

Guidance on the National Crime Agency (Complaints and Misconduct) Regulations 2013

1. Introduction

- 1.1 The National Crime Agency (Complaints and Misconduct) Regulations 2013 (“the Regulations”) confer functions on the IPCC in relation to its oversight of the exercise of functions by the Director General and other NCA officers.¹ The Regulations also set out the statutory framework for dealing with complaints, conduct matters and death or serious injury matters which involve NCA officers including the Director General of the NCA.
- 1.2 The Regulations only apply in relation to the Director General and NCA officers exercising f NCA functions in, or in relation to, England and Wales.
- 1.2 These Regulations are largely based on the statutory system which is in place for the police about which the IPCC has issued detailed [statutory guidance](#).
- 1.3 However, there are some key differences and the purpose of this advice note is to provide bespoke guidance for the NCA. This note should be read in conjunction with the IPCC’s Statutory Guidance to the police service on the handling of complaints and to assist in this it follows the same structure and provides references to relevant paragraphs. However, this note is not itself statutory guidance.
- 1.4 This note also includes additional detail in relation to some queries and issues which have arisen in practice to provide clarity.
- 1.5 The IPCC has also issued separate [guidelines on dealing with allegations of discriminatory behaviour](#).

¹ Section 26C, Police Reform Act 2002 requires the Secretary of State to make regulations conferring functions on the IPCC in relation to the exercise of functions by the Director General and other NCA officers.

2. Key definitions

2.1 National Crime Agency

The NCA is a crown body established under Part 1 of the Crime and Courts Act 2013. The NCA consists of NCA officers, and is under the direction and control of the Director General of the NCA. It is classified as a non-ministerial department.

2.2 Functions

The term “functions” means all functions of any description, including powers and duties, whether conferred by an enactment or arising otherwise.²

2.2 NCA functions

The term “NCA functions” means:

- Functions of the NCA
- Functions of the Director General
- Functions of other NCA officers.³

2.3 NCA complaint function

The term “NCA complaint function” means a function in relation to the exercise of functions by the Director General or any other NCA officer.⁴

2.4 NCA officer⁵

The term “NCA officer” means:

- (a) a person who has been appointed under paragraph 9 of Schedule 1 to the Crime and Courts Act 2013 as an NCA officer
- (b) a person who has been seconded to the NCA to serve as an NCA officer under paragraph 13 of Schedule 1 to the Crime and Courts Act 2013; and
- (c) an NCA special.

The Regulations apply to all NCA officers and the Director General.

² Section 16(1), Crime and Courts Act 2013

³ Section 16(1), Crime and Courts Act 2013

⁴ Section 26C(9), Police Reform Act 2002

⁵ Regulation 2, The National Crime Agency (Complaints and Misconduct) Regulations 2013

2.5 Senior officer⁶

A senior officer means an NCA officer of at least Grade 1.

2.6 NCA standards⁷

The Regulations refer to “NCA standards” which are the behaviours and standards in accordance with which the Director General and an NCA officer are required to comply under NCA conduct and performance policies (e.g. NCA values and where applicable to an NCA officer, the civil service code).

2.7 Disciplinary proceedings

For the Director General and NCA officers, any reference to disciplinary proceedings means any proceedings or management process which considers a person’s conduct to determine whether it is misconduct or gross misconduct and what, if any, action is to be taken as a result.⁸

2.8 Unsatisfactory performance proceedings

For the Director General and NCA officers, any reference to unsatisfactory performance proceedings means any proceedings or management process which considers a person’s performance to determine whether it is unsatisfactory or not or what, if any, action is to be taken as a result.⁹

3. General information

3.1 Transitional provisions¹⁰

The Regulations came into effect on 7th October 2013; the same day the NCA formally began operating. Where a matter came to the attention of SOCA before 7th October 2013, it will not be dealt with under the Regulations. The matter will instead be dealt with in accordance with the agreement under Section 26A of the Police Reform Act 2002 made between SOCA and the IPCC.

3.2 Delegation¹¹

⁶ Regulation 2, The National Crime Agency (Complaints and Misconduct) Regulations 2013

⁷ Regulation 2, The National Crime Agency (Complaints and Misconduct) Regulations 2013

⁸ Regulation 2, The National Crime Agency (Complaints and Misconduct) Regulations 2013

⁹ Regulation 2, The National Crime Agency (Complaints and Misconduct) Regulations 2013

¹⁰ Regulation 3, The National Crime Agency (Complaints and Misconduct) Regulations 2013

¹¹ Regulation 80, The National Crime Agency (Complaints and Misconduct) Regulations 2013

The Director General may delegate any or all of the powers or duties conferred on the Director General in the Regulations to an NCA officer who is:

- a senior officer where a complaint or conduct matter relates to the conduct of a senior officer
- an officer of at least Grade 2 in any other case.

The Director General must not delegate any powers or duties to an NCA officer whose involvement in that role could reasonably give rise to a concern as to whether that NCA officer could act impartially, whether because that NCA officer has acted as investigating officer in the case or otherwise.

