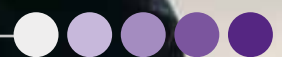


# LEARNING POINT

ISSUE NO 22 MARCH 2023

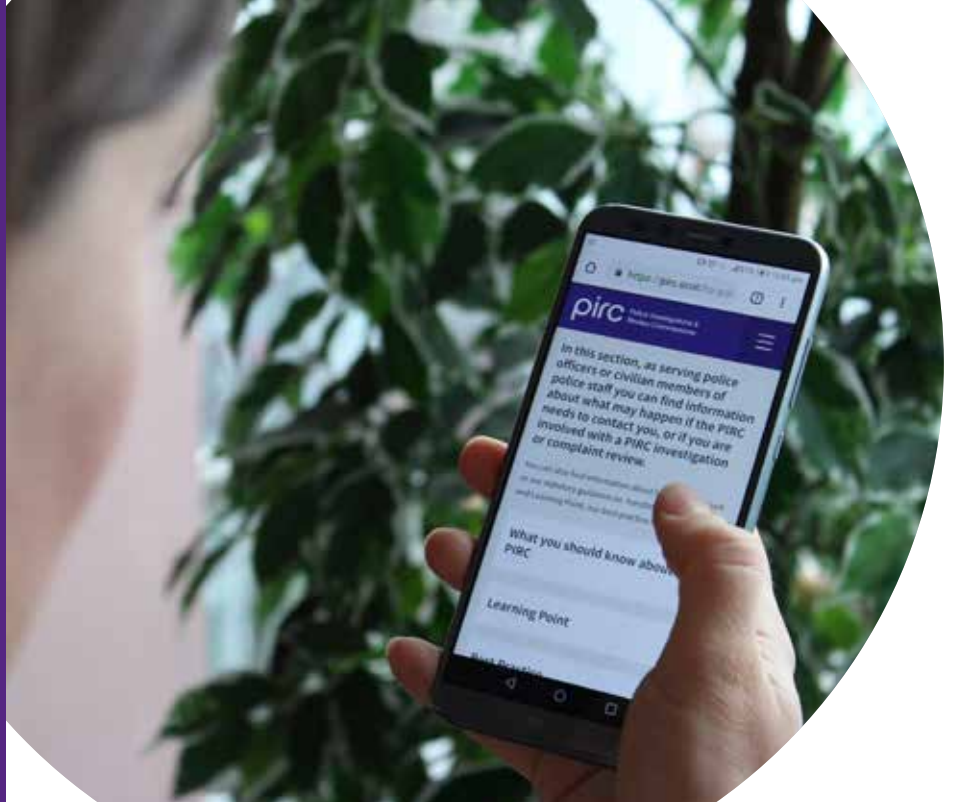
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Police Investigations &  
Review Commissioner



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## WELCOME

This bulletin is for everyone who deals with complaints and works in any of the policing bodies and organisations, located in Scotland, for whom the Police Investigations and Review Commissioner (PIRC) is legislatively responsible.

We offer guidance, updates and best practice based on real recommendations made by our review and investigations teams. These will help you better understand best practice when dealing with complaints and ultimately encourage improvements to the service being delivered to the public.



### FURTHER READING

[A guide for police and staff on the role of PIRC](#)  
[PIRC website](#)





PIRC Investigations

# Serious injury in police custody

**When people are taken into Police Custody they ordinarily spend some time in police cells. Not all people taken into custody are compliant which can result in some form of restraint or use of force being used to remove their clothing and property or to place them in a cell.**

On occasion people acting aggressively and being non-compliant have received injuries to their hands or fingers due to them being trapped by a cell door as the officers dealing with them attempt to leave. This occurred in the summer of 2022 when a person was taken into custody in relation to an allegation of serious assault. Officers entered the cell to interview the person and on attempting to leave, the person continually tried to get out of the cell. They were physically taken to the rear of the cell by the officers on three occasions and on the third, the officers managed to leave and close the door. However, the person moved and tried to stop the door being closed. This resulted in their finger being caught between the door and the door frame, causing serious injury.

This has happened on other occasions resulting in serious injury to those involved.

Officers involved in the securing of violent and non-compliant people in police cells should be aware of the importance of ensuring that the person is clear of the cell door before closing it.

Officer safety training includes options for tactical communications and, if necessary, the use of force when dealing with non-compliant or violent people to ensure the safe exit of officers from a cell and the wellbeing of the person.

