



Cumbria Office of the Police and Crime Commissioner

Complaints, Misconduct and Grievances Case Sampling Protocol

Document control

This policy applies to all employees of the Office of the Police and Crime Commissioner for Cumbria.

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Introduction

Each police and crime commissioner for a police area has a number of statutory responsibilities, which are principally laid out in the Police Act 1996 (as amended by the Police Reform and Social Responsibility Act 2011).

The Police & Crime Commissioner (Commissioner) will hold the Chief Constable to account for the service that the public should expect from the Commissioner and the Constabulary. Part of that service will be the dealing of complaints. Indirectly, part of that service will be dealing with Police Staff Disciplinary cases. This will be an independent process of scrutiny carried out by an Ethics and Integrity Panel with representatives drawn from outside of the Constabulary and the OPCC.

Amendments to the police complaints system by the Police Reform and Social Responsibility Act were designed to streamline and remove unnecessary bureaucracy from the system ensuring that complaints are handled at the lowest appropriate level.

Schedule 14, Section 7 of the Police Reform and Social Responsibility Act gives power to the 'local policing body' to direct the chief officer of police to comply with obligations in regard to complaints and therefore the monitoring of complaints would be seen by a Commissioner as an important part of their role. The local policing body may direct the Chief Officer to take such steps as the local policing body thinks appropriate and the Chief Officer must comply with any direction given.

The Policing and Crime Act 2017 has mandated that all Police & Crime Commissioners are to carry out reviews of 'Recorded - No Investigation' complaints, where the complainant is unhappy with the outcome. Commissioners may if they wish have involvement within other areas of the complaint process following consultation with the Chief Constable and appropriate staffing arrangements made.

Five elements, which the Police & Crime Commissioner should have in place to maintain effectively an ongoing scrutiny and oversight of complaints against the Constabulary would be:

1. Process and procedural audits as compared with Home Office Guidance on complaint handling;
2. Dip-sampling of completed complaints files and disciplinary files;
3. Analysis of statistics and trends;
4. Strategic analysis;
5. Discussion with stakeholders and partners.

This protocol is to specify procedures adopted by agreement between the Commissioner and Cumbria Constabulary, particularly towards elements numbered 1 and 2 above.

These procedures are intended to assure public trust and confidence by embedding transparent and structured processes for the Commissioner to discharge that individual element more effectively, as part of their overall function.

This approach will also enhance the Commissioner's ability to fulfil the other elements, as well as the enhanced expectations of the Independent Office of Police Conduct (IOPC) introduced under the Police Reform Act 2002. The IOPCC has produced Statutory Guidance that outlines the responsibilities of Police & Crime Commissioners.

The purpose of this structured approach is to ensure that complaints in Cumbria are being dealt with rigorously and fairly, in line with IOPC Statutory Guidance and Constabulary policies and procedures, under processes understood by the Commissioner. This approach also ensures that disciplinary cases in Cumbria are being dealt with rigorously and fairly, in line with Statutory Guidance and Constabulary policies and procedures, under processes understood by the Ethics and Integrity Panel.

If a series of cases (on their facts and outcomes) together indicated a consistent area for concern, then the Commissioner may review them in conjunction with the Constabulary and other stakeholders to see whether wider lessons emerge.

Case Sample Procedure

The Ethics and Integrity Panel (Panel), accompanied by a member of staff from the Office of the Police & Crime Commissioner (OPCC), will attend by arrangement the offices of the Constabulary's Professional Standards Department no more than once every quarter and no less than once on a six monthly basis.

The Office of the Police & Crime Commissioner and Professional Standards Department Admin Managers are responsible for making these arrangements, in line with the Panel's annual work programme.

The Panel will audit process and procedures using agreed checklists as attached (Appendices 1 to 4c). Files will be selected from a list of finalised complaints, provided by the Professional Standards Department to the member of staff at the time of attendance. With regards to finalised Review cases, the OPCC will provide the Panel with a list of finalised cases from which they will select ones to inspect.

Number or proportion of completed complaint files to be inspected

It is not practical to inspect all files completed during the six months preceding the case sampling session. Instead, an agreed number of completed files from the preceding six months will be inspected.

The number identified for inspection has been agreed as representing both an appropriate proportion from the total number of files completed in an average year and also a realistic quantity for the members of the Panel to give appropriate attention to.

