

# Statutory Guidance

on the handling of complaints  
about the police in Scotland

June 2022



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## Foreword

One of my objectives as the Police Investigations & Review Commissioner (PIRC) is to secure public confidence in policing in Scotland. An essential attribute of a good organisation is an effective system for handling complaints and feedback.

An effective complaints system has a number of key benefits:

- it resolves issues quickly and is cost effective;
- it increases public confidence in the organisation; and
- it allows for the collection of data and information that can drive improvements in policy development and service delivery

A good complaints handling process should:

- be simple and streamlined;
- be accessible and visible to all ;
- deal with complaints as quickly, effectively and as close to the point of service delivery as possible;
- have due regard to the general equality duty; and
- develop a culture that recognises the value of complaints and uses learning to improve service delivery rather than attribute blame.

This statutory guidance for police complaint handling aims to achieve these objectives. It provides guidance on how relevant complaints from the public should be handled and practical advice on best practice for police officers who deal with complaints.

While this updated guidance applies to Police Scotland and the Scottish Police Authority (SPA), it also applies to other policing bodies operating in Scotland.



I am confident that applying the revised guidance will promote efficiency, effectiveness, equality, accessibility, consistency and transparency for those dealing with police complaints. Actively and visibly promoting a culture of embracing and learning from complaints and supporting improvement and the delivery of services to the diverse communities of Scotland will have a positive impact on policing across the country.

**Michelle Macleod**

**Commissioner**



## Introduction

1. The purpose of this guidance is to set standards for police complaint handling in Scotland by providing practical advice on how complaints should be dealt with. Although principally intended for the SPA and Police Scotland, this guidance also applies to other policing bodies operating in Scotland. A list of all bodies to which the guidance applies is contained at **Appendix 1**.
2. This guidance is issued in accordance with section 45 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended (“the Act”), which provides that the PIRC may issue guidance to the Scottish Police Authority (“the SPA”) or the Chief Constable of the Police Service of Scotland on the carrying out of their functions under the Act.
3. In addition to legislation and guidance which govern police complaint handling in Scotland, the SPA, Police Scotland and other policing bodies operating in Scotland, must have regard to Public Sector Equality Duty contained in Section 149 of the Equality Act 2010<sup>1</sup>. It imposes a duty on public authorities to have due regard to the need to:
  - i. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - ii. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - iii. Foster good relations between persons who share a relevant protected characteristic<sup>2</sup> and persons who do not share it.

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<sup>1</sup> In addition to general public sector duty, some policing bodies will also be subject to specific duties. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 as amended sets out a list of the relevant public authorities. It includes the Chief Constable of the Police Service of Scotland. The specific duties include various reporting and data collection obligations. Central is the requirement to undertake impact assessments and to review and if necessary revise policies to ensure compliance with the equality duty.

<sup>2</sup> Includes age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation - Section 4 of the Equality Act 2010

The duty is anticipatory, rather than reactive, with public authorities required to take positive steps to eliminate discrimination, advance equality of opportunity and foster good relations.

4. Complaints made by members of the public about any action or omission or the standard of any service provided or not provided by the policing body or serving officers and staff are defined as relevant complaints by the Act<sup>3</sup>. It provides a broad definition of relevant complaints, namely:

***A statement, (whether oral, written or electronic) expressing dissatisfaction about an act or omission by the SPA, Police Scotland, or a person who, at the time of the act or omission, was a person serving with the police, namely a constable of Police Scotland, a member of police staff or a member of the SPA's staff.***

A relevant complaint may relate to actions or omissions or the standard of any service provided or not provided which occur on-duty and off-duty.

However, dissatisfaction by a person who is serving or has served with the police about their terms and conditions of their service and allegations of an act or omission that constitutes a crime are excluded from the definition of a relevant complaint<sup>4</sup>.

Through formal agreements and Memorandums of Understanding (MOUs) with the PIRC, other policing bodies operating in Scotland have adopted a similar definition.

5. The guidance sets out general overarching principles of good complaint handling and provides broad direction and support to policing bodies when dealing with relevant complaints. Policing bodies operating in Scotland must have regard to the guidance when dealing with relevant complaints or developing their own internal complaints procedures.

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<sup>3</sup> Section 34 of the Act

<sup>4</sup> Section 34(3) of the Act

6. The guidance is intended to improve police complaint handling and to encourage policing bodies to move to a culture that values complaints and promotes learning and improvement as the main focus of the complaint handling process.
7. This guidance should be read together with the legislation relating to complaints about the police. A list of the relevant legislation is contained at **Appendix 2**.

## The Appropriate Authority

8. The “appropriate authority” in relation to a complaint is the body responsible for handling the complaint. Generally, the appropriate authority in relation to complaints about officers, up to the rank of Chief Superintendent, is the Chief Constable.
9. For complaints about officers above the rank of Chief Superintendent (Assistant Chief Constable, Deputy Chief Constable and Chief Constable), the appropriate authority is the SPA.<sup>5</sup>
10. Where an officer of Police Scotland below the rank of Assistant Chief Constable is serving temporarily with another police force or organisation, responsibility for dealing with any complaint about that officer remains with Police Scotland, unless agreed otherwise between Police Scotland and the organisation concerned.

### Responsibilities of the Scottish Police Authority (SPA)

11. Section 60 of the Police and Fire Reform (Scotland) Act 2012 provides that the SPA must maintain suitable arrangements for the handling of relevant complaints and seek the views of others as to what those arrangements should be. The SPA must also keep itself informed as to the manner in which relevant complaints are

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<sup>5</sup> The SPA is the appropriate authority for dealing with relevant complaints about senior officers, even in circumstances where the alleged act or omission that gave rise to the complaint occurred before the subject officer was promoted to a senior officer rank.

dealt with by Police Scotland, with a view to satisfying itself that the arrangements for handling relevant complaints are suitable.

12. The PIRC will work collaboratively with the SPA to regularly review Police Scotland's arrangements for the handling of relevant complaints to ensure their efficiency and effectiveness.

### **Responsibilities of the Chief Constable of Police Scotland**

13. The Chief Constable of Police Scotland is responsible for the operational functions of the force, including complaint handling, in relation to, and including, officers up to the rank of Chief Superintendent.
14. Section 60 of the Police and Fire Reform (Scotland) Act 2012 provides that the Chief Constable of Police Scotland must maintain suitable arrangements for the handling of relevant complaints and seek the views of others as to what those arrangements should be. The Chief Constable must also provide the SPA with such information about relevant complaints as the SPA may reasonably require in order to perform its own functions under the same Act.

## **Guiding Principles**

15. There are a number of principles that underpin an effective and responsive complaints handling system. A good complaints system should be:

### **Visible and accessible**

16. It is essential to public confidence that the police complaints system is visible, clear and accessible. Information about the complaints process should be freely available and well publicised. Members of the public need to know how to go about making a complaint and how it will be dealt with.
17. Where necessary, assistance should be given to enable people with different needs and different protected characteristics or any vulnerabilities to access and

use the complaints system. Policing bodies must anticipate what type of reasonable adjustments may be required to meet the needs of the individual complainer, including those who have visual, hearing or mobility impairments. All information must be accessible in clear plain English or other languages on request and available in alternative formats.

18. Policing bodies should develop a range of ways to promote awareness of how to make a complaint. This may include placing posters within charge bar areas and having leaflets within police stations and other public places. Policing bodies should also ensure that the complaints process features prominently on their websites.

### **Independent**

19. To maintain public confidence in the handling of police complaints, the system must contain an appropriate degree of independence. Providing objective, accurate and properly reasoned responses to complaints is key to an effective system.
20. Effective oversight by the PIRC is essential to the independence of the system and to ensure that public confidence is maintained.

### **Objective, impartial and fair**

21. Policing bodies should take a proportionate approach to their handling of complaints. All complaint investigations must proceed on evidence and fact, not assumption. The evidence gathered must be analysed in an objective, impartial and fair manner. Findings must be clearly explained to the complainer and properly reasoned from the established facts.
22. Objectivity and impartiality should be demonstrable throughout the handling of a complaint. Complainers must have confidence that their complaints are being dealt with in a fair and thorough manner. Officers or staff must have no role in the handling of a complaint about an incident in which they were involved. Those

appointed to deal with complaints must immediately declare if they consider that their knowledge of anyone involved in the incident could undermine their ability to deal impartially with the complaint. In such circumstances, the person concerned must have no further involvement in the handling of the complaint. In the event of any doubt about whether a potential conflict of interest exists, the matter should be determined by the Professional Standards Department (PSD) or relevant decision-maker. A record must be kept of all declarations and decisions made in this connection.