When dealing with non-compliant, violent and aggressive people officers and custody staff must ensure that there are sufficient personnel available to carry out the tactical option chosen to secure the person whilst also ensuring the officers and staff members safe exit from the cell.

After the most recent PIRC report in relation to such injuries Police Scotland has issued a reminder to their officers and staff on how to deal with violent and non-compliant people in custody.

**THE FOLLOWING IS AN  
EXTRACT FROM THE  
OPERATIONAL SAFETY  
TRAINING MANUAL**

**'A physical Use Of Force, Tactical Option, must be an absolute necessity because of the subject's continued and escalating resistance. Officers/staff should choose a tactical option based on their perception of the subjects level of resistance, and other impact factors as per the Tactical Options Model.'**





## PIRC Investigations

# Investigation of Article 3 & 5 breaches of ECHR made against police officers and police staff

**In October 2021, following recommendations contained in the Lady Elish Angiolini report: Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, responsibility for investigating all on-duty allegations of assault made against police officers and police staff transferred from Police Scotland Professional Standards Department (PSD) to PIRC.**

Prior to transition, a working group consisting of members of Police Scotland, Crown Office and Procurator Fiscal Service (COPFS) and PIRC, developed a revised process for the referral, assessment and/or investigations of such complaints.

Since 4 October 2021, PIRC has received 444 referrals of allegations of a breach of Article 3 of European Convention on Human Rights (ECHR) (allegations of assault made against on-duty police officers and staff).

Of these allegations, following assessment, 108 have progressed to investigation. For the 336 allegations that have not progressed to investigation, this has been due to a lack of corroboration of the alleged crime or identification of the officer or member of police staff resulting in insufficient evidence.

As part of the PIRC assessment of an allegation we examine CCTV, including CCTV from custody suites, interview witnesses and seek other supporting evidence. Examination of CCTV, which can include officers Body Worn Video (BWV), can frequently and quickly provide evidence to support or negate the allegation.

Where, following assessment, an allegation moves to investigation, PIRC will gather all available evidence and a report outlining the circumstances and evidence will be submitted to the Criminal Allegations against Police Division (CAAPD) of COPFS. It is thereafter a decision for COPFS whether to institute criminal proceedings or not.

When requesting to interview an officer or member of police staff in respect of an assessment or investigation, officers and staff frequently ask, what is my status? PIRC will always confirm whether the person is being interviewed as a witness or suspect. If a person is being interviewed as a suspect, they will be afforded all the rights and entitlements required by law. PIRC will always act with integrity, fairness and respect in this regard.

The revised process, with PIRC undertaking assessments and investigation of allegations of assault, has recently been reviewed by members of CAAPD, PSD and PIRC. It is now well established and working well.



#### FURTHER READING

**Lady Elish Angiolini report: Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing**  
[www.gov.scot/groups/independentpolicingreview](http://www.gov.scot/groups/independentpolicingreview)



## PIRC Reviews

# Use of the non-investigation provisions

**The non-investigation provisions contained within our Statutory Guidance can be an effective and efficient way for Police Scotland to deal with minor, trivial or straightforward complaints.**

However, the application of these provisions is restricted to circumstances in which:

- i) the complaints have been assessed as non-criminal, non-complex and suitable to be dealt with via the Frontline Resolution Process (FLR); and
- ii) attempts to resolve the complaint via FLR have failed. In this regard, where an attempt to resolve the complaint has been unsuccessful, non-investigation can be utilised if:
  - the complaint is very trivial in nature; or
  - a period of 12 months has lapsed between the incident and the making of the complaint without any reasonable explanation; or
  - sufficient information was obtained during the FLR enquiry to enable an adequate response to the complaint to be provided and, where appropriate, determine whether the complaint is upheld or not upheld.

Examples of complaints which may be considered as trivial include: minor incivility, insignificant deviations from standard operating procedures and lack of updates, failure to keep or arriving late for a pre-arranged appointment.

The list is not exhaustive, and it is not possible to provide a specific comprehensive definition of a trivial or minor complaint, as every case will depend on its own facts and circumstances.

Instead, it is more helpful to focus on complaint allegations that are not suitable for FLR (and therefore not suitable for non-investigation provisions).

For example:

- allegations that there was a breach of the complainer's Human Rights,
- unlawful arrest and detention, forced entry, excessive force, denial of access to a solicitor,

- an interpreter or medical care whilst in police custody, and any allegations of discrimination.

