

## Rules and criteria for IPCC Commissioners (2016)

### DEALING WITH COMPLAINTS AGAINST COMMISSIONERS OF THE INDEPENDENT POLICE COMPLAINTS COMMISSION (IPCC)

#### 1. INTRODUCTION

##### IPCC Commissioners

The Commission is the governing board of the IPCC. It holds collective responsibility for governance of the Commission including oversight of the Executive. As public office holders, Commissioners oversee and take ultimate responsibility for IPCC investigations, casework and the promotion of public confidence in the complaints system.

- 1.1 Appointed by the Home Secretary, IPCC Commissioners work in a challenging and often exposed environment. They are the independent face of the IPCC and those with force responsibilities act under the delegated authority of the Commission in making decisions on individual cases. It is, therefore crucial that they are fully supported and advised by the Deputy Chairs and executive.
- 1.2 The IPCC has an established procedure for dealing with complaints made against Commissioners which is separate from the one for IPCC staff.

##### How to complain about an IPCC Commissioner

- 1.3 The Commission Secretary deals with complaints against Commissioners in the first instance and follows an established procedure.
- 1.4 This procedure deals with complaints made against Commissioners and should be read together with the code of conduct for Commissioners of the Independent Police Complaints Commission (IPCC).
- 1.5 Complaints made against the IPCC Chair are dealt with separately by the Home Office
- 1.6 There is also a separate procedure for dealing with complaints against the IPCC Chief Executive Officer (CEO).
- 1.7 The Commissioners' code of conduct forms part of the terms and conditions of their appointment. It sets out the high standards of conduct and performance expected of them. In particular, it sets out the expectation that they will observe the highest standards of propriety involving impartiality, integrity and objectivity in relation to their role as IPCC Commissioner and will observe the following seven principles of public life, known as the Nolan principles:

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- Selflessness – Appointees should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or friends.
  - Integrity – Appointees should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
  - Objectivity – In carrying out public business, including awarding contracts or recommending individuals for rewards and benefits, appointees should make choices on merit.
  - Accountability – Appointees are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - Openness – Appointees should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
  - Honesty – Appointees have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects public interest.
  - Leadership – Appointees should promote and support these principles by leadership and example.
- 1.8 Failure to comply with the code of conduct and/ or to follow the standards expected of those holding public appointments may call into question the continuation of the individual's appointment as a Commissioner.

## 2. WHAT IS A COMPLAINT?

- 2.1 The IPCC treats all complaints about the conduct of Commissioners seriously. A “complaint” is an expression of dissatisfaction in relation to the conduct of a Commissioner (conduct being an act, omission, statement or decision (whether actual, alleged or inferred). A complaint constitutes an allegation of misconduct against a Commissioner, where the Commissioner is alleged to have failed to adhere to:
- the requirements and standards of behaviour set out in the terms and conditions of appointment, and/or
  - the Commissioners' Code of Conduct.
- 2.2 The procedure does not cover:

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- 2.2.1 Dissatisfaction with the outcome of a police service complaint which has been properly conducted by the Commissioner with full advice from the IPCC Executive. The decisions Commissioners make concerning the outcome of a case are final. There is no appeal mechanism. The proper course of action in these circumstances is to consider getting legal advice on challenging the IPCC's decision by way of judicial review;
- 2.2.2 Where the complaint is not supported by evidence;
- 2.2.3 Comments about IPCC policies or policy decisions;
- 2.2.4 Public comments made by Commissioners which are in line with advice from the IPCC Executive and reflect the IPCC's corporate messages;
- 2.2.5 Matters that have already been raised and fully considered through this complaints procedure and a reasonable decision on them have been made in accordance with the procedure. The Commission Secretary cannot look at these matters again only on the basis that the complainant does not agree with the conclusion of the original complaint;
- 2.2.6 Where the complaint discloses neither the name and address of the complainant nor that of any other interested person;
- 2.2.7 Issues about the performance of a Commissioner which may not amount to misconduct (see paragraph 3.1.3).
- 2.2.8 Persistent or vexatious complaints. The IPCC has a managing customer contact policy in place which deals with persistent or vexatious complaints. The Commission Secretary will refer to this policy where the complaint is deemed to be either persistent or vexatious. Where such complaints have the potential to impact on the reputation of the Commissioner and/or the IPCC, the Commission Secretary will seek advice from the Head of Legal Services about how to redress this.

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### Who can complain?

