



## BRIEFING PAPER

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# Police complaints and discipline

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## Summary

**The information in this research briefing relates to England and Wales only**

The police complaints and discipline systems are key to police accountability. They facilitate the public and those within policing to raise concerns about the management of police forces and the behaviour of individual officers. The systems are designed to provide a fair and effective way for these concerns to be addressed. Public confidence in the systems is vital to securing overall confidence in the police.

The systems have long been the subject of political scrutiny. They are notoriously complicated despite repeated attempts to simplify them with reform. The independence of the systems (or perceived lack thereof) has also been the subject of repeated criticism.

### Recent reforms

Between 2014 and 2020 Coalition and Conservative Governments undertook the latest major reforms of the systems. The implementation of these reforms took some time and the reformed systems became fully operational in February 2020.<sup>1</sup> The reforms were wide-ranging but perhaps the most significant changes are:

- **The transformation of the previous Independent Police Complaints Commission into the new Independent Office for Police Conduct.** The IOPC has a new governance structure. It also has new powers to initiate police complaints and direct certain police investigations into the conduct of police personnel.
- **The introduction of Police and Crime Commissioners (PCCs) into the complaints system.** The offices of directly elected Police and Crime Commissioners (and the Deputy Mayor in London and Manchester) are now responsible for reviewing the complaint handling of forces when certain complainants are unhappy. They can also choose to further extend their responsibilities for police complaints. However, only three PCCs have so far chosen to play a greater role in handling complaints against their local force.
- **The simplification of the complaints system.** Many complex aspects of the old system have been repealed or replaced. The overall effect of these reforms is to reduce the number of pinch points in the system where complaint handling could get held up.
- **Introducing some independence into the police discipline system.** Misconduct hearings (the most serious police discipline procedure) are now typically held in public. They are now chaired by independent legally qualified persons rather than senior police officers.

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<sup>1</sup> **Note:** Some reforms relating to police whistleblowing are not yet in force.

## 4 Police complaints and discipline

It will take time for the reforms to bed in. It will therefore be some time before the overall impact of these changes can be accurately assessed.

### Police complaints: the basics

There are three key actors in the police complaints system:

- **The Independent Office of Police Conduct (IOPC)** is the body that oversees the system and conducts independent investigations into the most serious police complaint and conduct matters.
- Police force **Professional Standards Departments (PSDs)** include specialist teams responsible for handling most complaint matters for their force.
- **Police and Crime Commissioners** (or in Manchester and London the Deputy Mayor for Policing and Crime) are responsible for monitoring their forces complaint handling. They also conduct complaint reviews in some cases and can choose to extend their responsibilities further.

The police complaints process has four stages:

- 1 **Recording:** A decision to record a complaint is made. Recorded complaints must be handled in line with statutory rules set out in Schedule 3 of the *Police Reform Act 2002* (as amended).
- 2 **Referral:** A decision to refer a recorded complaint to the Independent Office for Police Conduct (IOPC) is made. The IOPC decide if referred complaints should be investigated and if so how.
- 3 **Handling:** A decision as to whether and how recorded complaints should be investigated is made. An outcome is either decided without a formal investigation or an investigation takes place which informs an outcome.
- 4 **Review:** Most individuals with recorded complaints can ask for their complaint to be reviewed if they are unhappy with the outcome decided at the end of handling stage. Reviews are undertaken by the relevant PCC/ Deputy Mayor or the IOPC depending on the nature of the complaint. A review can result in changes to the complaint outcome or a decision to send a complaint back to the referral or handling stage.

**Decisions at every stage must be “reasonable and proportionate”.**<sup>2</sup> What is reasonable and proportionate will depend on the specifics of the complaint. Those handling complaints should consider several factors including; the seriousness of the allegation, the potential for learning, how resource intensive taking the complaint forward will be alongside their overarching responsibilities to scrutinise the police and hold them accountable.<sup>3</sup> Police complaint decisions should be fair, effective, impartial and evidence based.<sup>4</sup>

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<sup>2</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 3.2 & 3.3

<sup>3</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 3.5 & para 3.12

<sup>4</sup> Ibid, para 3.18

## Police discipline: the basics

### **The police disciplinary system consists of internal processes within police forces.**

It is structured by statutory rules set out in the *Police Act 1996* (as amended) and secondary legislation made under it. Unlike the complaints system (which is overseen by the IOPC) there is no single independent body that provides oversight of the discipline system, though PCCs should hold chief constables accountable for their handling of disciplinary issues.

### **Not all poor policing behaviour engages the discipline system.**

Other processes, either a reflective practice review process or an unsatisfactory performance procedure, are initiated when poor behaviour is identified that does not warrant disciplinary action.

- A **reflective practice review process** is a formal police process. It is initiated when police conduct has fallen short of what is expected of those who work in policing but is not serious enough to warrant disciplinary action.<sup>5</sup>
- **Unsatisfactory performance procedure** is a police HR process. It is initiated when members of police personnel are unable to perform their duties to a satisfactory level.<sup>6</sup>

### **Disciplinary proceedings are initiated when there is a credible allegation of a breach of the policing standards of professional behaviour that is serious enough to warrant disciplinary action.**<sup>7</sup>

Conduct that warrants disciplinary action is that which 'damages public confidence in policing'.<sup>8</sup> It is behaviour that learning from alone would not be a sufficient response "given the gravity or seriousness of the matter".<sup>9</sup>

### **Officers whose behaviour is found to amount to misconduct or gross misconduct at a disciplinary proceeding are sanctioned.**

Depending on the circumstances they may be issued a formal warning, have their rank reduced or be dismissed from the police service. Officers dismissed are barred from working in the police.

**Police HR, conduct and discipline procedures are designed to "encourage a culture of learning and development" within the police.** All forces should have procedures in place to share learnings from individual cases.<sup>10</sup>

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<sup>5</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 4.44 and 4.45

<sup>6</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 4.59

<sup>7</sup> [r2, The Police \(Conduct\) Regulations 2020](#)

<sup>8</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), para 4.34

<sup>9</sup> *Ibid*, para 4.36

<sup>10</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 6.43

# 1. Fundamentals

The police complaints and discipline systems are key to police accountability. They facilitate the public and those within policing to raise concerns about the management of police forces and the behaviour of individual officers. The systems are designed to provide a fair and effective way for these concerns to be addressed. Public confidence in these systems is therefore important to securing overall confidence in the police.<sup>11</sup>

## Looking for information to help with constituency casework?

The Library has published a [short guide to police complaints](#) which helps MPs and their staff handle casework involving dissatisfaction with the police.

## 1.1 Legislation

The primary piece of legislation that regulates the police complaints system is the *Police Reform Act 2002* (the 2002 Act).

The *Police Act 1996* Part IV, Chapter II and Part 4A (the 1996 Act) is the primary piece of legislation that regulates the police discipline system.<sup>12</sup>

[Part 2](#) of the *Policing and Crime Act 2017* significantly amended the 2002 Act and made changes to the relevant provisions of the 1996 Act.

Secondary legislation provides detailed provisions for both systems. [The Police \(Complaints and Misconduct\) Regulations 2020](#) further regulates the complaints system and [The Police \(Conduct\) Regulations 2020](#) further regulates the discipline system.

## Statutory guidance

There are two main statutory guidance documents:

- The Independent Office for Police Conduct (IOPC) has issued [statutory guidance on the police complaints system](#).
- The Home Office has issued [statutory guidance on professional standards, performance and integrity in policing](#) which provides information on the discipline system.

## 1.2 Key definitions

### Police complaint

A police complaint is “any expression of dissatisfaction with a police force that is expressed by or on behalf of a member of the public”.<sup>13</sup> Complaints can be about the way a police force is run (procedures,

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<sup>11</sup> IOPC, [Strategic plan 2018-2021](#), November 2018, p14

<sup>12</sup> **Note:** The digital versions of the *Police Reform Act 2002* and *Police Act 1996* on [www.legislation.gov.uk](http://www.legislation.gov.uk) are not up-to-date with recent amendments. References to them throughout this paper do not link to the digital version of the legislation. MPs and their staff can access an up-to-date digital versions of these Acts via the Library. For information please see the Library’s webpage [resources](#).

<sup>13</sup> s12(1), *Police Reform Act 2002*; IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 5.2

policies or initiatives) or the conduct of its staff. However, people cannot complain about the conduct of police personnel if they have not been adversely affected personally by that conduct.<sup>14</sup>

### Conduct matters

A conduct matter is an allegation of police misbehaviour, that is not the subject of a complaint, which indicates that a member of police personnel may have committed a criminal offence or behaved in such a way that would warrant disciplinary proceedings.<sup>15</sup>

As conduct matters are, by definition, not complaints; they tend to come to the attention of the police internally, for example by managers or colleagues expressing concern about the behaviour of another member of police personnel. However, conduct matters may be brought to the police's attention through another means (e.g. civil proceedings).

### Recordable conduct matters

Recordable conduct matters are conduct matters which must be referred to the IOPC. The referral criteria are set out in detail in [section 3.3](#) of this paper but (generally speaking) recordable conduct matters are the more serious conduct matters.

### Death and serious injury matter (DSI)

Any circumstances in which the police may have contributed to someone's death or serious injury, that is not the subject of a complaint or a conduct matter, is known as a death or serious injury (DSI) matter.<sup>16</sup> DSI matters must be immediately recorded by police forces and referred to the IOPC.<sup>17</sup>

### Misconduct

Misconduct is a breach of the policing 'Standards of Professional Behaviour' that is serious enough to justify disciplinary action.<sup>18</sup> Gross misconduct is misconduct so serious it warrants an officer's dismissal from the police.<sup>19</sup> Suspected misconduct can be discovered through complaint, conduct or DSI matters.