The Director General may delegate all or any of the Director General's powers or duties in relation to the local resolution of complaints under the Regulations to any NCA officer.

The IPCC expects any delegation by the Director General to be set out in a scheme of delegation to ensure that decisions are being made at an appropriate level by NCA officers with a suitable level of training and experience and who meet the impartiality requirements above.

3.3 Complaints, conduct matters and DSI matters relating to a combination of NCA officers and people serving with the police

Where there is a complaint, conduct matter or DSI matter which relates to a combination of NCA officers and people serving with the police, the Director General is only the appropriate authority in relation to the NCA officers. The chief officer of the relevant police force will be the appropriate authority for any police officers. While the NCA and police may work together to carry out an investigation, the Director General (or his/her delegate) should only reach conclusions about an NCA officer. It will be for the chief officer of the police force to determine whether there is a case to answer etc. for any police officers.

3.4 Provision of information to the IPCC

The Police Reform Act 2002 permits an NCA officer (including the Director General) to disclose information to the IPCC, or to a person acting on the IPCC's behalf, for the purposes of the exercise by the IPCC of an NCA complaints function.¹²

In addition, under the Regulations, the Director General and NCA officers have a duty to provide the IPCC with all information and documents required by the IPCC to enable it to carry out its functions (as long as this is practicable).¹³ Any sensitivity

¹² Section 26C(5), Police Reform Act 2002

¹³ Regulation 11, The National Crime Agency (Complaints and Misconduct) Regulations 2013

relating to the information provided should be communicated to the lead investigator or casework manager to ensure that the IPCC is aware of this. The IPCC may not disclose information provided by the NCA except as permitted by the Regulations or otherwise prescribed by law.¹⁴ The exceptions to the duty to provide information will be considered by the IPCC before any information is communicated to the complainant or any other person.¹⁵

Both the ability of an NCA officer and the Director General to voluntarily disclose information to the IPCC and their duty to do so are subject to the restrictions set out in Schedule 7 to the Crime and Courts Act 2013.¹⁶

3.5 Complaints and conduct matters concerning a person who no longer works for the NCA

Complaints and conduct matters relating to the conduct of an NCA officer who has left the NCA since the time of the conduct must be handled in the same way under the Regulations as any other complaint or conduct matter. However, the appropriate authority will not be required to determine whether disciplinary proceedings should be brought against that NCA officer.¹⁷

¹⁴ Regulation 11, The National Crime Agency (Complaints and Misconduct) Regulations 2013

¹⁵ Regulation 16, The National Crime Agency (Complaints and Misconduct) Regulations 2013

¹⁶ Section 12, Crime and Courts Act 2013

¹⁷ Regulation 75, The National Crime Agency (Complaints and Misconduct) Regulations 2013

4. Statutory guidance considerations

The following table sets out which parts of the IPCC statutory guidance to the police service are analogous to the NCA system (albeit there are some differences in terminology and legal references).

Area	Paragraph numbers	Relevant to NCA	Notes
Section 2: Promoting access			
The importance of an accessible system	2.2-2.4	y	
Providing information and access	2.5-2.10	y	
Complainants who need additional assistance	2.11-2.16	y	
Complaints made by children and young people under 16	2.17-2.20	y	
Section 3: Complaints			
Initial handling of a complaint	3.3-3.8	y	
Definition of a complaint	3.9-3.10	y	
Who can complain?	3.11-3.16	y but not the information in text boxes	See sections 4.4 and 4.5 of this guidance note, the exclusion referred to in para 3.14 should be read as a reference to section 4.5 of this guidance note
Recording a complaint	3.17-3.26	y except paragraph 3.26	The conduct of NCA officers while off duty does not fall under the regulations
Complaints about discriminatory behaviour	3.27-3.30	y	

Who can be complained about?	3.31-3.34	n	Complaints can be made about the Director General of the NCA and NCA officers - see section 2.1 of this guidance note. See also sections 3.3 and 3.5 of this guidance note
Decisions not to notify or record a complaint	text box p24	y	
Deciding how to handle a complaint	3.35-3.38	y	
Section 4: Disapplication			
When can disapplication be carried out by the appropriate authority	text box p25	y	
When the IPCC's permission needs to be obtained	4.3-4.6	y	
Grounds for disapplication	4.7-4.19	y	
Partial disapplication	4.20	y	
Appeals against the decision to subject the complaint to disapplication	4.21	y	
Section 5: Local handling			
Introductory paragraphs	5.1-5.7	y	See also section 4.6 of this guidance note – <i>Who can carry out local resolution</i> Note also that the procedures mentioned in para 5.9 will be the
Local resolution	5.8-5.9	y	
Complaints suitable for local resolution	5.10-5.12	y	
Local resolution following referral	5.13-5.14	y	