### Quick and simple

23. The complaints process must be efficient and capable of delivering effective results as quickly as possible and at the earliest opportunity. The efficiency of the process will positively influence the public's perception of how police complaints are handled in Scotland.
24. The policing bodies should aim to acknowledge all relevant complaints within **three** working days of receipt and to respond to complaints requiring investigation within **56 days** of receipt. The aim of frontline resolution (FLR) is to provide a quick, informed response within a much shorter timescale<sup>6</sup>.
25. Each complaint is unique and many factors, such as complexity and seriousness, can influence the timescale in which complaints are concluded. Whenever the period of 56 days is exceeded, complainers should be contacted immediately and given an update on progress. Thereafter, complainers should be updated at least once every calendar month or such other period as may be agreed with the complainer (the method and frequency of communication should be recorded) until such time as the complaint is determined.

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<sup>6</sup> Front line resolution is discussed at paragraphs 32-40

## User-focused and accountable

26. The system must be user-focused and consider the individual needs of the complainer, taking cognisance of different protected characteristics or any vulnerabilities. The system must be accessible and easy to navigate. Particular attention should be given to encouraging engagement with the complaints process for those groups or communities whose participation is disproportionately low.
27. While complainers should expect fairness and even-handedness in the handling of their complaints, they in turn have a responsibility to act respectfully towards the police officers or staff involved in dealing with their concerns.
28. It is important to demonstrate accountability for the actions and decisions of the organisation and to hold to account those found to be responsible for poor or improper conduct. Policing bodies should adopt a restorative approach which seeks to put right anything that has gone wrong.
29. All relevant complaints may be subject to external scrutiny and there must be clear arrangements in place to inform complainers of their right of recourse to the PIRC if they are dissatisfied with the handling of their complaint.

## Values complaints and continuous improvement

30. Complaints provide a valuable opportunity to measure current performance, assess public concern or expectation and improve policy development and the service to the public.
31. Policing bodies must embrace a culture of valuing complaints, promote continuous improvement to drive up the standards of service delivery and ensure that there are effective means of communicating and sharing lessons learned.

## Capture and take Account of Equality Evidence

32. In order to advance equality of opportunity, eliminate discrimination and foster good relations between persons who share a relevant protected characteristic and persons who do not share it, policing bodies should seek to capture and record equality evidence<sup>7</sup> from complainers when they engage with the police complaints system. Adequate and accurate equality evidence is at the root of compliance with the general equality duty. Equality evidence, alongside complaints data, will enable policing bodies to better understand the effect of its policies and decisions, obtain a clearer understanding of the needs of their service users, inform more effective targeting of policy and resources and identify whether further information is required.

## Handling of Complaints

33. There are a number of ways in which a complaint may be dealt with, depending on its seriousness and complexity. The processes and procedures discussed below apply specifically to Police Scotland but the general principles are applicable to other policing bodies.

### Frontline Resolution (FLR)

34. The ability to resolve complaints promptly and simply is a key element of an efficient and effective police complaints system. To this end, FLR allows complaints to be resolved at an early stage by way of explanation, assurance or apology, usually over the phone or in person. FLR is intended to be a pragmatic and proportionate approach that benefits all parties involved in a complaint and we fully support its use.

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<sup>7</sup> The information held (or will be collected) about people with protected characteristics and the impact of decisions and policies on them.

35. Notwithstanding, FLR must only be used where the complaints are non-criminal, straightforward, relatively minor in nature and can be resolved quickly with minimal enquiry. Complaints involving allegations of a complex or serious nature are not suitable for FLR. This includes allegations that an individual's human rights have been interfered with and other serious complaints alleging: excessive force; unlawful or unnecessary arrest or detention; denial of access to a solicitor or interpreter; allegations of discrimination<sup>8</sup>; and unjustified searches of persons or premises. In respect of such complaints, FLR should only be undertaken in exceptional circumstances where, for example, the complaint is clearly unfounded or based on mistaken information.
36. In determining whether FLR is appropriate, the primary consideration is the nature of the complaint rather than the incident from which it has arisen. For example, a complaint raising multiple complex legal issues is unlikely to be suitable for FLR, irrespective of the subject matter of the complaint. By the same token, even though it may have arisen from the investigation of a serious crime, a complaint that an officer was rude or late for an appointment is likely to be suitable for FLR.
37. Where a complaint is about the actions of an officer or member of staff, the policing body should consider whether that individual ought to be given a right of reply to the allegation before the complaint is concluded by FLR.
38. Such complaints do not have to be dealt with via the full six-stage process<sup>9</sup> and there is no requirement for them to be formally investigated or responded to in writing. Nonetheless, it is important that auditable records, such as file notes or call recordings, are retained in respect of: the nature and detail of the complaint; all interaction and attempted contact with the complainer; any enquiries carried out; assessment to demonstrate why the complaint was deemed suitable or unsuitable for FLR and the rationale behind all decisions made in respect of the complaint. As complaints concluded by FLR are by definition resolved, they need not be determined as upheld or not upheld.
39. FLR is applicable only where the complainer agrees to the complaint being dealt with in this way. If the complainer is satisfied that the complaint has been resolved

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<sup>8</sup> See PIRC Guidelines for dealing with allegations of discrimination – insert link

<sup>9</sup> Discussed at pages 12-33



through an explanation, assurance or apology given by the policing body and understands that the matter will not be progressed further, that confirmation must be recorded in an auditable and sufficiently detailed manner. The complainer should be informed that the matter is concluded but advised how to pursue the complaint with the policing body, if on reflection, they are not satisfied that it has been resolved. While, written confirmation of the outcome of the FLR need only be provided when specifically requested by the complainer, policing bodies should ensure that the communication throughout the FLR process is tailored to the individual needs of the complainer.

40. However, even if FLR is unsuccessful and the complainer is not satisfied that the complaint has been resolved, it may not always be necessary or proportionate to progress such complaints through the full six-stage process. This may be appropriate in the following circumstances:

- **Nature of complaint** – the complaint is very trivial in nature, or
- **Undue delay** – a period of more than 12 months has lapsed between the incident giving rise to the complaint and the complaint being made, without any reasonable explanation, or
- **Sufficient information** – the information gathered during the FLR enquiry is sufficient to enable the policing body to respond to the complaint adequately and, where appropriate, determine as upheld or not upheld.

41. If a decision is made not to progress a complaint to a full investigation, the rationale for the decision must be fully recorded. The complainer should thereafter be provided with a reasoned and proportionate written explanation for the decision not to take the complaint further. The decision letter must include the standard passage advising the complainer of their right to seek a review by the PIRC if they remain dissatisfied (see paragraph 151 below).

42. Even where a complaint is dealt with by FLR, the policing body should consider whether it is prudent and proportionate to seize and retain perishable evidence, such as CCTV or Body Worn Video footage, as doing so will enable a more

effective level of enquiry should the complaint ultimately fall to be progressed through the full six-stage process or become the subject of a complaint handling review (CHR) by the PIRC. The policing body should also consider whether there are any conduct issues or learning opportunities arising from the complaint.

### **Alternative Resolution**

43. In addition to more formal complaint handling processes, all policing bodies operating in Scotland are encouraged, where the complainer consents, to consider other well established means of resolving complaints and conflicts, such as mediation, reconciliation or restorative justice.

### **Professional Standards Department (PSD) and divisional complaint handling**

44. When complaints are not suitable for FLR, their nature, complexity and seriousness will influence whether they should be dealt with by the local policing division, a specialised policing department or the Professional Standards Department (PSD).
45. Complaints that, by their nature, require specialist investigation or input, for example, those relating to road traffic, custody or intelligence, should be allocated to a department or staff/complaint handlers with the necessary expertise. Complaints considered to be serious or particularly complex should be progressed or overseen by the PSD.
46. To assess the seriousness of a complaint, the following questions should be considered.
- Does the complaint relate to a death, serious injury or other serious incident?
  - Does it raise issues of potential reputational damage to the policing body or arise from a matter that is particularly sensitive or high profile or have a significant impact on public confidence?

- Does it involve a vulnerable person or allegations that an individual has been discriminated against or disadvantaged or that their human rights have been interfered with?
- Has the complainer made what appears to be a credible allegation of a significant failure to adhere to procedure?

The complainer was taken into police custody where, following a vulnerability assessment, it was determined that he should be subject to constant observations. Constant observations were not maintained and the complainer suffered harm while in a cell. He subsequently complained that he would not have come to harm had constant observations been maintained.

As the complaint alleges a significant failure in custody procedures, resulting in harm to the complainer and potential interference with his human rights, this complaint would be classed as serious and a specialist investigation would be required by the custody division.

Police Scotland was policing a major demonstration during which fighting broke out between rival factions. In the course of the fighting, a stolen motorcycle being ridden by two persons, at high speed, broke through a police cordon and crashed causing members of the public to be injured. A complaint was subsequently received from an elected representative alleging substantial failings by the local area commander, who was in charge of managing the policing of the demonstration.

Given the potential for significant damage to public confidence and the force's reputation, the complaint should be viewed as serious and should be handled by the PSD.

47. Some preliminary enquiries may need to be undertaken before the seriousness of the complaint can be assessed and a decision taken on how it should be progressed. If an officer who is appointed to investigate at a local divisional level considers, at any point, that the matter is more serious than first thought, this must

be communicated to the PSD for further assessment. A decision will then be made as to whether the complaint requires more specialised investigation.