### The complaints and discipline systems

The complaints system deals with complaints, DSI matters and recordable conduct matters. The discipline system deals with conduct matters and suspected misconduct. The systems are separate, but they do interact with one another. For example, a complaint may move from the complaints system to the discipline system if

### Statistics for 2018/19

31,097  
recorded  
complaints

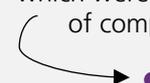


Unknown number of  
**conduct matters.**



4,097 **police force referrals to the IOPC.** This number includes some complaint, all recordable conduct and all DSI

2,362 **cases finalised as misconduct.** 513 of which were the subject of complaints.



**Sources:** IOPC, [Police complaints: Statistics for England and Wales 2018/19](#), p3; IOPC, [Annual report and statement of accounts 2018/19](#), p11; Home Office, [Police workforce, England and Wales](#), misconduct table 1b, 30 September 2019

<sup>14</sup> **Note:** Unless they are acting with written consent of someone who was personally adversely affected by police conduct.

<sup>15</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, p24

<sup>16</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, p47

<sup>17</sup> Ibid, para 7.6

<sup>18</sup> College of Policing, [Guidance on outcomes in police misconduct proceedings](#), 2017, para 3.4. **Note:** This is the definition of misconduct used in the discipline system. In the complaints system misconduct is defined as any breach of the police standards of professional behaviour

<sup>19</sup> College of Policing, [Guidance on outcomes in police misconduct proceedings](#), 2017, para 3.4

suspected misconduct is discovered. Some key actors have responsibilities in both systems.

### 1.3 Key actors

There are three key actors within complaints and discipline systems: The Independent Office for Police Conduct (IOPC), Professional Standards Departments (PSDs) and Police and Crime Commissioners (PCCs)/ Deputy Mayors.

#### IOPC

The IOPC is the independent body that oversees the police complaints system. The IOPC is responsible for:

- **Overseeing the police complaints system and maintaining statutory guidance on it.** The [statutory guidance](#) is intended to assist those working with complaints to achieve high standards and meet their legal obligations.<sup>20</sup>
- **Deciding how “referred” complaints, recordable conduct and death and serious injury (DSI) matters should be handled.** Certain complaints, recordable conduct matters and all DSI matters must be referred to the IOPC, other matters are ‘called in’ or initiated by the IOPC. The IOPC decides whether these matters should be investigated and how.
- **Conducting independent and directed investigations into certain complaints, conduct and DSI matters.**<sup>21</sup> The IOPC opened 508 independent investigations in 2019/20.<sup>22</sup>
- **Conducting independent reviews of some complaints handling.**

#### Professional standards departments

PSDs are specialist departments within police forces. They include policing teams responsible for investigating police corruption, vetting prospective police personnel and handling most complaints and conduct matters for their force.<sup>23</sup>

Any police personnel can handle a police complaint informally but complaints that require formal handling are typically dealt with by specialist personnel working in Professional Standards Departments (PSDs).

People working in PSDs have powers to handle complaints and conduct matters delegated by their chief constable.<sup>24</sup> The chief constable is

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<sup>20</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 1.2; s22, *Police Reform Act 2002*

<sup>21</sup> s10(2), *Police Reform Act 2002*

<sup>22</sup> IOPC, [Annual report and statement of accounts 2019/20](#), HC 511, July 2020, p14

<sup>23</sup> HMICFRS, [Professional standards department \(PSD\)](#) [last accessed 11 May 2020]

<sup>24</sup> [46](#), *The Police (Complaints and Misconduct) Regulations 2020*. **Note:** In this briefing references to “chief constable” should be read as including the Commissioners of both the Metropolitan Police Service and City of London Police.

therefore ultimately responsible for the handling these matters within their force.

PSDs have responsibilities in both the police complaints and discipline systems. They are typically responsible for:

- **Recording complaints that do not concern the conduct of the chief constable.** Sometimes PCCs/ Deputy Mayors are responsible for recording complaints (see below)
- **Referring certain complaints and conduct matters and all DSI matters to the IOPC.**
- **Handling complaints and conduct matters that are not referred to the IOPC** (and some that are, if the IOPC have decided they do not need formal investigation).

## Police and Crime Commissioners/ Deputy Mayors

PCCs, or the Deputy Mayor in London and Greater Manchester, have three core responsibilities within the police complaints and discipline system:

- **Holding their chief constable accountable for the performance of the local complaints and disciplinary processes.** Exactly how they do this is up to them but the IOPC has set some expectations in its [statutory guidance on the police complaints system](#). For example, PCCs/ Deputy Mayors are expected to scrutinise local complaints data.<sup>25</sup>
- **Handling complaints which concern the conduct of their chief constable.**<sup>26</sup>
- **Handling certain complaint reviews for their local force.** Complainants have a right to have the way their complaint was dealt with 'reviewed' if they were unhappy with how the force dealt with it. Certain complaint reviews are now carried out by their PCC/ Deputy Mayor.

### Extending responsibilities

PCCs/ Deputy Mayors can choose whether to extend their responsibilities for police complaints by adopting one of three models.<sup>27</sup> Those that choose not to extend their responsibilities operate 'model one'. The two models that extend a PCC's/Deputy Mayors' responsibilities are:

- 'Model two': PCCs/ Deputy Mayors also responsible for managing the 'recording stage'.
- 'Model three': PCCs/ Deputy Mayors also responsible for managing the recording stage and all correspondence with complainants throughout the complaints process.

Only three PCCs have extended their responsibilities for police complaints. Julia Mulligan (the PCC for North Yorkshire) has adopted

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<sup>25</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 4.12

<sup>26</sup> s29, *Police Reform Act 2002*; IOPC, [Statutory guidance on the police complaints system](#), February 2020, Annex A

<sup>27</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 1.27

model three. David Lloyd (the PCC for Hertfordshire) and Stephen Mold (the PCC for Northamptonshire) have adopted model two.<sup>28</sup>

### **Delegating responsibility**

PCCs/ Deputy Mayors can delegate their responsibilities for handling complaint reviews and (if chosen) their responsibilities under 'model two' and 'model three'.<sup>29</sup>

PCCs/ Deputy Mayors may choose to delegate these responsibilities to someone within their office. For example, the Deputy Mayor for Police and Crime in London has delegated the managing of local complaint reviews to her 'workforce and professional standards lead'.<sup>30</sup> However, PCCs/ Deputy Mayors can choose to delegate these responsibilities to someone outside their office, assuming they are not a serving police officer, another PCC, or someone who cannot work impartially.<sup>31</sup>

PCCs/Deputy Mayors *cannot* delegate their responsibility for overseeing the local complaints system.

## **1.4 Outcomes**

### **Learning**

The complaints and discipline systems are designed to support a learning culture within the police. Those handling complaint, conduct and DSI matters should always be looking for learning opportunities.<sup>32</sup> The handling of complaint, conduct and DSI matters can provide lessons for individual officers and improvements in force-wide and nation-wide practices.

Complaint, conduct and DSI matters investigation reports must include recommendations for learning. There is an expectation that swift action is taken to implement that learning.<sup>33</sup> Police forces should have processes in place to ensure that learning from complaints, conduct and DSI matters is shared with all staff.<sup>34</sup>

### **Apologies and mediation**

The police are expected to apologise as soon as they realise they got something wrong.<sup>35</sup> When it is obvious that a mistake was made, a force may apologise before the handling of a case is complete.<sup>36</sup> Apologies are said to demonstrate to the public that the police take responsibility for mistakes.<sup>37</sup> Sometimes forces will arrange for

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<sup>28</sup> Information provided to the Library via personal communication with the IOPC

<sup>29</sup> [r50, The Police \(Complaints and Misconduct\) Regulations 2020](#)

<sup>30</sup> Deputy Mayor of London, [Oversight of public complaints in the Metropolitan Police Service](#), 31 January 2020

<sup>31</sup> [r50, The Police \(Complaints and Misconduct\) Regulations 2020](#)

<sup>32</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 4.2

<sup>33</sup> *Ibid*, para 4.6

<sup>34</sup> *Ibid*

<sup>35</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 11.23; para 17.11

<sup>36</sup> *Ibid*, para 11.24

<sup>37</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 11.23

mediation to take place between complainants and relevant police personnel.<sup>38</sup>

## Remedies

Any “reasonable and proportionate” action can be taken in response to a complaint (assuming it can be taken legally). Seized property might be returned to a complainant or a caution might be removed from their criminal record (if it was issued incorrectly). Complaints may lead to a formal review of a policy or procedure.<sup>39</sup>

## Proceedings

Complaint, conduct and DSI matters can lead to human resources, formal conduct or disciplinary proceedings being initiated against police personnel. There are three types of proceedings that could be initiated as a result of poor police conduct:

- **Unsatisfactory performance procedure** is a police HR process. It is initiated when members of police personnel are unable to perform their duties to a satisfactory level.<sup>40</sup>
- A **reflective practice review process** is a formal police process. It is initiated when conduct has fallen short of what is expected of those who work in policing but is not serious enough to warrant disciplinary proceedings.<sup>41</sup>
- **Disciplinary proceedings** are formal proceedings. They are initiated when there is evidence that a police officer may have committed misconduct.<sup>42</sup> Officers are formally sanctioned when these proceedings find their behaviour amounted to misconduct.

