

Section 9: INVESTIGATIONS

9.1 Investigations under the Police Reform Act 2002 may vary greatly in their scope, purpose and complexity. This section covers:

- the IPCC's expectations in relation to issues such as terms of reference and keeping an audit trail
- some of the legislative requirements that apply to such an investigation, such as:
 - special requirements and severity assessments
 - the power to suspend an investigation; and
 - duties with regard to the provision of information
- best practice guidance.

Purpose of an investigation

9.2 The purpose of an investigation is to establish the facts behind a complaint, conduct matter or DSI matter and reach conclusions. This includes, where applicable, whether, in respect of those subject to investigation, there is a case to answer for misconduct or gross misconduct or unsatisfactory performance. It is also an opportunity to ascertain whether there is any learning for the force arising from the incident itself or the way it was handled. An investigation should be fair, reasonable and objective and based on evidence. What is reasonable in each case will depend on the particular circumstances.

Appointment of a person to carry out the investigation

The appropriate authority is responsible for appointing the investigating officer in a local, supervised or managed investigation. In the case of a supervised or managed investigation, the IPCC has the power to require any proposed appointment to be subject to its approval or, where a person has already been appointed, it may require another investigating officer to be selected.

Paragraph 16, 17 and 18, Schedule 3, Police Reform Act 2002

An appropriate authority may appoint:

- i. a person serving with the police
- ii. a member of staff of the Serious Organised Crime Agency, or
- iii. a member of staff of the National Policing Improvement Agency who is a constable

to investigate the complaint or matter.

However, the appointment of an investigating officer is subject to a number of important qualifications. These are:

- i. where an investigation relates to the conduct of a chief officer, the investigating officer must not be under that chief officer's direction and control
- ii. where an investigation relates to the conduct of the Commissioner or Deputy Commissioner of Police of the Metropolis, the investigating officer must be nominated by the Secretary of State for the Home Department
- iii. the investigating officer must have an appropriate level of knowledge, skills and experience to plan and manage the investigation
- iv. the investigating officer must not work, directly or indirectly, under the management of the person being investigated (this qualification does not apply to the investigation of a complaint about a direction and control matter)
- v. where an investigation relates to a senior officer, the investigating officer must not be the chief officer or a member of the same force as the person to whose conduct the investigation relates (this qualification does not apply to the investigation of a complaint about a direction and control matter); and
- vi. the investigating officer must not be appointed if his involvement in that role could reasonably give rise to a concern whether he or she could act impartially (however, where an investigation relates to a complaint about a direction and control matter the fact that a person works, directly or indirectly, under the management of the person to whose conduct the investigation relates or is the chief officer or a member of the same force as the person to whose conduct the investigation relates are not enough in themselves to constitute reasonable grounds for concern that the investigating officer could not act impartially).

Paragraph 16, 17 and 18, Schedule 3, Police Reform Act 2002
Regulation 24, Police (Complaints and Misconduct) Regulations 2012

9.3 The appointment of an investigator should be recorded in writing. Where any concerns have been raised about the appointment of a particular investigator the appropriate authority should also record in writing any decision, together with its reasons, whether or not to replace the investigator.

9.4 At the start of each investigation, the investigator should make a written note in the investigation decision log to declare whether or not there is anything that could reasonably give rise to a concern about whether he or she or any member of the investigation team could act impartially.

9.5 If no such concern is identified, an entry in the investigation decision log should be made to that effect for the purposes of transparency. Where there is such concern the investigator should raise it with the appropriate authority (and the

IPCC in a managed or supervised investigation), before he or she or any member of the investigation team carries out any steps (other than preservation of evidence) in connection with the investigation.

- 9.6 The appropriate authority should then decide whether to replace the investigator or not. Any decision made, together with the reasons, should be recorded in writing. This decision will be subject to any power of the IPCC to require the appropriate authority to select another investigator.

Terms of reference

- 9.7 Terms of reference will vary according to the complexity of an investigation. In straightforward investigations which are not subject to special requirements they may be as simple as a summary of the complaint being investigated. Investigations supervised or managed by the IPCC, as well as those which it carries out independently, will always have more detailed terms of reference.

- 9.8 Terms of reference should:

- provide focus and direction for the investigation
- be clear, unambiguous and tightly drawn
- describe the scope of the investigation that will be undertaken including the time period and/or what will not be investigated, if appropriate
- include a summary of any concerns, complaints or allegations
- not list actions to be undertaken
- include the identification of organisational learning
- spell out, where there is a parallel investigation, the relationship between the two investigations.

- 9.9 Subject to the harm test, a copy of the terms of reference and any revisions to them should be sent to complainants, interested persons and any subjects of the investigation. It may also be useful to meet with the complainant and any interested person at an early stage to explain the investigation process.

Keeping an audit trail

- 9.10 Every investigation, no matter how small or quick, requires some level of file recording to show what was done and why, together with the collation and preservation of any documents or other evidence seen or created as part of the inquiry.

- 9.11 The investigator should be able to demonstrate that steps were taken to understand the complaint and the views of the complainant. The following are examples of steps that may be taken to achieve this:

- if the investigation is based on a letter, the investigator should check with the complainant that this is a full account of everything that the person wants to complain about;
- if the complainant has expressed a wish to make a statement then the investigator should not refuse this and, whilst it may not always be

necessary, ordinarily a formal statement should be taken. If a statement is not taken, the basis for this decision should be recorded by the investigator; and

- if the complaint has been made verbally, this must be recorded in writing and a copy of the account provided to the complainant at an early stage. This gives the complainant an opportunity to confirm his or her agreement that it is an accurate record of the complaint he or she wants addressed.

9.12 A statement must always be sought from the complainant if his or her evidence may be used in criminal proceedings or disciplinary proceedings.

9.13 Where the investigator seeks an account from a person who is the subject of investigation, there must be an auditable record of it. The person could be invited to sign handwritten notes or a pocket notebook entry to confirm the accuracy of a record of a conversation. However, this is the minimum. In many cases, more would be required, such as an account by email, letter, statement or (recorded) interview. If an investigation is subject to special requirements (see paragraphs 9.29 to 9.34) or is an investigation into a recordable conduct matter, a notice of investigation will in most cases have been served (see paragraph 9.43) and a statement under an appropriate caution should be taken or requested from the person to whose conduct the investigation relates or he or she should be required to attend an interview, which will be recorded (see paragraphs 9.45 to 9.51 for more information on interviews).

The scope of the investigation

9.14 Investigators should adopt a proportionate approach to any investigation in order to ensure that, in the public interest, investigative resources are focused and employed efficiently and fairly. However, to use the term 'proportionate' is not another way of describing an investigation as limited or small scale. It must be borne in mind that the adequacy of the investigation may be scrutinised when any appeal is considered either by the IPCC or the chief officer. In order to decide what is a proportionate approach to investigating a complaint it may be useful to discuss with the complainant what are his or her key points to ensure that these are covered. Every investigation needs to be proportionate to:

- the seriousness of the matter being investigated;
- the prospects of a criminal trial, misconduct proceedings or unsatisfactory performance proceedings resulting;
- the public interest; and
- the investigation producing learning for the individual or organisation.

9.15 Investigators should take the following factors into account when determining the scope of an investigation and the methods to be used:

- the need to establish the facts in all cases;
- the seriousness of the allegation;
- whether Articles 2 or 3 of the European Convention on Human Rights are engaged;

- any more general cause of a complainant's dissatisfaction;
- whether the facts are in dispute;
- how long ago the incident took place and whether evidence is still likely to be available;
- the learning the investigation might yield for local or national policing and individual learning for persons serving with the police; and
- actual or potential public knowledge of, and concern about, the case.

9.16 Where further investigation is no longer proportionate to the likely outcome (for example, because no additional evidence is likely to emerge) it should be concluded and findings reported to the appropriate authority (or the IPCC in independent, managed or supervised investigations). In local and supervised investigations into a complaint the complainant has a right of appeal in relation to the investigation.

Allegations involving discrimination

9.17 Allegations of discrimination are not inevitably at the most serious end of the spectrum: all allegations must be assessed individually. Judgements made at the start of the investigation may well change in the light of the evidence. An allegation of discrimination could be more serious if, for example, the allegation has become the focus of public concern, or the incident may demonstrate that an officer's subsequent decision making may have been influenced by discriminatory attitudes.

9.18 The following factors can provide a guide to the scope of the investigation and the methods to be used (see also information on getting a complaint statement at paragraph 3.30). These factors should be revisited and re-assessed as more information becomes available. The list is not intended to be definitive or prescriptive:

- does the alleged discriminatory behaviour involve words, attitude or actions?
- what was the impact of the alleged behaviour on the complainant or interested person?
- what is the nature of the evidence supporting the alleged behaviour and what other evidence is likely to be found in establishing what happened during the incident?
- was the alleged behaviour raised by the complainant, someone on his or her behalf or an interested person, or reported by another person serving with the police?
- what does the complainant or interested person expect as an outcome for dealing with the alleged discrimination?
- has the impact of the incident affected, or is it likely that the impact will affect, the wider community or have a negative impact on views about the police service?
- is anything relevant known about the person to whose conduct the investigation relates, police force or local police area that would impact on the degree of investigation required?

- does the allegation raise other issues that will impact on how it is dealt with?

9.19 Evidence that could be considered in investigating an allegation of discriminatory behaviour might include:

- whether intelligence reports exist about the person subject to investigation or whether there is anything recorded on his or her personal files. However, any reference to personal data must be justifiable and lawful as there could be data protection issues.
- covert methods of gaining evidence (telephone logs, surveillance, integrity testing) may be considered if lawful in the circumstances
- if broader allegations of discrimination are indicated, it may be appropriate to extend considerations to a particular division or area in the police force. This may include consideration of local or national policies either in relation to a particular area or more generally on a community relations level.

9.20 It may also be useful to consider comparator evidence such as:

- how any other persons serving with the police who were present behaved at the incident;
- how other members of the public were treated at the same incident;
- how this officer or police staff member has behaved in similar circumstances;
- how this complainant or interested person has been treated at other similar incidents
- how a reasonable person serving with the police with similar levels of training and experience would be expected to behave in these circumstances.

9.21 When assessing all of the evidence it is important to give appropriate weight to any explanation given by a person serving with the police in response to the allegation of discrimination, particularly where there is a difference in treatment which has resulted in detriment to the complainant. There may have been an obvious detriment, such as loss of liberty. However, detriment can also include loss of dignity and hurt feelings. An investigator will have to make an assessment about whether the explanation provided is adequate, reasonable and justified in the circumstances. The allegation will be difficult to assess where the person subject of investigation has provided no explanation for the alleged behaviour. Comparator evidence, in these circumstances, may be helpful to the investigator as a means of determining whether discrimination was a factor.

9.22 Discrimination is not always overt, and it can be necessary to look at all the circumstances of a particular case in order to see if discrimination can rightly be inferred from the surrounding facts as explained at paragraph 3.29 above.

9.23 The relationship between the police and people from minority groups may be affected by local circumstances. Investigators should aim to ensure they have an awareness of local issues and experiences.

Death or serious injury matters turning into conduct matters

- 9.24 If, during an investigation of a DSI matter, it appears to the investigator that there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner justifying disciplinary proceedings, the investigator must make a submission to that effect. This should be in writing and should set out the investigator's reasons for reaching this conclusion.
- 9.25 In a managed investigation, the submission must be sent to the IPCC. In a local or supervised investigation the submission must be sent to the appropriate authority.
- 9.26 In a managed investigation, if the IPCC Commissioner agrees that there is such an indication he or she will send a copy of the submission to the appropriate authority who must record the matter as a conduct matter and consider whether it should be referred to the IPCC. In a local or supervised investigation if the appropriate authority agrees with the submission, it must notify the relevant appropriate authority, (if it is not the relevant authority itself) and the IPCC and send them a copy of the investigator's submission. The relevant appropriate authority must then record the matter as a conduct matter and consider whether it should be referred to the IPCC. In any case, the IPCC may call the matter in and may re-determine the mode of investigation.
- 9.27 Once the matter has been recorded, the investigator must make a severity assessment in relation to the conduct of the person concerned (where that person is a member of a police force or a special constable).
- 9.28 This process may happen at any time during an investigation and any DSI investigation should be kept under review as to whether there is an indication of the matters set out in paragraph 9.24.

Special requirements

- 9.29 Special requirements only apply to investigations of complaints against a member of a police force or a special constable. In the case of any other person, the investigator must adhere to the relevant policies and procedures for investigating allegations made against such persons.

If at any time during an investigation of a complaint, it appears to the investigator that there is an indication that a person to whose conduct the investigation relates may have:

- committed a criminal offence; or
- behaved in a manner which would justify the bringing of disciplinary proceedings then the investigator must certify the investigation as one subject to special requirements.

