When the investigation concluded, the IO repeatedly spelt Mrs F's name wrong in the investigation report.

*This added to Mrs F's belief that her complaint had not been seriously considered and that the police force was discriminating against her.*

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## Investigations following an upheld appeal against an investigation

If an appeal is upheld and further investigation is directed, the comments of the person who reviewed the appeal should be considered when deciding how to handle the re-investigation. If the IO decides that a suggested line of enquiry is not appropriate, they must document their rationale for this decision.

If suggestions that were made in a previous appeal assessment have not been followed, and there is no explanation for this, it is likely any subsequent appeal will be upheld and yet another investigation will have to be carried out.

Depending on the comments made it may be necessary to consider appointing a new IO. This will not always be necessary and, in fact, it can be preferable for the same IO to continue with the further investigation because of their previous knowledge of the case.

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## Case study nine – initial recording and re-investigation

Mr W was arrested and taken to custody. He submitted a long complaint letter about his arrest and time in custody. These were recorded as:

1. Unlawful arrest and detention.
2. Breach of Code C of PACE.

The detail of Mr W's complaints was not clarified with him at any point. After the investigation into his complaint, Mr W appealed to the IPCC.

Mr W disagreed with the findings of the IO. He also stated that his complaints about his strip search and the fact that officers had failed to provide him with his medication had not been investigated.

These complaints were included in his initial complaint letter, and it appeared they had been combined under complaint two. The IO had taken an account from the arresting officer, but failed to secure CCTV and failed to obtain an account from the custody sergeant.

*The appeal was upheld as these elements of Mr W's complaint had not been addressed. The casework manager also suggested that accounts be obtained from the custody sergeant and two detention officers.*

A further appeal was received from Mr W following the conclusion of the re-investigation. Mr W disagreed with the findings of the investigation and stated that the IO had still failed to investigate the allegation about his medication, and had failed to obtain a statement from one of the detention officers who dealt with him.

*During the process of handling the appeal, the casework manager became aware that the detention officer had retired, and that it had not been deemed necessary to pursue him for an account. However, this should have been explained in the investigation report. The complaint about medication not being provided could have been addressed using the custody sergeant's account (which included reference to this) and the custody record, but the final report failed to do this. Because the casework manager was able to provide this information to Mr W in the appeal assessment, although the appeal was upheld, no further investigation was directed.*

## Case study ten – multiple re-investigations

Following an investigation into Mr Y's complaint, the IPCC considered his appeal against the investigation. In the appeal assessment, the IPCC casework manager listed a number of complaint points that the IO did not cover, and suggested a number of lines of enquiry.

Following a subsequent further investigation, Mr Y again appealed to the IPCC. On reviewing the investigation it did not appear that all of the points raised by the casework manager had been addressed. There was no explanation for this. The appeal was upheld and the complaint was returned to the force for further investigation. The casework manager referred the force to both appeal assessments.

*At this point, the complainant had lost all faith in the IO, and the subsequent investigation was carried out centrally by the PSD. When conducting a re-investigation, following an upheld appeal, the IO should take particular notice of the comments of the person who reviewed the original investigation.*

### Get in touch

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