**Criminal proceedings** are initiated when there is sufficient evidence that a criminal offence may have been committed.<sup>43</sup> In such cases, complaint/ conduct investigations are normally concluded before criminal proceedings are initiated. However, in exceptional circumstances, police personnel can be charged with a crime before a complaint/ conduct investigation is completed.<sup>44</sup>

There is now a specific criminal offence of “police corruption”. Police officers commit this offence when they exercise, threaten to exercise, or do not exercise, their powers in order to achieve a benefit to themselves (or a benefit/ detriment to another person) and any reasonable person would not expect their powers to be exercised (or not exercised) in that way.<sup>45</sup>

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<sup>38</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 12.5 & 17.14

<sup>39</sup> Ibid, para 17.14

<sup>40</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 4.59

<sup>41</sup> Ibid, para 4.44 and 4.45

<sup>42</sup> Ibid, para 29, Schedule 3, *Police Reform Act 2002*

<sup>43</sup> For information on when charges can be issued see: House of Commons Library, [Police powers: an introduction](#), July 2020, section 4

<sup>44</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 13.74

<sup>45</sup> [s26](#), *Criminal Justice and Courts Act 2015*

### No action

Complaints that are clearly fanciful may warrant no action beyond an acknowledgement.<sup>46</sup> Similarly, complaints that are irrelevant (like those concerning the conduct of an off-duty officer which clearly did not bring the service into disrepute) may warrant no action.<sup>47</sup>

Sometimes, even when the complainant's concerns appear valid, those handling the complaint will decide it is not reasonable or proportionate to take a complaint forward. For example, it may be too time consuming to investigate the complaint. Those handling recorded complaints should at least provide an assessment of whether the service provided by the police was acceptable.<sup>48</sup>

Some complaints are better dealt with outside the police complaints system. For example, complaints about how the police handled personal data are more effectively handled by the Information Commissioner's Office.<sup>49</sup>

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<sup>46</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 12.10

<sup>47</sup> Ibid

<sup>48</sup> Ibid, para 17.4

<sup>49</sup> Ibid, para 6.21

## 2. Reforms 2014-2020

Between 2014 and 2020 major reforms were made to both the police complaints and discipline systems. Most of the reforms became operational on 1 February 2020. This section provides an overview of what has changed and what has not changed. It also discusses the impact these changes might have.

### 2.1 The reforms process

#### Background

The Coalition Government 2010-2015 embarked on major reforms to policing, starting with reforms to police governance. Police and Crime Commissioners were created to replace police authorities. They were given responsibility for holding their chief constables accountable for running effective and efficient police forces. The first PCC elections took place in 2012, the same year as a new body responsible for police professional standards, the College of Policing, was established. The Serious and Organised Crime Agency was reformed as the National Crime Agency (NCA) a year later. Under the new governance system, the Home Office (through its governance of the NCA) focuses on tackling serious and organised crime nationally, with PCCs assuming political leadership for local policing.<sup>50</sup>

After securing these fundamental reforms to police governance the Coalition Government turned its attention to reforming police accountability. In July 2014 (the then Home Secretary) Theresa May announced an end-to-end review of both the complaints and discipline systems.<sup>51</sup> The Home Office conducted an internal review of police complaints and Theresa May commissioned retired Major-General Chip Chapman to conduct an independent review of police discipline (the [Chapman Review](#) published in October 2014).

#### Pre-legislative consultation

In December 2014, the Coalition Government published a [consultation paper](#) setting out detailed plans to reform the police complaints and discipline systems. In October 2015, the Conservative Government responded to this consultation.<sup>52</sup>

Meanwhile, Theresa May had asked Sheila Drew Smith to conduct an [independent review of the Independent Police Complaints Commission's \(IPCC\) governance arrangements](#) (published November 2015). The review was ordered after a Triennial Review of the IPCC

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<sup>50</sup> See: House of Commons Library, [Policing in the UK](#), February 2020 for more information about the reform of police governance between 2010-2015.

<sup>51</sup> HC Deb, [Police Reform](#), 22 July 2014

<sup>52</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems: Summary of consultation responses and next steps](#), March 2015

found its organisational structure incompatible with Cabinet Office guidance.<sup>53</sup>

### ***Policing and Crime Act 2017***

The Conservative Government incorporated its reform proposals into the wide-ranging [Policing and Crime Bill 2015-16](#), which became the [Policing and Crime Act 2017](#). The following changes to the original Bill were made during its passage through Parliament:

- Government amendments to the Bill added new provisions relating to the IPCC. They incorporated Sheila Drew Smith's proposals to rename and reform the IPCC and create the new Independent Office for Police Conduct.<sup>54</sup>
- Pressure from Lords and the Official Opposition secured Government concessions regarding the Bill's provisions for historical misconduct cases. Provisions in the 2017 Act now allow for the yearlong time limit to bring forward misconduct cases against former officers can be overruled by the IOPC in exceptional cases.<sup>55</sup>

The 2017 Act received Royal Assent on 31 January 2017. Some of its provisions came into force immediately but the secondary legislation providing the detail for the complaints and discipline systems was not implemented until 1 February 2020.<sup>56</sup>

### **Elish Angiolini review**

In January 2017, a major review of deaths and serious incidents in police custody was published. Theresa May had asked Dame Elish Angiolini QC to conduct the review in 2015 following criticisms of IPCC investigations into the death in police custody of Sean Rigg and Olaseni Lewis.<sup>57</sup> The review made several specific recommendations about how the (then) IPCC should conduct investigations into death and serious injury matters occurring in custody and the wider system for police discipline. The Government's response (published October 2017) stated the 2017 Act reforms would address Dame Elish's concerns regarding the police complaints and discipline systems.

## **2.2 Why the reforms?**

### **Public confidence in the complaints system**

There have been longstanding concerns that the public lack confidence in the police complaints system.<sup>58</sup> The system is the primary mechanism

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<sup>53</sup> Home Office, [Triennial Review of the Independent Police Complaints Commission](#), March 2015, para 4

<sup>54</sup> House of Commons Library, [Policing and Crime Bill: Committee Stage Report](#), April 2016, section 3.1

<sup>55</sup> House of Commons Library, [Policing and Crime Bill – Lords Amendments](#), January 2019

<sup>56</sup> Home Office, [Home Office overhauls police complaints and discipline process](#), January 2020

<sup>57</sup> Home Office, [Home Secretary announces review of deaths in police custody](#), July 2015; HC Deb, [Independent Review: Deaths in Police Custody](#), 30 October 2017

<sup>58</sup> See, for example: Smith, G. (2006). [A Most Enduring Problem: Police Complaints Reform in England and Wales](#). *Journal of Social Policy*, 35(1), 121-141.

by which the actions of operationally independent police forces can be challenged by members of the public. Complaints systems that enable the public to challenge poor and unethical behaviour are seen as essential to maintaining public trust and confidence in the police.<sup>59</sup>

60% of respondents to the 2019/20 Crime Survey for England and Wales (CSEW) said they had been dissatisfied with the police in the last five years, but only 10% of respondents said they had complained in that time period.<sup>60</sup> These figures have hardly changed in nine years.

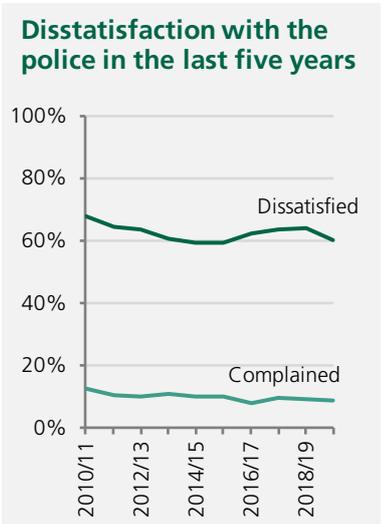
The Coalition Government argued that a lack of independence in the system was causing a lack of public confidence.<sup>61</sup> They considered that creating a system in which PCCs would have a greater role, would bring a level of independence to complaints handling. PCCs would also be directly accountable to the public for this function via the ballot box.<sup>62</sup> The Government felt that PCCs should be left to choose the level of their involvement in complaints, saying this, was “essential to the long term aims of the policy underpinning their introduction”.<sup>63</sup>

Whilst PCCs were positive about this proposal to give them freedom to get involved in complaints about their force, others were sceptical. For example, senior police officers were concerned that giving a greater role to PCCs in complaint handling could erode the operational independence of police forces.<sup>64</sup>

The Government were also concerned that the public were put off complaining by the complexity of the system. They were therefore keen to streamline its bureaucratic processes.<sup>65</sup> However, critics argued that the new flexibility they proposed for PCCs would undermine these efforts and create a “fragmented system”.<sup>66</sup>

## Vexatious complaints

The complexity of the system was said to be facilitating vexatious complaints. Those working in the system felt that their ability to handle legitimate complaints thoroughly was impeded by the time they were having to spend dealing with persistent and vexatious complainants.<sup>67</sup> Complicated procedures like “disapplication” appeared to be creating loopholes whereby oversight of the handling of ‘vexatious’ complaints



<sup>59</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, para 1.17

<sup>60</sup> ONS, [Crime in England and Wales: Annual supplementary tables](#), March 2020, table s27

<sup>61</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, para 2.10

<sup>62</sup> Ibid, para 2.28

<sup>63</sup> Ibid, para 2.29

<sup>64</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems: summary of consultation responses and next steps](#), March 2015, para 2.22

<sup>65</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, paras 2.18

<sup>66</sup> Ibid, para 2.15

<sup>67</sup> Ibid, para 2.10

could be compromised.<sup>68</sup> The Government argued that a simplified system would allow forces to more efficiently deal with complaints.<sup>69</sup>

### Independence of the IPCC

Dame Elish Angiolini's review of death and serious incidents in police custody highlighted a perception:

there is still a view amongst many families of those who have died in custody and of campaigners, lawyers and police officers who spoke to this review that the IPCC does not always feel truly independent of the police or of police culture.<sup>70</sup>

Dame Elish noted that "this perception may or may not be justified" but that "if an independent investigative body is to work, it must have the trust of families, and the full cooperation of police forces."<sup>71</sup> She made a series of recommendations for how the independent investigation of death's in police custody could be improved, including that:

- The IPCC should phase out its reliance ex-police officers. Dame Elish said the IPCC should consult rather than hire ex-police officers if they needed their investigatory skills. The IPCC should consider consulting officers from abroad. Dame Elish was argued that the IPCC should use these consultants to build the skills they need internally.<sup>72</sup>
- The IPCC to establish a specialist *Death and Serious Injuries Unit* to investigate DSI matters, staffed entirely by investigators without a police background.<sup>73</sup> However, the IPCC argued that a specialist DSI Unit would be impractical given their caseload.<sup>74</sup>
- Senior officers should be held personally responsible for protecting DSI scenes until the arrival of an IPCC investigator. She also called for a "strong focus" on obtaining independent evidence (CCTV, body-worn video and independent witness statements) following a DSI incident in custody. Dame Elish argued that officers involved in a DSI matter should not confer before providing an initial account of the incident.<sup>75</sup>