Paragraph 19B, Schedule 3, Police Reform Act 2002

9.30 This provision means that throughout the course of any investigation, the investigator must consider whether such an indication exists even if he or she initially decided it did not.

9.31 Disciplinary proceedings for the purposes of special requirements means any proceedings under the Police (Conduct) Regulations 2012.

9.32 The test has a low threshold - requiring only an indication. The investigator must think that there is an indication, but must also be satisfied that a reasonable investigator with knowledge of the circumstances or evidence would consider that the circumstances or evidence indicate a police officer or special constable may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings.

9.33 The investigator must set out the reasoning behind his or her decision as to whether an investigation should be subject to special requirements.

9.34 In a managed investigation, the investigator must consult with the IPCC's managing investigator as to whether or not the investigation should be subject to special requirements.

Severity assessments

9.35 Severity assessments only apply to investigations of complaints subject to special requirements or recordable conduct matters against a member of a police force or a special constable. Again, in the case of any other person, the investigator must adhere to the relevant policies and procedures for investigating allegations against such persons.

Severity assessments must be undertaken in respect of investigations of complaints subject to special requirements and all recordable conduct matters against a member of a police force or a special constable.

A severity assessment must be made as soon as reasonably practicable after:

- the investigator certifies the investigation as one subject to special requirements, in the case of a complaint; or
- the investigator is appointed in the case of a recordable conduct matter; or
- a matter is recorded as a conduct matter during or following an investigation of a DSI matter.

A severity assessment is an assessment as to:

- whether the conduct, if proved, would amount to misconduct or gross misconduct; and
- if the conduct were to become the subject of disciplinary proceedings, the form which those proceedings would be likely to take.

Paragraph 19B, Schedule 3, Police Reform Act 2002

9.36 The investigator must make the severity assessment on the basis of what would happen **if the conduct was proved**. The investigator should not consider the likelihood of the conduct being proved when making the severity assessment.

9.37 The investigator must consult with the appropriate authority before the assessment is completed.¹ In a managed investigation, the investigator should also consult with the IPCC's managing investigator.

9.38 Any assessment must be fully reasoned and documented. The investigator should obtain a copy of the relevant officer's disciplinary history to ensure that the appropriate assessment is made.

The definitions of misconduct and gross misconduct are as follows:

Misconduct is defined as:
a breach of the Standards of Professional Behaviour

Gross misconduct is defined as:
a breach of the Standards of Professional Behaviour so serious that dismissal would be justified.

Paragraph 29, Schedule 3, Police Reform Act 2002 and Regulation 3, Police (Conduct) Regulations 2012

9.39 After deciding whether the conduct would amount to misconduct or gross misconduct the investigator must decide what form any disciplinary proceedings would be likely to take.

¹ Paragraph 19B(5), Schedule 3, Police Reform Act 2002.

9.40 Ordinarily an assessment of misconduct would result in a misconduct meeting and an assessment of gross misconduct would result in a hearing. However, checks on the officer's disciplinary record should be made to determine whether:

- They are the subject of a live final written warning at the time of the initial severity assessment, or
- They have been reduced in rank (under the Police (Conduct) Regulations 2004 only) less than 18 months prior to the initial severity assessment.

9.41 If either condition applies, then the proceedings will be a hearing (irrespective of whether the conduct was assessed as amounting to misconduct only).

9.42 The severity assessment may be revised if the investigator believes it is appropriate to do so.

Notices of investigation

On completing a severity assessment, the investigator must give a written notice to the person concerned, which complies with the requirements of paragraph 19B(7), Schedule 3 of the Police Reform Act 2002 and regulation 16 of the Police (Complaints & Misconduct) Regulations 2012.

A written notice need not be given for so long as the investigator considers the notification might prejudice:

- the investigation; or
- any other investigation, including a criminal investigation.

During an investigation, the investigator may revise the severity assessment and if they do so they must, as soon as practicable, serve a further written notice on the person concerned which complies with Paragraph 19B(7), Schedule 3 of the Police Reform Act 2002 and regulation 16 of the Police (Complaints & Misconduct) Regulations 2012.

Paragraph 19B, Schedule 3 Police Reform Act 2002

9.43 In a managed investigation, the investigator should consult with the IPCC's managing investigator as to the content of the notice, whether its service should be delayed or any revision of the severity assessment.

Representations to the investigator

During the investigation of a complaint subject to special requirements or a recordable conduct matter, the investigator must consider any relevant statement or document provided by the person concerned (or document provided by a police friend) within ten working days (unless this period has been extended by the investigator) starting with the day after which the notice of investigation is given.

Paragraph 19C, Schedule 3, Police Reform Act 2002
Regulation 18, Police (Complaints and Misconduct) Regulations 2012

9.44 Any oral statement should be recorded and the person concerned should be asked to sign the record as an accurate reflection of what has been said.

Interviews

During an investigation which is subject to special requirements or in relation to a recordable conduct matter and where an investigator proposes to interview the person concerned (the interviewee), the investigator shall, if reasonably practicable, agree a date and time for the interview with the interviewee.

If a date and time is not agreed, the investigator shall specify a date and time. If the interviewee or their police friend is not available to attend but proposes an alternative time which is reasonable and falls within five working days beginning with the first working day after the day specified by the investigator, then the interview will be postponed to the time proposed. An interviewee must attend the interview.

Regulation 19, Police (Complaints and Misconduct) Regulations 2012

9.45 A failure to attend an interview may in itself be a breach of the Standards of Professional Behaviour.

9.46 The interviewee must be given written notice of the date, time and place of interview.² This should be given as soon as reasonably practicable after these are either agreed or, in the absence of agreement, specified by the investigator.

In advance of an interview, the investigator must provide the interviewee with such information as the investigator considers appropriate in the circumstances of the case to enable the interviewee to prepare for the interview.

Regulation 19, Police (Complaints and Misconduct) Regulations 2012

9.47 Decisions as to what should be disclosed should be documented and made in light of the circumstances of the case. The interviewee is not entitled to disclosure of every document, but only those that the investigator considers appropriate in the circumstances of the case to enable them to prepare for interview.³ Public confidence could be undermined if the extent of the disclosure given could be perceived to give the interviewee an unfair advantage.

² Regulation 19, Police (Complaints & Misconduct) Regulations 2012.

³ Regulation 19, Police (Complaints and Misconduct) Regulations 2012.

9.48 Where a decision is made to interview a person serving with the police and if the allegation is at the more serious end of the spectrum, then consideration should be given to techniques such as video interviewing, cognitive interviewing and interviewing vulnerable and significant witnesses. Only investigators who have received the appropriate training should undertake such interviews.

9.49 At the beginning of the interview the interviewee should be reminded of the content of any written notice of investigation given to him or her and reminded of the warnings it contains.

9.50 Where an interview is taking place in relation to an allegation of discriminatory behaviour the person being interviewed should be invited to:

- describe in detail what took place;
- describe his or her perceptions of the complainant and the incident;
- reflect on what may have prompted the complaint;
- reflect on his or her behaviour in the light of the relevant professional standards;
- describe his or her training and experience;
- reflect on his or her understanding of his or her public duties to eliminate discrimination and promote equality;
- reflect on the interaction with the complainant in light of the allegation.

9.51 These provisions apply to interviews held under the Police Reform Act 2002. Criminal interviews held under the Police and Criminal Evidence Act 1984 must comply with that Act and the relevant case law and codes of practice.

Power to suspend an investigation or other procedure

An appropriate authority may suspend an investigation or other procedure which would, if it were to continue, prejudice any criminal investigation or proceedings. Having consulted with the appropriate authority, the IPCC may direct that the investigation or procedure shall continue if it is in the public interest.

Regulation 22, Police (Complaints and Misconduct) Regulations 2012

9.52 The power to suspend only arises where continuing the investigation or other procedure would prejudice a criminal investigation or criminal proceedings. Thus, there should be specific, identified prejudice (and that prejudice should be significant). In order to determine whether such prejudice arises, it will be necessary to consider the following:

- (a) the extent to which the matter raises issues which are the same as, or closely connected with, the issues in the ongoing criminal investigation or proceedings; and
- (b) what particular prejudice (if any) would be caused to the ongoing criminal investigation or proceedings by the investigation or any other procedure.

9.53 If the power to suspend arises, appropriate authorities should next consider whether it is appropriate to exercise that power in all the circumstances. When deciding whether to exercise the power to suspend, authorities should consider whether, if the investigation or other procedure were to continue, there would be prejudice to the criminal investigation or proceedings which is so significant that it is not outweighed by the public interest in ensuring:

- i. the prompt investigation of the matter; and
- ii. the prompt bringing of criminal or disciplinary proceedings against persons serving with the police where they are warranted.

9.54 In other words, a balancing exercise should be carried out. The following relevant factors should be considered:

- the relative severity of the allegation against the person serving with the police and the allegation against the suspect or defendant in the criminal investigation or proceedings;
- the relative strength of the evidence in support of each allegation;
- whether delay would lead to the frustration of any potential criminal or disciplinary proceedings against a person serving with the police;
- in particular, whether suspending the investigation would risk the expiration of the six-month statutory time limit for the bringing of a prosecution of a summary-only offence before the conclusion of any investigation;
- whether delay would otherwise lead to injustice to the complainant, interested person or to the subject of the complaint; and
- the view of the CPS about whether continuing with the investigation or other procedure would prejudice any criminal investigation or proceedings, and if so, whether there are any steps short of suspension which can be taken to mitigate the risk of prejudice.

9.55 There will be many cases where the necessary balancing exercise comes down in favour of continuing with the investigation or other procedure even though the issues raised by the criminal investigation or proceedings and by the complaint are closely linked. That might be so, for example, where it is alleged that the police officer has committed a more serious offence than that with which the defendant to the related criminal proceedings is charged (because it might then be in the public interest to prioritise the investigation and prosecution of the more serious offence despite the risk of prejudice to the ongoing prosecution of the lesser offence).

9.56 Appropriate authorities should always seek, and consider, the views of the CPS before exercising the power to suspend.

9.57 A number of steps may be taken to reduce (or remove) the risk of prejudice to criminal proceedings while still allowing an investigation to proceed. These include,

- carrying out a single interview with each relevant witness covering both the subject matter of the criminal proceedings and the matter under investigation;

- interviewing witnesses to the matter in the presence of the solicitor for the defendant to the criminal proceedings.

9.58 Appropriate authorities should always consider whether measures of this kind can be put in place, and should only exercise the power to suspend where significant prejudice to the criminal proceedings, which is not outweighed by countervailing public interest considerations, would remain even if any appropriate measures of this type were taken.

9.59 Even though an investigation or other procedure is suspended, there may still be an opportunity to obtain witness statements by those not involved in a criminal investigation or trial. There is also unlikely to be any reason why, if the criteria are satisfied, the relevant persons cannot or should not be served with a notice of investigation. Furthermore, it may well be the case that after receiving legal advice, the complainant decides that they still wish to provide a statement of complaint. Other aspects of the investigation may still be subject to suspension if the appropriate authority, in consultation with the CPS, deems this appropriate.

9.60 In any instance where an investigation or other procedure is suspended, the complainant must be notified in writing and be provided with a rationale for the decision. Where a complainant objects to the suspension, he or she should also be informed of their right to ask the IPCC to consider whether or not to direct that the investigation or other procedure continue.

Resumption of a complaint after criminal proceedings

Where the whole or part of a local or supervised investigation of a complaint has been suspended until the conclusion of criminal proceedings, unless the complainant has indicated that he or she wishes for the investigation to start or be resumed, the appropriate authority must take all reasonable steps to contact the complainant (or if applicable, their solicitor or other representative), to ascertain whether the investigation should be started or resumed. In a managed or independent investigation this will be the responsibility of the IPCC.

The investigation must be started or resumed if the complainant indicates he or she does want this.

If the complainant indicates he or she does not want the investigation started or resumed or fails to reply within 28 days starting on the day after the date of the letter sent to him or her, then the appropriate authority must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

Regulation 23, Police (Complaints and Misconduct) Regulations 2012

9.61 If the appropriate authority decides it is in the public interest for the complaint to be treated as a recordable conduct matter then it should be dealt with as a recordable conduct matter. If it decides it is not in the public interest, the appropriate authority can close the case and should notify the complainant to

that effect. The appropriate authority must also notify the person complained against whether it will treat the matter as a recordable conduct matter or not, unless it might prejudice any criminal investigation, pending proceedings or would not be in the public interest.

9.62 The IPCC expects the appropriate authority to have checked whether the complainant is in prison as this may have a bearing on the speed, practicality and means of communication, and any delay may not be due to an unwillingness to co-operate.