## The Six-Stage Complaint Process

48. This section describes the six-stage complaints process and the over-arching principles of good complaint handling that all policing bodies operating in Scotland should follow.

### Stage 1 – Notification of Complaint

49. Complaints about policing bodies in Scotland may be made in writing, verbally, by phone or face-to-face, or by any means of online communication. It is important that complainers are aware of the different routes available when making a complaint, and that policing bodies adopt a flexible approach which considers the individual needs of the complainer and takes steps to remove any barriers that members of the public may face when making a complaint.
50. Complaints brought by a representative or a third party should also be accepted, however, confirmation must be sought to establish that the representative has obtained the appropriate consent of the service user.
51. The officer or staff member notified of the complaint should inform the complainer of the next steps. All complainers should be provided with a copy of any available complaint related publications, such as the national leaflet on complaints about the police or directed to the relevant section of the policing body's website<sup>10</sup>. The individual needs of the complainer must be considered by the person notified of the complaint. All communication with the complainer, including complaint related publications, should be available in alternative formats.

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<sup>10</sup> Police Scotland's Complaints about the police  
<https://www.scotland.police.uk/about-us/police-scotland/complaints-about-the-police/>  
SPA Complaints Process  
<https://www.spa.police.uk/about-us/complaints/spa-complaints-process/>

52. Complaints must be taken at face value and, in the absence of strong evidence to the contrary, **must** be assumed to have been made in good faith.

## Stage 2 – Recording and Initial Assessment

53. Accurate and consistent recording of complaints is essential to promoting public confidence in the complaints process. It also provides evidence to assess the impact that policies and strategies have on service users, and to assist future policy and strategy development. A structured system for recording complaints, equality evidence, complaint outcomes and remedial actions taken provides an opportunity to identify services that are not being provided to the service users' satisfaction, or are affecting people with certain protected characteristics disproportionately. It is vital that this information is retained, analysed and used to improve service delivery.
54. Within Police Scotland, the PSD is responsible for the recording of complaints. All complaints regarding the SPA, SPA staff and senior officers of Police Scotland are recorded by members of the SPA complaints Team

### Is it a complaint about the police?

55. All officers and staff involved in the recording of complaints must be familiar with the definition of a relevant complaint: a statement (whether oral, written or electronic) expressing dissatisfaction about an act or omission by the policing body, or someone who, at the time of the act or omission, was a person serving with the police.
56. A “person serving with the police” is someone who is, or at the time of the matter being complained about was, a serving police officer or member of staff of a policing body. The act or omission need not have occurred in the course of an officer or staff member's duty, employment or appointment in order to constitute a relevant complaint.
57. A relevant complaint may relate to any action taken, or any lack of action taken, by or on behalf of the person who is the subject of the complaint. It can also relate

to the standard of service, which the person who is the subject of the complaint has provided or failed to provide. The officer or staff member need not be identified in order for an allegation to be treated as a complaint.

58. An expression of dissatisfaction regarding the actions of the policing body as an employer (e.g. relating to the terms and conditions of employment of a police officer or staff member) is not considered to be a complaint about the police. Such matters are normally dealt with by the policing body's human resources department, internal grievance procedure or through a misconduct process.
59. Expressions of dissatisfaction that relate to a specific action or a decision do not require to be recorded as complaints where there exists a separate appeal remedy specifically designed to deal with the subject matter of the person's concerns. For example, an appeal to a sheriff following a decision to revoke a firearms licence, or an appeal to the Information Commissioner's Office or Scottish Information Commissioner against a decision not to disclose information, or an appeal following a finding of guilt in criminal proceedings. For the avoidance of doubt, a member of the public may complain about the actions of the police during a criminal investigation.
60. Sometimes it is not clear, at the outset, whether the matter is a complaint about the actions or behaviour of an individual, about the service provided by the organisation, or is merely a request for an explanation or information. A request for information should not be recorded as a complaint.

### **What to consider when recording a complaint**

61. If the complaint is made by telephone to a service centre or face-to-face at a local police office and is not resolved at the initial point of contact, the person notified must note the complaint and pass it to the PSD or other appropriate department for recording, assessment and allocation. The same process applies to all complaints received by way of email or letter.
62. Officers and staff members recording or receiving a complaint must give appropriate consideration to, and be clear about, the information provided by the complainer. It is important for the person receiving the complaint to proactively

establish the exact issues of concern and/or dissatisfaction. Officers and staff members should consider the different needs of complainers as they navigate the complaints system, and take steps to make reasonable adjustments, where appropriate. Any information provided by the complainer concerning protected characteristics and their experience with the policing body should be fully documented.

63. On receiving a complaint, the person should seek to establish:
  - What is the complaint?
  - What does the service user wish to achieve by complaining?
64. The answers to these questions should be established and agreed by the service user and provider.
65. As a complaint may contain more than one allegation, each allegation should be recorded as a distinct “head of complaint”. A useful way to approach this is to assess whether an individual allegation is capable of being upheld or not upheld independently of the complainer’s other allegations. If it is, the allegation should be recorded separately.
66. The person recording or receiving the complaint should also check whether the complainer has previously brought the same complaint to the policing body. It is not necessary to record a new complaint that is identical to complaints recorded previously and which has arisen from the same set of circumstances. However, it must be borne in mind that a repetitious complaint may mean that previously raised concerns have not been properly addressed. The person receiving the complaint should take time to ensure that the matter has been, or is being, dealt with properly.
67. Any complaints received by Police Scotland about senior officers (i.e. Assistant Chief Constable rank and above) should be forwarded by the PSD to the SPA. In relation to other policing bodies operating in Scotland, complaints about senior officers should be forwarded to the appropriate authority, which should have procedures in place to record and assess the matter.
68. In respect of complaints about non-senior officers, the PSD must determine the type and nature of complaint being made and assess its seriousness or

complexity. This allows a decision to be made on how the complaint is to be progressed, i.e. by FLR, the local division or PSD.

69. There are three broad categories of police complaints: on-duty complaints, off-duty complaints and quality of service complaints.

### On-duty complaints

70. On-duty complaints are those where there is an allegation about an act or omission by an officer or staff member while they were on duty. These may be criminal or non-criminal in nature and are categorised by Police Scotland as follows:

- Excessive force
- Incivility
- Neglect of duty
- Irregularity in procedure
- Traffic irregularity/offence
- Oppressive conduct/harassment
- Unlawful/unnecessary arrest/detention
- Discriminatory behaviour
- Corrupt practice
- Other – criminal
- Other – non-criminal

### Off-duty complaints

71. Complaints about the policing body may also be made about the acts or omissions of an officer or staff member who was off duty at the time of the incident giving rise to the complaint. Such complaints can allege criminal conduct or non-criminal conduct, such as incivility.
72. Many complaints about off-duty officers and staff arise from personal disputes and interactions, such as neighbour disputes or other incidents occurring in their personal lives. Police officers and staff have a right to a private life. In determining whether an off-duty allegation should be dealt with as a complaint about the police, consideration should be given as to whether a link exists between the subject matter of the complaint and the person's role as a police officer or member of

police staff. The matter should be treated as a complaint about the police **only** if the conduct (if established) would, in the view of a reasonable observer, have a bearing upon the person's role as a police officer or member of police staff, including any conduct that has the potential of undermining the core values and objectives of the policing body or public confidence in policing in general.

A member of the public complains about an off-duty police officer, who is the coach of her son's football team. She complains that the officer runs the team poorly and that her son is not getting a regular game. This should not be recorded as an off-duty complaint, as a reasonable observer would not consider the officer's conduct as a coach to have a bearing on his role as a police officer.

A member of the public complains about an off-duty police officer who used his warrant card at a railway station to jump the queue. He complains that, following a high profile sport event, the local railway station was very busy with travelling fans requiring police officers to regulate the entry to the station. The complainer alleged that an off-duty officer, who was at the sports event, used his warrant card to avoid waiting in the queue. The complainer alleges that, during the train journey, the officer stated that using the warrant card to avoid waiting in the queue was one of the privileges of his employment.

As the use of the warrant card is directly associated to his work as a police officer, the complaint should be recorded and investigated.

### Quality of service complaints

73. Quality of service complaints concern the provision of a service by the policing body, rather than the conduct of an individual officer or member of police staff. Complaints of this kind are categorised by Police Scotland in the following way:

- **Policy/ Procedure** - this concerns the policies, practices or procedures of the policing body, rather than the implementation of these by an individual officer or staff member.

- **Service Delivery** - this relates to the policing response to an incident or other matter, such as the time taken to respond or the type of response provided.
- **Service Outcome** - this concerns the outcome of policing involvement in a matter, such as a failure to take action or dissatisfaction with the action taken.