The Commissioner reserves the right to increase or decrease that specified number if necessary, in consultation with the Constabulary. The frequency of attendances to the PSD Offices will also influence the number of files that are dip-sampled. However, the Constabulary is committed to assisting this process in enhancing trust and confidence in the police complaints system and restrictions on access to files should not be a barrier.

1. The number of dip sampled files chosen from those concluded outside of Schedule 3 (Service Recovery) within area **8 (eight)**
2. The number of dip sampled files chosen from those concluded outside of Schedule 3 (Service Recovery) within PSD **8 (eight)**
3. The number of dip sampled files chosen from those concluded by way of Recorded – No Investigation **8 (eight)**
4. The number of dip sampled files chosen from those concluded by way of Recorded – Investigation **8 (eight)**

[NB: In conducting dip-sampling under this protocol it is important to note it is not a review of the appropriateness or otherwise of the conclusion reached in any individual case. There should not be undue weight on the factual issues arising in a case.]

Completed Complaint Review files to be inspected

The IOPC deal with any appeals against complaints which have been Recorded and Investigated, ie more serious allegations, along with specific appeals in respect of managed or supervised investigations. As they have had involvement in the complaint they will be the appropriate body to deal with the appeal.

The OPCC will deal with reviews resulting from Recorded – No Investigation complaints, dealt with by the Constabulary.

5. The number of review files chosen from those concluded by the OPCC to be inspected at the dip sample session is: **4 (four)**

Identified Best Practice to be inspected

When carrying out reviews of complaints, the Panel should note any areas of best practice that are identified during the handling of the complaint. Particular note should be made of how and to whom this best practice has been disseminated to.

Disciplinary files to be inspected

Complaint and disciplinary files are dealt with by investigators within the Constabulary's Professional Standards Department. The Panel will sample police officer and police staff disciplinary files on a six-monthly basis and no more than once a quarter.

At the case sample session, all closed cases finalised following the previous reporting period will be presented. Given that the number of cases is expected to be small, the Panel are likely to be able to select and inspect all finalised files. The frequency of the case sample sessions may influence the number of files that are sampled during the session.

Closed case files to be examined will include those with outcomes as follows:

- Action short of dismissal
- Dismissal
- Appeal

The Panel will audit process and procedures using pro forma checklists as presented at Appendix 6. The checklists highlight the various stages in the disciplinary process that may give rise to issues of integrity, efficiency and effectiveness or proportionality. This should allow easy identification of areas of concern.

The Constabulary is committed to assisting this process in enhancing trust and confidence in the disciplinary process and there will be no restrictions on access to closed files.

[NB: In conducting a full examination or dip-sampling under this protocol it is important to note it is not a review of the appropriateness or otherwise of the conclusion reached in any individual case. There should be no assessment of the factual issues arising in any case and the Panel will not seek to consider the merits of the case]

Grievance files to be inspected

There are a relatively small number of grievance files finalised at any one time during a year.

At the case sample session, all closed cases finalised following the previous reporting period will be presented. Given that the number of cases is expected to be small, there should be no requirement to specify any limitations on the number of cases that are scrutinised. However should this number increase in the future the Office of the Police and Crime Commissioner reserves the right to increase or decrease the number of files inspected by agreement with the Constabulary. The frequency of the case sample sessions may influence the number of files that are sampled during the session.

Due to the confidential process undertaken by the Grievance procedure names contained within the grievance files may be redacted prior to being provided to the Panel to sample.

Closed case files to be examined will include those with outcomes as follows:

- Resolved to satisfaction
- Unresolved
- No Further Action
- Withdrawn

The Panel will audit process and procedures using the pro forma checklist as presented at Appendix 7.

Case Sample Outcomes

This protocol represents an understanding agreed between the Constabulary and the Police & Crime Commissioner in Cumbria. It is intended to constitute an important limb of the overall scrutiny and public accountability that is delivered by a Police & Crime Commissioner in pursuit of statutory duties set out the Police Reform and Social Responsibility Act 2011.

In particular, within its own Single Equality Scheme, the Commissioner has prioritised and assessed their functions for relevance to equality. Complaints against the police is a key area where realised or potential impacts on human rights, race, or other equality issues can be revealed. ("Stop & Search" or "Stop & Account" provides one important example). This is why the vigilance of the Commissioner provides one important part of the framework of remedies and reassurances available to members of the public in this field. Disciplinary cases against police officers and police staff are a key area where realised or potential impacts on human rights, race, or other equality issues can be revealed.