### Problems with the discipline system

Several high-profile incidents, including allegations of a history of misconduct in national undercover policing units and the police response to the death of Ian Tomlinson, shone a light on the police discipline system. These incidents highlighted several specific problems with the system (like the ability to bring criminal charges against officers, the inability of the system to handle matters involving former

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<sup>68</sup> IPCC, [Focus: Fanciful, vexatious, oppressive, or abuse of procedure](#), June 2014, p9

<sup>69</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, para 2.43

<sup>70</sup> Dame Elish Angiolini, [Report of the Independent Review of Deaths and Serious Incidents in Police Custody](#), January 2017, para 9.5

<sup>71</sup> Ibid, para 9.6

<sup>72</sup> Ibid, para 58

<sup>73</sup> Dame Elish Angiolini DBE QC, Report of the Independent Review of Deaths and Serious Incidents in Police Custody, January 2017, recommendation 55 & 58

<sup>74</sup> IPCC, [Response to the independent review of death and serious incidents in police custody by Dame Elish Angiolini](#), undated

<sup>75</sup> Ibid, pages 241- 243

officers and the lack of support for police whistle-blowers). Underlying all these concerns was a feeling that the police discipline system lacked transparency and could not be effectively scrutinised.<sup>76</sup>

As Theresa May announced the Chapman Review, she committed the Government to legislating for misconduct hearings (the most serious form of disciplinary proceeding) to be typically held in public.<sup>77</sup> She also promised to create a “police barred list” to ensure that officers dismissed from one force could not be hired by another.<sup>78</sup>

### **Chapman recommendations**

Major Chapman’s review found the police discipline system to be “opaque” and “adversarial”. He recommended the system be independently overseen to improve consistency. He suggested this could be a role for the College of Policing.<sup>79</sup>

Major Chapman identified widely held concerns that the disciplinary processes were too long. He said delay was “almost institutionalised in the system by its adversarial approach” and legal nature.<sup>80</sup> The Government agreed that the system could be “made more efficient”. They raised concerns that delays can “leave some officers spending large amounts of time suspended from duty on full-pay when they are accused of serious misconduct”.<sup>81</sup>

Major Chapman argued that the system was fostering a blame culture in the police because officers did not feel they could make mistakes and learn from them.<sup>82</sup> The Government agreed, they argued that the police discipline system should be “refocused” so that it better facilitated learning.<sup>83</sup> They also proposed that low level misconduct should be dealt with through performance management processes rather than disciplinary proceedings. They therefore proposed that performance management and disciplinary processes be merged.<sup>84</sup>

## **2.3 What has changed?**

### **The Independent Office for Police Conduct (IOPC) has replaced the Independent Police Complaints Commission (IPCC)**

The IOPC has a new corporate structure. It continues to operate as a non-departmental body sponsored by the Home Office which now appoints its non-executive board. The Home Office used to appoint IPCC

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<sup>76</sup> HC Deb, [Police Reform](#), 22 July 2014

<sup>77</sup> HC Deb, [Police Reform](#), 22 July 2014, cc1266

<sup>78</sup> Ibid, cc1271

<sup>79</sup> Major Chapman, [An Independent Review of the Police Disciplinary System in England and Wales](#), October 2014, p69

<sup>80</sup> Ibid, p49

<sup>81</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, para 3.19

<sup>82</sup> Major Chapman, [An Independent Review of the Police Disciplinary System in England and Wales](#), October 2014, p69

<sup>83</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems: Summary of consultation responses and next steps](#), March 2015, para 3.6 to 3.8

<sup>84</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems: Summary of consultation responses and next steps](#), March 2015, para 3.9 to 3.10

“Commissioners”, who were collectively responsible, with its Crown appointee Chief Executive, for the work of the IPCC.<sup>85</sup> Now the responsibility for most of the IOPC’s core functions is held solely with its Crown appointee ‘Director General’ (currently Micheal Lockwood).<sup>86</sup> He has powers to delegate some of his functions to other IOPC staff.<sup>87</sup> The Director General, like the former IPCC Chief Executive/ Commissioners, must be recruited from outside of policing.

The IOPC Director General has new powers to bar former police officers from any IOPC role.<sup>88</sup> Under the Director General’s current [scheme of delegation](#) (published January 2020) the Deputy Director General positions for ‘Operations’ and ‘Strategy and Corporate Services’ are barred to former officers. The scheme also states that “careful consideration” would be given before hiring former police officers in any Executive or Regional Director role.<sup>89</sup> However, the Director General has chosen not to bar former police officers from senior investigative roles. The IPCC’s response to Dame Elish noted that:

the practical policing experience of those who come from a police background cannot be taught and can be extremely useful in providing context and robustly scrutinising and challenging police behaviour.<sup>90</sup>

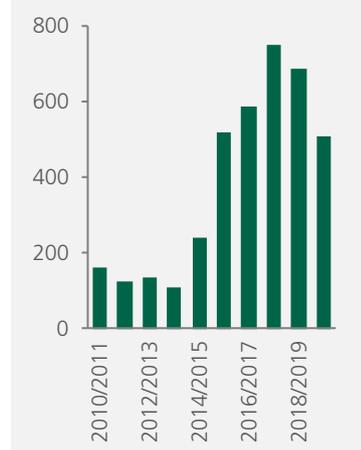
The IOPC has committed to building investigative skills in-house and has developed an investigator traineeship.<sup>91</sup> As at January 2019, 28% of the IOPC’s operational staff had a police background.<sup>92</sup>

Since February 2020, the IOPC has had stronger powers to direct some police complaint and conduct investigations which are being conducted by police forces (previously the IPCC used to “manage” some force investigations). They also have new powers to initiate their own handling of any complaint and conduct matters. The Home Office has also increased IOPC capacity with extra funding since 2013.<sup>93</sup> The number of independent investigations opened by the IOPC has increased over recent years. In 2019/20 it opened more than twice the number of independent investigations as its predecessor body the IPCC in 2010/11.<sup>94</sup>

### **PCCs/ Mayors have new responsibilities in the complaint system**

PCCs/ Deputy Mayors are now responsible for some complaint “reviews” for their forces. [Review](#) is the new appeals process for complainants unhappy with how their complaint was handled by their

**Independent investigations opened by the IPCC/ IOPC**



<sup>85</sup> Sheila Drew Smith, [An independent review of the governance arrangements of the Independent Police Complaints Commission](#), November 2015, para 2.12 to 2.17

<sup>86</sup> s10, *Police Reform Act 2002*

<sup>87</sup> Schedule 2, para 6A, *Police Reform Act 2002*

<sup>88</sup> Schedule 2, para 6A(6), *Police Reform Act 2002*

<sup>89</sup> IOPC, [Director General Scheme of Delegation](#), January 2020, para 4-5

<sup>90</sup> IPCC, [Response to the independent review of death and serious incidents in police custody by Dame Elish Angiolini](#), undated

<sup>91</sup> Ibid; IOPC, [investigative roles](#) [last accessed 27/08/20]

<sup>92</sup> Correspondence with the IOPC

<sup>93</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems: Summary of consultation responses and next steps](#), March 2015, para 5.9

<sup>94</sup> IOPC, [Annual report and statement of accounts 2019/20](#), July 2020, p14

police force. Previously appeals were dealt with by police forces themselves or the IPCC (depending on their subject matter). Police forces are not involved in handling complaint reviews. Instead PCCs/ Deputy Mayors or the IOPC handle them (depending on the subject matter). This ensures that all “appeals” are now dealt with independently of police forces.

**Those handling complaints have more discretion to resolve some matters outside the formal systems**

Allowing them this discretion is intended to allow them to respond more effectively to these complaints and free up time to investigate more serious and concerning allegations.<sup>95</sup>

**The systems are now explicitly focussed on learning and continuous improvement.**

Misconduct has been redefined to mean a breach of the policing standards that is so serious it warrants disciplinary action (previously misconduct was any breach of the standards). This is supposed encourage officers to own and learn from their mistakes by reducing the seriousness of the potential outcome in some cases.<sup>96</sup> Under the new system police forces are expected to respond to learning recommendations made by the IOPC.

**The complaints system has been simplified. The simpler system should speed up complaint handling.**

Some complicated processes in the old system (such as “disapplication”) have been repealed. Some of the terminology in the system has been changed to aid public understanding of the system.

The repeal of processes like “disapplication” and the strengthening of the IOPC’s powers to direct the initiation of disciplinary proceedings in cases they have been involved in should ensure cases move through the system faster. The IOPC was already focusing on speeding up complaint handling across the system before the reforms went live in February 2020.<sup>97</sup> This includes the length of its own investigations. In March 2019, it reported that it now completes around 80% of its investigations within a year an improvement on 68% in 2017.<sup>98</sup>

**Specific reforms were made to the discipline system**

- Investigators are now expected to explain when their investigations take longer than 12 months.
- Disciplinary proceedings can be brought against some former officers. Former officers can now face disciplinary proceedings if allegations come to light within 12 months of them leaving the police. In addition, the IOPC has new powers to determine that disciplinary processes may be initiated against officers who have been out of service for longer than twelve months.

