

Complaints relating to the Conduct of the Chief Constable



What constitutes a complaint against a chief officer?

Chief officers engage with the public in a different way to most police officers. They are not usually involved in frontline policing, but they can still be the subject of a complaint. They may also be included in complaints made about their police force. When people raise concerns about chief officers, local policing bodies should establish whether the matter is an expression of dissatisfaction and make sure the complainant is eligible to complain, as they do for all complaints. For more information about someone's eligibility to complain, please see paragraphs 5.3–5.6 of IOPC Statutory Guidance.

Local policing bodies are the appropriate authority only when a complaint is about the conduct of the chief officer. Therefore, it is vital that the local policing body clarifies whether a complaint that references the chief officer does actually involve his or her conduct. If it is about the decisions of the force in general, or about a delegated power rather than the chief officer, these matters should be directed to the correct appropriate authority. To be clear, if the complaint involves a matter for which the chief officer is not directly responsible, then the local policing body is not the appropriate authority.

Local policing bodies may receive complaints about the chief officer that do not relate to their direct actions, but instead reference actions that have been delegated or given to another member of the police force to carry out. From a complainant's point of view, the chief officer represents the force. These complaints are often made in good faith, but without a clear understanding that in practice, the matter does not involve the chief officer. It is best to provide a response that explains that the matters raised will be addressed by the appropriate department. The response should include information about the next steps.

Complaints after chief officers address the public

Chief officers sometimes address the public directly. This may be through press releases or other content aimed specifically at the public. If someone expresses dissatisfaction with the content of a chief officer's statement and they are adversely affected by the content, this should be logged as a complaint.

Please refer to *section 29 of the Police Reform Act 2002* and *paragraph 5.6 of the IOPC Statutory Guidance* for guidance on whether a person will be considered to have been adversely affected. A person will be treated as such if they have suffered any form of loss, damage, distress or inconvenience as a result of the matter complained about, if they have been put in danger or otherwise unduly put at risk of being adversely affected.

Directing complaints to the correct appropriate authority

Where it is clear immediately that a complaint is not about a chief officer, the local policing body should forward the complaint to the correct appropriate authority and inform the complainant that this has been done.

The local policing body should keep a record of the type of contact so that they can answer any queries the complainant may have about their correspondence. If the local policing body takes steps to establish who the appropriate authority is, but it remains unclear whether the matters complained about relate to the chief officer, then the complaint should be logged and looked into.

Complaints against a chief officer raised during another process

Complainants may change who they complain about as they progress through their contact with the complaints system. Complaints against or involving a chief officer may be included in correspondence sent for another reason – for example, a review application.

How to make a complaint

Complaints against Surrey's Chief Constable (CC) should be sent in writing to:

The Police and Crime Commissioner
Office of the Police and Crime Commissioner for Surrey
PO Box 412
Guildford
Surrey
GU3 1BR
Or email on: surreypcc@surrey.police.uk

Please note that the Commissioner cannot investigate complaints made anonymously.

Reasonable and proportionate handling of complaints (*Outside Schedule 3 of the Police Reform Act 2002*)

More details about the principles of reasonable and proportionate complaint handling are available in the *IOPC Statutory Guidance*. Many complaints against a chief officer will be suitable for handling outside of *Schedule 3* because an explanation is often all that is needed to resolve a matter to the satisfaction of the complainant. As with all complaints, the local policing body should try to understand the reasons behind the complaint and identify exactly what the complainant wants to be addressed.

In some circumstances, a matter that was initially dealt with outside of *Schedule 3* but is subsequently recorded at the request of the complainant, does not need any further activity in addition to the work done *outside Schedule 3*. In these situations, the complaint should include an assessment of the service provided. This should decide whether the service was acceptable or not. The complainant should be notified of the outcome, and their right of review.

There will also be situations where a complainant requests that their complaint be recorded, but it is reasonable and proportionate for the local policing body to take no further action. When this happens, local policing bodies should provide the complainant with a clear rationale to explain why they are taking no further action.

Schedule 3 recording threshold

Paragraphs 6.26 and 6.27 of the IOPC Statutory Guidance set out the circumstances in which complaints must be recorded under Schedule 3 of the *Police Reform Act 2002*. *Paragraphs 6.30 and 6.31 of the guidance* sets out other factors to consider when deciding if a complaint should be recorded. When making this decision, disciplinary proceedings can include complaints that could result in unsatisfactory performance proceedings. The criteria should be assessed on the allegations and not on the merit of the complaint.

There are also several circumstances where a CC complaint that was originally suitable to be handled outside Schedule 3 must be recorded under Schedule 3 and handled formally. Handling a complaint outside of Schedule 3 is no longer appropriate if:

- a complainant is dissatisfied with how the matter has been handled and wants the complaint to be recorded;
- at any time, the complainant asks that the matter be treated as a formal complaint ;
- further information obtained during the handling of the complaint means that it must be recorded as a complaint under Schedule 3 ;
- detailed enquiries that cannot be completed promptly are needed to resolve the matter.