9.63 Where a complaint is subject to a supervised investigation, the investigator should write to the IPCC staff member supervising, setting out the action taken to contact the complainant before proposing to close the case. This enables the IPCC to decide if further action needs to be taken before the complaint is closed. This would be dealt with as a 'reasonable requirement' for the purposes of the supervised investigation.⁴

Suspension of officers and special constables

The Police (Conduct) Regulations 2012 allow the appropriate authority to suspend a police officer or special constable in certain circumstances.

In the case of a supervised, managed or independent investigation the appropriate authority must consult with the IPCC in deciding whether or not to suspend an officer or special constable. It must also consult the IPCC before a suspension is brought to an end (because the suspension conditions are no longer satisfied).

Regulation 10, Police (Conduct) Regulations 2012

9.64 In consulting the IPCC, the appropriate authority should inform the IPCC of its preliminary view and rationale for that view, including which suspension conditions are satisfied.

Providing information / communication

9.65 Investigators and appropriate authorities need to manage the provision of information to complainants, interested persons and those to whose conduct the investigation relates in the course of an investigation. They also need to be in a position to deal with requests for information and questions.

⁴ Regulation 9, Police (Complaints and Misconduct) Regulations 2012.

The Police Reform Act 2002 requires the appropriate authority (or the IPCC in independent and managed cases) to keep the complainant and/or interested person informed about:

- the progress of an investigation
- any provisional findings of the person carrying out the investigation
- where applicable whether the appropriate authority (or the IPCC) has made a determination under paragraph 21A, Schedule 3 of the Police Reform Act 2002
- whether an investigation report has been submitted to the IPCC or the appropriate authority
- the action to be taken (if any); and
- where action is taken, its outcome(s).

Sections 20 and 21, Police Reform Act 2002

9.66 Once an investigation has started, the appropriate authority in a local or supervised investigation, or the IPCC in an independent or managed investigation, has a duty to keep the complainant or interested person informed of its progress.

The first update must be provided promptly and within 28 calendar days of the start of the investigation. Subsequent updates must be provided at least every 28 calendar days after that.

Regulation 12, Police (Complaints and Misconduct) Regulations 2012

9.67 The investigator should agree with the complainant or interested person how he or she wishes to be kept informed of the progress of the investigation (i.e. by telephone, in writing, or in person). Where a notification is given that is not in writing, it must be confirmed in writing as soon as reasonably practicable.

9.68 Updates on the progress of the investigation may include, for example, information about the stage reached in the investigation, what has been done, what remains to be done and, where applicable, a summary of any significant evidence obtained. Updates should also include the likely timescale for completing the investigation and any revisions to this.

9.69 It is also good practice, where it will not prejudice the investigation, to keep the person who is the subject of the investigation regularly informed of the investigation's progress, taking into account the exceptions described below. At the start of the investigation, an investigator should agree with him or her or his or her representative(s), the preferred method for giving the updates and to whom they should be given.

9.70 Appropriate authorities and investigators should take into account any further guidance issued by the IPCC concerning disclosure of information.

Exceptions to the duty to provide information

The duty to keep the complainant and interested persons informed does not apply in circumstances where non-disclosure is:

- i. necessary to prevent premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings
- ii. necessary to prevent the disclosure of information in any circumstances in which its non-disclosure is:
 - in the interest of national security
 - for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders
 - required on proportionality grounds; or
 - otherwise necessary in the public interest.

The appropriate authority must consider whether the non-disclosure of information is justified under any of the above grounds where:

- i. that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings
- ii. the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings
- ii. the disclosure of that information may prejudice the welfare or safety of any third party
- iii. that information constitutes criminal intelligence.

Regulation 13, Police (Complaints and Misconduct) Regulations 2012

9.71 Information must not be withheld on one of these grounds unless the appropriate authority concludes that there is a real risk of the disclosure of the information causing a significant adverse effect.⁵ In considering whether provision of information may have a significant adverse effect, it is necessary to bear in mind that the risk may not be explicit on the face of one document, but may be implicit when several documents are taken together. For example, an informant may not be explicitly named, but it may be possible to identify him or her from the context when several documents are considered together.

9.72 Potential harm can sometimes be avoided or minimised by redacting the material that is harmful from the document or information requested. What needs to be removed will depend on what information is requested and what harm may arise from its disclosure.

⁵ Regulation 13, Police (Complaints and Misconduct) Regulations 2012.

Section 11: CONCLUDING THE INVESTIGATION

- 11.1 This section deals with the investigation report. It covers:
- what the report should contain
 - how the report should be written
 - the action that an appropriate authority should take once a report has been received.

The investigation report

- 11.2 The investigation report is an important document as it is the primary record of the investigation, the evidence and its conclusions. Subject to the harm test it will usually be sent to the complainant and any interested persons and so needs to be written in clear and unambiguous terms. It may be subject to extensive scrutiny possibly even by a court so it is important that it is factually correct and that the conclusions which are drawn are coherent and based on the evidence gathered in the course of the investigation.

Whose report?

- 11.3 In a local or supervised investigation, the report is written by the investigator appointed by the appropriate authority. The findings and conclusions contained in the report are therefore those of the investigator.
- 11.4 In a supervised investigation the IPCC has to confirm that the terms of reference and any requirements it imposed during the investigation have been met. The appropriate authority should confirm that the IPCC is so satisfied. The IPCC may seek further information, evidence and explanation from the investigator, but its role is not to approve the report so it will not endorse the report's findings or recommendations. This is because the IPCC may have subsequently to consider an appeal from a complainant. Appropriate authorities should ensure that the IPCC's limited role in a supervised investigation is not misrepresented to the complainant and / or any interested person.
- 11.5 In a managed investigation, the report is written by the investigator appointed by the appropriate authority. However, the IPCC has direction and control of the investigation and so the investigator should consult the IPCC's managing investigator about the report's findings and conclusions. It must be borne in mind that, in the event of any dispute between the managing investigator and the force investigator, the IPCC's managing investigator may attach an addendum to the report setting out his or her findings and conclusions.

The content of a report

- 11.6 The investigation report is the main source of information and explanation for the complainant or interested person. The CPS, appropriate authority and the IPCC may also rely on the report to guide them through the evidence.

At the end of an investigation of a complaint subject to special requirements or a recordable conduct matter into the actions of a police officer or special constable, the investigator's report must:

- i. provide an accurate summary of the evidence
- ii. attach or refer to any relevant documents; and
- iii. indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

Regulation 20, Police (Complaints and Misconduct) Regulations 2012

- 11.7 At the end of an investigation of a complaint which is not subject to special requirements or a DSI matter, the investigator should also produce a report that includes an accurate summary of the evidence and attach or refer to any relevant documents.

11.8 The report in any complaint investigation not subject to special requirements should state whether the complaint should be upheld or not upheld (see paragraphs 11.18 to 11.27 for guidance on upholding).

- 11.9 The report in any DSI matter should address the matters set out in paragraph 11.45.

11.10 The IPCC expects all reports to be objective and evidence-based. In addition to the matters above, where they apply, reports should contain only relevant information and:

- explain what the complaint, conduct or DSI matter is about
- include the terms of reference, if any, for the investigation
- give a clear account of the evidence gathered
- show that the investigation has met the objectives set for it in the terms of reference or otherwise
- provide clearly reasoned conclusions based on the evidence
- highlight any learning opportunities for either an individual or the organisation, where appropriate, even where no allegation is substantiated
- be written in plain language free of technical jargon.

11.11 A report should provide a clear narrative explanation, based on the evidence collated, as to what the evidence suggests may have happened and the context of any conduct under investigation. This should make sure that the complainant or interested person is provided with as full an explanation as possible for what the evidence shows.

11.12 If a complaint is upheld, the report must also explain whether, and to what extent, any conduct by the person to whom the investigation related may have caused or contributed to what happened. This is necessary because a complaint can be upheld even if there is no evidence to show that any misconduct or unsatisfactory performance has taken place. This should also be communicated to the complainant and / or any interested person.

Conclusions

11.13 In reaching conclusions, an investigator must apply the civil standard of proof, that is 'the balance of probabilities' - whether it is more likely than not that the conduct alleged did, in fact, take place.

11.14 The standard of proof is unaffected by the severity of the allegation. However, in general, the more serious the allegation the greater the cogency of the evidence required to prove that it was more likely than not that the conduct took place. This does not mean that the civil standard of proof is a sliding scale, it is a fixed test.

11.15 Where there are conflicting accounts, the investigator should consider whether there are any other factors that make one account more credible than the other. The investigator should consider the conflicting witness evidence in light of any objective facts which can be proved independently of that evidence. This might, for example, include CCTV or documentary evidence.

11.16 In the case of an investigation into a complaint not subject to special requirements there will be no decision to make about whether there is a case to answer for misconduct or gross misconduct.

11.17 The investigation report (in any investigation) can, if applicable, draw attention to evidence which suggests that the performance of the person to whose conduct the investigation relates was satisfactory or unsatisfactory. This should always be included where the weight of the evidence suggests that the performance may have been unsatisfactory.

Complaints not subject to special requirements

Upholding a complaint

11.18 In relation to complaint investigations that have not become subject to special requirements, an investigation report should indicate whether the complaint should be upheld – subject to the qualifications outlined below.

11.19 A complaint can be made about the conduct of a person serving with the police and 'conduct' includes acts, omissions, statements and decisions. A complaint may therefore be about direction and control or service delivery. It is important to remember that an investigation may conclude that a person's

complaint should be upheld because, in the circumstances, the force did not deliver the service standard expected because of, for example, systemic failings (regardless of the absence of indications of misconduct or individual officer failings).

11.20 Where relevant, it may be appropriate to explain in the findings of the report why the investigation did not become subject to special requirements. This may be particularly useful where the original complaint did make allegations of individual misconduct.

11.21 An investigation into more than one complaint may result in separate complaints being upheld but on different bases.

Standard of service complaints

11.22 A complaint can be made about the service delivered by a police force and a complaint should be upheld where the findings of the investigation show that the service provided by the police did not reach the standard a reasonable person could expect. In deciding what that standard of service is, the investigator and appropriate authority should apply an objective test: that of a reasonable person in possession of the available facts. They should have regard to any agreed service standards and any national guidance that applies to the matter. Where appropriate, reaching this finding is necessary so that an assessment can be made by the police force as to what steps should be taken to improve the service provided to the public.

11.23 If the complaint includes issues of misconduct or lawfulness (civil or criminal), then the report should not reach a determinative finding of upholding the complaint in relation to these issues (see paragraphs 11.28 to 11.34 for further guidance on what findings are available in relation to these types of investigation). This would at least give the appearance of determining the issues which would be for the subsequent misconduct meeting or hearing or court to determine. A decision about upholding a complaint should only be made in relation to issues concerning service delivery which will not become part of any subsequent disciplinary proceedings.

'Lawfulness' complaints

11.24 A complaint can be about the lawfulness of police officer conduct (for example, the making of an arrest is both an 'act' and a 'decision' and falls within the definition of 'conduct'). A report should address the complaint and summarise and evaluate the evidence, but a report should not reach a concluded determination that there has been criminal behaviour or civil unlawfulness. Reaching concluded determinations on these issues is for the criminal and civil courts.

11.25 However, where necessary to address a complaint which has been made about the lawfulness of police officer conduct, the report can include the investigator's view, expressed in careful and conditional language, as to

whether (depending on the resolution of the facts) the conduct was lawful. Therefore, in relation to complaint investigations that have not become subject to special requirements, an investigator can decide whether to uphold, or not uphold, a complaint, providing that the report makes clear that no final determination is being reached on lawfulness, and can indicate, where necessary, why, on the basis of the evidence collated during the investigation, the investigation did not become subject to special requirements.

The final decision concerning upholding a complaint

- 11.26 It is for the appropriate authority (in a local or supervised investigation) or the IPCC (in a managed investigation) to reach the final decision as to whether to uphold a complaint. Complaints may also be upheld as part of determining an appeal from a relevant finding of a local or supervised investigation – see section 13.
- 11.27 Where there is a difference between the conclusion of the investigator and the decision reached by the appropriate authority or the IPCC, the reasons for this should be noted in the rationale for the final decision. The decision(s) of the appropriate authority or the IPCC should, if possible, be communicated to the complainant and any interested person.

Complaint investigations subject to special requirements and recordable conduct matter investigations

- 11.28 In an investigation of a complaint subject to special requirements or a recordable conduct matter, investigators will need to collate and analyse evidence in relation to each allegation and reach findings on the balance of probabilities in relation to each allegation. This will assist investigators in making the 'case to answer' assessment for misconduct / gross misconduct.
- 11.29 As outlined under paragraph 11.6 above, in relation to these types of investigation, the report must include the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

The 'case to answer' test

- 11.30 Finding that there is a 'case to answer' means that the investigator is of the opinion that there is sufficient evidence that a reasonable misconduct hearing or meeting **could** find, on the balance of probabilities, gross misconduct or misconduct.
- 11.31 It follows from the case to answer test, that a subsequent misconduct hearing or meeting may, despite the finding of a case to answer, decide that the subject did **not** breach the Standards of Professional Behaviour. Therefore, investigators should be careful not to use determinative language

when reaching case to answer findings in their reports. Reaching a determinative finding of misconduct/gross misconduct is a matter for the misconduct meeting/hearing.