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<sup>95</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 1.6

<sup>96</sup> Ibid, para 4.6

<sup>97</sup> IOPC, [Making a difference Impact report 2018/19](#), March 2019, p15-16

<sup>98</sup> Ibid, p16

- Some disciplinary proceedings are now held in public. There is now an assumption that misconduct hearings (the most serious form of proceeding) are held in public. Misconduct hearings are now independently chaired by a legally qualified professional. The IOPC also has new powers to present a case at these hearings.
- Officers dismissed from the police service (or former officers who it is found at disciplinary proceedings would have been dismissed) are now placed on a “barred list”. Those listed on the barred list are prevented from working for any police force ever again.<sup>99</sup>

### **Further reforms will facilitate police whistleblowing**

Changes were made to police conduct regulations to clarify that officers cannot be investigated for misconduct for making “protected disclosures” alone.<sup>100</sup> The IOPC are to gain new powers to independently investigate certain concerns raised by whistle-blowers with their consent. A date has not been set for this change to be brought into force.

### **The IOPC has published new guidance to police forces on preserving the scene of a death and/or serious injury incident**

Police forces already had a statutory duty to take “all steps” necessary to preserve the scene of a DSI incident.<sup>101</sup> In January 2019, the IOPC published new statutory guidance to forces on “achieving best evidence in death and serious injury matters”.<sup>102</sup> The guidance provides advice on taking evidence from non-policing and policing witnesses and the collection of independent evidence (such as CCTV and body-worn video images). The guidance states that policing witnesses “should be instructed not to speak (or otherwise communicate) about the incident with each other”. It also says that a record should be made of this instruction being given to officers.<sup>103</sup>

### **Advocacy groups can now bring ‘super complaints’ against the police**

Designated public and charitable organisations can ask Her Majesty’s Inspectorate for Constabulary and Fire & Rescue Services (HMICFRS), the IOPC and the College of Policing to look at what they consider to be widespread issues affecting policing in England and Wales.

Three super complaints have so far been deemed eligible for investigation:

- [Police response to victims of modern slavery](#) (July 2019);
- [Police use of protective measures in cases of violence against women and girls](#) (July 2019);
- [Police data sharing for immigration purposes](#) (December 2018).

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<sup>99</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, section 7

<sup>100</sup> [r2\(5\)](#), *The Police (Conduct) Regulations 2020*

<sup>101</sup> Schedule 3, paragraph 14B, *Police Reform Act 2002*

<sup>102</sup> IOPC, [Statutory guidance to the police force on achieving best evidence in death and serious injury matters](#), January 2019

<sup>103</sup> *Ibid*, para 20-21

HMICFRS has yet to comment on a further super complaint submitted in March 2020 ([police response to police perpetrated domestic abuse](#)).

## 2.4 What has not changed?

### **The systems remain complex**

Whilst some complex aspects of the old systems (like the process for investigating complaint/ conduct matters and the appeals process) have been simplified, the reforms have arguably added complexity in some areas. For example, there are now different complaint processes across England and Wales depending on what responsibilities the PCC has chosen to assume. It might be difficult for some to understand who is responsible for what in the complaints system locally, particularly if more PCCs choose to expand their responsibilities going forward.

The IOPC are committed to supporting “the implementation of changes to legislation, which simplify the police complaints and discipline system.”<sup>104</sup> Only time will tell if the public find it easier to engage with the reformed systems.

### **Police forces have retained a significant amount of autonomy to handle complaints**

Only three PCCs have chosen to assume responsibility for the recording stage of police complaints (those in North Yorkshire, Herefordshire and Northamptonshire). In these three forces some low-level complaints are now dealt with by the office of the PCC, everywhere else all complaints not referred to the IOPC are dealt with by police forces.

The “mandatory referral criteria” which designates which complaint matters must be referred to the IOPC were not fundamentally altered (though they were widened to include abuse of position for a sexual purpose). Statutory guidance does encourage forces to voluntarily refer complaints if appropriate and the IOPC has increased capacity.<sup>105</sup> But ultimately, the system is still designed with an assumption that forces investigate most complaints and the IOPC independently investigates only the most serious and sensitive cases.<sup>106</sup>

PCCs now have a statutory responsibility for scrutinising their force’s complaint handling. The Government assumes that ineffective PCC’s will suffer at the ballot box.<sup>107</sup> This would require complaint handling to be a prominent election issue for PCCs. Public engagement with PCC elections in general has historically been low, just 27.3% of the electorate turned out at the 2016 PCC elections.<sup>108</sup>

### **The discipline system is still largely self-governed by police forces**

The Government dropped plans to make the College of Policing responsible for the independent oversight to the discipline system

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<sup>104</sup> IOPC, [Strategic plan 2018-2021](#), November 2018, p15

<sup>105</sup> IOPC, [Statutory guidance to the police force on achieving best evidence in death and serious injury matters](#), January 2019, paras 9.31-9.33; see also p18 of this briefing

<sup>106</sup> IOPC, [Statutory guidance to the police force on achieving best evidence in death and serious injury matters](#), January 2019, p179

<sup>107</sup> [PO HL7063: Police and Crime Commissioners](#), answered 2 May 2018

<sup>108</sup> See: House of Commons Library, [Police and Crime Commissioner Elections: 2016](#), May 2016

before introducing its reforms to Parliament. Instead it chose to “work with the College to determine what (an independent oversight role) could include in the future”.<sup>109</sup> The Government has not made any announcement about the progress of this work since. The College of Policing did publish [guidance on outcomes in misconduct proceedings](#) in 2017.

The IOPC were given stronger powers with regards to some conduct matters (they can require forces initiate disciplinary proceedings in cases they have been involved with without a lengthy consultation process and present a case at misconduct hearings). There is now an assumption that misconduct hearings (the most serious types of disciplinary proceeding) are held in public and they must be independently chaired by legally qualified persons. The chair is chosen by the relevant PCCs/ Deputy Mayors from a list they maintain.<sup>110</sup>

Most conduct matters are still dealt with entirely by police forces. Professional Standards Departments (PSDs) investigate most conduct matters without IOPC involvement and all disciplinary proceedings are run and overseen by police forces (including cases investigated/ directed by the IOPC). Much of the discipline system is therefore still conducted out of public view and forces are only required to report information about disciplinary matters finalised as misconduct to the Home Office.<sup>111</sup>

### **Treatment of Black, Asian and Minority Ethnic officers**

There are long held concerns that Black, Asian and Minority Ethnic (BAME) police officers are unfairly treated in police disciplinary proceedings.<sup>112</sup> The latest analysis of the issue published by the National Police Chiefs Council (NPCC) looked at complaint and conduct cases handled by Professional Standards Departments (PSDs) between January and March 2019.<sup>113</sup> The analysis showed that 10% of conduct matters involved BAME officers despite only 7% of police officers coming from BAME backgrounds. By contrast, the analysis *did not* find an ethnic disparity in complaint allegations (6% of public complaints involved BAME officers). The analysis found complaint and conduct matters involving accused BAME officers were more likely to be considered serious by those handling them. 33.1% of complaint matters and 92.6% of conduct matters involving BAME officers were initially assessed as misconduct/ gross misconduct by those handling them (compared with 12.4% and 84.6% for white officers respectively).<sup>114</sup>

The NPCC linked the ethnic disparities to low numbers of BAME officers working in PSDs and their working practices. They found that 63% of

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<sup>109</sup> Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems: Summary of consultation responses and next steps](#), March 2015, para 3.8

<sup>110</sup> Ibid, para 11.35; [r28\(4\)](#), *The Police (Conduct) Regulations 2020*

<sup>111</sup> See: Home Office, [Police workforce, England and Wales: misconduct](#), September 2019

<sup>112</sup> See for example: National Black Police Association, [Black police reporting racism 'labelled troublemakers'](#), June 2012

<sup>113</sup> NPCC, [Understanding Disproportionality in Police Complaint & Misconduct Cases for BAME Police Officers & Staff 2019](#), December 2019

<sup>114</sup> NPCC, [Understanding Disproportionality in Police Complaint & Misconduct Cases for BAME Police Officers & Staff 2019](#), December 2019, p5-6

PSDs had no BAME people working in them at all. A similar percentage (62%) were not applying additional considerations when conducting severity assessments in cases involving BAME officers. Over three quarters of PSDs (78%) had no action plan to address the ethnic disparities in their caseload.<sup>115</sup>

It is hoped that the move to refocus the discipline system on learning will help address ethnic disparities in PSD caseloads. The new learning emphasis should allow middle managers to handle low level conduct matters themselves without passing cases to PSDs.<sup>116</sup> Only time will tell what impact this will have on BAME officers.

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<sup>115</sup> NPCC, [Understanding Disproportionality in Police Complaint & Misconduct Cases for BAME Police Officers & Staff 2019](#), December 2019, p61-62

<sup>116</sup> See: BBC Radio 4, [Transcript of 'File on 4' - 'Racism in the police'](#), June 2020, p11

## 3. Complaints

### Looking for information to help with constituency casework?

The Library has published a [short guide to police complaints](#) which helps MPs and their staff handling casework involving dissatisfaction with the police.

### 3.1 The basics

**A police complaint is “any expression of dissatisfaction with a police force that is expressed by or on behalf of a member of the public”.**<sup>117</sup> Complaints can be about the way a police force is run (procedures, policies or initiatives) or the conduct of its staff. However, people cannot complain about the conduct of police personnel if they have not been adversely affected personally by that conduct.<sup>118</sup>

**The police complaints process has four stages:**

#### Four stages to the police complaints process

- 1 Recording:** A decision to record a complaint is made. Recorded complaints must be handled in line with statutory rules set out in Schedule 3 of the *Police Reform Act 2002* (as amended).

Complaints *must* be recorded when they concern certain allegations and when the complainant requests it.

Complaints that aren't recorded are resolved at this stage; normally by a conversation which satisfies the complainant's concerns. Those unhappy with this outcome can ask for the complaint to be recorded.
- 2 Referral:** A decision to refer a recorded complaint to the Independent Office for Police Conduct (IOPC) is made. The IOPC decide if referred complaints should be investigated and if so how.