### Officers/staff no longer serving

74. If a complaint is made about an officer or staff member who has since retired, resigned, or been dismissed, the complaint must still be recorded and dealt with in the same manner as any other complaint about the policing body. In order to constitute a relevant complaint, the alleged act or omission must have occurred at a time when the person was serving with the police. If it is deemed that such complaints can still give rise to organisational learning and improvement, the retirement, resignation or dismissal of the subject officer should not preclude effective and proportionate investigation.

A call handler took a call from a member of the public who wished to make a complaint about the actions of an officer who had earlier attended a call at her home. The complaint related to the officer failing to take details and deal with an allegation of domestic assault.

The call handler arranged for another officer to be dispatched to deal with the allegation of assault, but did not record a complaint about the police. The complainer then wrote a letter of complaint alleging that the officer and the call handler were in neglect of duty. The call handler has since left the service.

A complaint about the police should have been recorded by the call handler and sent to the Professional Standards Department. A check revealed that some staff were unclear on new procedures for processing complaints. Training material was re-circulated for all staff in the service centre for dealing with complaints. The complainer was issued with an apology and advised of the issues identified and what was done to prevent this from happening in the future.

## Anonymous Complaints

75. Anonymous complaints can present a number of challenges for policing bodies. The fact that the complainer withholds their identity and remains anonymous during the process does not preclude the complaint being dealt with.

However, difficulties can arise where anonymous complainers do not provide their contact details, meaning that the policing body is unable to communicate with the complainer directly. In such cases, the policing body is unable to obtain additional information to assist with the initial assessment of the complaint or the complaint enquiry and it is not possible to issue the final response to the complainer. In such circumstances, policing bodies should consider whether the anonymous complaint is a relevant complaint capable of being made by a member of the public. If so, the complaint should be progressed through the complaint handling process. Alternatively, policing bodies must consider whether other routes, such as whistle-blowing, are more appropriate to deal with anonymous allegations.

## Withdrawn and Abandoned Complaints

76. Where a complainer intimates that they wish to withdraw their complaint in full, it is advisable to obtain a handwritten statement from the complainer to that effect. The statement should include the complainer's reason for withdrawing the complaint. Consideration should also be given to retaining any available CCTV, BWV or other video/audio evidence, medical or photographic evidence in the event the complainer decides to re-engage with the complaints process.
77. In certain circumstances, despite the complainer wishing to withdraw their complaint, a full complaint enquiry may still be required if:
- The complainer states that their reason for withdrawing the complaint is their lack of faith in the complaints process and/or that the police will not investigate the matter properly;

- The complaint arises from a matter that is particularly sensitive, serious or high profile;
  - The subject officer has a concerning complaint history
78. In cases where the complainer fails, without good reason, to engage with the enquiry officer, consideration may be given to abandoning the complaint enquiry. However, the individual circumstances of each complaint/complainer must be considered. The complaint handler must make all reasonable efforts to secure the complainer's cooperation and engagement, and keep an accurate record of all attempts to contact the complainer.
79. If the complaint enquiry cannot proceed further without the complainer's cooperation/engagement, consideration should be given to abandoning the complaint. All decisions to abandon a complaint should be communicated in writing and the complainer should be given a reasonable opportunity to re-engage with the complaints process.
80. In some cases, further engagement by the complainer may not be necessary, in order for the complaint enquiry to proceed to a conclusion and a final response to be issued to the complainer.

## Stage 3 – Allocation and Enquiry

### Factors to be considered when allocating complaints

81. The allocation process involves deciding how to appropriately progress the complaint. It requires an assessment of the seriousness or otherwise of the complaint as set out at paragraphs 44 - 46 above.
82. Consideration also needs to be given to the appropriateness of the officer appointed to handle the enquiry. For locally handled complaints, the enquiry

officer<sup>11</sup> may, in some cases, be the line manager of the officer who is the subject of the complaint. It is important to consider the perception that may be created by the appointment of an enquiry officer who is well-known to the officer concerned. In any case, the officer responding to the complaint must be of a more senior rank. For example, an Inspector cannot determine a complaint about a Chief Inspector.

83. Officers or staff who were involved in an incident must have no role in the handling of any subsequent complaint. Those appointed to deal with complaints must immediately declare if they consider that their knowledge of anyone involved in the incident could potentially undermine, or be perceived objectively as having the potential to undermine, their ability to deal impartially with the complaint. In such circumstances, the person concerned must have no further involvement in the handling of the complaint.

A member of the public complained about the way a police officer dealt with a dispute between him and his neighbour. The enquiry officer established that the complainer's neighbour was a distant relative and declared that she felt it was inappropriate for her to deal with the complaint.

As the relationship between the officer and the neighbour could give rise to a conflict of interest, the complaint was allocated to a different officer.

## Proportionality

84. Proportionality is a key element of the complaint handling process. In order to establish the facts behind the complaint, it is essential that a tailored enquiry is conducted which is thorough but also proportionate to the issues raised.
85. The enquiry officer should seek to establish:
- What should have happened?
  - What did happen?
  - What was the cause of any identified failings?

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<sup>11</sup> or civilian equivalent

- What can be done to rectify things?
86. The extent of the enquiry will depend on the facts and circumstances of each case. In the context of any complaints enquiry, the overarching principle is that enquiries must be sufficient to enable an effective and properly reasoned response to be issued to the complainer. Guidance on what should be contained in a final response to a complaint is provided at paragraph 138 below.
87. Those appointed to handle the complaints require to use their judgement in determining the necessary scope and extent of the enquiry. The following factors should be taken into account in making this determination.
- ***The need to establish the material facts*** – this applies to all complaints regardless of whether they are classed as serious and/or complex or minor in nature.
  - ***Whether particular facts are in dispute*** – the enquiry should focus on establishing those facts that are in dispute.
  - ***The availability of potentially material evidence*** – this is linked to (1) and (2) above. Where the facts giving rise to a complaint are in dispute and potentially material evidence is available (e.g. CCTV, Body Worn Video (BWV) or the account of an independent witness) it must be obtained and preserved at the earliest opportunity. Where the decision is taken not to carry out particular enquiries (e.g. obtaining statements from certain witnesses), enquiry officers should note the reasons for their decisions.
  - ***The seriousness and/or complexity of the complaint and any public concern*** – where the complaint may entail serious consequences for a complainer, police officer or third party, greater time and resources will generally require to be allocated to the investigation. The same applies where the issues raised by the complaint are complex or where the complaint has given rise to public concern.
  - ***The extent to which the complaint may give rise to learning*** – this is not a decisive factor in itself, but may justify additional enquiries where otherwise these may not be necessary.

88. While it is important to deal with complaints quickly and efficiently, this must not compromise the quality of investigation or complaint handling.

### Obtaining clarification of the issues from the complainer

89. Following the appointment of an officer or staff member to investigate the complaint, contact should be made with the complainer at the earliest opportunity. This may be done during a face-to-face meeting, telephone or e-mail correspondence. Complaint handlers should take cognisance of the individual needs of the complainer, and tailor communication to meet those needs

Reasonable adjustments should remove or reduce any disadvantages to the person for whom they are intended to assist<sup>12</sup>. Examples of reasonable adjustments to communication methods may include:

- Providing correspondence in braille, by audio CD, using larger font, or reading information aloud to the complainer
- Using 'Easy Read' to translate difficult information by making it easier for the complainer to understand
- Arranging face to face meetings for complainers who may suffer from visual or hearing impairments, where telephone communication is not appropriate
- Adhering to an individual's preferred means of communication, where feasible and appropriate

90. One purpose of early contact is to ensure that the complainer is aware that their complaint is being progressed. The enquiry officer should agree the scope and nature of the complaint, and discuss the complainer's expectations. Failure to do so may result in an ineffective investigation and a response that does not address

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<sup>12</sup> [What reasonable adjustments are: Reasonable adjustments - Acas: Reasonable adjustments in practice | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/what-reasonable-adjustments-are)

the full extent of the complainer's concerns. Detailed notes of all discussions with the complainer must be accurately recorded and retained.

91. If the nature of the complaint is serious, complex, detailed or unclear, it is preferable to obtain a statement. This should be done as early as possible in the complaints process.
92. Statements should also be taken in the following circumstances:
  - where the complainer does not appear to have effectively or comprehensively described their complaints in their initial correspondence;
  - where it appears that the complainer may have additional information in relation to their complaint; and
  - where the complainer has expressed the desire to provide a statement.
93. Obtaining a statement has a number of benefits for both the complainer and the policing body. A comprehensive, signed statement acts as the framework for any subsequent investigation. It focuses the complainer on their issues of concern. It also provides the enquiry officer with an opportunity to explain the basis for any police action and, by doing so, allows an opportunity to resolve concerns at that stage.
94. The statement must make clear the concerns that the complainer wishes to be addressed and those which, in the light of any explanation given, do not require any further action. All statements must contain a list of the complaints being made and any evidence being offered by the complainer in support of them. Where the complainer has made complaints in earlier correspondence but does not refer to them during their interaction with the enquiry officer, the enquiry officer must clarify whether the complainer still wishes to pursue them. If the complainer does not wish to do so, this should be clearly recorded in the statement.
95. Obtaining a statement also provides the opportunity to assess the complainer's expectations and to put on record the enquiry officer's view as to whether these can be realised (for "managing expectations" see paragraphs 105 and 106 below).
96. The complainer should always be asked to sign the statement. Any refusal or inability to do so should be noted. If the complainer will not or cannot confirm the

contents of the statement, this should not in itself prevent the complaint being progressed.