Ways of resolving the complaint	5.15-5.16	y	relevant NCA procedures for dealing with performance related matters.
Action plans	5.17-5.18	y	
Communication	5.19	y	
Statements	5.20	y	
Appeal against local resolution	5.21-5.22	y	
It is not possible to locally resolve the complaint	5.23-5.25	y	
Section 6: Conduct matters			
Definition of a conduct matter	6.3-6.4	y	
Recording a conduct matter	6.5-6.10	y	
Conduct matters involving allegations of discrimination	6.11	y	
Conduct matters relating to people who no longer work for the police	6.12	y	
Section 7: Death or serious injury matters			
Definition of a DSI matter	text box p40	y	
Recording a DSI matter	7.3	y	
Section 8: Referrals			
Matters that must be referred to the IPCC including definitions of mandatory referral criteria and call in	8.3-8.21	y	Parts of this section are included in this guidance note. See also sections 4.11 and 4.12 of NCA guidance note for additional information

Deadlines for referral	8.22-8.24	y	
Voluntary referrals	8.25-8.26	y	
Referral of complaints about direction and control	8.27	n	
Notification of referral	Text boxes p49	y	
Determining whether and how a matter should be investigated	8.28-8.29	y	
Section 9: Investigations			
Purpose of an investigation	9.2	y	An investigation does not have to reach a conclusion about whether there is unsatisfactory performance.
Appointment of a person to carry out the investigation	9.3-9.6	y (except 2 nd text box)	Instead of 2 nd text box see section 4.14 of this guidance note
Terms of reference	9.7-9.9	y	
Keeping an audit trail	9.10-9.13	y	
The scope of the investigation	9.14-9.16	y	
Allegations involving discrimination	9.17-9.23	y	
Death or serious injury matters turning into conduct matters	9.24-9.28	y	
Special requirements	9.29-9.34	y	Special requirements can be applied (where appropriate) to any complaint investigation in relation to the Director

			General or an NCA officer
Severity assessments	9.35-9.42	9.36-9.38 only	See section 4.15 of this guidance note for further information about severity assessments in relation to NCA
Notices of investigation	9.43	n	See section 4.16 of this guidance note
Representations to the investigator	9.44	y	The time period for providing any relevant statement or document will be the time period in the notice of investigation
Interviews	9.45-9.51	y	
Power to suspend an investigation or other procedure	9.52-9.60	y	
Resumption of a complaint after criminal proceedings	9.61-9.63	y	
Suspension of officers and special constables	9.64	n	NCA regulations do not cover suspension
Providing information / communication	9.65-9.72	y	See also section 4.18 of this guidance note
Section 10: Discontinuances			
When can an investigation be discontinued by the appropriate authority?	text box p68	y	
When the IPCC's permission needs to be obtained	10.2-10.3	y	

Requirement to obtain representations from the complainant	10.4	y	
Grounds for discontinuance	10.5-10.15	y	
Notification	text box p72	y	
Action to be taken following a discontinuance	10.16- 10.17	y	
Appeal against the decision to discontinue	10.18	y	
Section 11: Concluding the investigation			
The investigation report including content and conclusions	11.2-11.41	y	
Criticism	11.42- 11.43	y	
Who receives the report?	text box p84	y	
What does the IPCC expect the appropriate authority to do with the report?	11.44- 11.48	y	
Death or serious injury investigation outcomes	11.49- 11.51	y	
Publication	11.52	y	
Section 12: Action after the investigation			
Communication with the complainant and interested persons after the conclusion of the investigation	12.3-12.9	y	

Apologies	12.10-12.14	y	
Outcomes for individuals including allegations involving discrimination, special case procedures, unsatisfactory performance procedures, public hearings and criminal proceedings	12.15-12.43	12.18-12.24 and 12.37-12.43	Outcomes for individuals will be in accordance with the NCA disciplinary and performance processes.
Learning lessons	12.44-12.58	y	
IPCC recommendations under paragraph 28A of Schedule 3	12.59-12.63	n	This provision is not included in NCA regulations
Inquest proceedings	12.64-12.67	y	
Section 13: Appeals			
Principles of appeal handling	13.2-13.10	y	
Who considers the appeal?	13.11-13.17	y	
Appeals to the chief officer including delegation and notification	13.18-13.28	y	
Appeals to the IPCC	13.29-13.30	y	
Appeal validity	13.31-13.41	y except 13.34	
Appeals against a failure to notify or record a complaint	13.42	y	See also section 4.19 of this guidance note
Appeals against the decision to disapply	13.43-13.60	y	

Appeals against the outcome of local resolution or the outcome of a complaint handled otherwise than in accordance with Schedule 3 PRA 2002	13.61-13.67	y	
Appeals against the decision to discontinue	13.68-13.79	y	
Appeals against investigation	13.80-13.107	y	See also section 4.21 of this guidance note - this right of appeal includes consideration of whether the decision about whether or not there is a case to answer is appropriate but not the distinction between misconduct and gross misconduct.
Section 14: Data collection and monitoring			
Responsibilities of the chief officer	14.5-14.8	y	
Responsibilities of the local policing body	14.9-14.12	n	
The police complaints system performance framework	14.13-14.16	n	Data is collated separately for cases involving the NCA but is published in the IPCC's annual report

Section 1: Introduction

4.1 *Appropriate authority*¹⁸

The appropriate authority has responsibility for certain key actions and decisions under the regulations.