11.32 Furthermore, in relation to complaint investigations that have become subject to special requirements, an investigator should **not** “uphold” a complaint on the same issues upon which a case to answer is found. This may give the appearance of determining the issues which will be for the subsequent misconduct meeting/hearing to determine. **Therefore, in these circumstances the investigator should not go on, having made the case to answer determination, to reach any conclusions about whether the complaint should be upheld or not.**

11.33 If, in an investigation of a complaint subject to special requirements or a recordable conduct matter, an investigator finds sufficient evidence that one or more of the allegations are made out on the balance of probabilities, then the investigator must consider whether a reasonable misconduct hearing or meeting could find misconduct or gross misconduct in relation to the relevant officer’s conduct. If so, then the investigator should reach a case to answer finding for misconduct or gross misconduct. If not, then the investigator should reach a no case to answer finding.

11.34 There is no requirement to indicate the precise breach of the Standards of Professional Behaviour for which there is a case to answer, but it may assist in explaining why the investigator has reached a case to answer finding to indicate which Standard(s) they have in mind. In deciding whether to reach a case to answer for misconduct or gross misconduct, the investigator must consider whether the alleged misconduct, if proved, would amount to a breach of the Standards that is so serious as to justify dismissal and if so, should reach a case to answer for gross misconduct. If not considered this serious, then the investigator should reach a case to answer for misconduct only. The investigator should make clear in the report the reason why the particular case to answer has been reached.

The Police Reform Act 2002 defines misconduct as “a breach of the Standards of Professional Behaviour” and gross misconduct as “a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal.”

Paragraph 29, Schedule 3, Police Reform Act 2002

Recommendations

11.35 Based on the evidence that has come to light during the investigation, the investigator may include recommendations in the report about possible action to be taken by police forces. These recommendations may relate, for example, to training, changes in policy/procedure or enhanced supervision.

11.36 The table below summarises the types of findings which are available in each type of PRA investigation

Type of investigation	Available findings		
	Case to answer	Complaint – uphold or not	Performance
Complaint subject to special requirements	Decide whether each subject has a case to answer for misconduct or gross misconduct or no case to answer	No	If relevant draw attention to evidence which may be the basis for a determination of whether or not each subject's performance was satisfactory or unsatisfactory (this may be particularly relevant where a finding of no case to answer has been reached in relation to a particular subject).
Complaint not subject to special requirements	No It may be instructive to explain the evidential basis on which it was decided that there were no special requirements	Decide whether each complaint should be upheld or not upheld (subject to the qualifications detailed in paragraph 11.18-11.27).	If relevant draw attention to evidence which may be the basis for a determination of whether or not each subject's performance was satisfactory or unsatisfactory.
Conduct matter	Decide whether each subject has a case to answer for misconduct or gross misconduct or no case to answer.	n/a	If relevant draw attention to evidence which may be the basis for a determination of whether or not each subject's performance was satisfactory or unsatisfactory (this may be particularly relevant where a finding of no case to answer has been reached in relation to a particular subject).
DSI matter	No	n/a	If relevant draw attention to

	It may be instructive to explain the evidential basis on which it was decided that there were no special requirements		evidence which may be the basis for a determination of whether or not each subject's performance was satisfactory or unsatisfactory.
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Criticism

- 11.37 No criticism or adverse comment against an individual who is capable of being identified should appear in a report unless that individual has had an opportunity to respond to that criticism or adverse comment. This applies not only to persons serving with the police, but to anyone identified in the report. Normally, criticism or adverse comments will be put to the individual during an interview, but they can also be drawn to the individual's attention in other ways, such as by serving the notice of investigation on the person subject to investigation or providing a copy of the complaint to the person complained against.
- 11.38 When drafting the report, if it appears to the investigator that the person criticised or subject to comment has not had an opportunity to respond to it then either:
- i. the criticism or adverse comment should be removed from the report (unless to do so would undermine the findings or adequacy of the explanation); or
 - ii. a letter should be sent to the relevant individual informing them of what the criticism is and the facts or evidence which support the criticism. The recipient must then be given a reasonable opportunity to respond to that criticism. The investigator should consider any response and decide whether the criticism or adverse comment should be amended or removed from the report. It may also be appropriate to include the response in the report.

Who receives the report?

The report in a local investigation must be submitted to the appropriate authority.

The report in a supervised and managed investigation must be submitted to the IPCC and a copy sent to the appropriate authority.

The report in a DSI investigation must be submitted to the IPCC and a copy sent to the appropriate authority.

Paragraphs 22 and 24A, Schedule 3, Police Reform Act 2002

What does the IPCC expect the appropriate authority to do with the report?

Local and supervised investigations

When it receives a report after a local or supervised investigation into a complaint or conduct matter, the appropriate authority must determine whether the report should be referred to the Director of Public Prosecutions (CPS) (see paragraphs 12.37 to 12.43).

In addition, the appropriate authority must determine:

- i. whether or not any person to whose conduct the investigation related has a case to answer in respect of misconduct, gross misconduct or no case to answer
- ii. whether or not any such person's performance is unsatisfactory
- iii. what action, if any, the authority will take in respect of the matters dealt with in the report; and
- iv. what other action (if any) the authority will take in respect of those matters.

Paragraph 24, Schedule 3, Police Reform Act 2002

11.39 These decisions are for the appropriate authority, not the investigator.

Once it has made these decisions, and subject to the harm test, the appropriate authority must notify the complainant (where there is one) and any interested person of:

- i. the findings of the report
- ii. its determinations; and
- iii. the complainant's right of appeal.

Paragraph 24, Schedule 3, Police Reform Act 2002

11.40 Appropriate authorities should ensure that a complainant or interested person receives a clear explanation of what has happened based on the facts established in the investigation. In most cases the investigation report will be sent to the complainant and any interested person unless there is a reason under the harm test not to do so.

Managed and independent investigations

In a managed or independent investigation, the IPCC will determine whether to notify the CPS and send it a copy of the report. A copy of the report will be sent to the appropriate authority and the IPCC will notify the appropriate authority that it must determine:

- i. whether any person to whose conduct the investigation related has a case to answer in respect of misconduct, gross misconduct or has no case to answer
- ii. whether or not any such person's performance is unsatisfactory
- iii. what action, if any, the authority will take in respect of the matters dealt with in the report; and
- iv. what other action (if any) the authority will take in respect of those matters.

The appropriate authority must make those determinations and submit a memorandum to the IPCC setting out:

- i. its determinations
- ii. its reasons if it decides not to bring any disciplinary proceedings against that person.

Paragraph 23, Schedule 3, Police Reform Act 2002

11.41 The IPCC expects the appropriate authority's memorandum as soon as practicable having made its determinations and in any event, within 15 working days of the request. Its determinations should be clear and well reasoned so that the IPCC can consider the memorandum and decide whether to make recommendations. The IPCC may seek further information from the appropriate authority when considering the memorandum.

11.42 When it receives the memorandum, the IPCC will decide whether to accept the appropriate authority's determinations and whether to make any recommendations or directions under paragraph 27, Schedule 3 of the Police Reform Act 2002.

The IPCC may make a recommendation that:

- i. a person serving with the police has a case to answer for misconduct or gross misconduct or no case to answer
- ii. the person's performance is unsatisfactory or not
- iii. disciplinary proceedings of a form specified are brought against the person in respect of his or her conduct, efficiency or effectiveness; and/or
- iv. disciplinary proceedings are modified so as to deal with specified aspects of that person's conduct, efficiency or effectiveness.

If the appropriate authority does not take steps to give full effect to the IPCC's recommendation, then the IPCC may direct the appropriate authority to take such steps . The appropriate authority must comply with the IPCC's direction.

Paragraph 27, Schedule 3, Police Reform Act 2002

11.43 The IPCC will require confirmation from the appropriate authority of the steps that have been taken to give effect to the recommendation or direction.

The appropriate authority is under a duty to ensure that any disciplinary proceedings brought in accordance with an IPCC recommendation or direction are brought to a proper conclusion.

Paragraph 27, Schedule 3, Police Reform Act 2002

Death or serious injury (DSI) investigation outcomes

11.44 The outcomes of a DSI investigation will reflect the fact that it is not an inquiry into any criminal, conduct or complaint allegation against any person serving with the police.

11.45 The purpose of a DSI investigation is to establish facts, the sequence of events and their consequences. Its role is to investigate how and to what extent, if any, the person who has died or been seriously injured had contact with the police, and the degree to which this caused or contributed to the death or injury.

At the end of a DSI investigation, the investigator must submit a report to the IPCC and send a copy to the appropriate authority. The IPCC must determine whether the report indicates that a person serving with the police may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings. If the IPCC decides that it does, it will notify the appropriate authority. The appropriate authority must then record the matter as a conduct matter and consider whether it should be referred to the IPCC. Subject to any decision by the IPCC to re-determine the form of the investigation, the investigator of the DSI matter must investigate the conduct matter.

Where there is no such indication, the IPCC may make recommendations or give advice under section 10(1) (e) of the Police Reform Act 2002 as it considers necessary or desirable.

Paragraphs 24A - 24C, Schedule 3, Police Reform Act 2002

11.46 The appropriate authority must respond to those recommendations indicating where it accepts them and where it does not, what action it will take as a result and its rationale for those decisions. The IPCC may also wish to follow up whether and how these changes have been implemented.

Publication

11.47 The IPCC is responsible for publishing investigation reports in managed and independent investigations. Chief officers should consider whether it would

enhance public confidence if they also published reports into local and supervised investigations. Publication may require some redaction.

Section 13: **APPEALS**

- 13.1 This section explains the different rights of appeal that exist for a complainant and sets out the legislative framework. From 22 November 2012, the responsibility for determining appeals is shared between the IPCC and the chief officer. This section provides guidance on how an appeal to the chief officer should be dealt with.

Principles of appeal handling

- 13.2 An appeal offers a final opportunity to consider whether the complaint could have been handled better at a local level and, where appropriate, to put things right. If a complainant is still dissatisfied after an appeal he or she may seek to challenge the appropriate authority's decision through judicial review.
- 13.3 An appeal should be dealt with in good faith, fairly and in a timely manner.
- 13.4 Appeals should be handled consistently and proportionately.
- 13.5 Consideration of an appeal must involve a fresh consideration of the case. Although it is not a re-investigation it should not merely be a 'quality check' of what has happened before.
- 13.6 An appeal must be given impartial consideration. There needs to be clear separation between the original decision-maker and the person who decides the appeal.
- 13.7 The complainant's appeal contains their representations, which must be given due consideration.
- 13.8 The person who made the decision that is being appealed should be allowed the opportunity to comment on the appeal so that this can be taken into account when determining it.
- 13.9 The right of appeal allows the complainant to challenge a decision or outcome. If the appeal is upheld, relevant action must be taken by the appropriate authority.
- 13.10 The complainant and, where applicable, the person complained about should be provided with a clear explanation of the outcome of the appeal and the reason for any decision made.

Who considers the appeal?