- 2.3 A complaint may be submitted by a member of the public, a stakeholder, a fellow Commissioner or a member of staff (members of IPCC staff should be made aware of the protection afforded by the whistle blowing policy).
- 2.4 All complaints should be submitted to the Commission Secretary in the first instance (this does not apply to staff that have opted to follow the whistle blowing policy).
- 2.5 Complaints may be made by telephone, by letter, by fax, or by email.
- 2.6 Any complaint of misconduct against a Commissioner must be supported by evidence. If evidence cannot be supplied to support the allegation of misconduct, the complaint will be dismissed.
- 2.7 The IPCC aims to manage complaints within the minimum time consistent with fairness to all parties and proper consideration of the complaint. An indicative timetable of the process for dealing with complaints against Commissioners is set at paragraph 2.13.
- 2.8 Complainants will be treated with courtesy and fairness at all times. The IPCC hopes complainants will be courteous and fair in their dealings with Commissioners, the Chair and staff at all times.
- 2.9 Actions to discredit the reputation of an IPCC Commissioner or the IPCC before the conclusion of a complaint is made will be taken very seriously.
- 2.10 The process covers a maximum of five stages which are explained in more detail in Section 3. In summary:
  - Assessment. Upon receipt of a complaint, the Commission Secretary will undertake an assessment of the information and evidence provided by the complainant. The Commission Secretary may request the relevant case files from the casework team. The Commission Secretary also has the option to seek advice from members of the senior management team such as the Head of Legal Services. Once the assessment has been completed, the Commission Secretary will advise the IPCC Chair whether, on the face of the information provided by the complainant, the complaint raises an issue of misconduct i.e. a failure to meet the standards of behaviour set out in the terms and conditions of appointment and the Commissioners' code of conduct. The Commission Secretary may advise the complaint is not about misconduct, but about the performance of the Commissioner and the Chair may decide to refer these matters to the Deputy Chairs who will address these outside of this procedure (in the case of the Deputy Chairs or non-executive Commissioners, the Chair will deal with these directly). If it is concluded

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that the complaint is vexatious *and* has the potential to have a negative impact on the reputation of the Commissioner, the Commission Secretary has the option to seek advice about addressing this.

- Investigation. Examination of the complaint and advice to the Chair on whether there has been a failing of conduct and, if so, what courses of action are appropriate. Please also see paragraph 2.11.
- Conclusion. Judgement by the Chair of the outcome of the investigation and whether any follow up action or sanction needs to be taken.
- Appeal. The Commissioner has the right of appeal to the Home Office against the decision made by the Chair.
- Review of Appointment. Consideration by the Home Office of continuation of appointment where the outcome of the complaint calls this into question.

2.11 The Chair can consider options for resolution before the investigation stage.

2.12 If performance issues are identified at any stage of this process, the Chair will consider whether these should be dealt with by the Deputy Chairs under the performance route.

2.13 The table below shows the indicative timescales we aim to work to throughout the process:

Complaint acknowledged	Within two working days of receipt of complaint
<b>Stage 1:</b> Assessment by Commission Secretary and advice to IPCC Chair	<p>Within ten working days from the receipt of the complaint by the Commission Secretary. In some instances the outcome of the assessment will be communicated as part of the acknowledgement.</p> <p>The Chair has a further five working days to consider the advice from the Commission Secretary and make a decision on the complaint.</p>
<b>Stage 2*:</b> Investigation	<p>Investigation to be completed within 30 working days of the investigator being formally appointed by the Chair.</p> <p>Complainant and Commissioner will be informed.</p>

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<p><b>Stage 3*</b>: Conclusion by Chair</p>	<p>Chair to review report of investigator.</p> <p>Commissioner will also be made aware of the conclusions of the investigator at this point and be invited to make representations to the Chair within ten working days of receipt.</p> <p>Conclusions by the Chair should be communicated to the complainant within ten working days of them being made. The complainant should also be informed if the Commissioner has appealed the Chair's decision.</p>
<p><b>Stage 4.</b> Right of appeal</p>	<p>Following the decision made by the Chair, the Commissioner has the right of appeal.</p>
<p><b>Stage 5.</b> Home Office</p>	<p>Where the Home Office receives advice from the Chair to consider termination of appointment, the matter will be referred to the Director General of the Crime and Policing Group for his or her consideration, advised by the Director General of Human Resources. The Home Office should aim to report back to the Chair within 30 working days of receipt of his/her advice.</p>

An assessment and investigation of a complaint often requires reviewing case files, which can take time. We will inform the complainant where we anticipate that assessment/investigation will take longer than the period of time set out above.