If a complaint can no longer be handled *outside of Schedule 3*, the complaint should be recorded as a *Schedule 3* complaint and the complainant should be informed of this. If a complaint contains multiple allegations, some of which are suitable for handling *outside of Schedule 3* and some of which must be recorded, the complaint should be recorded in its entirety.

Recording a complaint

A complaint must also be recorded and handled under Schedule 3 if the local policing body decides that it is appropriate or if the complaint:

- Is an allegation that the conduct or other matter complained of resulted in death or serious injury;
- is an allegation that, if proved, might constitute a criminal offence by a person serving with the police or justify the bringing of disciplinary proceedings;
- is about conduct or any other matter which, if proved, might have involved the infringement of a person's rights under Articles 2 or 3 of the European convention on Human Rights (see glossary) or;
- meets any of the mandatory recording/referral criteria (see below).

What is meant by recordable?

The appropriate authority must first consider whether the matter complained of is 'recordable'. A matter is recordable if it involves allegations of conduct that, assuming it to have taken place:

- appears to have resulted in the death or serious injury of any person;
- has had an adverse effect on a member of the public, or;
- meets any of the following criteria:
 - i. a serious assault, as defined in paragraphs 9.7 – 9.11 of IOPC guidance.
 - ii. a serious sexual offence, as defined in paragraphs 9.12 – 9.14 of IOPC this guidance.
 - iii. serious corruption including abuse of position for a sexual purpose or for
 - iv. the purpose of pursuing an improper emotional relationship, as defined in
 - v. paragraphs 9.15 – 9.23 of IOPC guidance.
 - vi. a criminal offence or behaviour which is liable to lead to disciplinary
 - vii. proceedings and which in either case was aggravated by discriminatory
 - viii. behaviour on the grounds of a person's race, sex, religion or other status
 - ix. identified in paragraph 9.24 of IOPC guidance.
 - x. a relevant offence (see paragraph 9.28 IOPC guidance)

Local policing bodies are expected to take a pragmatic, reasoned and proportionate approach to deciding which complaints should be logged. If an expression of dissatisfaction is made to an individual or team in the local policing body and it can be resolved quickly to the satisfaction of the member of the public, this does not have to be logged as a police complaint. If the dissatisfaction cannot be resolved quickly or the complainant remains dissatisfied, the complaint should be formally logged under *Schedule 3 of the Police Reform Act 2002* as a CC complaint.

Where a complaint is recorded, the PCC will provide the complainant with a reference number and a copy of the record of complaint. The CC will also be informed of the complaint and the recording decision unless to do so could:

- prejudice any criminal investigation; and/or
- is contrary to the public interest.

Once a complaint has been recorded, the PCC will determine the most suitable method of dealing with it and notify the complainant accordingly.

The options are:

- Not a CC complaint – explain and forward to appropriate authority (PSD)
- CC complaint – record and deal with *outside Schedule 3* (provide explanation).
- CC complaint – record inside *Schedule 3* if requested by complainant, if dissatisfied with previous response or is a mandatory referral. Provide outcome letter with right to review by IOPC. (*See IOPC statutory guidance and R v Rose*).
- Referral to IOPC
- Investigation

Please note, should the PCC decide not to record the complaint under schedule 3, complainants who remain dissatisfied, have a right to appeal this decision to the IOPC by writing to:

Independent Office for Police Conduct
PO Box 473
Sale
M33 0BW
0300 020 0096
enquiries@policeconduct.gov.uk

Exceptions to the duty to investigate complaints.

The duty to investigate a complaint does not apply where the appropriate authority determines that:

- the complaint concerns substantially the same:
 - conduct or other matter as a complaint made previously, or
 - conduct as a conduct matter recorded previously
- there is no fresh indication in respect of that conduct or other matter that:
 - a person serving with the police may have committed a criminal offence
 - or behaved in a manner that would justify the bringing of disciplinary proceedings, or
 - there may have been the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights;
- there is no fresh substantive evidence which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded; and
- the previous complaint or conduct matter:
 - has been, or is being, investigated
 - (in the case of a complaint) has been, or is being, otherwise handled in accordance with Schedule 3
 - (in the case of a complaint) has previously been withdrawn and, therefore, the provisions of Part 2 to the Police Reform Act 2002 ceased to apply to that previous complaint.

The PCC may decide to not record the complaint on the following grounds:

- More than 12 months have elapsed between the incident, or the latest incident, and no good reason for the delay has been shown or injustice would be likely to be caused by the delay;
- The matter is already the subject of a complaint made by or on behalf of the same person;
- The complaint is anonymous;
- The complaint is vexatious, oppressive or otherwise an abuse of the complaints process;
- The complaint is repetitious;
- The complaint is fanciful; and
- It is not reasonably practicable to complete the investigation of the complaint because:
 - It is not possible to communicate with the complainant or a person on his behalf; or
 - It is not possible to complete a satisfactory investigation due to a refusal or failure on the part of the complainant to make a statement.