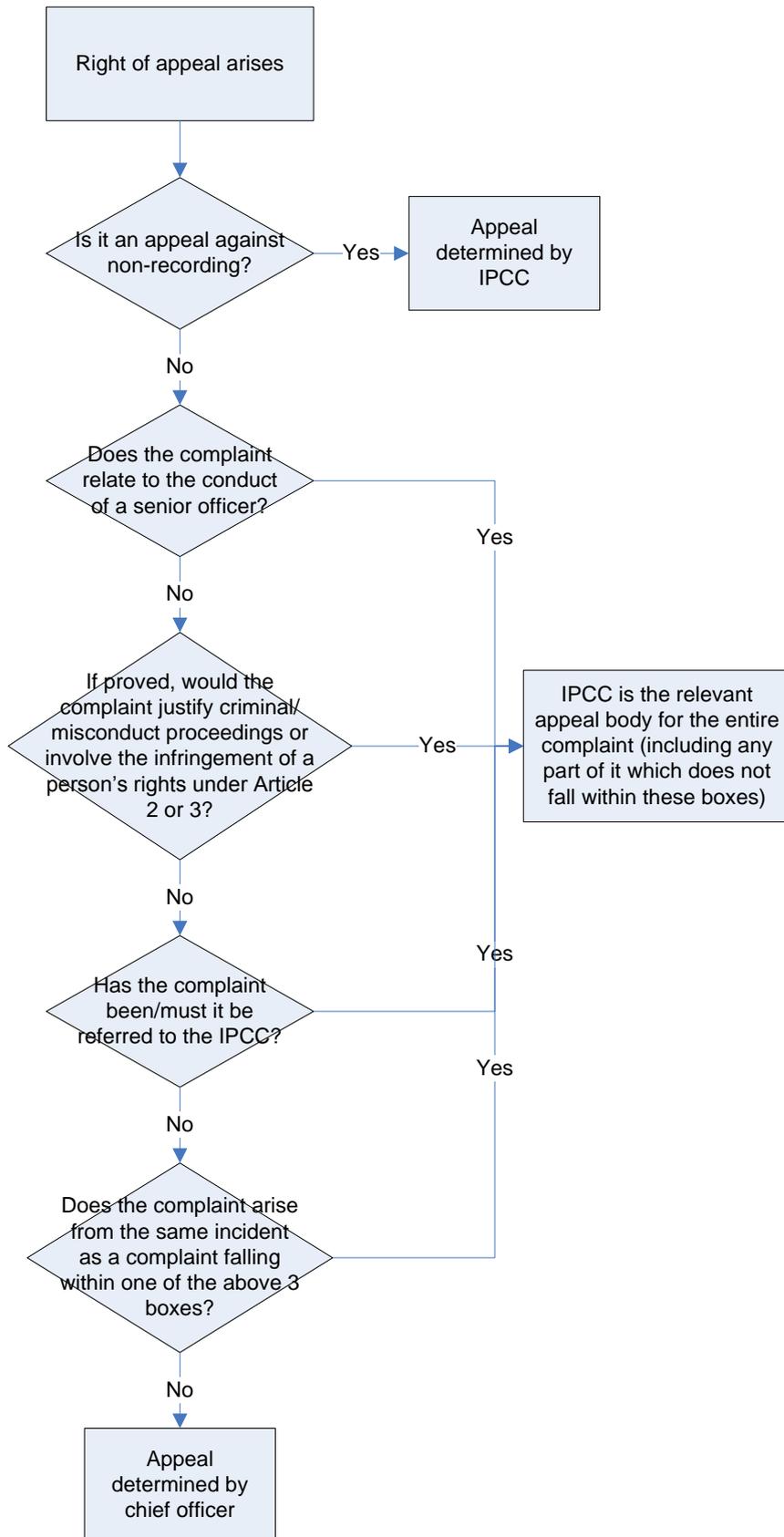
The Police Reform Act 2002 provides a right of appeal in respect of certain decisions and outcomes made in relation to a complaint. These are:

- i. a decision not to record a complaint or not to notify the correct appropriate authority (or a failure to make a determination whether it is the appropriate authority or decide to record or notify)
- ii. a decision to disapply the requirements of Schedule 3 of the Police Reform Act 2002 in relation to a complaint
- iii. the outcome of the local resolution of a complaint
- iv. the outcome of a complaint handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002
- v. a decision to discontinue the investigation of a complaint; and
- vi. certain determinations and outcomes relating to a local or supervised investigation into a complaint.

Paragraphs 3, 7, 8A, 21 and 25, Schedule 3, Police Reform Act 2002

13.11 When informing the complainant of a decision that carries a right of appeal, the local policing body or the chief officer must also inform the complainant of who will consider that appeal.

13.12 Depending on the circumstances of the complaint, an appeal will be considered by either the chief officer of the relevant appropriate authority or the IPCC.



- 13.13 When determining who should consider the appeal, the local policing body or the chief officer should ask the following questions:
- i. is it an appeal about a failure to determine if it is the appropriate authority or to record or notify a complaint?
 - ii. is the complaint that is the subject of the appeal about the conduct of a senior officer (an officer holding a rank above chief superintendent)?
 - iii. if proved, would the conduct as described in the complaint either justify criminal or misconduct proceedings or involve the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights?
 - iv. has the complaint that is the subject of the appeal been referred to the IPCC or must it be referred?
 - v. does the complaint arise from the same incident as a complaint falling within sub-paragraphs i-iv above?
 - vi. does part of the complaint that is the subject of the appeal fall within any of the sub-paragraphs outlined in ii-iv above?
- 13.14 If the answer to all of these questions is no, the right of appeal is to the chief officer.
- 13.15 If the answer to any of these questions is yes, the right of appeal is to the IPCC.
- 13.16 The test listed at 13.13 iii above must be applied to the substance of the complaint, not applied with hindsight after the complaint has been dealt with. It means that if the appropriate authority cannot satisfy itself from the complaint as presented that the conduct complained about, if proved, would not lead to criminal or misconduct proceedings against a person serving with the police or infringe Article 2 or 3 of the European Convention on Human Rights, any appeal in relation to that complaint must be dealt with by the IPCC regardless of how the complaint has been dealt with or any findings in relation to the complaint.
- 13.17 When considering whether a complaint arises from the same incident as another complaint, appropriate authorities should consider whether the complaints arise from the same time and place and involve the same or substantially similar persons serving with the police. A number of separate complaints that are otherwise unconnected, but arise from the same large-scale event should not be considered as having arisen from the same incident.

Appeals to the chief officer

- 13.18 Assigning the responsibility for some appeals to chief officers is designed to ensure that more complaints are dealt with, and thus resolved, locally. However, chief officers will need to be mindful of the importance of public confidence in the complaints system and should ensure that any arrangements they put in place to determine appeals allow objective decision making.

- 13.19 As this section is focusing on the role of the chief officer in determining appeals, references to 'chief officer' are to the chief officer as the relevant appeal body, unless otherwise specified.

Delegation of the consideration of appeals

Where the chief officer is the relevant appeal body he or she may delegate his or her responsibilities in relation to appeals to a police officer of at least the rank of chief inspector or police staff member who is of at least a similar level of seniority.

The chief officer may not delegate these responsibilities to a person whose involvement in that role could reasonably give rise to a concern as to whether he or she could act impartially, whether because that person has acted as the investigating officer in the case or attempted to resolve the complaint by way of local resolution or otherwise.

Regulation 30 and 33, Police (Complaints and Misconduct) Regulations 2012

- 13.20 The IPCC considers that chief officers should not delegate the consideration of an appeal to the following:
- i. anyone who was involved in the local resolution of the complaint or the investigation process (either carrying out tasks, advising on the case or making the final decision) that is subject to appeal
 - ii. anyone involved in the decision to disapply or discontinue that is subject to appeal
 - iii. anyone overseeing or supervising the decision that is subject to appeal (this means involvement in the decision itself rather than having a general supervisory role over the person making the decision)
 - iv. the person in whose name the notification of the decision subject to appeal was sent as this could lead the complainant to believe that both the original decision and the appeal decision have been made by the same person
 - v. anyone of a lower rank than the person who made the decision subject to appeal (or equivalent for police staff)
 - vi. anyone who has a personal connection to the person serving with the police or to the incident subject of the complaint, or anyone who is the immediate line manager of the person serving with the police.
- 13.21 In many circumstances, the type of case that will come to the chief officer on appeal will have been dealt with by local management. Therefore, consideration of the appeal by the professional standards department (PSD) will provide sufficient distance for an objective review. Where an appeal relates to actions taken by the PSD, the chief officer should consider carefully whether another member of the PSD will be viewed as being capable of carrying out an objective review or whether the appeal should be considered by a person from another department. This may mean that in some forces, more complaints will need to be dealt with initially by local management to allow for a two-stage process.
- 13.22 The fundamental consideration for the chief officer when deciding to delegate his or her power to consider appeals is whether the person to

whom he or she proposes to delegate is a person whose involvement in the role could reasonably give rise to a concern about whether he or she could act impartially. This is an objective test. The chief officer should consider whether a reasonable person could have concerns about whether the person deciding the appeal could act impartially. If the answer to that question is yes, then someone else should be appointed to determine the appeal.

- 13.23 The IPCC considers it good practice to tell the complainant who has considered the appeal and why he or she is an appropriate person to do so. In some circumstances this may reassure the complainant. It is important for public confidence that the complainant feels that his or her appeal has been given full consideration by an appropriate person.
- 13.24 In order to assist in maintaining confidence in the appeals process, chief officers should develop an internal process for quality checking the handling of appeals and ensuring that they are dealt with appropriately.
- 13.25 Chief officers should also develop and disseminate a scheme of delegation to ensure that the right people at the right levels and with the right training are allocated as decision makers. In the interests of accountability and transparency, it is good practice to make the scheme of delegation available on the force website.

Notification and receipt of appeals

Where a chief officer (or a local policing body) notifies the complainant of a decision which carries a right of appeal, he or she must notify the complainant in writing of:

- i. the existence of the right of appeal
- ii. the body to whom the appeal should be made
- iii. where the relevant appeal body is the IPCC, the reason why
- iv. that there is no right of appeal to the IPCC, where the chief officer is the relevant appeal body; and
- v. the time limit for making the appeal.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012

- 13.26 It is important that the right appeal body is identified and clearly communicated to the complainant in order to avoid appeals being made to the incorrect appeal body creating delay and unnecessary administrative work for the complainant, appropriate authorities and the IPCC. Appropriate authorities should be in a position to respond quickly and fully to any enquiries from the IPCC where there is any uncertainty about whether the correct relevant appeal body has been identified.

If an appropriate authority receives an appeal which should be considered by the IPCC, the appeal must be forwarded to the IPCC and the complainant notified that the appeal has been forwarded and that the IPCC is the relevant appeal body. The appeal will be taken to have been made when it is forwarded.

Paragraph 32, Schedule 3, Police Reform Act 2002

13.27 It is important that the appeal is forwarded as soon as reasonably practicable. In order to aid timeliness this should be done, where possible, by email or fax.

13.28 When an appeal is received, unless it can be immediately identified as not being a valid appeal, a letter acknowledging receipt of the appeal must be sent to the complainant. This should inform the complainant when they can expect to hear about their appeal and what they can expect to happen. It should also give the complainant a point of contact should he or she have any queries.

Appeals to the IPCC

13.29 When the IPCC receives an appeal for which it is the relevant appeal body it will notify the local policing body or chief officer concerned of the appeal. Once notified that an appeal has been made, the local policing body or the chief officer should not take any action that would prejudice the appeal or any action that may be taken as a result.

The IPCC may request any information which it considers necessary to deal with an appeal from any person. Any information requested by the IPCC for this purpose must be supplied.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012

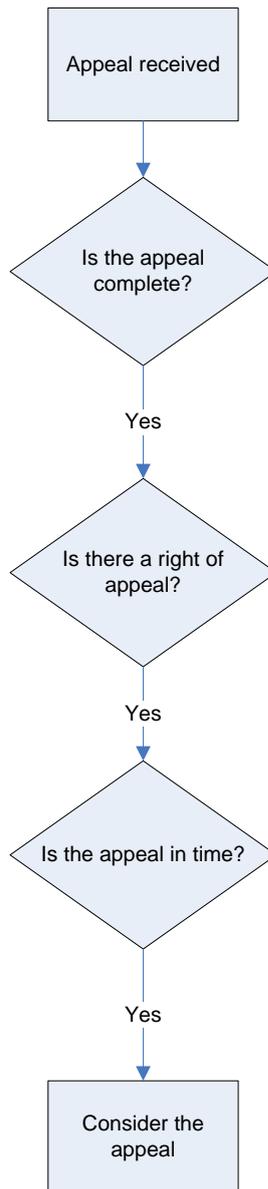
13.30 The IPCC expects any information it requests to be provided within five working days of the request.

If the IPCC receives an appeal which should be considered by the chief officer of a force, the IPCC will forward the appeal to the chief officer and notify the complainant that the appeal has been forwarded and that the chief officer is the relevant appeal body. The appeal will be taken to have been made when it is forwarded.

Paragraph 31, Schedule 3, Police Reform Act 2002

Appeal validity

13.31 There are a number of reasons why an appeal may be judged to be invalid. If it is judged that an appeal is invalid, the complainant should be advised of this determination and the reason for the decision should be explained clearly.



Is the appeal complete?

An appeal must be in writing and state:

- i. the details of the complaint
- ii. the date on which the complaint was made
- iii. the name of the force or local policing body whose decision is the subject of the appeal
- iv. the grounds for the appeal; and
- v. the date on which the decision to which the appeal relates was given to the complainant.

However, the relevant appeal body (or the IPCC in the case of a non-recording appeal) may decide to consider an appeal even though it does not comply with one or more of these requirements.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012

- 13.32 It may still be possible to consider an appeal even if the reasons given for the appeal are minimal (or absent), or show a lack of understanding of the complaints system. An appeal should usually be considered in the absence of any of the information above unless the lack of information makes it impossible to identify the case to which the appeal relates.
- 13.33 In some circumstances it may be appropriate to contact the complainant to clarify the points he or she is raising, or if it is not clear to which complaint the appeal relates. If, after taking all reasonable steps to contact the complainant, it has not been possible to make contact with them or it has not been possible to gather sufficient information to consider the appeal, the appeal may be considered invalid.