This protocol is intended to help:

- provide public reassurance about the integrity, effectiveness and efficiency of policing in Cumbria;
- assess the risk of policing impacting adversely and disproportionately on human rights; or on minority ethnic groups in Cumbria;
- assess whether such risks can be justified as proportionate, legitimate, legal, and minimised;
- assist decision-making about the policing method or policy involved.

When assessing the potential impact or indicated effect of policing processes, methods, procedures or policy upon equality, consideration will at the same time be given to ethnic or national origin, race, colour, or nationality. (Where an impact is also identified on other minorities, or on issues of religious belief, gender, sexual orientation, disability, age and social background, then this will also be reported on where appropriate).

Identified Issues or Concerns

When carrying out their inspection of complaint, disciplinary and grievance cases, the Panel members undertake this task on behalf of the Police and Crime Commissioner. They will ask any questions or raise concerns they may have about the processes or procedures to the member of staff allocated to them. These can if necessary be escalated to the Head of the Professional Standards Department to invite further explanations. They will also draw them to the attention of the Deputy Chief Constable at the Panel meeting where complaints and disciplinary matters are discussed.

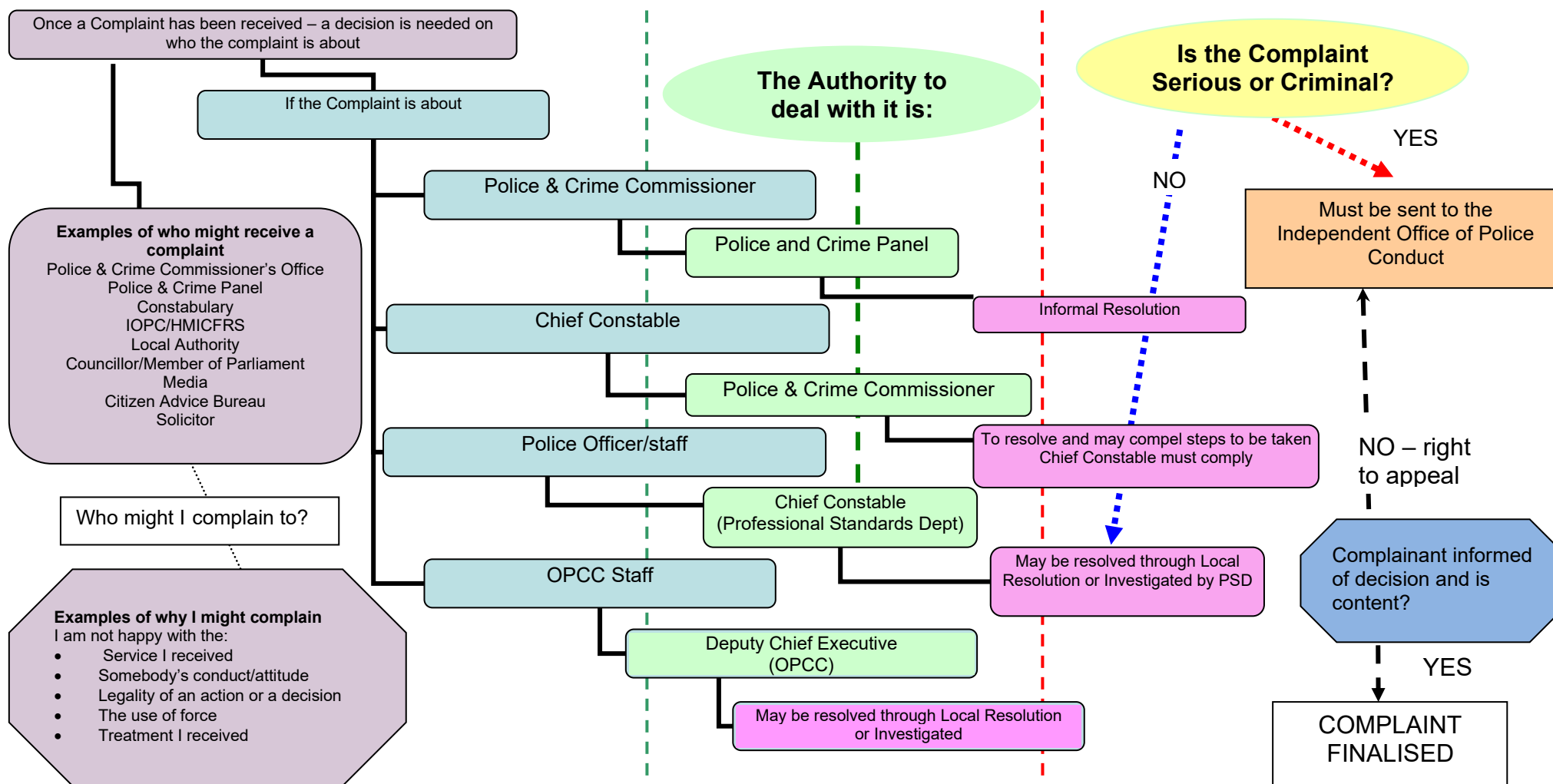
The Commissioner will be notified by way of a written report. Where serious issues are identified the Commissioner may then wish to raise the matter with the Deputy Chief Constable who will respond, as appropriate, with advice and explanations. In addition to the above, the member of OPCC staff's report will also measure their satisfaction with the sampling visit, the application of the checklists and the outcome of the sampling exercise.