### 3. STAGES INVOLVED IN THE HANDLING OF A COMPLAINT

#### 3.1 Stage 1: Assessment

3.1.1. The Chair, advised by the Commission Secretary, will consider all complaints against Commissioners, including the Deputy Chairs, to determine whether the complaint raises issues that need to be investigated under this procedure.

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3.1.2 When a complaint is received, the Commission Secretary will:

- i. acknowledge the complaint within two working days;
- ii. refer the complaint to the Chair with advice;
- iii. Notify the Commissioner that a complaint has been made against him/ her and give a brief summary of the complaint.

3.1.3 The Chair will review the complaint and advice from the Commission Secretary within five working days. The Chair will make a decision based on the following options:

- That the complaint relates to a conduct issue and that it should be investigated using this procedure (a decision to refer to investigation is neutral, implying only that a conduct issue has been raised, not in any way anticipating the conclusion);
- That the complaint concerns the service provided by the IPCC in which case it should be referred to the Internal Investigations Unit (IIU) who will arrange for it to be dealt with under the normal arrangements for dissatisfaction with the outcome of a service complaint;
- That the complaint raises a capability or performance issue in relation to a Commissioner in carrying out their duties in which case it will be referred to the Deputy Chairs under the normal performance management arrangements. If the complaint is against the Deputy Chairs or a non-executive Commissioner, it will be dealt with by the Chair.
- That the complaint is about dissatisfaction with the outcome of a police service complaint which has been properly conducted by the Commissioner with full advice from the IPCC Executive and will not be considered under this procedure.

3.1.4 In all cases, the complainant and Commissioner who is the subject of the complaint will be informed of the outcome of the Chair's initial consideration.

3.1.5 Exceptionally, the Chair may consider that the issue raised is so serious as to call into question whether the Commissioner can continue to carry out his or her normal responsibilities while the investigation takes place without prejudice to the interests of the IPCC. In such a case, the Chair may decide to remove all operational duties from the Commissioner. Where this decision is made, the Chair will keep this decision under review throughout the investigation.

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- 3.1.6 The decision to suspend a Commissioner is for the Home Office (as the appointment body) acting on the advice of the Chair. In that case, any suspension needs to be confirmed by the Home Office and reviewed regularly.

### Resolution before investigation

- 3.1.7 Where the Chair determines that a complaint raises an issue which requires investigation under this procedure, s/he may consider whether, as an alternative, it would be appropriate to consider resolving the complaint informally. For informal resolution to be successful, it is important that both the Commissioner and the complainant are prepared to participate in mediation or some other informal resolution process. If such a process is attempted and a successful conclusion is reached, the matter ends there and there is no need for formal investigation.

### 3.2 Stage 2: Investigation

- 3.2.1 Where the Chair determines that the complaint raises a substantive conduct issue that requires formal investigation, s/he will normally appoint an external investigator with suitable experience. The appointed person will be independent from the IPCC, Home Office and the police. The investigation will be completed within 30 days of the appointment of the external investigator.
- 3.2.2 Where an investigation is required, it should be carried out in accordance with the principles of natural justice, namely it should be effective, fair, impartial, timely and proportionate. Its purposes are:-
- To establish the facts in relation to the complaint:
  - To determine whether there is a finding of fault in respect of any of the allegations of conduct (on the balance or probabilities) and advise the Chair on the seriousness of the failing:
  - If so, to advise the Chair on his/her consideration of any appropriate sanctions.
  - Where the investigation finds the complaint of misconduct to be unsubstantiated but has caused reputational damage to the Commissioner, to determine a form of redress.
- 3.2.3 It is for the investigator to determine how s/he undertakes the investigation. However, it is to be expected that the investigator will contact the complainant to give him or her the opportunity to explain the detail of the complaint.
- 3.2.4 In all cases the investigator should contact the Commissioner to arrange a time to interview him or her and/ or invite him or her to make a written

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response to the complaint. The Commissioner should be supplied with sufficient detail about the complaint to enable him or her to respond. This will normally involve supplying the Commissioner with a copy of the complaint and any supporting material. Exceptionally, if the Commissioner fails to respond to reasonable attempts to arrange an interview, the investigator may proceed on the basis of the material s/he has before him or her. Any communication to the Commissioner should be in the form of a letter marked “personal and confidential”, unless different arrangements have been agreed with him or her.