Is there a right of appeal?

- 13.34 The complaint to which the appeal relates must have come to the attention of the appropriate authority on or after 22 November 2012. If the complaint was made before this date the appeal will be dealt with in accordance with the relevant previous Police (Complaints and Misconduct) Regulations.
- 13.35 Only a complainant, or someone acting on his or her behalf, can bring an appeal (of any type) in relation to a complaint (see “Who can complain” in section three for the definition of a complainant). If anyone other than the complainant or someone acting on his or her behalf tries to make an appeal, the appeal is invalid.
- 13.36 Before an appeal can be made there should be a final decision, clearly dated, which can evidence the decision being appealed. The exception to this is where the appeal is in relation to the non-recording of a complaint and no decision has been made. In this case the IPCC will consider any appeal made 15 working days or more after the complaint was submitted.

There is no right of appeal in relation to a complaint that relates to a direction and control matter in the following cases:

- i. an appeal against a decision by the appropriate authority to disapply the requirements of Schedule 3 of the Police Reform Act 2002
- ii. an appeal against the outcome of any complaint that is subject to local resolution or handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002
- iii. an appeal against a decision by the appropriate authority to discontinue an investigation (where that discontinuance is not within the IPCC's power); or
- iv. an appeal with respect to an investigation.

Paragraphs 7, 8A, 21 and 25, Schedule 3, Police Reform Act 2002

There is no right of appeal against a failure by the local policing body to determine whether it is the appropriate authority, to notify or record a complaint if the complaint relates to a direction and control matter.

Paragraph 3C, Schedule 3, Police Reform Act 2002

There is no right of appeal against a decision by the appropriate authority to disapply or discontinue where the IPCC has given permission.

Paragraph 7 and Paragraph 21, Schedule 3, Police Reform Act 2002

There is no right of appeal against a decision to discontinue an investigation (where that discontinuance is within the IPCC's power).

Paragraph 21, Schedule 3, Police Reform Act 2002

Is the appeal in time?

Appeals must be made within 28 days of the day after the date of the letter from the local policing body or chief officer giving a notification of the decision which is capable of appeal to the complainant.

Except in the case of a non-recording appeal, if the appeal has been made to the wrong appeal body, it will be treated as having been made when it is forwarded by the chief officer or the IPCC to the correct relevant appeal body. However, any time elapsing between the appeal being received by the chief officer or the IPCC and being forwarded on to the correct relevant appeal body will not be taken into account for the purposes of the 28 day period.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012
Paragraph 31 and 32, Schedule 3, Police Reform Act 2002

- 13.37 The IPCC expects the notification to the complainant to specify the date by which the appeal should be received and for it to be posted on the day it is dated. If any of the information required in the notification has not been given

(or there is no evidence that it has been given), the appeal should not be treated as out of time and should be given full consideration.

The relevant appeal body (or the IPCC in the case of a non-recording appeal) may extend the period for making an appeal where it is satisfied that because of the special circumstances of a case it is just to do so.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012

13.38 Whether such special circumstances exist will be a matter for the person dealing with the appeal to consider on a case-by-case basis. Where an appeal has been made out of time, the complainant should be asked to provide any reasons why the appeal is late. Any reasons provided should be taken into account when deciding whether an appeal should be considered. The following matters should also be taken into account (though this is not an exhaustive list):

- any reasons for the delay – including whether the delay is outside the complainant’s control and whether he or she has taken all reasonable steps to submit his or her appeal in time. This should include consideration of any particular vulnerabilities or needs of the complainant – for example, medical conditions, disabilities or where English is not his or her first language
- the subject matter of the complaint – is this a particularly serious case or one in which there would be real public interest?
- links to other complaints that may be being investigated or appealed
- the length of the delay – the test should become more difficult to pass the further beyond 28 days the appeal is received
- the fairness of the case – for example, the potential impact on the complainant or any other member of the public and on those subject to the investigation.

13.39 The fact that a notice of investigation (see paragraph 9.43) may have been withdrawn before an appeal was made does not prevent an appeal from being considered. Even if a notice of investigation has been withdrawn, disciplinary proceedings may follow a successful appeal.

13.40 If, following consideration, the appeal is judged to be out of time and there are no special circumstances making it just to extend the time, the appeal should be treated as invalid and the appeal should not be considered further.

Notifying the complainant where the appeal is invalid

13.41 The complainant should be informed of the decision to treat the appeal as invalid. This notification should be made in writing (and by any other means where the complainant has asked for such communication) as soon as reasonably practicable. The reasons for considering the appeal as invalid should be explained clearly to the complainant.

Appeals against a failure to notify or record a complaint or to determine whether it is the appropriate authority (non-recording appeals)

There is a right of appeal to the IPCC against the non-recording of any complaint except where:

- i. there is no requirement to record the complaint because the subject matter of the complaint has been or is already being dealt with by means of criminal or disciplinary proceedings against the person whose conduct it was
- ii. there is no requirement to record the complaint because the complaint has been withdrawn; or
- iii. the complaint is about direction and control and the appeal relates to a failure by the local policing body.

Paragraph 3A-3C, Schedule 3, Police Reform Act 2002

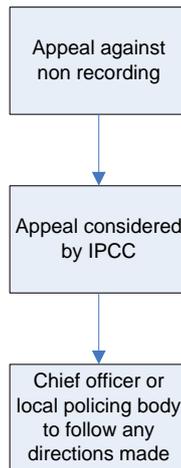
There are three potential grounds for an appeal against the non-recording of a complaint:

- i. a failure by the chief officer or local policing body to determine whether or not it is the appropriate authority
- ii. a failure by the chief officer or local policing body to notify the correct appropriate authority about the complaint; or
- iii. a failure by the chief officer or local policing body to record a complaint or part of a complaint.

Paragraph 3, Schedule 3, Police Reform Act 2002

13.42 If the appeal is upheld, the chief officer or the local policing body must follow any direction given to it by the IPCC as to the action to be taken for making a determination or for notifying or recording a complaint.⁶ In determining whether the chief officer or local policing body has failed to make a decision or to record or notify, the IPCC will take into consideration its expectation that any decision about recording will be made within ten working days of a complaint being received.

⁶ Paragraph 3, Schedule 3, Police Reform Act 2002.



Appeals against the decision to disapply

An appeal may be made to the relevant appeal body against a decision to disapply the requirements of Schedule 3 of the Police Reform Act 2002. However there is no right of appeal where the complaint relates to a direction and control matter or where the IPCC has given its permission for the disapplication.

Paragraph 7, Schedule 3, Police Reform Act 2002

Consideration of appeals against the decision to disapply

The chief officer (where he or she is the relevant appeal body) must determine whether the decision to disapply the requirements of Schedule 3 of the Police Reform Act 2002 should have been taken.

Paragraph 7, Schedule 3, Police Reform Act 2002

- 13.43 When determining an appeal against a decision to disapply, the person dealing with the appeal should take the following points into consideration:
- has the complaint been, or should the complaint have been, referred to the IPCC? If so, the complaint should not have been subject to any decision to disapply without the approval of the IPCC and the appeal must be upheld
 - was the decision to disapply made with the permission of the IPCC? If so, there is no right of appeal and the appeal should be considered as invalid; and
 - was the complainant offered the opportunity to make representations before the decision to disapply was made and if any representations were provided, were these taken into account in making the decision to disapply?
- 13.44 The disapplication decision should show on which ground the decision to disapply has been made and the reason why that ground was considered appropriate. The guidance below covers each ground for disapplication separately; however the guidance on disapplications in section four of this guidance should also be taken into account.

More than 12 months have passed between the incident, or the latest incident, and the complaint and either no good reason for the delay has been shown or injustice would be caused by the delay

- 13.45 Where the complaint relates to a series of incidents, the person dealing with the appeal must ensure that the date used as a benchmark for the 12-month period is the date of the most recent incident.
- 13.46 Assuming that the 12-month period has passed, the person dealing with the appeal must also assess whether the appropriate authority should have determined:
- i. no good reason for the delay has been shown; or
 - ii. injustice would be likely to be caused by the delay.

The matter is already the subject of a complaint made by or on behalf of the same complainant

- 13.47 The disapplication decision should include details of the previous complaint and why this new complaint is the same. The person dealing with the appeal must ensure that the complaint is against the same officer originally complained against, relating to the same subject and by the same complainant.
- 13.48 The person dealing with the appeal should ensure that, at the time of the decision to disapply, the handling of the previous complaint was still ongoing. If not, disapplication under this ground is not appropriate.

Anonymous complaints

- 13.49 Although it is unlikely that an appeal will be made relating to an anonymous complaint, the complainant or interested person may make his or her identity known only after the disapplication decision has been taken. Where this happens, the complainant should be advised of his or her right of appeal.

The complaint is vexatious, oppressive or an abuse of the procedures for dealing with complaints

- 13.50 The person dealing with the appeal must assess whether the complaint meets the definition of vexatious, oppressive or an abuse of the procedures for dealing with complaints as set out in paragraphs 4.15 and 4.16 and section 15 of this guidance.
- 13.51 The person dealing with the appeal must also satisfy him or herself that the decision has been made based on the substance of the complaint, rather than about the complainant.

Repetitious complaints

- 13.52 The person dealing with the appeal must ensure that the complaint satisfies the definition of a repetitious complaint.

It is not reasonably practicable to complete the investigation of the complaint or any other procedures under Schedule 3 to the Police Reform Act 2002

- 13.53 The disapplication decision should show that one of the criteria for not reasonably practicable applies to the complaint and how it is considered to apply.
- 13.54 If the disapplication decision is reached on the basis of either lack of communication or refusal or failure to co-operate; the person dealing with the appeal must consider what efforts have been made to communicate and engage with the complainant. This should include looking at the methods of communication used, any communication preferences expressed by the complainant, any attempts to deal with his or her representative where appropriate, and the efforts made to meet any particular needs of the complainant.
- 13.55 The person dealing with the appeal should also consider whether the complaint could have been dealt with without the complainant's co-operation.
- 13.56 If the disapplication decision is made on the basis of the lapse of time, the person dealing with the appeal must consider whether he or she agrees that the lapse of time is such that the completion of a satisfactory investigation is not reasonably practicable.

Considering the appeal

- 13.57 The appeal must be upheld if the relevant appeal body finds that the decision to disapply the requirements of Schedule 3 of the Police Reform Act 2002 should not have been made.
- 13.58 If a decision to disapply has been based upon a single disapplication ground, the person dealing with the appeal may consider that the particular criterion used was not appropriate. In some circumstances, it may be clear from the information available that another disapplication ground would apply and therefore disapplication would still have been appropriate. Where the complainant has not had the opportunity to make representations in relation to the new ground being considered as part of the appeal, he or she should be given an opportunity to make representations at the appeal stage before a decision is made about whether the appeal should be upheld.
- 13.59 Some complaints may consist of multiple allegations. The person dealing with the appeal may find that disapplication was the correct decision in relation to some allegations, but not for others. In such circumstances, the appeal may be upheld in part. However, action under Schedule 3 of the Police Reform Act 2002 would only need to be taken in relation to those allegations where the decision to disapply should not have been made.

Directions and notification

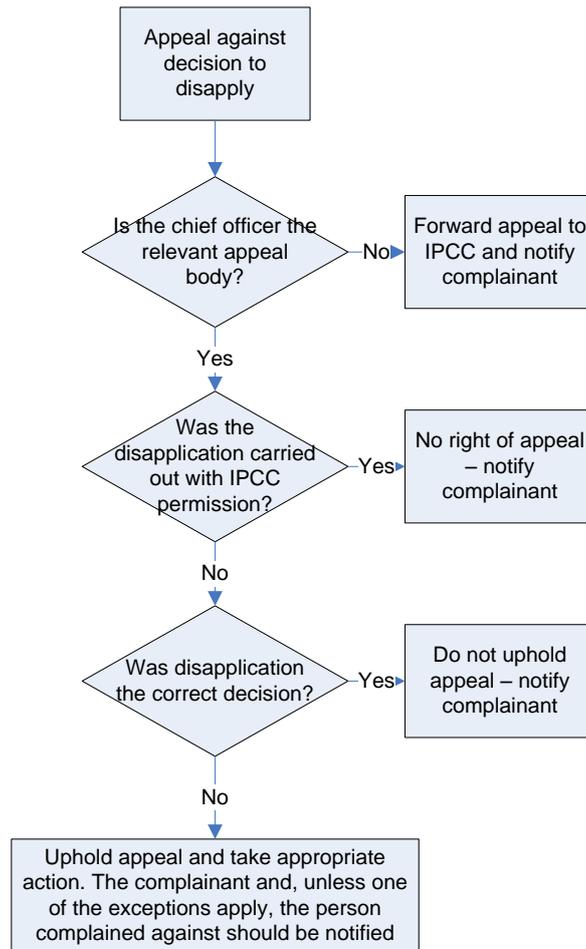
The chief officer must notify the complainant of the reasons for his or her determination in relation to the appeal. Where an appeal against the decision to disapply is upheld by the chief officer, the chief officer must take whatever action he or she thinks appropriate in relation to the complaint. The chief officer must also notify the complainant and the person complained against of any action he or she proposes to take in relation to the complaint.