Appendices

The following supporting documents illustrate in flow chart or checklist form the processes followed for complaints:

1. Complaints process map (flow chart)
2. Checklist for Case Sampling closed Complaint Files
3. Checklist for Case Sampling closed Review Files
4. Checklist for:
 - a. Non-Recorded, Dealt with Outside Schedule 3 – Service Recovery
 - b. Recorded – No Investigation
 - c. Recorded – Investigation
5. Checklist for Complaint Review Files
6. Checklist for Case Sampling closed Police Officer and Police Staff Disciplinary Files
7. Checklist for Case Sampling Grievance Files.

Appendix 1



Appendix 2



Checklist for Case Sampling Complaint Files

	Area to Review	Checks to Make	Service Recovery	No Investigation	Investigation
1.	Initial Assessment	Clear initial assessment and documented?			
2.	Acknowledgement of receipt of complaint	Timely contact with the complainant and investigating officer identified.			
3.	Telephone Call Complaint Form / Letter	Was the form completed correctly/does the letter contain sufficient information (recorded matters only)?			
4.	Keeping complainant informed	Was acknowledgement of receipt sent to the complainant and that they were kept informed on an ongoing basis?			
5.	Officer/staff member subject of complaint	Is there evidence to show how the officer was informed of the complaint and kept informed on an ongoing basis?			
7.	Withdrawal	Is this fully documented?			
8.	Time taken to complete	Has a reasonable amount of time been taken to complete the investigation? <u>Complaint Timescales</u> Outside Schedule 3 – between 3 to 28 days Recorded – No Investigation - 28 days Recorded – Investigation - 120 days			
9.	Justification of the	Has the reasonable and			

	outcome of the complaint process	proportionate approach been appropriate and conclusion supported by evidence?			
10.	Final response to the complainant and the officer	Was the final response timely, responsive and conclusive? Did it identify the right of review?			
11.	Officer improvement	Was Reflective Practice Review Process (RPRP) and/or Practice Requires Improvement (PRI) identified and actioned?			

Appendix 3



Checklist for Case Sampling Review Files

	Area to Review	Checks to Make
1.	Initial Assessment of Review	Is it clear that an initial assessment was made of the Review and recorded?
2.	Review letter/form	Was sufficient information provided as to the nature of the review?
3.	Acknowledgement of receipt of Review	Letter to complainant – timely and responsive? Is investigating officer identified to complainant?
4.	Keeping complainant informed	Was acknowledgement of receipt sent to the complainant and that they were kept informed on an ongoing basis (usually every 28 days)?
5.	Officer/staff member subject of complaint	Is there evidence to show how the officer was informed of the complaint and kept informed on an ongoing basis?
6.	Time taken to complete	Has a reasonable amount of time been taken to complete the Review? (There are no Review timescales within the legislation or guidance.) <u>Review Timescales</u> Review decision xxxxxx Re-Investigations - 120 days
7.	Justification of the outcome of the Review process	Has the approach, review and conclusion been appropriate and supported by evidence?
8.	Final response to the complainant and the officer re the outcome of the Review	Were the final responses timely, responsive and conclusive? Did it identify to the complainant any right of further appeal?

Appendix 4a

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Non-Recorded, Dealt with Outside Schedule 3 – Service Recovery

When dealing with complaints outside of Schedule 3 – the issue will be logged. There is no fixed process for dealing with the matter and should be to the complainant's satisfaction.

