

# Oversight bulletin

Issue 2 - July/August  
/September

**ipcc**  
independent  
police complaints  
commission

Welcome to our Oversight bulletin. We publish a new bulletin each quarter, looking back at issues raised during the previous three months.



## What trends have we spotted this quarter?

### Who have we seen this quarter?

#### PSD meetings:

Avon and Somerset  
Beds/Herts/Cambs  
British Transport Police  
Cheshire  
City of London  
Derbyshire  
Devon and Cornwall  
Dorset  
Dyfed-Powys  
Essex  
Greater Manchester  
Gwent  
Hampshire  
HMRC  
Humberside  
Kent  
Leicestershire  
Lincolnshire  
Merseyside  
Metropolitan Police Service  
Ministry of Defence  
Norfolk/Suffolk  
North Wales  
Northamptonshire  
Northumbria  
Nottinghamshire  
South Wales  
South Yorkshire  
Staffordshire  
Surrey  
Sussex  
Cumbria  
Thames Valley  
Warwickshire/West Mercia  
West Midlands

#### National meetings:

North West Regional Heads  
West Mids Regional Heads  
North East Regional Practitioners  
South East Regional Practitioners  
South East Regional Heads

Among the concerns our operational staff have raised, common topics have included:

### 1. Failures in updates to complainants

*One of the common issues complainants raise with us is not receiving meaningful updates from forces. While this is not a basis to uphold an appeal, forces are required to provide meaningful updates to complainants every 28 days. We will include further guidance about updating complainants in issue ten of Focus, which will be published in December 2016.*

### 2. Failure to tell complainants about their right to appeal against the non-recording of a complaint

*We have noted a number of examples where complainants have not been informed about their right to appeal against a decision not to record their complaint. If a force is not going to record a complaint a formal decision should be made. The complainant should be informed, in writing, of the decision and of their right of appeal. You can read more about the recording of complaints in issue one of Focus.*

### 3. Section 25 (3) memorandums

**Don't forget!** We request that forces provide a "section 25 (3) memorandum" when they submit background papers for an appeal against an investigation. This should include the appropriate authority's determination on:

- whether the person to whose conduct the investigation related has a case to answer and, if so, whether this is misconduct or gross misconduct
- whether the person's performance is unsatisfactory or not
- what action, if any, you will take in respect of the matters dealt with in the report
- if no disciplinary proceedings are to be brought, the reasons for that determination; and
- the reasons why the report has not been sent to Director of Public Prosecutions

## Queries this quarter

The team responded to 168 telephone and email queries during July, August and September. Common queries included:

### Complaints from serving/retired officers

There have been a number of different queries about how to handle a complaint made by serving or retired officers.

- A person serving with the police cannot make complaints under the Police Reform Act 2002 if:
  - They were on duty at the time of the conduct they claim to have been a victim of, been adversely affected by or have witnessed.
  - The complaint relates to the conduct of a person who, at the time of the alleged conduct, was under the direction and control of the same chief officer as themselves.

Obviously, this should not prevent the consideration of any concerns raised by officers – they just cannot be recorded as a complaint under the PRA. If the concerns meet the definition of a recordable conduct matter, they should be recorded. If they meet the referral criteria, they should be referred.

- If a retired officer makes a complaint, the matter should be considered to determine whether any of the allegations took place after the retired officer was employed. Any matters of this type should be recorded (subject to the usual recording exemptions).

### Reports following a local investigation into a death or serious injury (DSI)

We have received a number of queries about submitting DSI reports to the IPCC, the process and the IPCC's remit.

- In cases where the IPCC directs a local investigation into a DSI, and the investigation then concludes with a decision by the appropriate authority that there is no evidence of criminality or indication of behaviour justifying disciplinary proceedings, the investigation report should be submitted to us for review. Please email it to [NorthCasework@ipcc.gsi.gov.uk](mailto:NorthCasework@ipcc.gsi.gov.uk)
- We will consider the report to assess whether we believe there to be an indication that a police officer/staff may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings. We can, if necessary, recommend that the force records a conduct matter, starts a criminal investigation, and/or undertakes unsatisfactory performance procedures (UPP). We can also make organisational learning recommendations.

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## Want to know more?

What else would you like to see in these updates? Get in touch and let us know!

## Contact us

Email: [force\\_oversight@ipcc.gsi.gov.uk](mailto:force_oversight@ipcc.gsi.gov.uk)

## Review of Focus 8 – when a complaint becomes recordable

We have received updated legal advice, which impacts on the information we included in issue eight of our publication, Focus. This relates to the recording of complaints made under the Police Reform Act (PRA). We are currently revising issue eight of Focus to reflect this updated advice.

The following considerations (taken from paragraph two, page nine of Focus 8) should be excluded from the decision about whether to record a complaint:

“There is only one right of appeal against the decision not to record a complaint, and only one recording decision is required on a potential complaint. Therefore, if the matter was raised previously as a potential complaint and was not recorded as a complaint, provided that the matter being raised again is identical to that which has already been assessed, irrespective of whether the non-recording appeal right is still live, was not exercised, or was exercised and was not upheld, there is no requirement to make a further recording decision, or to issue a second right of appeal. Clearly, where the appeal right is still live, it would be appropriate to highlight this to the complainant.”

Additional legal advice was sought as there was a challenge to our previous understanding which, while intended to be pragmatic, created a risk that applying the guidance could prejudice the appeal rights described in legislation. We recognise that there is a gap in the legislation which we will work with the Home Office to seek to address in the new regime. The Policing and Crime Bill 2016 is currently drafted to end the practice of non-recording and the IPCC will look at how these complaints could be dealt with. In the meantime, a recording decision must be made on each complaint. The options are either for the Appropriate Authority to reiterate the decision made in respect of the original complaint or any other applicable ground, or to consider whether attempting to make the complaint again amounts to an abuse of process.

We will publish the updated Focus 8 on our website and will advise you when this has been done. If you have any questions about the recording process in the meantime, please contact your Oversight Force Liaison.

### Messages

The IPCC is trialling a form which we have developed to assist with the handover of cases from PSDs to the IPCC when we take on an independent investigation.

This is to ensure that we know everything about the case up to the point of this handover.

Your comments are important to us and your OFL will be asking for your feedback on this document.

### Forward look

- We will publish our next edition of Focus in December, which has just been out for consultation. This issue looks at the quality of investigations into complaints
- We will conduct an evaluation of the launch of our discrimination guidelines – reviewing whether the guidelines have been embedded in forces and whether the way that allegations of discrimination are handled has improved. We are currently developing the scope of this review. We will use a combination of reviews from our case management system, dip-sampling and an assessment of the success of forces' action plans to inform our conclusions.

Statutory  
Guidance