97. Enquiry officers must apply a degree of flexibility regarding the method used to obtain a statement. Some complainers may have been affected by tragic or traumatic circumstances which led to their interaction with the police. Enquiry officers should consider whether reasonable adjustments are required to accommodate the complainer's individual needs and vulnerabilities. If the complainer is unwilling or unable to provide a statement by conventional means, they should be given the opportunity to communicate in other forms, for example, by a pre-prepared statement or email.

A member of the public submitted complaints to Police Scotland's Professional Standards Department in relation to investigation of an incident which led to the tragic death of her relative. The complainer advised that she is suffering from anxiety, post-traumatic stress disorder and generally poor mental health. Due to the traumatic nature of the incident, the complainer felt unable to discuss the incident in person and provide a statement to the enquiry officer to inform the complaint enquiry. The complaint enquiry officer made a reasonable adjustment and allowed the complainer to prepare her own account of the events within an agreed timescale.

Complaint handlers should be mindful that the circumstances of certain complaints are often sensitive, traumatic or upsetting for individuals to speak about, when considering the most appropriate means by which to obtain an account from a complainer.

98. The enquiry officer must consider the statement objectively and impartially, and assess the credibility and reliability of the account.

#### **“Heads of complaint” form**

99. The policing body and complainer should formally agree a list of the complaints to be dealt with/progressed. Within Police Scotland, this is done by listing the complaints on a standard “heads of complaint” form (see [Appendix 3](#)) which the

complainer must be asked to agree. Where the complainer has previously communicated complaints in writing but, following discussion, does not wish to pursue some or all of the complaints, the enquiry officer must record this (e.g. in a statement) and ask the complainer to sign confirming that they wish no further action taken in relation to these complaints. The agreed list should be a definitive record of those complaints which the complainer wishes to pursue.

100. The heads of complaint form should, wherever possible, be used by Police Scotland in conjunction with a statement noted from the complainer. Care should be taken to ensure that the complaints listed in any statement are accurately reflected in the form.
101. The complainer should be provided with a copy of the completed heads of complaint form. If it is not possible to produce this at the time of completion, a copy should be sent to the complainer at the earliest opportunity. Where no heads of complaint form is completed, the reasons for this should be recorded.

### **Obtaining a statement from officers/staff**

102. Whether or not statements are sought from the officer or staff member subject of a complaint will depend on the facts and circumstances of the case. For example, where a complaint of excessive force is wholly undermined by the content of CCTV evidence, it may not be necessary to obtain statements from the officers concerned. Similarly, where the officer subject of the complaint has already addressed the complaint (e.g. in their notebook), no further account may be required.
103. Regardless of whether formal statements are obtained, the officer or staff member who is the subject of the complaint must be advised of the specific allegations to provide them with a right of reply.
104. If the officer or staff member opts to provide a statement in connection with the complaint, the enquiry officer must consider this objectively and impartially and assess whether the account provided is credible and reliable and addresses all of the complaints raised. If, for example, there is an allegation that the officer made a particular comment/observation, this should be addressed in the statement and

the final response sent to the complainer. Best practice is to ensure that officers specifically address each individual head of complaint in their statements. Simple denials or general assertions that do not address the specific complaint, such as “I refute the allegation” or “I was polite and professional throughout” are unlikely to carry significant evidential weight.

105. Where the officer or staff member complained about has opted not to address the specific allegations in their statement, the enquiry officer should provide them with a further opportunity to do so. It is important to bear in mind that, if an officer or staff member does not address the complaint, or if they do not provide a statement, there may be no evidence to counter the account given by the complainer. In those circumstances, assuming the evidence in support of the complaint is considered to be credible and reliable, it is likely that the allegation would be upheld on the balance of probabilities.

A member of the public complained that she attended at a local police station to report a crime but felt that the officers (Constables A and B) did not believe her. The member of the public provided a statement of complaint explaining the reasons why she considered this to be the case. In contrast, Constable A provided an account stating that he could not recall the interaction with the member of public and Constable B provided a general denial in his account, stating “*I refute the allegation*”.

Constable A’s account is of no evidential value as he could not recall his interactions with the member of the public. Constable B did not address the complaint or provide a detailed account beyond a general denial. Accordingly, the account provided by the member of the public outweighs that of the officers complained about. The complaint should, therefore, be upheld.

106. It is important that statements provided by officers and staff represent their own accounts. It is not acceptable for officers or staff to simply copy the statements provided by colleagues. The submission of copied statements by officers or staff casts doubt on the reliability of their accounts. Where statements are received in this form, the officer or staff member should be reminded of the need to prepare statements independently of colleagues, and be given a further opportunity to

provide an independent account. If no further account is provided, careful consideration will require to be given to the reliability of the statements provided.

### Statements of other witnesses

107. The extent to which statements require to be taken from other potential witnesses depends on the facts and circumstances of the individual case. As noted above, in cases where clear or conclusive CCTV evidence exists, it may not be necessary for accounts to be taken from witnesses. In other cases, obtaining the accounts of witnesses may be crucial to the effective determination of the complaint. The factors to be considered are:
- whether the account of a particular witness could assist in establishing the material facts; and
  - whether obtaining the account is proportionate, taking into account the evidence that already exists.
108. Statements obtained from witnesses must be considered objectively and impartially and an assessment made of the credibility and reliability of the account. Statements should be dated and contain the details of the officer or staff member who obtained them
109. Enquiry officers must also apply a degree of flexibility when obtaining witness statements. Enquiry officers should consider whether reasonable adjustments are required to meet the individual needs and vulnerabilities of a witness. If the witness is unwilling or unable to provide a statement by conventional means, they should be given the opportunity to communicate in other forms, for example, by a pre-prepared statement or email.

## Managing expectations

110. The management of a complainer's expectations is an important element of the complaint handling process. Failure to manage expectations may result in continued dissatisfaction, regardless of the effort applied in investigating and responding to the complaint.
111. Taking the following steps may assist in the management of expectations:
- establish at an early stage the complainer's expectations regarding the complaints process itself and their desired outcome ;
  - where the complainer's expectations are unlikely to be fulfilled, make this clear to the complainer and give details of the likely outcomes;
  - advise the complainer of the various steps within the complaints process and the amount of contact they should expect during the handling of the complaint;
  - provide the complainer with the national complaints leaflet, if this has not already been supplied; and
  - inform the complainer of how long enquiries are likely to take, when they are likely to receive a response to the complaint, and the options open to them if they remain dissatisfied.

## The importance of good communication

112. Confidence in the complaints system requires regular and effective communication with the complainer throughout the process. It is also necessary to communicate regularly with the officer or staff member subject of complaint in order that they are aware that matters are still ongoing and when they can expect to be notified of the findings.

## Unacceptable and unreasonable conduct and behaviours

113. People can act out of character in times of distress or anxiety. This can result in the complainer acting in an unacceptable manner. Examples include; persistent refusal to accept a decision; persistent refusal to accept an explanation on what can or cannot be done; and continuing to pursue a complaint without any new information. In some cases, it may be necessary to advise complainers of the need for mutual respect between them and the policing body.
114. The complainer's right to complain must be balanced with the rights of officers and staff to safety and respect, and with the right of other complainers to have appropriate time and resources applied to their own complaints.
115. Unreasonable conduct by a complainer can hinder efforts to deal with the complaint efficiently and effectively. Most public bodies have in place policies and procedures to deal with unreasonable conduct and these should be invoked by policing bodies in appropriate circumstances. If the behaviour of the complainer is deemed unacceptable and/or the complainer refuses to accept a decision or explanation, the policing body should record the reasons for their decision and, if it is decided not to engage with the complainer, they should be notified of that decision.
116. However, in order that the complaint can be addressed objectively and impartially, it is important to separate the allegation from the complainer's behaviour. Simply because a complainer behaves unreasonably during the complaints process does not, in itself, affect the validity of their complaint.

## Record-keeping

117. Record-keeping is an integral part of the complaint handling process, whether the complaint is resolved by FLR, handled by the local police division or dealt with by PSD. Maintaining complete and accurate records assists in demonstrating (both internally and to external oversight bodies) that complaints have been dealt with diligently and based on the available evidence. It also protects policing bodies

against claims of poor complaint handling, promotes transparency and allows for proper scrutiny.