Person concerned	Appropriate authority
Director General of the NCA	Permanent Secretary to the Home Office
NCA officer	Director General of the NCA
Person serving with the police on secondment to the NCA	The chief officer or local policing body who would be the appropriate authority under the Police Reform Act 2002. ¹⁹ The appropriate authority can however arrange for the Permanent Secretary or Director General to carry out the functions of the appropriate authority during the secondment. ²⁰
Any other person on secondment to the NCA	The person who would have had direction and control of them if it were not for the secondment

4.2 *Power of the Permanent Secretary to the Home Office to give directions to the Director General*²¹

Where it appears to the Permanent Secretary that the Director General of the NCA has not complied with an obligation which has arisen by or under the Regulations or has contravened an obligation, the Permanent Secretary may direct the Director General to take whatever steps the Permanent Secretary thinks appropriate. The Director General must comply with such a direction.

¹⁸ Regulation 2, The National Crime Agency (Complaints and Misconduct) Regulations 2013

¹⁹ Section 29, Police Reform Act 2002

²⁰ Regulation 2(2), The National Crime Agency (Complaints and Misconduct) Regulations 2013

²¹ Regulation 9(3)-(5), The National Crime Agency (Complaints and Misconduct) Regulations 2013

Section 3: Complaints

4.3 Subject matter of the complaint

A complaint must be about the conduct of the Director General or an NCA officer, i.e. the complaint is in relation to or is conduct involving the Director General or an NCA officer exercising NCA functions.

4.4 Who can make a complaint?

A complaint may only be made by one of the following:

- a member of the public who claims that the conduct took place in relation to him or her
- a member of the public who claims to have been adversely affected by the conduct, even though it did not take place in relation to him or her
- a member of the public who claims to have witnessed the conduct
- a person acting on behalf of someone who falls within any of the three categories above.

A person can only be considered as having been authorised to act on behalf of another for the purposes of making a complaint if he or she has and is able to produce written consent from that person.²²

A person who does not fall within the categories above may raise a concern with the NCA and the concern may be looked into but it should not be treated as a complaint for the purposes of the Regulations and the person raising the concern will not have any of the statutory rights of a complainant.

4.5 Complaints by NCA officers

The Director General or an NCA officer cannot make a complaint about the conduct of another NCA officer who falls under the Regulations which happened while that NCA officer or Director General was on duty.²³ This does not mean that the Director General or an NCA officer cannot raise concerns about something which happened while they were on duty. In those circumstances, the Director General or an NCA officer will not have any of the statutory rights of a complainant but may, if appropriate, be treated as an interested person.

²² Regulation 8, The National Crime Agency (Complaints and Misconduct) Regulations 2013

²³ Regulation 8(4), The National Crime Agency (Complaints and Misconduct) Regulations 2013

Section 5: Local handling

4.6 *Who can carry out local resolution?*

The appropriate authority may appoint an NCA officer to carry out the local resolution of a complaint.²⁴

Section 8: Referrals

4.7 *Complaints that must be referred to the IPCC*²⁵

Appropriate authorities must refer to the IPCC:

- complaints alleging that the conduct complained of has resulted in death or serious injury
- complaints which fall within the mandatory referral criteria (see paragraph 4.10)
- complaints which the IPCC notifies that it requires to be referred regardless of whether the complaint is already being investigated by any person or the IPCC has considered it.

4.8 *Conduct matters that must be referred to the IPCC*²⁶

Appropriate authorities must refer to the IPCC recordable conduct matters which

- relate to any incident or circumstances in or in consequence of which a person has died or suffered serious injury
- fall within the mandatory referral criteria (see paragraph 4.10)
- the IPCC notifies the appropriate authority that it requires the matter to be referred regardless of whether the conduct matter is already being investigated by any person or the IPCC has considered it previously.

²⁴ Regulation 26, The National Crime Agency (Complaints and Misconduct) Regulations 2013

²⁵ Regulation 22, The National Crime Agency (Complaints and Misconduct) Regulations 2013

²⁶ Regulation 32, The National Crime Agency (Complaints and Misconduct) Regulations 2013

4.9 Referral of death or serious injury (DSI) matters

It is the duty of the appropriate authority to refer all DSI matters to the IPCC.²⁷

A DSI matter means any circumstances (unless the circumstances are or have been the subject of a complaint or amount to a conduct matter) in, or as a result of which, a person has died or sustained serious injury and:

- at the time of death or serious injury the person had been arrested by the Director General or an NCA officer and had not been released or the person was, at the relevant time, otherwise detained in the custody of the Director General or an NCA officer; or
- at or before the time of death or serious injury the person had contact of any kind – whether direct or indirect – with the Director General or an NCA officer who was acting in the execution of his or her duties and there is an indication that the contact may have caused – whether directly or indirectly – or contributed to the death or serious injury. However, this sub-category excludes contact that a person who suffered the death or serious injury had whilst he or she was acting in the execution of his or her duties.²⁸