Description	Yes / No / N/A
Has an initial assessment been made of the complaint	
Based on the information within the complaint would the matter constitute a criminal offence or justify disciplinary proceedings? (If yes, then the matter must be recorded)	
Has the complainant asked for the complaint to be recorded? (If yes, the complaint must be recorded. If no, the complaint can be dealt with by way of Service Recovery.)	
Who carried out the Service Recovery process: <ul style="list-style-type: none"> Local Policing Team Professional Standards Department 	
Did the level of Service Recovery seem proportionate to the issues raised?	
Was an apology necessary or provided?	
Was any Performance Requiring Improvement (PRI) identified during the Service Recovery process? (If yes, then the matter must be recorded)	
Was the issue dealt with in a timely manner? (Where possible logged complaints may be resolved during initial contact)	
Has the matter been sufficiently recorded to provide assurance that it was dealt with appropriately and to the complainant's satisfaction?	
Was any Best Practice identified for future improvements? (If yes, detail below what this was and if it was disseminated)	

NOTE

Please provide any comments regarding how this matter was dealt with, especially with regard to any of the above where the complaint should have been recorded.

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Appendix 4b

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Recorded – No Investigation

Based upon the information provided a complaint must be recorded if:

- It is not possible to resolve it outside of Schedule 3;
- At any time the complainant wants it to be resolved;
- If the Appropriate Authority believes it is appropriate to record it;
- If Practice Requiring Improvement (PRI) is identified during non-Schedule 3 handling
- The complaint is to be referred to the IOPC.

Description	Yes / No / n/a
Was early contact made with the complainant to understand the complaint and seek their views on how the complaint should be handled?	
Did the complainant ask for the complaint to be recorded?	
Was appropriate scoping/enquiries carried out to support the determination not to investigate?	
Was the officer informed of the complaint?	
<i>Reasonable and Proportionate Handling should consider the matter's seriousness with due regard to:</i> <ul style="list-style-type: none"> ▪ <i>The nature of the incident</i> ▪ <i>Any actual or potential impact or harm to individual(s), communities or the wider public</i> ▪ <i>The potential impact on confidence in the police and/or the police complaints system</i> 	
Where it has taken time to complete enquiries, were meaningful updates provided to the complainant?	
Was a reasonable and proportionate response provided to the complainant, including any evidence-based rationale for decisions made?	
Where no action is to be taken to resolve the complaint, has a clear and sound rationale been provided to the complainant?	
Was an apology necessary or provided?	
Was any Performance Requiring Improvement (PRI) identified during the Service Recovery process? (If yes, please provide further comment below)	
Was the issue dealt with in a timely manner? (Where possible complaints may be resolved during initial contact)	

NOTE

Please provide any comments regarding how this matter was dealt with and any identified issues.

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Appendix 4c

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Recorded – Investigation

An Appropriate Authority must make arrangements for a complaint to be Recorded – Investigation if at any time it appears that there is an indication 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;
- There may have been an infringement of a person's rights under Article 2 or 3 of the HRA 1998.
- It is reasonable and proportionate to handle it; or the IOPC has directed so following referral or review;
- It relates to a Chief Officer.

Description	Yes / No / n/a
Was early contact made with the complainant to understand the complaint and seek their views on how the complaint should be handled?	
Was appropriate scoping/enquiries carried out to support the determination to investigate?	
Was the officer informed of the complaint?	
<i>Reasonable and Proportionate Handling should consider the matter's seriousness with due regard to:</i> <ul style="list-style-type: none"> ▪ <i>The nature of the incident</i> ▪ <i>Any actual or potential impact or harm to individual(s), communities or the wider public</i> ▪ <i>The potential impact on confidence in the police and/or the police complaints system</i> 	
Where it has taken time to complete enquiries, were meaningful updates provided to the complainant during the investigation?	
Was a reasonable and proportionate response provided to the complainant, including any evidence-based rationale for decisions made?	
Where no action is to be taken to resolve the complaint, has a clear and sound rationale been provided to the complainant?	
Was an apology necessary or provided?	
Was any Performance Requiring Improvement (PRI) identified during the Service Recovery process? (If yes, please provide further comment below)	
Was the issue dealt with in a timely manner? (If over 12 months, has the Local Policing Body been advised?)	
Was any Best Practice identified? If yes, how and to whom was this disseminated?	

NOTE

Please provide any comments regarding how this matter was dealt with, especially with regard to any of the above where the complaint should have been recorded.

- Timeliness of Investigations - where a case takes longer to complete than 12 months, PSD must notify the LPB and provide an explanation. This would include reason for the time taken, a summary of planned steps to bring to a conclusion. An update will be provided every 6 months thereafter until the conclusion of the complaint.