Complaints involving or connected to certain allegations *must* be referred to the IOPC “without delay”. Other complaints may be voluntarily referred. The IOPC has the power to ‘call in’ any complaint at any point. Complaints that are ‘called in’ *must* be referred to the IOPC. The IOPC can also treat complaints that come to their attention as having been referred to them. This is known as the ‘power of initiative’.
- 3 Handling:** A decision as to whether and how recorded complaints should be investigated is made. An outcome is either decided without a formal investigation or an investigation takes place which informs an outcome. Recorded complaints may be resolved without a formal investigation by either an action in response to the complaint or by a decision to take no further action.

Complaints involving a credible allegation that a person serving in the police may be guilty of misconduct, may have committed a criminal offence or a may have breached the right to life/ prohibition from torture *must* be investigated. Other complaints may be investigated when it is reasonable and proportionate.

The IOPC decides whether complaints referred to them should be investigated and how. The IOPC may direct the relevant force to investigate a complaint or decide to investigate it itself.

<sup>117</sup> s12(1), *Police Reform Act 2002*; IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 5.2

<sup>118</sup> **Note:** Unless they are acting with written consent of someone who was personally adversely affected by police conduct.

At the end of the investigation a report is produced that sets out the evidence and any learnings that can be taken forward. Reports about the conduct of police personnel will provide an opinion about whether or conclude if those involved should be subject to disciplinary proceedings. Normally the local police force decides how to **resolve** a complaint based on the report’s findings. The IOPC directs how investigation reports written or directed by them should be resolved.

**Review:** Some complainants with recorded complaints have a right to apply for the complaint handling in their case reviewed.

Complaints which involve certain allegations are reviewed by the IOPC, all other eligible complaints are reviewed by the relevant Police and Crime Commissioner’s office (or the body they have designated).

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The IOPC can *direct* forces to progress complaints further or change their findings. PCCs/ Mayors can *recommend* how a complaint can be progressed or how findings could be changed. There is an expectation that PCC/ Deputy Mayoral recommendations are complied with, but police forces can disagree with them.

### Decisions at every stage must be “reasonable and

**proportionate”**.<sup>119</sup> What is reasonable and proportionate will depend on the specifics of the complaint. Those handling complaints should consider several factors including; the seriousness of the allegation, the potential for learning, how resource intensive taking the complaint forward will be alongside their overarching responsibilities to scrutinise the police and hold them accountable.<sup>120</sup> Police complaint decisions should be fair, effective, impartial and evidence based.<sup>121</sup>

## 3.2 Recording

Deciding whether a complaint should be recorded is the first important decision when dealing with a police complaint. Recording a complaint means it *must* be dealt with under the procedure set out in Schedule 3 of the *Police Reform Act 2002*.

In most police force areas, the local police force is responsible for deciding whether a complaint should be recorded. In Hertfordshire, North Yorkshire and Northamptonshire the office of the PCC is responsible for making recording decisions.

Those making a recording decision must contact the complainant “as soon as possible” upon receipt of a complaint. They should use this conversation to better understand the complaint and ask the complainant how they would like it to be dealt with.<sup>122</sup>

A complaint must be recorded if:<sup>123</sup>

- at any point the complainant wants it to be recorded.
- It involves someone’s death or serious injury.

<sup>119</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 3.2 & 3.3

<sup>120</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 3.5 & para 3.12

<sup>121</sup> *Ibid*, para 3.18

<sup>122</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 6.12

<sup>123</sup> *Ibid*, para 6.27; paragraph 2, Schedule 3, *Police Reform Act 2002*

- It involves an allegation of criminal conduct or misconduct by a serving member of a police force.
- It involves a possible infringement of the right to life or the prohibition of torture under the [European Convention of Human Rights](#).
- It meets the criteria for mandatory referral to the IOPC (see below).

### Handling complaints outside of Schedule 3

Some complaints are handled outside the formal statutory process set out in Schedule 3 of the 2002 Act and are resolved without being recorded.

Handling cases outside of Schedule 3 is supposed to help police forces resolve a complainant's concerns quickly and efficiently. Complaints handled outside of Schedule 3 should therefore be resolved to the complainant's satisfaction.<sup>124</sup> Complainants who are not happy with how their complaint was handled outside of schedule 3 can ask for it to be recorded.<sup>125</sup>

### 3.3 Referral

The referral process brings the IOPC into the handling of a complaint. There are three ways in which the IOPC can become involved in the handling of a complaint: it can be formally referred to them, 'called in' or 'initiated' by them. The IOPC decide whether and how referred complaints are investigated.

#### Formal referrals

Any complaint can be referred to the IOPC. Those handling complaints are encouraged to voluntarily refer those that could have a significant impact on public confidence in the police.<sup>126</sup>

Certain complaints and conduct matters *must* be referred to the IOPC. These are complaints which allege that someone in the police:<sup>127</sup>

- was involved in someone's death or serious injury whilst on duty;
- committed a serious assault or sexual offence;
- committed any serious criminal offence (those which carry a fixed sentence or a minimum sentence of seven years) or any offence aggravated by discriminatory behaviour;
- committed serious corruption, including abusing their position for sexual purposes or to pursue an inappropriate emotional relationship;
- committed misconduct where their behaviour was aggravated by discrimination.

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<sup>124</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 6.20

<sup>125</sup> Ibid, para 6.25

<sup>126</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 9.31

<sup>127</sup> Ibid, p56 and p57

## 'Calling in' complaints

The IOPC can 'call in' any complaint. This essentially requires those handling it to refer it to them. The IOPC can use this power to require a complaint to be referred to them at any stage in the complaints process (even if the relevant PSD has already conducted an investigation).<sup>128</sup>

## Power of initiative

The IOPC can treat any complaint that comes to its attention as if it has been referred to it using its 'power of initiative'. For example, the IOPC could use its power of initiative to open an investigation into an incident reported in the media.<sup>129</sup>

## 3.4 Handling

Any recorded complaint can be investigated but not all are. The IOPC decides whether referred complaints need investigating and can determine that any referred complaint *must* be investigated.<sup>130</sup> Any complaint which indicates that a member of police personnel may have committed a criminal offence or be guilty of misconduct *must* be investigated. Any complaint which indicates that the right to life or the prohibition of torture might have been infringed *must* be investigated.<sup>131</sup> Other recorded complaints may be investigated if it is reasonable and proportionate to do so.<sup>132</sup>

There are three types of investigation:

- PSDs can decide to investigate recorded complaints that have not been referred to the IOPC via a **local investigation** (assuming the complaint is not about the conduct of a chief officer).<sup>133</sup> The IOPC can also decide that a referred complaint should be investigated locally.
- The IOPC can decide that a referred complaint should be investigated by the relevant PSD via a **directed investigation**. In directed investigations the relevant PSD conducts the investigation based on parameters set by the IOPC. The IOPC can set the terms of reference, investigative steps and can take responsibility for any decision in the investigation process.
- The IOPC can decide that a referred complaint should be investigated by its staff via an **independent investigation**.

Some complaints which concern the conduct of police personnel are subject to **special procedures** which protect the rights of those being investigated. Special procedures must be followed when a complaint indicates that a police officer or a police special may have committed a crime or breached the policing Standards of Professional Behaviour. See

<sup>128</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, paras 9.34 & 9.35; para 4 & 13, Schedule 3, *Police Reform Act 2002*.

<sup>129</sup> *Ibid*, paras 9.36- 9.39; para 4A, 13A & 14CA, Schedule 3, *Police Reform Act 2002*.

<sup>130</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 10.6

<sup>131</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 10.6

<sup>132</sup> *Ibid*, para 10.5

<sup>133</sup> **Note:** complaints which concern the conduct of the chief officer are handled by the office of the relevant PCC/ Deputy Mayor. See: IOPC, [Statutory guidance on the police complaints system](#), February 2020, Annex A.

[section 4.3](#) of this briefing for more information about these types of investigations.

All investigations involve specialist staff (staff working in PSDs in **local** and **directed** investigations and staff working in the IOPC in **independent investigations**) taking reasonable steps to gather evidence about the incident.<sup>134</sup>

All investigations should be conducted in a timely manner. PSDs must write to the IOPC, their PCC and the complainant when local investigations take longer than a year. They must explain what is causing the delay and how they are planning to complete their investigation.<sup>135</sup> The IOPC must write to the relevant force, PCC and complainant when directed or independent investigations take longer than a year to complete.<sup>136</sup>

At the end of the investigation a report is produced. The investigation report outlines and analyses the available evidence in the incident and makes recommendations as to how the complaint should be resolved.<sup>137</sup> Investigation reports about local investigations subject to **special procedures** provide an assessment of whether the officer's actions would amount to misconduct if proved and what sort of disciplinary proceedings should follow.

How investigation reports are taken forward differs depending on what type of investigation was conducted.

## Local investigations

Investigation reports about local investigations are written by staff in PSDs and submitted to force management (with copies sent to force management). Force management decide how the report should be taken forward and they are normally responsible for communicating this outcome to those involved.<sup>138</sup>

Force management *must* decide whether the officer(s) involved have a "case to answer" regarding their conduct and initiate disciplinary proceedings as appropriate.<sup>139</sup> If the investigation indicated that the officer may have committed a criminal offence they must pass the matter to the Crown Prosecution Service (CPS) as appropriate.<sup>140</sup>

## Directed investigations

Investigation reports about directed investigations are written by staff in PSDs and submitted to the IOPC (with copies sent to force management). PSD investigators should share these reports with the IOPC for comments before they are finalised. The IOPC can make an

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<sup>134</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 13.2

<sup>135</sup> Ibid, p99

<sup>136</sup> Ibid, para 13.82

<sup>137</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 14.8 & 14.9

<sup>138</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 17.44. **Note:** In North Yorkshire the PCC is responsible for communicating the force management's decision at the end of an investigation.