4.10 Mandatory referral criteria²⁹

The appropriate authority must refer complaints and conduct matters to the IPCC that include allegations of conduct which constitutes:

- serious assault, as defined in guidance issued by the IPCC
- serious sexual offence, as defined in guidance issued by the IPCC
- serious corruption, as defined in guidance issued by the IPCC
- criminal offence or behaviour which is liable to lead to misconduct proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status identified in IPCC guidance
- a relevant offence, or

²⁷ Regulation 36, The National Crime Agency (Complaints and Misconduct) Regulations 2013

²⁸ Regulation 8(7)-(10), The National Crime Agency (Complaints and Misconduct) Regulations 2013

²⁹ Regulations 22 and 32, The National Crime Agency (Complaints and Misconduct) Regulations 2013

- complaints or conduct matters which are alleged to have arisen from the same incident as anything falling within these criteria.

An appropriate authority must also refer complaints which arise from the same incident about which there is a complaint alleging that the conduct complained of resulted in death or serious injury.

An extract of the IPCC statutory guidance providing fuller definitions of the mandatory referral criteria can be found at Annex 1 of this guidance note.

4.11 Who can make a referral?

A referral can be made by the appropriate authority. Where the Director General is the appropriate authority, the Permanent Secretary to the Home Office may also refer complaints or recordable conduct matters which either have not been referred or are not required to be referred by the appropriate authority if the Permanent Secretary considers referral would be appropriate because of the gravity of the subject matter or any other exceptional circumstances.³⁰

4.12 Making a referral

The remit of the IPCC is set out by the Regulations which are focused on the actions or failings of NCA officers, including the Director General. The IPCC can only look at wider issues and learning where it arises from an individual case where a complaint, conduct matter or DSI matter has been recorded. Any complaint or conduct matter can be referred to the IPCC voluntarily, and in circumstances where there is significant public interest and concern this should be considered, however a matter does need to be identified and recorded as either a complaint or conduct matter prior to referral. In particular, while it is not compulsory for a specific officer(s) to have been located and identified in order for a conduct matter to be recorded, it is a requirement to identify the conduct that is alleged to have infringed the NCA standards of professional behaviour.

4.13 Deadlines for referral

A mandatory referral must be made without delay and in any case not later than the end of the day after the day it first becomes clear to the appropriate authority that it is a matter which must be referred.³¹

³⁰ Regulation 22 and 32, The National Crime Agency (Complaints and Misconduct) Regulations 2013

³¹ Regulations 22, 32 and 36, The National Crime Agency (Complaints and Misconduct) Regulations 2013

Section 9: Investigations

4.14 Appointment of a person to carry out an investigation

The appropriate authority may appoint an NCA officer or a person serving with the police to carry out the investigation. In managed and supervised investigations, this will be subject to the agreement of the IPCC.³²

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

- (i) the investigating officer must have an appropriate level of knowledge, skills and experience to plan and manage the investigation
- (ii) the investigating officer must not work, directly or indirectly, under the management of the person being investigated
- (iii) where an investigation relates to a senior officer, the investigating officer must not be the Director General
- (iv) the investigating officer must not be appointed if his or her involvement in that role could reasonably give rise to a concern whether he or she could act impartially.³³

4.15 Special requirements and severity assessments

Under the Regulations, this is referred to as a “special procedure”, this should not be confused with the accelerated procedures for “special cases”.

If, during the course of an investigation of a complaint, it appears to the person investigating 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. They must then make a severity assessment.

³² Regs 41-43, The National Crime Agency (Complaints and Misconduct) Regulations 2013

³³ Regulation 39, The National Crime Agency (Complaints and Misconduct) Regulations 2013

A “severity assessment” for the Regulations is defined as “an assessment as to whether the conduct, if proved, would amount to misconduct or gross misconduct”. It does not include making an assessment as to what form any disciplinary proceedings might take.

The same applies to revised severity assessments.³⁴

4.16 Notices of investigation³⁵

The standards to refer to in the notice are the “NCA standards”.

The notice must be in writing and comply with the requirements of regulation 49(7).

The notice should not include the likely form of any misconduct proceedings.

The notice should give a right to seek advice from the trade union or any other body representing the interests of the person concerned (they can also have an NCA friend (see paragraph 4.17)).

The time limit for providing representations to the investigator is not specified in the Regulations, instead they say “such period as determined by the NCA”. The ten working days allowed for those serving with the police by the Police (Complaints and Misconduct) Regulations 2012 and associated regulations should be used as a starting point for determining this time period, although the investigator may extend this period if required.

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.

4.17 NCA friend³⁶

An NCA officer or the Director General may have another NCA officer or a trade union official who is not otherwise involved in the matter as an “NCA friend”.