If a decision to is made to not record the complaint, the complainant will be notified of this decision and why, what steps will be taken (if any) in relation to the complaint and their right of appeal to the IOPC (as outlined above).

Referral to IOPC

General guidance about referrals is included in *IOPC Statutory Guidance* that covers this area. When referrals to the IOPC relate to a chief officer, different tests apply depending on whether the referral involves a complaint or a conduct matter.

For complaints, the mandatory referral criteria includes; any complaint relating to a chief officer where the appropriate authority is unable to satisfy itself from the complaint alone that the conduct complained of, if proved, would not justify the bringing of criminal or disciplinary proceedings. The test must be applied to the nature of the complaint alone, and not to the merit of the allegation. *Please see R v Rose for further ruling on the matter.*

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

- a serious assault
- a serious sexual offence
- serious corruption, including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship
- a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status identified in paragraph 9.24 of the IOPC guidance
- a relevant offence
- complaints or conduct matters arising from the same incident as one where conduct falling within the above criteria is alleged; or
- any conduct matter relating to a chief officer (or the Deputy Commissioner of the Metropolitan Police Service) and any complaint relating to a chief officer (or the Deputy Commissioner of the Metropolitan Police Service) where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of, if it were proved, would not justify the bringing of criminal or disciplinary proceedings

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

Indication test

'Indication' is taken to have its plain English definition. In making the decision about whether there is 'an indication', the appropriate authority should consider whether the circumstances, and the evidence readily available, show or reasonably imply that a

person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, or that there may have been the infringement of a person's rights under Articles 2 or 3.

This decision should take account of the facts being asserted by the complainant, alongside any readily available evidence, and not focus solely on what the complainant says those facts amount to. Where a complainant alleges, for example, that an offence has been committed without explaining what has been done that they believe constitutes that offence, the appropriate authority should seek further information and clarification from the complainant before making the decision regarding whether there is an indication.

Where there is doubt whether or not there is an 'indication', this may suggest that it is reasonable and proportionate to investigate. Where a decision is made that there is no indication, but during subsequent handling the complaint handler considers that the indication test may now be met, the complaint handler should highlight the matter to the appropriate authority to consider whether the complaint must now be investigated.

These complaints must be passed to the IOPC by the end of the day on the day it becomes clear that it requires referral.

Investigation

Any complaint which is not dealt with by the methods outlined above will be investigated. The PCC will appoint an investigating officer in these cases. The person appointed must:

- Have an appropriate level of knowledge, skill and experience to plan and manage the investigation;
- Not work directly or indirectly under the management of the Chief Constable;
- Be a person whose appointment could reasonably give rise to a concern as to whether they could act impartially.

In order to satisfy the requirements of impartiality, the PCC will appoint the Chief Constable of an independent Force to act as an investigating officer. In most instances this Chief Constable will delegate this authority to the Head of their Professional Standards Department.

On receipt of a complaint that qualifies for investigation, the investigating force will be given a copy of the complaint, any relevant documentation, and a full briefing which will include, where possible:

- Details and remit of the brief;
- Details of access to any material, ensuring the appropriate security vetting arrangements;
- Arrangements for interviewing the Chief Constable, the complainant, and any other witnesses;
- A timetable for interim statements/update reports; and
- A proposed date for the completion of the investigation and submission of the final report.

- The expectation is that the investigating officer will have:
- Full access to any material required and requested;
- Full cooperation from all staff and officers.

It is also expected that the investigating officer will keep the complainant, the PCC and the Chief Constable updated at regular intervals.

Reporting

Once the investigating officer has completed their investigation, they will submit their report to the PCC setting out their findings and details of evidence considered. It is understood that this report be suitable for disclosure to all parties and include a recommendation on whether to uphold the complaint or not. The PCC will then consider the report and make a decision within ten working days.

The decision will identify whether to agree the findings and recommendation in the report and what, if any, action should be taken. This will include a decision about whether to uphold the complaint, what steps will be taken and whether, if necessary, it will be referred to misconduct proceedings if gross misconduct is identified.

The complainant and all parties will then be informed of the PCCs decision and the complainant will be given their appeal rights to the IOPC.

Human Rights and Equality

In implementing this policy, the OPCC will ensure that its actions are in accordance with the requirements of the Human Rights Act 1998 and the Convention Rights embodied within it, in order to protect the human rights of complainants, other users of the police services and the Office of the Police and Crime Commissioner for Surrey.

GDPR Assessment

The OPCC will only forward, hold or retain personal information where it is appropriate for it to do so, in line with the OPCC GDPR Policy, Privacy Statement and Retention Policy.

Freedom of Information Act Assessment

This policy is suitable for access by the General Public.