<sup>139</sup> Ibid

<sup>140</sup> Ibid, p121

addendum to a directed investigation report if they cannot reach an agreement with the author on its content.<sup>141</sup>

The IOPC recommends how the report should be taken forward. Force management must respond to any recommendations made by the IOPC. The IOPC decides if officers have a “case to answer” regarding their conduct and if the case should be passed to the CPS. Force management *must* initiate disciplinary proceedings when directed to by the IOPC.<sup>142</sup>

## Independent investigations

Investigation reports about independent investigations are written by staff in the IOPC and are owned by the IOPC. Copies of the full report are sent to force management. Anonymised summaries are published on the IOPC’s website (sometimes the IOPC publishes the full report online).<sup>143</sup> Police forces are required to respond to recommendations made in independent investigation reports.<sup>144</sup> In independent investigations subject to **special procedures**, the IOPC determines whether an officer has a case to answer for misconduct and directs the relevant force to initiate proceedings appropriately. The IOPC will also pass the cases to the CPS where appropriate.

## Death and serious injury matters

Investigation reports concerning “death or serious injury” matters, no matter what type of investigation was conducted, are sent to the IOPC. The IOPC determines how findings should be taken forward.<sup>145</sup>

## 3.5 Review

Those with recorded complaints resolved by police forces have the right to have their complaint reviewed if they are unhappy with the outcome.<sup>146</sup> There is no right to review a complaint that was subject to a directed or independent investigation and therefore resolved by the IOPC. However, the IOPC can reopen complaints if there is compelling evidence to do so.<sup>147</sup>

The whole process of handling the complaint is reviewed. A review will be “upheld” when the outcome is not considered reasonable and proportionate. When the handling of a complaint is not considered “reasonable and proportionate” the review will only be upheld when it is considered that the outcome was affected by this handling.<sup>148</sup>

The office of the relevant Police and Crime Commissioner/ Deputy Mayor is responsible for conducting most complaint reviews. The IOPC

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<sup>141</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 14.6

<sup>142</sup> Ibid, para 17.65

<sup>143</sup> See: IOPC, [Our investigations](#) [last accessed 23 June 2020]

<sup>144</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, paras 17.32 to 17.37

<sup>145</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, paras 17.40 to 17.43

<sup>146</sup> Ibid, para 18.2

<sup>147</sup> Ibid, para 18.3

<sup>148</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 18.32 & 18.33

conducts reviews of some complaints. The IOPC will conduct a complaint review for:

- all referred complaints (no matter how the complaint was referred);
- complaints about the conduct of very senior officers (those who rank higher than chief superintendent);
- complaints where the force could not conclude (based on the complaint alone) that an officer's conduct does not warrant disciplinary or criminal proceedings or that the right to life or prohibition from torture was not infringed.<sup>149</sup>

### PCCs/ Deputy Mayors

PCCs/ Deputy Mayors can make *recommendations* at the end of their reviews. They can *recommend* that<sup>150</sup>:

- a complaint is investigated/ reinvestigated;
- a complaint that was not referred to the IOPC should be referred;
- (in investigated complaints) police personnel involved in the incident complained about should be subject to some form of proceedings;
- a case should be passed to the CPS;
- an action should be taken in response to the complaint.<sup>151</sup>

There is an expectation that police forces comply with recommendations made at the end of review, but they can disagree with good reason. If they disagree, they must explain why clearly to the PCC/ Deputy Mayor and the complainant.<sup>152</sup>

### IOPC

The IOPC can make *directions* at the end of their reviews and can come to their own findings with regards to the complaint. They can *direct* a police force to<sup>153</sup>:

- investigate/ reinvestigate a complaint
- initiate some form of proceedings on a member of police personnel
- pass a case to the CPS

Police forces must comply with IOPC directions.

The IOPC can recommended that the force take an action in response to the complaint, how they can learn from the incident.

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<sup>149</sup> Ibid, para 18.6

<sup>150</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, p141

<sup>151</sup> **Note:** see [r30](#), *The Police (Complaints and Misconduct) Regulations 2020* for examples of possible actions.

<sup>152</sup> IOPC, [Statutory guidance on the police complaints system](#), February 2020, para 18.50

<sup>153</sup> Ibid, p142

## 4. Discipline

### 4.1 The basics

**The police disciplinary system consists of internal processes within police forces.**

It is structured by statutory rules set out in the *Police Act 1996* (as amended) and secondary legislation made under it. Unlike the complaints system (which is overseen by the IOPC) there is no single independent body that provides oversight of the discipline system, though PCCs should hold chief constables accountable for their handling of disciplinary issues.

**Not all poor policing behaviour engages the discipline system.**

Other processes, either a reflective practice review process or an unsatisfactory performance procedure, are initiated when poor behaviour is identified that does not warrant disciplinary action.

- A **reflective practice review process** is a formal police process. It is initiated when police conduct has fallen short of what is expected of those who work in policing but is not serious enough to warrant disciplinary action.<sup>154</sup>
- **Unsatisfactory performance procedure** is a police HR process. It is initiated when members of police personnel are unable to perform their duties to a satisfactory level.<sup>155</sup>

**Disciplinary proceedings are initiated when there is a credible allegation of a breach of the policing standards of professional behaviour that is serious enough to warrant disciplinary action.**<sup>156</sup>

Conduct that warrants disciplinary action is that which 'damages public confidence in policing'.<sup>157</sup> It is behaviour that learning from alone would not be a sufficient response "given the gravity or seriousness of the matter".<sup>158</sup>

**The police disciplinary system is designed to "encourage a culture of learning and development" within the police.** All forces should have procedures in place to share learnings from individual cases.<sup>159</sup> The focus on learning is supposed to have moved the disciplinary system on from a culture of blame.<sup>160</sup>

### 4.2 Standards of professional behaviour

The standards of professional behaviour set out how *police officers* are expected to behave.<sup>161</sup> Police officers are always expected to meet these

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<sup>154</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 4.44 and 4.45

<sup>155</sup> *Ibid*, para 4.59

<sup>156</sup> [r2, The Police \(Conduct\) Regulations 2020](#)

<sup>157</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), para 4.34

<sup>158</sup> *Ibid*, para 4.36

<sup>159</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 6.43

<sup>160</sup> *Ibid*, page 27

<sup>161</sup> *Ibid*, para 2.4

standards. They can be disciplined when their off-duty behaviour falls short of the standards.<sup>162</sup>

There are ten standards of professional behaviour set out in [Schedule 2 of The Police \(Conduct\) Regulations 2020](#):

<b>The standards of professional behaviour</b>	
<b>1</b>	<b>Honesty and integrity</b> Police officers are honest, act with integrity and do not compromise or abuse their position
<b>2</b>	<b>Authority, respect and courtesy</b> Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy. Police officers do not abuse their powers or authority and respect the rights of all individuals.
<b>3</b>	<b>Equality and diversity</b> Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.
<b>4</b>	<b>Use of force</b> Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.
<b>5</b>	<b>Orders and instructions</b> Police officers only give and carry out lawful orders and instructions. Police officers abide by police regulations, force policies and lawful orders.
<b>6</b>	<b>Duties and responsibilities</b> Police officers are diligent in the exercise of their duties and responsibilities. Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.
<b>7</b>	<b>Confidentiality</b> Police officers treat information with respect and access or disclose it only in the proper course of police duties.
<b>8</b>	<b>Fitness for duty</b> Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.
<b>9</b>	<b>Discreditable conduct</b> Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty. Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.
<b>10</b>	<b>Challenging and reporting improper conduct</b> Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

The Home Office maintains [statutory guidance on professional standards, performance and integrity in policing](#) (chapter two of which provides statutory guidance on the standards). The College of Policing (the body responsible for professional standards in policing) has issued a

<sup>162</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 2.18

[Code of Ethics](#) for all those in policing. The Code of Ethics provides a “broader framework” that “underpins” the standards.<sup>163</sup>

## The Code of Ethics

The College of Policing has issued a ‘Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales’, better known as the [Code of Ethics](#). Everyone who works in policing is expected to adopt the Code of Ethics, not just police officers.<sup>164</sup>

The Code of Ethics:

- sets out nine “policing principles” (accountability, fairness, honesty, integrity, leadership, objectivity, openness, respect and selflessness) based on the [principles of public life](#).
- Translates the Standards of Professional Behaviour into language that applies to all those working in policing and provides examples which helps those in policing interpret them.
- Provides general guidance on how behaviour which does not uphold the policing principles, or the Standards of Professional Behaviour should be addressed.

There is an expectation that the Code and the Standards are read together and therefore the Code of Ethics should inform decisions about an officer’s conduct.<sup>165</sup>

Both the Code and the Standards have been deliberately written in everyday language. They intend to provide a “framework which everyone can easily understand”.<sup>166</sup>

## 4.3 Misconduct and gross misconduct

**Misconduct** is a breach of the Standards of Professional Behaviour that would warrant disciplinary action. **Gross misconduct** is misconduct so serious it warrants an officer’s dismissal from the police.<sup>167</sup>

Conduct that warrants disciplinary action is that which ‘damages public confidence in policing’.<sup>168</sup> It is behaviour that learning from alone would not be a sufficient response “given the gravity or seriousness of the matter”.<sup>169</sup> Whether officers have “a case to answer” for misconduct is decided on a case-by-case basis. Decision makers should consider a range of factors including the officer’s rationale for their behaviour, the effect of their behaviour on their ability to fulfil their duties and their

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<sup>163</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 2.6

<sup>164</sup> College of Policing, [Code of Ethics: A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales](#), July 2014, para 1.3.2

<sup>165</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 2.6

<sup>166</sup> Ibid, para 2.3

<sup>167</sup> College of Policing, [Guidance on outcomes in police misconduct proceedings](#), 2017, para 3.4

<sup>168</sup> Ibid, para 4.34

<sup>169</sup> Ibid, para 4.36

position within their force.<sup>170</sup> Senior officers are expected to set an example in their force. Infractions that might be considered less serious in cases involving junior officers can carry more gravity in cases involving senior officers.<sup>171</sup>

## 4.4 Whistleblowing

The Standards of Professional Behaviour and the Code of Ethics require police personnel to report any concerns they have about the behaviour of their colleagues.<sup>172</sup> Police personnel who withhold concerns can be challenged through disciplinary proceedings.