118. A six-stage complaint file should contain a record of the complainer's details, issues raised, all significant steps taken during the complaints process, all evidence obtained during the course of the investigation and the outcome, including any learning identified or any corrective or remedial action proposed as a result of complaint process. In particular, records must be kept of all contact with the complainer, the officer subject of complaint, and any witnesses. This is particularly important where the officer subject of complaint provides a statement and further enquiries are made with the officer to clarify his/her position on the complaint. In that situation, the officer should be asked to provide a further statement. In the absence of a further statement, a clear record must be kept of any additional information provided by the officer, e.g. emails or detailed notes of any telephone conversations.
119. The same applies to any additional information provided by the complainer or a witness. Where contact is made with a complainer by telephone, a detailed note of the conversation must be recorded.
120. All email correspondence and file notes relative to the handling of the complaint must be retained.

An officer investigating a complaint comments in her report that, during the investigation, she spoke to a member of staff within the shop where the incident that led to the complaint had occurred. The member of staff told the officer that the complainer had started arguing with the person subject of complaint and that this had been captured on the shop's CCTV system.

If subject to external scrutiny, the information in the report would hold little weight without a signed statement from the member of staff and a copy of the CCTV footage.

In response to a complaint of incivility, an officer provides a statement in which he does not comment on the complaint. Further enquiries are made with the officer to establish his position in respect of the complaint, but no record is kept of the additional information

provided by the officer. In the response to the complaint, the police inform the complainer that the officer denied the allegation of incivility.

As there is no record of the evidence to support the finding made in the response, the handling of the complaint is likely to be commented on adversely by the PIRC in any complaint handling review.

## The Complaint Enquiry Outcome

121. In cases involving complaints of a serious, complex or criminal nature, or where the complaints may justify the bringing of misconduct proceedings, in accordance with best practice, the enquiry officer should prepare a report on conclusion of all outstanding lines of enquiry. The report may contain the following:

- details of all complaints which have been agreed with the complainer;
- an outline of the complainer's expectations;
- a clear account of the enquiry carried out and the evidence obtained;
- an explanation for any decision not to obtain a statement or to make further enquiries;
- details of the facts which have been established in respect of each complaint;
- a recommendation on the determination as to whether or not each complaint is upheld and the reasons for this, based on the evidence;
- recommendations for any further action; and
- details of any individual or organisational learning from the complaint (regardless of whether or not the complaint is upheld).

## Criminal allegations

122. In Scotland, the Crown Office and Procurator Fiscal Service (COPFS) is responsible for the prosecution of crime. Accordingly, where it can reasonably be inferred that an officer or member of police staff may have committed a criminal

offence, the matter must be referred to the Criminal Allegations Against the Police Division (CAAP-D) of the COPFS. The SPA has a similar obligation in relation to criminal allegations made about senior officers of Police Scotland.

123. Where a complainer has made both criminal and non-criminal complaints, the policing body concerned should always consider whether COPFS involvement precludes the non-criminal complaints from being progressed. Much will depend on the nature of the non-criminal complaints and whether these are closely linked to the criminal allegations. If in doubt, the policing body should seek guidance from COPFS and/or the PIRC on the matter. Where the consideration of non-criminal complaints requires to be delayed until criminal allegations are determined, the policing body must notify the complainer and inform them that a response to the non-criminal complaints will be issued as soon as the COPFS has concluded its involvement.

## Stage 4 – Determination

124. The enquiry officer must carry out an objective analysis of the evidence obtained. The following should be considered:
- the act or omission that prompted the complaint;
  - whether or not the facts established support/contradict the complainer's position;
  - if the evidence is supportive of the complainer's position, what action should be taken and what can be done to prevent a recurrence;
  - whether an apology is appropriate; and
  - what can be learned from the complaint
125. The findings of the enquiry will then be passed to a more senior officer or decision-maker, who will make a determination based on the information provided. The officer tasked with making the determination must be satisfied that the enquiries undertaken and evidence gathered during the complaint enquiry are sufficient to

enable an effective and properly reasoned response to be issued to the complainer.

126. Where the complaint enquiry identifies poor performance, the reason for this should be established. For example, the performance may be related to: a lack of resources; a lack of training or experience; poor planning and supervision; or a genuine misunderstanding or error on the part of the officer or staff member. This could assist in identifying learning opportunities or determining the appropriate corrective action.

### Upholding/not upholding a complaint

127. Non-criminal complaints about the police are determined using the civil standard of proof, i.e. the decision whether to uphold a complaint must be taken on the balance of probabilities.
128. A complaint should be upheld where the findings establish that the service provided or conduct of the person subject of complaint fell below the standard that a reasonable person would expect.
129. Conversely, a complaint would not be upheld where the findings show that the service provided or conduct in question was of the standard that a reasonable person would expect.
130. When deciding what a reasonable person would expect, any determination must be based on an objective and impartial assessment of the facts established. All the evidence must be considered, along with any relevant legislation, guidelines, policy or procedure.
131. Where there are conflicting accounts of events, those determining the complaint must decide, based on all the available evidence, whether the complainer's account is **more probable** than the competing account.
132. In order to determine a complaint on the balance of probabilities, it is not necessary for an account to be corroborated by other evidence, provided the account is considered to be credible and reliable. Similarly, there is no requirement: for a "*sufficiency of evidence*" (akin to what is required in criminal

proceedings); for independent evidence; to reconcile accounts; or to establish facts or findings with certainty.

A complainer alleges that a police officer was uncivil towards her. Her account is supported by a friend, who was present when the alleged incident occurred. The officer is informed of the complaint but does not address it in his statement. The enquiry officer contacts the officer providing a further opportunity to address the complaint but the officer does not do so. There is nothing to indicate that the accounts given by the complainer and her friend are unreliable or lack credibility. No other evidence exists in relation to the complaint.

The police uphold the complaint as, based on the available evidence, it is more probable than not that the officer was uncivil towards the complainer.

A complainer alleges that an officer conducted herself in an oppressive manner. Support for the complainer's position is given by two of his relatives. However, there are significant discrepancies between the accounts given and all three acknowledge that they were heavily intoxicated at the time of the incident.

The officer provides an operational statement in which she firmly denies the allegation and provides a clear and detailed account of her position.

The police do not uphold the complaint as, even though the complainer is supported by two witnesses, the discrepancies between their accounts and level of intoxication at the time indicate that their accounts are unreliable. In addition, the account given by the officer is considered to be credible and reliable. Accordingly, the officer's account is considered to be more probable than those of the complainer and other witnesses.

133. There may be occasions when it is simply not possible to conclude that one account is more probable than another. This may occur when the evidence is equally weighted on both sides, for example, where there is nothing in the surrounding facts and circumstances to support either account, or where there is nothing to undermine the reliability or credibility of either account. Where a

complaint is not upheld on this basis, the complainer should be provided with a clear explanation for the decision, including why his or her account has not been preferred.

134. During the complaint investigation, information may be uncovered that shows a failing on the part of the policing body, which has not been the subject of an allegation by the complainer. This should not be ignored. Appropriate action should be taken and an explanation provided to the complainer.

A member of the public complains that during his time in police custody he was not provided with his medication and that this made him unwell. The complainer is a vulnerable adult with learning difficulties.

The investigation into the complaint reveals that, on arrival at the custody facility, the complainer was assessed as vulnerable and placed in an observation cell with half-hourly visits to be carried out. CCTV footage was examined as part of the complaint investigation, and it was apparent that the complainer was not visited on a half-hourly basis and that checks were instead being carried out via the CCTV system. Lengthy periods of time passed, during which there was no personal interaction with the complainer.

It was considered that this fell short of the standards expected and, although the complainer was not aware of the failures, an explanation and apology were given to him regarding the failures in policing procedures.

### **Consistency in decision-making**

135. In determining complaints, policing bodies should seek to ensure consistency of decision-making. Past decisions should not be taken as binding, as the nature and circumstances of complaints are often different. However, efforts should be made to treat similar issues in a consistent way.

## Stage 5 – Identifying organisation and individual learning

### Continuous improvement

136. Senior management should take an active interest in complaints and review information relating to complaints on a regular basis. They should be provided with regular reports to identify trends or wider issues. Continuous improvement in the complaint handling process must be an ongoing objective for policing bodies in Scotland. The effective handling of complaints should, in turn, lead to an overall improvement in policing.

### Capturing learning for the organisation

137. Capturing learning from complaints and equality evidence will improve policing generally and could ultimately contribute to a reduction in complaints. Good complaint handling procedures will, therefore, have effective mechanisms in place for capturing, disseminating and implementing any lessons learned. Professional Standards Departments and those involved in the handling of complaints must work closely with other departments in this respect and there must also be strong links to police and staff training.

A man telephones 999 and asks for an ambulance to attend his home to take him to hospital as he is suffering from mental health problems. The man terminates the call and police officers are sent to his home in order to check on his wellbeing. The man requests that the officers call him an ambulance to take him to hospital; but on checking with the control room, the officers are told that ambulances will not attend in respect of mental health issues.

During the investigation of a subsequent complaint it is established that the advice given by the control room was incorrect. Training was thereafter given to control room staff to avoid a similar misunderstanding occurring in future.