Where the IPCC is the relevant appeal body, it must notify the complainant and the appropriate authority of the reasons for its determination and any directions in relation to the appeal. The appropriate authority must notify the person complained against of any direction the IPCC gives unless it might prejudice any criminal investigation, pending proceedings or would otherwise be contrary to the public interest.

Paragraph 7, Schedule 3, Police Reform Act 2002
Regulation 11, Police (Complaints and Misconduct) Regulations 2012

- 13.60 Where an appeal against the decision to disapply is upheld by the IPCC, the IPCC will give whatever directions it thinks appropriate as to the action to be taken by the appropriate authority. The appropriate authority must comply with any directions given by the IPCC.⁷

⁷ Paragraph 7, Schedule 3, Police Reform Act 2002.



Appeals against the outcome of the local resolution of a complaint or the outcome of a complaint handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002

There is a right of appeal against the outcome of any complaint which is subjected to local resolution or is handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002 except where the complaint relates to a direction and control matter.

Paragraph 8A, Schedule 3, Police Reform Act 2002

13.61 An appeal against the outcome of a complaint handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002 refers to an appeal against the outcome of a complaint that has been the subject of a disapplication. The right of appeal relates to the outcome of any action, including no action, taken in respect of such a complaint.

13.62 In most circumstances, the relevant appeal body for this type of appeal will be the chief officer. However, if a person begins to consider an appeal and finds that the complaint was not initially suitable to be dealt with by local resolution or that the complaint should not have been handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002, the

appeal should be upheld because the complaint should not have been handled in such a way.

Consideration of appeals

The chief officer must decide whether the outcome of the complaint, whether it has been locally resolved or handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002, is a proper outcome.

Paragraph 8A, Schedule 3, Police Reform Act 2002

- 13.63 When deciding whether the outcome is a proper one, the focus should be on whether the outcome is appropriate to the complaint, not simply on the process followed to reach that outcome. The decision should be made on the basis of the evidence available.
- 13.64 In making a decision about the appeal, the relevant appeal body should take the following into consideration:
- any representations the complainant has provided as part of his or her appeal about why the outcome is not a proper outcome
 - whether an action plan was drawn up and agreed with the complainant setting out the steps to be taken when locally resolving his or her complaint. The outcome of the local resolution should be a clear consequence of the actions agreed
 - whether both the complainant and the person complained against had the opportunity to comment on the complaint during the local resolution process
 - whether any explanation given was sufficiently clear and comprehensive to address the complainant's concerns
 - if no apology has been given as part of the outcome, whether an apology would be appropriate, taking into account the substance of the complaint;⁸ and
 - whether there is any learning from the complaint and whether this has been identified and communicated to the complainant.
- 13.65 If the person dealing with the appeal finds that the outcome of the complaint is not a proper outcome, the appeal must be upheld.
- 13.66 An appeal may result from the fact that although the outcome is proper, it has not been communicated effectively. In these circumstances the appeal should not be upheld, but further information about the outcome should be provided to the complainant.

⁸ Regulation 6, Police (Complaints and Misconduct) Regulations 2012 prevents, during the local resolution of a complaint, an apology being tendered on behalf of the person complained against if they have not agreed to the apology.

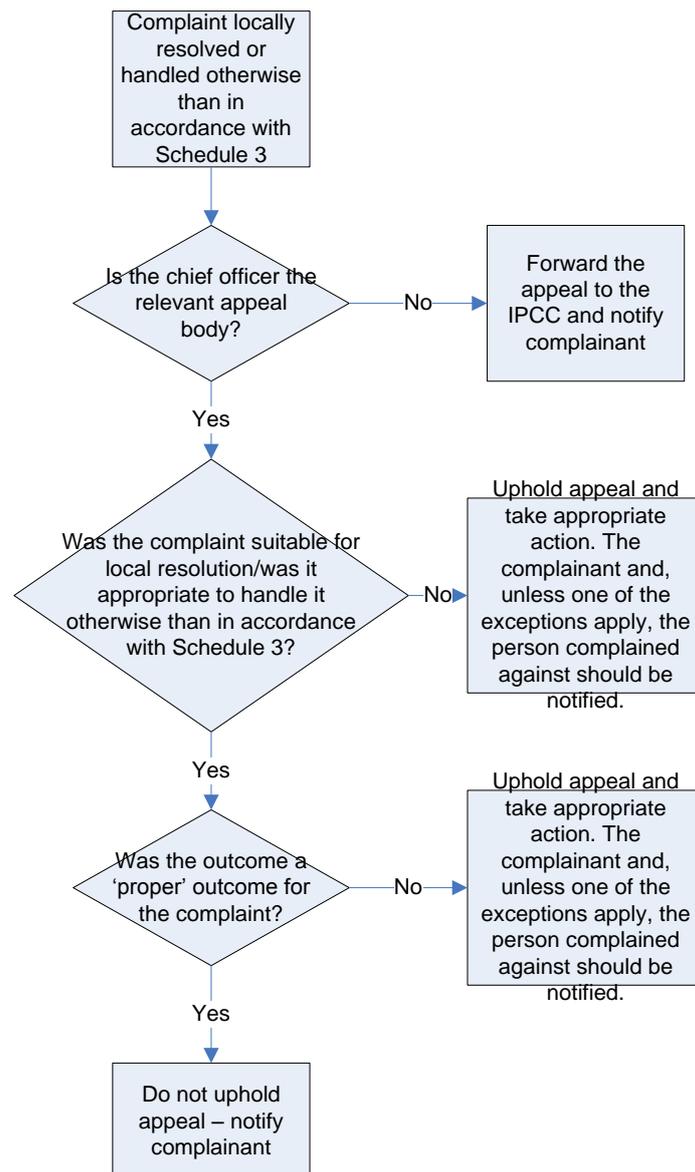
Directions and notifications

The chief officer must notify the complainant of the reasons for his or her determination in relation to the appeal. Where an appeal is upheld by the chief officer, he or she must take whatever action he or she thinks appropriate in relation to the complaint. The chief officer must notify the complainant and the person complained against of any action he or she proposes to take in relation to the complaint.

Where the IPCC is the relevant appeal body, it must notify the complainant and the appropriate authority of the reasons for its determination and any directions in relation to the appeal. The appropriate authority must notify the person complained against of any direction the IPCC gives unless it might prejudice any criminal investigation, pending proceedings or would otherwise be contrary to the public interest.

Regulation 11, Police (Complaints and Misconduct) Regulations 2012
Paragraph 8A, Schedule 3, Police Reform Act 2002

- 13.67 Any action taken by the appropriate authority as a result of an appeal should be aimed at reaching a proper outcome for the complaint.



Appeals against the decision to discontinue

An appeal may be made to the relevant appeal body against a decision by the appropriate authority to discontinue an investigation of a complaint (where the discontinuance is not within the Commission’s power). However, there is no right of appeal where the complaint relates to a direction and control matter.

Paragraph 21, Schedule 3, Police Reform Act 2002

Consideration of appeals against the decision to discontinue

The chief officer must determine whether the decision to discontinue the investigation should have been taken.

Paragraph 21, Schedule 3, Police Reform Act 2002

- 13.68 When determining an appeal against a decision to discontinue an investigation, the person dealing with the appeal should consider the following questions:
- if the investigation was a local investigation, was the complaint one that required referral to the IPCC? Is the investigation supervised or managed? If the answer is yes to either question, the investigation can only be discontinued with the permission of the IPCC. If the investigation was discontinued without an application to the IPCC the appeal should be upheld
 - was the discontinuance ordered or carried out by the IPCC? If so, there is no right of appeal and the appeal should be considered as invalid
 - was the complainant offered the opportunity to make representations before the decision to discontinue was made and, if any representations were provided, were these taken into account in making the decision to discontinue?

13.69 The discontinuance decision should show on which ground the decision was based and the reason why that ground was felt to be appropriate. The guidance below covers each ground for discontinuance separately, however the guidance on discontinuances in section 10 of this guidance should also be taken into account.

The complainant refuses to co-operate to the extent that it is not reasonably practicable to continue the investigation

13.70 The relevant appeal body must consider what efforts have been made to communicate and engage with the complainant. This should include looking at the methods of communication used, any communication preferences expressed by the complainant, attempts to deal with his or her representative where appropriate, and efforts made to meet any particular needs of the complainant.

13.71 The relevant appeal body should also consider whether the complaint could have been investigated without the complainant's co-operation.

Where the appropriate authority has determined the complaint is suitable for local resolution

13.72 The relevant appeal body should consider whether the complaint passed the suitability test for local resolution set out in paragraphs 5.10 to 5.12.

The complaint is vexatious, oppressive or an abuse of the procedures for dealing with complaints, conduct matters or DSI matters

13.73 The person dealing with the appeal must assess whether the complaint meets the definition of vexatious, oppressive or an abuse of the procedures for dealing with complaints as set out in paragraphs 10.10 to 10.12 and section 15 of this guidance.

- 13.74 The person dealing with the appeal must also satisfy him or herself that the decision has been made based on the substance of the complaint and not on the basis of the complainant.

The complaint is repetitious

- 13.75 The person dealing with the appeal must ensure that the complaint fits the definition of a repetitious complaint.

It is not reasonably practicable to proceed with the investigation

- 13.76 The person dealing with the appeal must consider the rationale given by the appropriate authority as to why it was not reasonably practicable to proceed with the investigation and whether he or she agrees with that rationale. The person dealing with the appeal must decide whether it was reasonably practicable to proceed with the investigation.

Considering the appeal

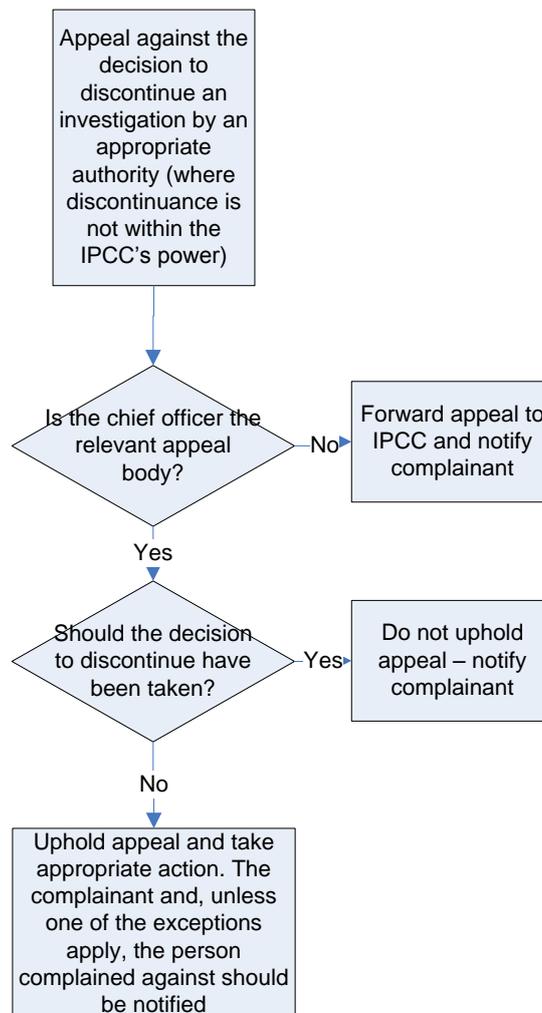
- 13.77 The appeal must be upheld if the person dealing with the appeal finds that the decision to discontinue the investigation should not have been taken.
- 13.78 If a decision to discontinue an investigation has been made based upon a single discontinuance ground, the person dealing with the appeal may consider that the particular ground used was not appropriate. In some circumstances, it may be clear from the information available that another discontinuance ground would apply and therefore a discontinuance would still have been appropriate. Where the complainant has not had the opportunity to make representations in relation to the new ground being considered as part of the appeal, they should be given this opportunity at the appeal stage before a decision about whether the appeal should be upheld is made.
- 13.79 Some complaints may consist of multiple allegations. The person dealing with the appeal may find that discontinuance was the correct decision in relation to some allegations, but not in relation to others. In such circumstances, the appeal may be upheld in part, however the action required to investigate would only need to be taken in relation to those allegations where the discontinuance decision was incorrect.