- 3.2.5 A Commissioner who is the subject of the complaint will have the right to consult with, and be accompanied by, a representative (including a legally qualified representative) at any interview during an investigation and at all stages of any subsequent procedures. The cost of such representation will be borne by the Commissioner personally and will not be reimbursed by the IPCC. In addition, the Commissioner may wish to consider what welfare support they may need. This may be support from a Commissioner colleague or someone who is has no involvement in dealing with the complaint. Commissioners may wish to refer to the Employee Assistant Programme (EAP) which is a confidential service offering advice and a counselling. Commissioners have the option to self refer. Further information on this service can be found on the IPCC’s intranet pages. The cost of any other professional welfare support, will in most cases, be borne by the Commissioner personally.
- 3.2.6 The investigator may also make arrangements to interview other persons as necessary for the purpose of conducting an effective investigation.
- 3.2.7 The investigator will ensure that the key stages of the investigation are recorded, and that all appropriate documents relating to the complaint are retained. Hard copies of these documents should be kept for safekeeping after completion of the investigation. Electronic documents should be stored in a secure folder.
- 3.2.8 The investigator should keep a record of all interviews and should ask the subject of the interview to confirm its contents. If the alleged conduct issue is not serious, the record may be in the form of a note recording the main points of the discussion. If the complaint raises serious misconduct issues defined as matters which, if substantiated, would call into question the continued appointment of the Commissioner, a full transcript of the interview should be kept. In such cases, the interview should normally be tape-recorded.
- 3.2.9 When the investigation has been completed, the investigator should submit a report of the investigation to the Chair. The report should give full details of the complaint, the investigation, and the findings on matters

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of fact. The standard of proof required is the civil standard of the balance of probabilities. The report should contain reasoned conclusions about whether misconduct has taken place. If so, the report should advise on whether the misconduct is considered serious and what sanctions might be considered by the Chair.

3.2.10 The investigator will also provide a copy of the report to the Commissioner who is the subject of the complaint, at the time it is submitted to the Chair. The Commissioner involved should be invited to make any further written representations to the Chair within 10 working days of receipt of the report.

### 3.3. Stage 3: Conclusion

3.3.1 The Chair should review the investigator's report and decide whether she accepts its findings, taking account of any further representations made by the Commissioner. The Chair has 2 weeks in which to consider this. S/he may decide to hold a hearing to hear more from the investigator and the Commissioner. Once she has made his/her decision, the complainant and Commissioner within 10 days of having made the decision.

3.3.2 Where the Chair confirms a finding of misconduct, s/he will proceed to judge the seriousness of the failing and what appropriate management action or sanctions should be imposed, taking account of (but not bound by) the investigator's conclusions. This may include oral or written warnings, training or other learning responses, management follow through, or in serious misconduct cases, a recommendation for termination of the appointment.

3.3.3 Where any follow up action is for management within the IPCC and does not call into question the continued appointment of the Commissioner for the remainder of his or her term of appointment, which concludes the process. The Home Office should be notified of any confirmed finding of misconduct.

3.3.4 Where the Chair confirms that there is no finding of misconduct or performance management issues, s/he will consider whether action is required to restore any reputational damage done to the Commissioner as a result of the complaint.

3.3.5 Where, however, the Chair judges the misconduct to be incompatible with the continued appointment of the Commissioner and with safeguarding the reputation of the IPCC and public confidence in its work, s/he should refer the matter to the Home Office for their formal consideration (see stage 5).

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3.3.6 Where the Chair considers that she is unable to act because of a conflict of interests or the perception of bias, she will refer the investigator's report and other documentation to the Home Office who will arrange for a Home Office official to undertake the role of the Chair in this part of the process.

### **3.4 Stage 4: Appeal**

3.4.1 The Commissioner has a right of appeal against the decision of the Chair

3.4.2 The complainant should be informed if the Commissioner has appealed against the decision of the Chair.

### **3.5 Stage 5: Review of Appointment**

3.5.1 Where the Home Office receives advice from the Chair to consider termination of appointment, the matter will be referred to the Director General of the Crime and Policing Group for his or her consideration, advised by the Director General of Human Resources.

3.5.2 The Commissioner will be invited to make any further representations s/he may wish to make. They may make representations in person to the Director General. In this case, the Commissioner will have the same rights to be represented or accompanied as at the investigation stage of the process. Where, after considering any such representations, the Director General so judges, s/he will recommend termination to the Home Secretary, who is formally responsible for the appointment of Commissioners. The Home Office should aim to report back to the Chair within 6 weeks of receipt of his/her advice.