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Appendix 5

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Complaint Review

Where a complaint has been recorded and dealt with via no investigation, a complainant's right of appeal is to the Police and Crime Commissioner. There are no timescales within which the Review has to be undertaken, although it should be done in a timely manner.

The IOPC guidance and Focus editions state that a complaint outcome should be reviewed as to whether the outcome was Reasonable and Proportionate, considering if the service provided by the Police was acceptable or not.

Description	Yes / No / N/A
Were reasonable and proportionate actions taken in relation to the initial complaint?	
Was the complainant provided with a full and comprehensive finalisation letter?	
Were there any criminal or misconduct issues that were not identified by the Constabulary? (If yes, please provide details below)	
Were any Practice Requiring Improvement (PRI) or Reflective Practice Review Processes (RPRP) identified and documented?	
Were any recommendations made to the Constabulary: <ul style="list-style-type: none"> • That the matter should be investigated • Further enquiries should be made • 	
If yes, please detail below what the recommendations were and if they have been acknowledged and undertaken by the Constabulary?	

NOTES

Please provide any comments regarding how this matter was dealt with and any identified issues.

- If the Review is upheld and is to be investigated PSD will aim to complete the investigation within 120 days from the date the appeal is recorded to the date the IO submits a final report.
- There is a request to keep complainants updated on the progress of their Review every 28 days, although this may be done verbally but a note will be made in the progress log to this effect.
- Complainants will be advised of the outcome of their Review and whether or not they are entitled to any further appeals either by the Constabulary or with the IOPCC.

Appendix 6

Reference No:

POLICE OFFICER / STAFF MISCONDUCT FILE

Description	Yes / No / N/A
ACU Intelligence Report and/or originating documentation (if appropriate)	
Severity Assessment by Appropriate Authority/Investigating Officer (including any re-assessments / policy decisions and final assessments)	
Notification to Officer(s)/ Staff - including Regulation Notice/Notification of Investigation	
Suspension notice (if applicable) - including reviews and updates	
Correspondence with IOPC (if applicable)	
Updates to Officer(s)/Staff regarding progress of investigation (4 weekly basis)	
Criminal Investigation – including unused material (if applicable)	
Misconduct Investigation – including Investigation Report	
Letter to Officer(s)/Staff advising of outcome	
Was any Practice Requiring Improvement (PRI) identified. If so has it been adequately completed? (This is progressed via the Reflective Practice Review Process (RPRP) and is only currently available for Police Officers/Special Constables).	
Misconduct Proceedings – if applicable (i/e Meeting or Hearing and including appeal)	
Sanctions/Outcomes	

Description	Yes / No / N/A
Has the file been completed in a timely manner?	
Was the investigation proportionate?	
Do letters/emails provide sufficient information/explanation of processes?	
Any identified organisational or individual learning/ best practice issue(s) and actions (if applicable)	

NOTES

- There statutory timescales for the completion of Misconduct Investigations in relation to Police Officers/Special Constables.
- Depending upon the proposed course of action, there are timescales in relation to the holding of Misconduct Meetings, Misconduct Hearings, Special Case Hearings and the Appeal Process.

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Appendix 7

Reference No:

GRIEVANCE FILE

Description	Yes / No
Grievance Form	
Stage 1 – Resolution form completed by allocated person/manager	
Stage 2 – Grievance allocated to different person/manager	
Stage 2 – Resolution form completed <ul style="list-style-type: none"> • Resolved to satisfaction / not satisfaction • Continued • Withdrawn 	
Stage 3 – Allocated to Chief Officer to deal with (within 21 days)	
Stage 3 - Review completed and final decision made <ul style="list-style-type: none"> • Resolved to satisfaction • Resolved not to satisfaction • Withdrawn 	

Description	Yes / No
Has the file been completed in a timely manner?	
Was the matter dealt with proportionately?	
For Stages 2 and 3 - do letters/emails provide sufficient information/explanation of processes and agreements made?	
Any identified organisational or individual learning and actions taken (if applicable)	

NOTES

- The timescales for Stage 1 and Stage 2 processes are 14 days, however this is flexible following agreement with the aggrieved.
- Where Stage 3 of the process is undertaken this must be completed within 21 days.
- Following the outcome of Stage 3 the aggrieved may, if they wish, request a meeting with the Chief Constable.

- An employee may subsequently elect to proceed to an Employment Tribunal. It should be noted that they do not have to go through the Grievance process to go to an Employment Tribunal.

COMMENTS:

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