4.18 Exceptions to the duty to provide information to the complainant and interested persons³⁷

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

³⁴ Regulation 49, The National Crime Agency (Complaints and Misconduct) Regulations 2013

³⁵ Regulation 49, The National Crime Agency (Complaints and Misconduct) Regulations 2013

³⁶ Regulation 53, The National Crime Agency (Complaints and Misconduct) Regulations 2013

³⁷ Regulation 16, The National Crime Agency (Complaints and Misconduct) Regulations 2013

- (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 or unsatisfactory performance proceedings
- (ii) the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings
- (iii) the disclosure of that information may prejudice the welfare or safety of any third party
- (iv) that information constitutes criminal intelligence.

Section 13: Appeals

4.19 Appeals against the non-recording of complaints³⁸

There is no right of appeal against a failure by the Permanent Secretary to the Home Office to record a complaint or to notify the correct appropriate authority of the complaint.

4.20 Appeals against investigation

The complainant has the following rights of appeal to the relevant appeal body:

- (a) a right to appeal on the grounds that the complainant has not been provided with adequate information

³⁸ Regulation 21, The National Crime Agency (Complaints and Misconduct) Regulations 2013

- i. about the findings of the investigations; or
 - ii. about any determination of the appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the investigation report
- (b) a right to appeal against the findings of the investigation
- (c) a right of appeal against any determination by the appropriate authority that a person to whose conduct the investigation related has a case to answer or that such a person's performance is, or is not, unsatisfactory in respect of that person's conduct or has no case to answer
- (d) a right of appeal against any determination by the appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report; and
- (e) a right of appeal against any determination by the appropriate authority under regulation 68(2)(a) as a result of which it is not required to send the Director of Public Prosecutions a copy of the report.³⁹

³⁹ Regulation 71, The National Crime Agency (Complaints and Misconduct) Regulations 2013

Annex 1 - Definitions of referral criteria (taken from IPCC statutory guidance to the police service on the handling of complaints pp 44 – 47)

Serious assault

8.7 'Serious assault' is conduct that results in an injury that amounts to actual bodily harm or a more serious injury.

8.8 'Serious assault' is interpreted in accordance with the law on what constitutes an assault occasioning actual bodily harm contrary to Section 47 of the Offences Against the Person Act 1861. The offence is committed when a person assaults another, thereby causing actual bodily harm to that other person. One factor in law that distinguishes a charge under Section 39 of the Criminal Justice Act 1988 (common assault) from one under Section 47 is the degree of injury. The Crown Prosecution Service (CPS) legal guidance on the charging standards for the offence of assault occasioning actual bodily harm should be applied in determining whether an offence is one of assault occasioning actual bodily harm rather than common assault.

8.9 Any attempt, incitement or conspiracy to commit any offence referred to above must also be referred to the IPCC.

8.10 Where a person is injured as a result of the conduct of a person serving with the police, forces should first consider whether the injury is a serious injury or one which must be referred. If not, they should ask themselves whether there is anything about the conduct or the circumstances in which the injury was sustained which points to the need for a voluntary referral. For injuries occurring once a person is in custody, the threshold for force to be necessary or proportionate is higher.

Serious sexual offences

8.11 The term 'serious sexual offences' includes:

- all offences under the Sexual Offences Acts 1956 to 2003 that must be tried in the Crown Court; or
- any other offences under these Acts which appear, to an appropriate authority, to be an offence for which the individual concerned, if convicted, would be likely to receive a sentence of more than six months.

8.12 Any attempt, incitement or conspiracy to commit any offence referred to above must also be referred to the IPCC.

Serious corruption

8.13 The term serious corruption refers to conduct that includes:

- any attempt to pervert the course of justice or other conduct likely seriously to harm the administration of justice, in particular the criminal justice system;
- payments or other benefits or favours received in connection with the performance of duties amounting to an offence for which the individual concerned, if convicted, would be likely to receive a sentence of more than six months;
- abuse of authority;
- corrupt controller, handler or covert human intelligence source (CHIS) relationships;
- provision of confidential information in return for payment or other benefits or favours where the conduct goes beyond a possible prosecution for an offence under Section 55 of the Data Protection Act 1998;
- extraction and supply of seized controlled drugs, firearms or other material; or
- attempts or conspiracies to do any of the above.

8.14 The law requires that allegations of serious corruption are referred to the IPCC without delay. It is therefore not appropriate to wait until there is sufficient information to make an arrest.

8.15 Where an allegation of serious corruption is made or potential serious corruption is identified this may require covert investigation. This should not prevent or delay referral to the IPCC.

8.16 The IPCC expects covert cases to be referred if any of the following factors are present:

- reasonable suspicion that a criminal offence has been committed
- the investigation has moved to an operational phase
- covert intrusive tactics are about to be deployed
- the allegations are extremely sensitive or likely to have an adverse impact on public confidence.

8.17 If it is unclear whether any of these factors are present the case should be discussed with the IPCC to establish whether referral is necessary.