138. The SPA should ensure it is kept informed of organisational learning identified from complaints through regular reports from, and meetings with, Police Scotland. Efforts should be made to ensure that any such learning has been disseminated appropriately.
139. The learning and improvement identified as a result of a complaint may relate to policing at a divisional or national level, as well as individuals who were the subject of the complaint. This may include: the review of policy or guidance; changes to equipment or facilities; training or communication initiatives; or a review of resources.

### **Internal recommendations and learning points**

140. When the officer investigating the complaint identifies a failing and has ascertained why this occurred, they should make recommendations designed to prevent a recurrence. For example, recommendations may be made to amend policy or procedure, provide training, or to review resource allocation. Where appropriate, recommendations should also be made to provide a remedy to the complainer, e.g. the provision of an explanation for any failing and an apology.
141. The enquiry officer may identify areas for general improvement, regardless of whether the complaint is upheld. These are sometimes referred to as “learning points” and may relate to complaint handling or operational matters. Learning points should be considered by managers and, where these are agreed, they should be disseminated in order to improve practice. Even where guidance on a subject already exists, e.g. in a standard operating procedure, a learning point can act to remind officers or staff about that guidance.
142. Recommendations and learning points must be based on a robust assessment of the evidence, and should be specific and proportionate to what is sought to be achieved. Consideration should be given to whether the implementation of the recommendation or learning point can be measured.
143. Depending on the nature of the recommendation or learning point, it may be worth considering the practice of other policing bodies within the UK.

## Training and development

144. There are three main types of training that should be considered by policing bodies in relation to complaints.

- The training of officers and staff as a result of any shortcomings, failings or performance issues identified by the complaint enquiry by the police handling of complaints and captured by means of internal recommendations and learning points, or following a review by the PIRC. In the absence of appropriate training, any learning from the complaint will be lost.
- The training in effective complaint handling of officers at both PSD and divisional level, and those otherwise involved in the handling of complaints. The skills and knowledge required for effective complaint handling are often different from those needed for an effective criminal investigation. Officers involved in complaint handling will require to assess evidence using a different standard of proof (the balance of probabilities) than that applicable to criminal investigations. Those involved in complaint handling will also need to be aware both of the internal procedures and processes for handling complaints, as well as the provisions of this guidance.
- General training for officers who are not involved in complaint handling but who may nevertheless be the first point of contact in relation to a complaint. The aim of such training is to ensure that all frontline officers and staff have a basic knowledge of the complaint handling process and of what to do if they receive a complaint during the course of their duties.

## Shared learning

145. In order to ensure organisational and individual improvement, any learning arising from complaints must be effectively disseminated and shared as appropriate. Procedures require to be established and maintained to enable this.

146. Methods that may be used to share learning throughout the organisation include:

- highlighting issues raised by the PIRC in complaint handling reviews;



- dissemination of PIRC learning bulletins;
- the issuing of internal reports, bulletins and emails; and
- departmental briefings.

## Stage 6 – Notification to the Complainer

147. At the conclusion of the complaint handling process, the final decision should be provided in writing (other than those dealt with by FLR).
148. Consideration should be given in appropriate cases to explaining the outcome of the complaint personally to the complainer, prior to the issuing of the final response. This may be most appropriate in relation to serious, sensitive or complex complaints, but may also be advisable, regardless of the nature of the complaint, where the complainer is known to have difficulties understanding written communication or different needs arising from different protected characteristics.

### Final response to the complaint

149. As the means by which the findings of the enquiry are communicated to the complainer, the final response is a key part of the complaints process. The response will strongly influence the complainer's perception as to how their complaint has been handled, and whether the process has been fair and impartial. A thorough investigation into a complaint will be undermined by a poor response. **It is essential to public confidence that care is taken in explaining the findings and conclusions as clearly as possible.**
150. Final responses to complaints must:
- be clear and easy to understand, and free of technical language or jargon;
  - be tailored to the individual needs of the complainer, which may require consideration of alternative formats.

- address all of the complaints that were agreed at the outset of the process;
  - be firmly based on the facts and evidence established during the enquiry and avoid the use of unfounded judgements or assumptions;
  - contain details of the enquiries carried out in respect of each complaint;
  - be adequately reasoned and explain clearly how the facts and evidence support the conclusions reached, including any conclusion that the complainer's account is no more probable than a competing account;
  - contain details of any relevant policy, procedure or legal provision that supports the conclusions;
  - state clearly whether each complaint is upheld or not upheld on the balance of probabilities;
  - communicate clearly any service or conduct failings identified;
  - contain details of any action taken to avoid a recurrence of the situation which gave rise to the complaint, including any learning or improvement action;
  - where misconduct proceedings have been taken, advise of the determination made at those proceedings and any disciplinary action ordered, if permitted by the applicable legislation;
  - include, where appropriate, an apology;
  - provide the names of the officers involved in the complaint, unless there is an assessment of an identified risk to those officers, in which case unique identification numbers would suffice; and
  - include the standard passage advising the complainer of their right to seek a review by the PIRC if they remain dissatisfied (see paragraph 156 below).
151. The complainer must be informed if there are any misconduct actions or proceedings resulting from the complaint, any other measures to be taken (e.g. through improvement action or performance regulations) or no further action to be taken. Providing complainers with this information promotes transparency in decision-making.



152. It may sometimes be necessary to consider the extent of information contained within a final response, e.g. where the disclosure of particular information would prejudice ongoing criminal proceedings. In such cases, it may not be possible to respond to the complaint until the conclusion of criminal proceedings. If in doubt, the policing body should seek guidance from COPFS before any decision is taken to withhold important information on this basis. Reference should also be made in the response to any decision to withhold information and the reasons for this.

## Apology

153. An apology should always be given where a complaint has been upheld but may also be appropriate in other situations. Generally, an apology should be issued whenever the service provided has fallen below the expected standard, or the policing body is responsible for something that has gone wrong. Apologies should be unambiguous and sincere.

“By doing [the action complained about], Police Scotland failed to provide a service of the standard rightly expected by the general public and those affected by our actions such as you. Please accept my apologies for the anxiety and distress that [the action complained about] has caused you.”

154. Phrases such as “I am sorry if you were offended by the comment” and “we regret that you felt the need to complain” can be taken as insincere and are best avoided.

155. The Scottish Public Services Ombudsman has published [guidance](#) on the issuing of apologies which policing bodies should take into account.

## Notifying complainers about the PIRC’s review function

156. When issuing final responses to relevant complaints, policing bodies must notify the complainer of their entitlement to seek a review by the PIRC if they are dissatisfied with the handling of their complaint. The following passage must appear as the final paragraph of the letter of response:

“If you are not satisfied with the way in which your complaint has been handled, you may request a review by the Police Investigations and Review Commissioner (PIRC). If you decide to contact the PIRC, you must submit an application form to them within 3 months of the date of this letter, otherwise they may not be able to deal with your complaint. The contact details for the PIRC are outlined below.”

Telephone: 01698 542900

Email: [enquiries@pirc.gov.scot](mailto:enquiries@pirc.gov.scot)

Online: [pirc.scot](http://pirc.scot)

Post: PIRC, 2<sup>nd</sup> Floor, Hamilton House, Caird Park, Hamilton, ML3 0QA

## The Role of the PIRC in Complaints

157. This section summarises the PIRC’s role in reviewing how relevant complaints are dealt with and sets out what the PIRC expects from policing bodies dealing with complaints.
158. In order to improve police complaint handling practices and increase public confidence in policing, the PIRC has the following functions in relation to complaints about the police:
- Conducting complaint handling reviews in relation to how policing bodies deal with relevant complaints; and
  - Ensuring that the complaint handling arrangements maintained by the SPA and Police Scotland are, among other things, efficient and effective.

### Complaint Handling Reviews (CHRs)

159. The PIRC may, at the request of the complainer or the policing body concerned, examine the manner in which a relevant complaint has been dealt with<sup>13</sup>. This is known as a complaint handling review. The PIRC may carry out a complaint handling review at the request of the policing body, but only if satisfied that the

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<sup>13</sup> As defined in paragraph 3

policing body has taken reasonable steps to deal with the complaint. The policing body may consider invoking this provision to deal with a complainer who repeatedly raises the same complaint, despite the policing body advising that there is nothing further they can do.

160. The PIRC's statutory remit extends to relevant complaints made about:

- the SPA;
- Police Scotland; and
- any person who, at the time of the act or omission complained of, was an officer of Police Scotland, a member of police staff, or a member of the SPA's staff

161. Through statutory instrument and formal agreement, the PIRC's remit also covers UK policing bodies whose functions extend to Scotland (**See Appendix 1**).

162. In assessing the manner in which policing bodies deal with complaints, the PIRC will consider the following key principles:

- Investigation - whether sufficient enquiries into the complaint have been carried out by the policing body;
- Evidence - whether the policing body's response to the complaint is supported by the material information available;
- Protocol - whether in dealing with the complaint the policing body has taken account of the relevant policies, procedures and legal provisions; and
- Rationale - whether the policing body's response to the complaint is adequately reasoned.