Directions and notification

The chief officer must notify the complainant of the reasons for his or her determination in relation to the appeal. Where an appeal against the decision to discontinue an investigation is upheld by the chief officer, the chief officer must take whatever action the chief officer thinks appropriate for investigating the complaint. The chief officer must notify the complainant and the person complained against of any action he or she proposes to take in relation to the complaint.

Where the IPCC is the relevant appeal body, it must notify the complainant and the appropriate authority of the reasons for its determination and any directions in relation to the appeal. The appropriate authority must notify the person complained against of any direction the IPCC gives unless it might prejudice any criminal investigation, pending proceedings or would otherwise be contrary to the public interest.

Paragraph 21, Schedule 3, Police Reform Act 2002
Regulation 11, Police (Complaints and Misconduct) Regulations 2012



Appeals against investigation

There is a right of appeal to the relevant appeal body in relation to an investigation of a complaint carried out by the appropriate authority itself or supervised by the IPCC. The only exception to this is where the complaint relates to a direction and control matter; in which case there is no right of appeal.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.80 There is no right of appeal in respect of managed or independent investigations.

A complainant may appeal on the following grounds:

- i. that he or she has not been adequately informed about the findings of the investigation or any determination relating to the action to be taken or not taken in respect of the matters dealt with in the report
- ii. against the findings of the investigation
- iii. against the appropriate authority's determination as to whether the person to whose conduct the investigation related has a case to answer for misconduct, gross misconduct or no case to answer or whether the person's performance is unsatisfactory or not
- iv. against the appropriate authority's determinations relating to the action to be taken or not taken in respect of the matters dealt with in the report, or
- v. against the appropriate authority's determination not to refer the report to the CPS.

Paragraph 25, Schedule 3, Police Reform Act 2002

Consideration of appeals against investigation

The chief officer must consider those appeal grounds that are appropriate in the circumstances.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.81 In practice, this means that the person dealing with the appeal does not have to consider a ground of appeal not mentioned by the complainant, but may still do so if he or she deems it appropriate: for example, where it appears that another ground of appeal may apply and may lead to the upholding of the appeal. The person dealing with the appeal should consider all grounds of appeal raised by the complainant.

Where an appeal is brought, the IPCC may require the appropriate authority to submit a memorandum to it setting out:

- i. whether it has determined that the person to whose conduct the investigation related has a case to answer and, if so, whether in respect of misconduct or gross misconduct
- ii. whether it has determined that the person's performance is or is not unsatisfactory
- iii. what action, if any, it will take in respect of the matters dealt with in the report
- iv. if no disciplinary proceedings are to be brought, the reasons for that determination; and
- iv. the reasons for determining it does not need to send the report to the CPS.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.82 The appropriate authority must comply⁹ and should do so as soon as reasonably practicable (which, in practice, should not generally exceed seven days) unless the IPCC requires this memorandum by a specified deadline.

13.83 The guidance below covers each ground of appeal separately. However, it may be appropriate to consider them together: for example, where there are strong links between findings and outcome.

Considering whether the complainant received adequate information

The right of appeal relates only to whether the complainant has been given adequate information about:

- i. the findings of the investigation; or
- ii. any determination of the appropriate authority relating to the action to be taken or not taken in respect of the matters dealt with in the report.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.84 It is essential that a full explanation is given to the complainant about what has been found to have happened. A person whose complaint against a person serving with the police has been investigated should receive:

- a clear narrative explanation for what has happened, based on the facts established
- a description of the context for any behaviour complained about
- a clear statement about whether his or her complaints have been upheld
- where appropriate, whether a person serving with the police has a case to answer for misconduct or gross misconduct or no case to

⁹ Paragraph 25, Schedule 3, Police Reform Act 2002

answer or whether a person's performance is satisfactory or unsatisfactory; and

- what, if any, action is to be taken in relation to the matters dealt with in the report.
- 13.85 The quality of the explanation provided, in the context of the investigation work undertaken, should be taken into account when considering this ground.
- 13.86 Where an investigation report has been written, the IPCC considers that forces should disclose it to the complainant (subject to the harm test). This means that it is important that it is clear and easy to understand. If the report was redacted or edited before being given to the complainant, the person dealing with the appeal should satisfy him or herself that the relevant points in the report were not omitted unnecessarily because of the redaction.
- 13.87 Where an investigation report has been written, but the complainant has been given a decision letter instead, the person dealing with the appeal should ensure that all relevant points in the report were also included in the letter. The person dealing with the appeal should also consider sending the report to the complainant as part of the appeal determination.
- 13.88 Where an investigator has failed to provide sufficient information during the investigation this should be highlighted to the appropriate authority to ensure that it fulfils its duties to provide information to a complainant in the future. However, an appeal cannot be upheld based on a failure to provide information during the progress of the investigation as this falls outside the appeal grounds.

Considering the findings of the investigation

- 13.89 The findings of the investigation include the eventual conclusions. In their clearest form this will be a set of allegations that are either upheld or not. The findings of the investigation also include the reasons for the conclusions, the evidence that has been gathered to support the conclusions, and a critical analysis of the evidence.
- 13.90 Guidance on findings and outcomes is contained within sections 11 and 12 of this guidance. These sections provide information on explanations of the outcome of an investigation, the giving of apologies where appropriate, and the making of decisions about whether a complaint should be upheld or not.
- 13.91 When determining an appeal against the findings of an investigation, the person dealing with the appeal should consider the investigation findings, taking into account the evidence gathered, and decide whether the investigation's findings need to be reconsidered. The person dealing with the appeal must develop his or her own assessment of the case, not base it on the assessment that the investigator has made.

- 13.92 When communicating a decision about whether an appeal is upheld in relation to the findings, the rationale for the decision should be provided to the complainant with reference to the relevant evidence.
- 13.93 The following questions should be considered to reach a decision on the findings:

Are the conclusions reached reasonable in light of the evidence?

- 13.94 The appropriate authority should have looked at every allegation that the complainant has made, for example, in a statement or letter of complaint. If the investigation has not answered the allegations that have been made, the person dealing with the appeal should consider whether this was an appropriate and proportionate approach, taking into account the substance and circumstances of the case. If not, it may be appropriate to uphold the appeal on this ground. The person dealing with the appeal should continue to assess the findings in relation to those allegations that have been dealt with.
- 13.95 The person dealing with the appeal must consider whether the conclusions of the investigation are supported by the evidence available, and ensure that a clear rationale is being made to link the evidence to the conclusions.

Has the investigation been carried out in a proportionate manner and has sufficient evidence been gathered?

- 13.96 The factors listed at paragraph 9.15 of this guidance should be used to inform what approach was proportionate for an investigator to have taken to investigate a complaint. As an investigation has progressed, the proportionality of the response required may have changed and this should be taken into account when considering any appeal. Proportionality is a particular consideration when it appears that lines of enquiry may have been missed or consciously not pursued by an investigator. However, it is not sufficient to conclude that an investigation has been proportionate without further explanation. When considering the 'proportionality' of following particular lines of enquiry a judgement is being made about the likelihood and difficulty of obtaining fruitful evidence weighed against the seriousness of the allegations. When considering the 'proportionality' of the investigation as a whole, a judgement is being made about the scope and robustness of the investigation weighed against the seriousness of the allegations. Where appropriate it should be made clear to the complainant why the person dealing with the appeal has deemed a particular approach to be disproportionate.
- 13.97 In considering the lines of enquiry pursued by the investigator, the person dealing with the appeal should take into account any terms of reference or similar document, such as an investigation log or file record of relevant decisions, that may have applied to the scope and methods used during the investigation. This may have required a particular direction to be taken by the investigation or put limits on what the investigation would examine,

including the availability of evidence required and considerations as to the sufficiency of the evidence to establish the facts of the case given the seriousness of the allegation and likely outcomes.

Have the right decisions been made about whether or not the complaint(s) that have been investigated should be upheld?

13.98 Guidance in paragraphs 11.18 to 11.27 outlines where a complaint should be upheld. The person dealing with the appeal should have regard to this guidance when reviewing an appeal and considering whether a complaint should have been upheld. A decision on whether each complaint has been upheld or not should be clear from the file and the person dealing with the appeal should satisfy him or herself that the correct decisions have been reached. If the person dealing with the appeal decides that the findings need to be reconsidered then the appeal should be upheld and the appropriate authority must then re-investigate the complaint.¹⁰ It is the final decision made by the appropriate authority as to whether each complaint is upheld or not that is subject to appeal, not any findings made by an investigator to the appropriate authority. Such findings and their rationale may, however, be useful in considering whether the right decisions have been reached.

Considering whether there is a case to answer or whether a person's performance is unsatisfactory

The person dealing with the appeal must decide if he or she considers the appropriate authority's decision is appropriate as to:

- i. whether the person subject of investigation has a case to answer in respect of misconduct, or gross misconduct or no case to answer
- ii. whether the person's performance is unsatisfactory or not; and
- iii. whether the action, if any, to be taken by the appropriate authority is appropriate.

Paragraph 25, Schedule 3, Police Reform Act 2002

13.99 The person dealing with the appeal should be satisfied that the findings do not need to be reconsidered before considering whether the determinations about the action to be taken are appropriate.

13.100 The person dealing with the appeal should assess whether the appropriate authority's decisions and the action to be taken, if any, are appropriate. If they are not, then the appropriate authority should take action, which he or she considers appropriate, in relation to the bringing of disciplinary proceedings.

13.101 Finding that there is a case to answer means that the person dealing with the appeal is of the opinion that there is sufficient evidence that a reasonable

¹⁰ Paragraph 25, Schedule 3 of the Police Reform Act 2002.

misconduct hearing or meeting **could** find on the balance of probabilities, gross misconduct or misconduct.

Considering whether the proposed action is appropriate

- 13.102 The proposed action in respect of an investigation could include the possibility of disciplinary proceedings.
- 13.103 The action could also include non-disciplinary action – recommendations regarding force practices or policies that are suggested by the circumstances of the complaint and its investigation.
- 13.104 In terms of the determinations as to whether any disciplinary proceedings should be brought against persons serving with the police, the person dealing with the appeal should judge whether the proposed action is appropriate based on the seriousness of the conduct in respect of which findings have been made and the underlying evidence. The person dealing with the appeal should assess each case on its own merits but, for example, may consider the following factors:
- the background to the incident in which the alleged conduct took place
 - whether an individual has shown remorse for what happened
 - whether the alleged action was accidental, negligent or deliberate; and
 - whether the person serving with the police has admitted to the conduct alleged and, if so, at what stage he or she did so.
- 13.105 A clear rationale should be provided for any action to be taken as a result of the appeal.

Considering whether a referral to the CPS should have been made

The person dealing with the appeal should consider whether the following conditions are satisfied:

- i. the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related, and
- ii. the circumstances are such that it is appropriate for the report to be considered by the CPS, or
- iii. any of the matters in the report fall within any prescribed category of matters.

Paragraph 25, Schedule 3, Police Reform Act 2002

- 13.106 When considering whether the circumstances are such that it is appropriate for the report to be considered by the CPS, this decision must be made in light of the report's findings and the evidence gathered and the reasons given by the appropriate authority for not referring the report to the CPS.
- 13.107 Many of the issues that are relevant here will have been considered when looking at the findings of the investigation. A full rationale will be required

when it is determined that a referral to the CPS is not necessary despite the report indicating that a criminal offence may have been committed.

Following an appeal against investigation: determinations, directions and notification

When a chief officer upholds an appeal, he or she shall, depending on the appeal ground upheld:

- i. take such steps as he or she considers appropriate for ensuring the complainant is properly informed
- ii. reinvestigate the complaint
- iii. take such action as he or she considers appropriate in relation to the bringing of disciplinary proceedings and ensure that any such proceedings are proceeded with to a proper conclusion; and/or
- iv. notify the CPS of the determination and send it a copy of the investigation report.

The chief officer must give notification of any determination to the complainant, to any interested person and (unless it may prejudice any proposed review or re-investigation of the complaint) the person complained against.

Paragraph 25, Schedule 3, Police Reform Act 2002

Where the IPCC is the relevant appeal body and an appeal is upheld, the IPCC shall (depending on the appeal ground upheld):

- i. give directions to the appropriate authority to ensure the complainant is properly informed
- ii. review the findings, without further investigation
- iii. direct a reinvestigation of the complaint
- iv. determine whether to make recommendations under paragraph 27, Schedule 3, Police Reform Act 2002
- v. direct the appropriate authority to notify the CPS of the determination and send it a copy of the investigation report.

The appropriate authority must comply with any directions given to it by the IPCC.

Paragraph 25, Schedule 3, Police Reform Act 2002