Criminal offences and behaviour liable to lead to misconduct proceedings and which in either case is aggravated by discriminatory behaviour

8.18 This refers to any criminal offence or other behaviour liable to lead to misconduct proceedings that is aggravated by discrimination on the grounds of a person's:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex, or
- sexual orientation

8.19 The form of the alleged discrimination may be direct through language or behaviour, for example, the use of discriminatory words or use of stereotypes to describe individuals. The complainant or interested person may allege that the criminal offence or behaviour was motivated by discrimination. He or she may allege treatment which amounts to discrimination by comparison with the treatment given to others. While it is not for the complainant to prove that the person serving with the police discriminated against him or her it is important that when raising allegations about the treatment he or she received that he or she is able to identify (where possible) how that treatment was discriminatory. The person dealing with the matter should encourage the complainant or interested person to provide as much information as possible as to why they consider they were discriminated against. It is equally possible that the complainant or interested person does not allege discrimination, but that the investigator believes discrimination is a factor.

Relevant offence

'A relevant offence' is defined as any offence for which the sentence is fixed by law or any offence for which a person of 18 years and over (not previously convicted) may be sentenced to imprisonment for seven years or more (excluding any restrictions imposed by Section 33 of the Magistrates Court Act 1980).

Regulation 1, Police (Complaints and Misconduct) Regulations 2012

Annex 2 – Counterpart provisions in PRA and Police Regulations and the NCA Regulations

The following table provides the equivalent provisions in the Police Reform Act 2002 and associated regulations for each of the NCA Regulations to assist with applying the IPCC statutory guidance in practice.

NCA Regulation	Counterpart provision
1. Citation commencement and extent	n/a
2. Interpretation	Regulation 1, Police (Complaints and Misconduct) Regulations 2012 and Section 29 PRA
3. Revocation and transitional provisions	n/a
4. Application: general	Section 12, PRA
5. Application of the 2002 Act	Applies sections: <ul style="list-style-type: none"> • 9 (the Independent Police Complaints Commission), • 19 (use of investigatory powers by or on behalf of the Commission), • 22 (power of the Commission to issue guidance), • 24 (consultation on regulations), regulations made under section 27 and Schedule 2 of the PRA
6. General functions of the Commission under these Regulations	PRA Section 10
7. Reports to the Secretary of State	PRA Section 11
8. Complaints, matters and persons to which these Regulations apply	PRA Section 12 and 29
9. General duties of the Permanent Secretary, Director General and Inspectors	PRA Section 15
10. Payment for assistance with investigations	PRA Section 16
11. Provision of information to the Commission	PRA Section 17
12. Inspection of premises on behalf of the Commission	PRA Section 18
13. Duty to keep the complainant informed	PRA Section 20
14. Duty to provide information for other persons	PRA Section 21 and regulation 12-13, Police (Complaints and Misconduct) Regulations 2012
15. Manner in which duties to provide information are to be performed	Regulation 12 Police (Complaints and Misconduct) Regulations 2012

16. Exceptions to the duty to keep the complainant informed and to provide information for other persons	Regulation 13 Police (Complaints and Misconduct) Regulations 2012
17. Duties to preserve evidence relating to complaints	PRA Schedule 3 para 1
18. Initial handling and recording of complaints	PRA Schedule 3 para 2
19. Copies of complaints etc.	Regulation 15, Police (Complaints and Misconduct) Regulations 2012
20. Recording of complaints	Regulation 3, Police (Complaints and Misconduct) Regulations 2012
21. Failures to notify or record a complaint	PRA Schedule 3 para 3
22. Reference of complaints to the Commission	PRA Schedule 3 para 4 & reg 4, Police (Complaints and Misconduct) Regulations 2012
23. Duties of the Commission on references under regulation 22	PRA Schedule 3 para 5
24. Handling of complaints by the appropriate authority	PRA Schedule 3 para 6
25. Disapplication of requirements of these Regulations	PRA Schedule 3 para 7 & regulation 5, Police (Complaints and Misconduct) Regulations 2012
26. Local resolution of complaints	PRA Schedule 3 para 8 & regulation 6, Police (Complaints and Misconduct) Regulations 2012
27. Appeals relating to complaints dealt with other than by investigation	PRA Schedule 3 para 8A
28. Conduct matters arising in civil proceedings	PRA Schedule 3 para 10
29. Recording etc. of conduct matters in other cases	PRA Schedule 3 para 11 & regulation 7, Police (Complaints and Misconduct) Regulations 2012
30. Conduct matters not required to be recorded	Regulation 7(2) and (3), Police (Complaints and Misconduct) Regulations 2012, PRA Schedule 3 para 10(4A) and 11(3B),
31. Duties to preserve evidence relating to conduct matters	PRA Schedule 3 para 12
32. Reference of conduct matters to the Commission	PRA Schedule 3, para 13 & regulation 7(4) & (5), Police (Complaints and Misconduct) Regulations 2012
33. Duties of the Commission on references under regulation 28	PRA Schedule 3, para 14
34. Duty to record DSI matters	PRA, Schedule 3, para 14A