163. The PIRC's review function is based largely on the information provided by the policing body and the complainer. The review function does not involve an investigation or re-investigation of the complaint.

### **The provision of complaint files and information**

164. Police Scotland and the SPA are obliged under section 44(2) of the Act to provide the PIRC with all information specified or described in a notification given by the PIRC. In terms of section 44(3), Police Scotland and the SPA must provide the

information in such form, in such manner and within such a period as may be specified by the PIRC in the notification or in any subsequent notification. The provision of information by other policing bodies will be by agreement.

165. It is essential to the efficiency and the effectiveness of the PIRC's review process that policing bodies produce **all** the information they hold in relation to a complaint case when first requested to do so. Requests for information found to be missing from files are time-consuming for both the PIRC and the policing body concerned. Policing bodies should, therefore, ensure that the complaints file provided to the PIRC contains all the information held in relation to the complaint and the incident giving rise to it.
166. The PIRC may also require the information to be provided in a particular form. Wherever possible, the file should be submitted to the PIRC electronically. The information should also be submitted in the order specified by the PIRC.
167. Policing bodies must supply their complaint files to the PIRC within **fourteen days** from the date that the information is requested. The PIRC should be advised, as soon as possible, if the policing body anticipates a delay or is unable to meet this timescale.
168. There will be, on occasion, reason to request further information from policing bodies while the review is ongoing. In order to mitigate against significant delay to the review process, policing bodies should supply the information requested within **seven days** from the date that the request is made. The PIRC should be advised as soon as possible if the policing body anticipates a delay or is unable to meet this timescale.

### Discretionary decisions

169. Section 35 of the Act affords the PIRC the discretion to decline to review the handling of a complaint. This means that the PIRC does not have to review all complaints that are submitted by the applicants. The decision not to conduct a complaint handling review will only be made when the PIRC is satisfied that it is the most appropriate response in the circumstances.



170. The PIRC will notify the policing body of any discretionary decision not to proceed with a review if they have been put on notice that a review has been requested (i.e. the complaint file has been requested from the policing body).

### **Complaint Handling Review outcomes**

171. Under section 35(4)(b) of the Act, the PIRC must inform the complainer and those about whom the complaints were made of our conclusions, the reasons for them and what action is proposed in relation to these. By agreement, the notification of subject officers may be delegated to the policing body, who will ensure that a copy of the complaint handling review report is given to the relevant officers and/or members of police staff.

### **Reconsideration directions, recommendations and learning points**

172. If, after completing the review, the PIRC is of the opinion that the complaint should be reconsidered, the PIRC may give a “reconsideration direction” instructing the policing body to reconsider the complaint. The PIRC may direct that the reconsideration is to have regard to any further information that may have become available during the review or specify additional enquiries to be undertaken. In more serious cases, where significant complaint handling shortcomings have been identified during the review, the PIRC may supervise the reconsideration direction. In deciding whether to issue a supervised reconsideration direction, the PIRC will have regard to the seriousness of the case and the public interest.
173. The PIRC may make recommendations to the policing body, requesting that further action is taken in relation to the complaint. For example, the PIRC may recommend that the policing body conducts further enquiries into the complaint, considers the terms of internal guidelines or procedures, or issues an apology to the complainer.
174. The PIRC may also identify and make learning points. Learning points are observations used to highlight opportunities for improvement, either in complaint handling practice or in policing in general. For that reason, learning points may

be of wider application than the CHR in question. They can be designed for individuals, specific groups of officers or entire policing bodies.

175. In some cases, the PIRC may specify that a recommendation should be dealt with by an officer or staff member who was not involved in the policing body's initial handling of the complaint. All reconsideration directions must be dealt with by an individual who was not previously involved in the consideration of the complaint. This includes any person involved in the initial investigation and/or determination of the complaint.
176. We expect policing bodies to accept and implement all our recommendations. However, if the policing body considers a recommendation to be flawed or erroneous, they have **fourteen days** from the date that the CHR has been issued to formally reject our recommendations. If we do not hear from the policing body within that timescale, our recommendations will be deemed as accepted and we will await their subsequent implementation.
177. In general, recommendations should be implemented **within 56 days** of the date that the PIRC's review was communicated to the policing body. However, it is acknowledged that, in exceptional cases (e.g. where the recommendation requires the amendment of internal procedures or extensive additional enquiries), and in cases where a reconsideration direction has been given, implementation may take longer than 56 days.
178. In all but supervised reconsideration directions, the responsibility for informing all parties of the progress rests with the policing body. If there is a delay in implementation of recommendations and/or the completion of reconsideration directions, the policing body must notify the complainer and the PIRC before the expiry of the 56-day period and provide regular updates thereafter.
179. Where a supervised reconsideration direction or reconsideration direction has been given, the policing body is required to produce a section 40 (S40) report. The purpose of a S40 report is to allow the PIRC to understand precisely what has happened in revisiting a complaint. It is, in essence, a new complaint report that must detail every material action taken in the reconsideration of the complaint and make clear the rationale behind these actions and any conclusions reached. The report should be proportionate to the complexity of the complaint made and

the level of enquiry undertaken. A copy of the S40 report – alongside supporting documentation – must be provided to the PIRC for our consideration.

180. Any proposed further response should not be provided to the complainer until the S40 report has been received and approved by the PIRC. Once the S40 report has been approved, a copy of the proposed further response letter must be sent to the PIRC prior to being issued to the complainer, following which the reconsideration direction will be considered as completed, concluding our involvement.
181. The PIRC will only conclude our involvement once we are satisfied that our recommendations have been implemented in full and/or the conditions of the reconsideration have been completed.
182. Accordingly, it is considered best practice for a copy of a proposed further response letter arising from a PIRC recommendation to be submitted to the PIRC – alongside any supporting documentation – prior to the response being issued to the complainer.
183. If an organisational/individual learning point has been identified by the PIRC as part of a CHR, the policing body is expected to provide us with an update within **56 days** of the date the learning point was made to advise that it has been actioned or cascaded appropriately.

### Efficient and effective complaint handling arrangements

184. Section 40A of the Act provides that the PIRC must keep under review all arrangements maintained by the PIRC, the SPA and Police Scotland for the handling of relevant complaints. The PIRC must seek to secure that those arrangements are:
  - efficient and effective;
  - contain and manifest an appropriate degree of independence; and
  - are adhered to.

185. Complaint handling arrangements should have specific provisions to ensure policing bodies' compliance with the general equality duty. Equality data should be obtained, analysed and used to improve the complainer's experience.
186. The PIRC may make recommendations or give advice for the modification of these arrangements, as well as the practices of the SPA and Police Scotland in relation to other matters, as appear from the carrying out of the PIRC's other functions to be necessary or desirable.
187. The PIRC performs this function by carrying out regular audits of the SPA and Police Scotland's complaint handling and, where appropriate, making recommendations for improvements. The PIRC also reviews the procedures adopted by the SPA and Police Scotland for the handling of relevant complaints and gives advice in relation to these.
188. Through participation in the National Complaint Handling Development Group, the PIRC will seek to proactively work alongside Police Scotland and the SPA in order to identify opportunities for best practice and learning.
189. The PIRC will work with Police Scotland and the SPA to ensure that officers involved in complaint handling – both within PSD and at a divisional level – have the requisite skills and knowledge required for effective complaint handling. This will be achieved by the provision of presentations and training inputs as and when the need arises or is specifically requested by the policing body.
190. The PIRC will regularly examine its own arrangements and processes for reviewing relevant complaints and will modify these in order to ensure that they are accessible, efficient and effective.

## Appendix 1 Appropriate Authorities to which this Guidance Applies

Police Scotland
Scottish Police Authority
British Transport Police
British Transport Police Authority
Ministry of Defence Police
Ministry of Defence Police Committee
Civil Nuclear Constabulary
Civil Nuclear Police Authority
National Crime Agency
Her Majesty's Revenue and Customs
UK Border Force

## Appendix 2 Relevant Legislation

Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended
Police and Fire Reform (Scotland) Act 2012
Police (Conduct) (Scotland) Regulations 1996
Police Service of Scotland (Conduct) Regulations 2013
Police Service of Scotland (Conduct) Regulations 2014
Police (Conduct) (Senior Officers) (Scotland) Regulations 1999
Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013
The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007
Equality Act 2010
The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

## Appendix 3      Heads of Complaint Form used by Police Scotland

### HEADS OF COMPLAINT

<b>Reference Number</b>	
<b>Name</b>	
<b>Address</b>	

<p><b>I confirm the following is a comprehensive list of my complaints about the police arising from my contact with Police Scotland on..... and there are no other matters which I wish to raise relative to this subject.</b></p>
1.
2.
3.

Continue overleaf if there are additional allegations

<b>Name (printed)</b>	
<b>Name (signed)</b>	
<b>Enquiry Officer Name (printed)</b>	
<b>Enquiry Officer Name (signed)</b>	
<b>Date</b>	

**The complainer MUST be provided with a copy of this form at the earliest opportunity**