Police whistle-blowers are protected from unfavourable treatment at work under the [Public Interest Disclosure Act 1998](#).<sup>173</sup> The [Police \(Conduct\) Regulations 2020](#) ensures that misconduct proceedings cannot be brought against those who make “protected disclosures”.<sup>174</sup>

Police personnel should report their concerns through internal processes in their force wherever possible.<sup>175</sup> If they feel unable to report their concerns internally, they are encouraged to report them through another official body (for example, their staff association, their Police and Crime Commissioner or the IOPC).<sup>176</sup>

## 4.5 Conduct investigations

The process for investigating an officer’s conduct is initiated when there is *indication* that a member of police personnel committed a criminal offence or that their behaviour amounts to misconduct. In cases not involving a complaint this is known as a **conduct matter**. Investigations into conduct matters *must* be conducted in line with rules set out in the [Police \(Conduct\) Regulations 2020](#).

Investigations should be conducted “efficiently and effectively”. Investigators are expected to complete their investigations within six to twelve months. They are must to explain when investigations take longer than a year.<sup>177</sup>

At the end of an investigations a report is published which

- describes the available evidence regarding the allegation,

<sup>170</sup> College of Policing, [Code of Ethics: A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales](#), July 2014, para 5.1.8 and box 2

<sup>171</sup> College of Policing, [Code of Ethics: A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales](#), July 2014, para 1.4.4

<sup>172</sup> Schedule 2, [para 10](#), [Police \(Conduct\) Regulations 2020](#); College of Policing, [Code of Ethics: A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales](#), July 2014, section 10

<sup>173</sup> See House of Commons Library, [Whistleblowing and gagging clauses](#), January 2016

<sup>174</sup> [r2\(5\)](#), [The Police \(Conduct\) Regulations 2020](#)

<sup>175</sup> College of Policing, [Reporting concerns](#), undated, para 2.3

<sup>176</sup> College of Policing, [Reporting concerns](#), 2016, paras 2.13- 2.16. **Note:** this guidance was issued before changes to the police complaints and discipline system were introduced. Some of the information in it is incorrect.

<sup>177</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 7.3

- provides an opinion as to/ determines whether the officer has a “case to answer” for misconduct, gross misconduct or neither and what disciplinary proceeding (if any) should be initiated as a result.<sup>178</sup>
- recommends what learning can be taken forward.

The report is passed to force management or, in investigations being directed or conducted by the Independent Office of Police Conduct (see below), an IOPC decision maker. Force management/ the IOPC decide whether (and what sort of) disciplinary proceedings should be initiated.

## Referring conduct matters to the IOPC

Conduct matters (like complaints) may be referred to IOPC. Some conduct matters *must* be referred to the IOPC (known as **recordable conduct matters**). Recordable conduct matters are handled under the complaints system not the discipline system. Other conduct matters are referred voluntarily. The rules governing which conduct matters must be referred to the IOPC are the same as for complaint matters (see [section 3.5](#) of this briefing).

The IOPC decides if all matters referred to them should be investigated and how (complaint, recordable conduct and conduct matters). They can either:

- decide a matter does not need formal investigation, leaving the relevant Professional Standards Department (PSD) to handle the matter without investigation,
- direct a PSD investigation into the matter; or,
- independently investigate the matter itself.

## Severity assessments

Investigators conduct a ‘severity assessment’ before they begin an investigation into a *police officer’s* conduct. The severity assessment allows them to determine whether the allegation before them would, if proved, amount to misconduct, gross misconduct or neither. Based on this assessment they decide how to proceed with their investigation.

If the severity assessment determines a conduct matter would not amount to misconduct, the case does not proceed to a formal investigation. Instead the investigator uses the severity assessment to determine whether the officer’s conduct amounts to ‘practice requiring improvement’ (and therefore should be referred to a reflective practice review process) or not. Conduct matters which do not involve ‘practice requiring improvement’ can still be passed to an officer’s line manager. The investigator can also determine that no further action can should be taken.

If the severity assessment determines that the allegation would amount to misconduct or gross misconduct a formal investigation is launched.

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<sup>178</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 7.1

## Special conditions

Cases involving “special conditions” may be fast tracked to misconduct proceedings.

As soon as an investigator considers that:

- there is sufficient evidence that on the balance of probabilities the conduct of an officer amounts to gross misconduct; *and*,
- it is in the public’s interest for the officer to be dismissed without delay,

they should pass the case to force management (or the IOPC in directed investigations).<sup>179</sup> Force management decide whether *accelerated misconduct proceedings* should be initiated.<sup>180</sup>

## 4.6 Disciplinary proceedings

Disciplinary proceedings are the most serious process in the police disciplinary system. They can only be used in cases involving *police officers*. A different internal disciplinary process is initiated when Police Community Support Officers and civilian staff members are accused of serious breaches of the Code of Ethics.

Disciplinary proceedings are initiated when force management or the IOPC consider that “on the balance of probabilities” a proceeding *could* find an officer’s behaviour amounted to misconduct or gross misconduct.<sup>181</sup> However, force management and the IOPC have discretion not to bring proceedings in such cases.<sup>182</sup> For example, they might decide not to bring proceedings when the officers involved are seriously unwell or when they consider it disproportionate.<sup>183</sup>

Disciplinary proceedings are formal legal proceedings. They *must* be conducted in line with rules set out in the [Police \(Conduct\) Regulations 2020](#). They aim to establish the facts behind an allegation and come to a fair and just conclusion.<sup>184</sup> They are designed to give accused officers a fair opportunity to make their case.

At the end of a disciplinary proceeding it is determined whether an officer’s conduct amounts to misconduct, gross misconduct or neither.<sup>185</sup> The civil standard of proof is used to make this decision. Officers are therefore sanctioned when “on the balance of probabilities” their behaviour amounted to misconduct or gross misconduct.<sup>186</sup>

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<sup>179</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 7.47 to 7.49

<sup>180</sup> Ibid, para 7.50

<sup>181</sup> Ibid, para 8.61

<sup>182</sup> Ibid, para 8.80

<sup>183</sup> Ibid, paras 8.88 to 8.93

<sup>184</sup> Ibid, para 4.27

<sup>185</sup> Ibid, para 9.6

<sup>186</sup> Ibid, para 9.10 and 9.11

## Sanctions

There are four types of sanction that can be applied to officers who are found to have committed misconduct:

- **Written warnings** sit on an officer's record for 18 months.<sup>187</sup> They are a "significant sanction" and can impact an officer's ability to progress professionally.<sup>188</sup>
- **Final warnings** can sit on an officer's record for up to five years.<sup>189</sup> Officers with final written warnings on their record are dismissed from the police if they are found to have committed misconduct again.<sup>190</sup>
- **Reduction in rank** is used in cases where a final written warning would not be serious enough but where dismissal is not warranted. It is often used when an officer's misconduct demonstrates a significant failure of leadership.<sup>191</sup>
- **Dismissal** is used when officers are already on a final warning, have been recently demoted or when their behaviour is so serious it justifies it. The dismissal is effective immediately and the officer is placed on a "police barred list" which means they are unable to work in the police again.<sup>192</sup>

The sanction chosen depends on the seriousness of the misconduct. Decision makers consider the officer's culpability, the harm caused and whether there were aggravating or mitigating factors.<sup>193</sup>

## Types of disciplinary proceeding

There are three types of disciplinary proceeding. Cases involving gross misconduct are typically heard at **misconduct hearings**, but some are heard at **accelerated misconduct hearings**. Cases involving an indication of misconduct might be heard at a misconduct hearing or a **misconduct meeting** depending on the officer's disciplinary record.

Proceeding	When used	Description	Sanctions applicable
<b>Misconduct hearings</b>	Any case involving an indication of gross misconduct. Cases where there is an indication of misconduct involving officers on their final warning.	Typically held in public (unless there is good reason not to) Chaired by a legally qualified person chosen from a force-wide pool.	Written warning Final warning Reduction in rank Dismissal

<sup>187</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 10.51

<sup>188</sup> Ibid, para 4.35

<sup>189</sup> Ibid, para 10.51 and 11.126-11.127

<sup>190</sup> Ibid, 10.52

<sup>191</sup> Ibid; para 11.133-11.145

<sup>192</sup> Ibid, para 11.144

<sup>193</sup> College of Policing, [Guidance on outcomes in police misconduct proceedings](#), 2017, section 4

	Cases where there is an indication of misconduct involving officers who have been demoted within the last three years.	Documentary evidence and witness testimony considered.  Can involve the presentation of evidence from the IOPC and the accused officer's legal representatives.	
<b>Accelerated misconduct hearings</b>	Cases in which special conditions apply and force management/ the IOPC have decided that they should be initiated.		
<b>Misconduct meetings</b>	Cases involving an indication of <i>misconduct</i> which does not qualify for a misconduct hearing.	Held in private.  Chaired by a senior officer or staff member from within the force.  Documentary evidence is considered and witness testimony.	Written warning  Final warning

## Appeals

Officers sanctioned at misconduct proceedings have a right to appeal.<sup>194</sup> There are limited grounds for appeal. They are:

- the findings of the original disciplinary process were unreasonable;
- there is evidence that was not considered at the original hearing that could have materially affected it;
- there was a breach of procedures that could have materially affected the outcome.<sup>195</sup>

Officers must give notice of their application to appeal within 10 working days after the final decision being sent to them.<sup>196</sup>

Appeals are considered by *Police Discipline Appeals Tribunals* and conducted in line with rules set out in [The Police Appeals Tribunals Rules 2020](#).

<sup>194</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020; para 26.6 & 26.10

<sup>195</sup> Ibid, para 26.21

<sup>196</sup> Ibid

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