35. Duty to preserve evidence relating to DSI matters	PRA, Schedule 3, para 14B
36. Reference of DSI matters to the Commission	PRA, Schedule 3, para 14C and regulation 8, Police (Complaints and Misconduct) Regulations 2012
37. Duties of Commission on references under regulation 36	PRA, Schedule 3, para 14D
38. Power of the Commission to determine the form of an investigation	PRA, Schedule 3, para 15
39. Appointment of persons to carry out investigation	Regulation 24, Police (Complaints and Misconduct) Regulations 2012
40. Withdrawn complaints	Regulation 21, Police (Complaints and Misconduct) Regulations 2012
41. Investigations by the appropriate authority on its own behalf	PRA, Schedule 3, para 16
42. Investigations supervised by the Commission	PRA, Schedule 3, para 17, regulation 9 Police (Complaints and Misconduct) Regulations 2012
43. Investigations managed by the Commission	PRA, Schedule 3, para 18
44. Investigations by the Commission itself	PRA, Schedule 3, para 19
45. Combining and splitting investigations	Regulation 25, Police (Complaints and Misconduct) Regulations 2012
46. Relinquishing the Commission's supervision or management of an investigation	Regulation 26 Police (Complaints and Misconduct) Regulations 2012
47. Circumstances in which an investigation or other procedure may be suspended	Regulation 22, Police (Complaints and Misconduct) Regulations 2012
48. Resumption of investigation after criminal proceedings	Regulation 23, Police (Complaints and Misconduct) Regulations 2012
49. Special procedure: assessment of seriousness of conduct under investigation	PRA, Schedule 3, para 19B, regulation 16 & 18, Police (Complaints and Misconduct) Regulations 2012
50. Duty to consider submissions from person whose conduct is being investigated	PRA, Schedule 3, para 19C
51. Interview of person whose conduct is being investigated	PRA, Schedule 3, para 19D, regulation 19, Police (Complaints and Misconduct) Regulations 2012
52. Duty to provide certain information to appropriate authority	PRA, Schedule 3, para 19E
53. NCA friend	Regulation 17 Police (Complaints and Misconduct) Regulations 2012

54. Interview of the Director General or an NCA officer during certain investigations	PRA, Schedule 3, para 19F, regulation 1&2 Police (Complaints and Conduct) Regulations 2013
55. Restrictions on proceedings pending the conclusion of an investigation	PRA, Schedule 3, para 20
56. Accelerated procedure in special cases	PRA, Schedule 3, para 20A
57. Investigations managed or carried out by Commission: Action by appropriate authority	PRA, Schedule 3, para 20B
58. and 59 Investigations managed or carried out by Commission: action by Commission	PRA, Schedule 3, para 20C and 20D
60. and 61 Other investigations: action by appropriate authority	PRA, Schedule 3, para 20E and 20F
62. and 63 Special cases: recommendation or direction of Commission	PRA, Schedule 3, para 20H and 20I
64. Power to discontinue an investigation	PRA, Schedule 3, para 21 and regulation 10, Police (Complaints and Misconduct) Regulations 2012
65. Procedure where conduct matter is revealed during investigation of DSI matter	PRA Schedule 3, para 21A
66. Final reports on investigations: complaints, conduct matters and certain DSI matters	PRA Schedule 3, para 22, regulation 20 Police (Complaints and Misconduct) Regulations 2012
67. Action by the Commission in response to an investigation report under regulation 66	PRA Schedule 3, para 23
68. Action by the appropriate authority in response to an investigation report under regulation 66	PRA Schedule 3, para 24
69. Final reports on investigations: other DSI matters	PRA Schedule 3, para 24A
70. Action by the Commission in response to an investigation report under regulation 69	PRA Schedule 3, para 24B & 24C
71. Appeals with respect to an investigation	PRA Schedule 3, para 25
72. Reviews and re-investigations following an appeal	PRA Schedule 3, para 26
73. Duties with respect to disciplinary proceedings	PRA Schedule 3, para 27
74. Information for complainant about disciplinary proceedings	PRA Schedule 3, para 28

75. Complaints or conduct matters concerning a person who has subsequently ceased to be the Director General or an NCA officer	Regulation 27, Police (Complaints and Misconduct) Regulations 2012
76. Complaints or conduct matters concerning a person whose identity is unascertained	Regulation 28, Police (Complaints and Misconduct) Regulations 2012
77. Notification of actions and decisions	Regulation 29, Police (Complaints and Misconduct) Regulations 2012
78. Keeping of records	Regulation 31, Police (Complaints and Misconduct) Regulations 2012
79. Register to be kept by the Commission	Regulation 32, Police (Complaints and Misconduct) Regulations 2012
80. Delegation of powers and duties by the Director General	Regulation 33, Police (Complaints and Misconduct) Regulations 2012
81. Manner and time limits of notifications	Regulation 34, Police (Complaints and Misconduct) Regulations 2012
82. Appeals	Regulation 11, Police (Complaints and Misconduct) Regulations 2012
83. Relevant appeal body	PRA, Schedule 3, paras 30-32, Regulation 30, Police (Complaints and Misconduct) Regulations 2012