While the Statutory Guidance states that it may be appropriate to consider applying the non-investigation provisions if a period of 12 months or more has passed between the incident and the making of the complaint, it also stipulates that there must be no reasonable explanation for this delay.

If a period of 12 months or more has passed between the incident and the making of the complaint we can choose to not investigate, as detailed in our non-investigation provisions within our Statutory Guidance.





As such, it is incumbent on the police complaint handlers to ascertain from the complainer the reason for the delay in the submission of a complaint. Circumstances which may constitute a reasonable explanation include:

- a delay in the conclusion of associated criminal proceedings,
- the complainer's poor physical or mental health,
- the complainer may have only been made aware of the information/ circumstances that gave rise to the complaint some time after the incident.

In recent months, we have observed an increase in the number of applications for a CHR relating to the use of the non-investigation provisions. Example 1 highlights good practice when dealing with non-investigative provisions.

However, in some cases, we identified shortcomings that indicate there is still work to be done to improve the police complaint handlers' understanding of these provisions and their application. Example 2 shows a case where non-investigation provisions were applied incorrectly.

#### EXAMPLE 1

The complainer made allegations of incivility and that the case for his mobile phone was damaged whilst it was retained as a production. However, the incident giving rise to these complaints took place in May 2016 and, despite the complainer having repeated contact with Police Scotland in the intervening period, the complaints were not made until September 2021. We agree with the Police Scotland assessment that these complaints were suitable for resolution via FLR and, as there was no reasonable explanation provided for the delay in submitting the complaints, we consider that the use of the non-investigation provisions was appropriate and the most efficient and proportionate way to respond to the complaints.

#### EXAMPLE 2

The complainer alleged that officers had failed to consider information that he had presented to them, whilst they were dealing with an incident. The complaint was initially correctly assessed as unsuitable for FLR, as it required further enquiry before a response could be provided. However, the information made available to us suggested that no further enquiry was undertaken and the complaint was concluded by a non-investigation letter.

We observed that no attempt to resolve the complaint was made and no further enquiry was undertaken. Furthermore, the complaint response focused on the perceived undue delay in the submission of the complaint, however, no efforts were made to clarify with the complainer whether there was a reasonable explanation for the time that had elapsed between the incident and the complaint being made.



#### FURTHER READING

Please read or download the Statutory Guidance document on our website [www.pirc.scot](http://www.pirc.scot)





## PIRC Reviews

# Recording of complaints

**In recent Complaint Handling Reviews (CHRs), we have identified a recurring issue with the recording of complaints about the police.**

Around 18 percent of our CHR recommendations for Police Scotland in 2022/23 are in connection with the recording of complaints<sup>1</sup>. As these recommendations generate additional work for PSD and use up valuable resources, we would take this opportunity to offer some guidance on how to ensure that complaints are properly recorded at the outset of a complaint enquiry.

We have identified instances where a single head of complaint agreed with an applicant contained multiple expressions of dissatisfaction e.g. the applicant has made a number of allegations about a particular incident which have been recorded as a single complaint.

In the example highlighted here, the complainer expressed dissatisfaction about the perceived impartiality of the police officers dealing with a neighbour dispute; thereafter about the police getting involved in a civil dispute; and, finally, the complainer was unhappy with the reasons provided for their arrest.

In our view, these allegations can be upheld or not upheld individually, and should be recorded and responded to separately. Failure to separate these allegations increases the risk that some of the complainer's concerns are not addressed in the final response, which can lead to further dissatisfaction and encourage the complainer to seek a review.



### EXAMPLE

**In a recent CHR, the following was recorded as a single allegation: “You state that you feel your neighbour is treated better than you are when he phones the police. You state police should not be involved in civil matters and you feel that you were arrested so your neighbour could complete putting up his fence”.**

<sup>1</sup> Section 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006







PIRC Reviews

# Timescales & effective communication

**In accordance with our Statutory Guidance, we expect policing bodies to respond to complaints requiring investigation within 56 days of receipt.**

We acknowledge that each complaint is unique and vary in their complexity and seriousness, which can influence the timescale in which complaints are concluded.

Whenever the period of 56 days is exceeded, good practice requires that complainers be contacted and given an update on progress. Thereafter, complainers should be regularly updated and where possible provided with a revised timetable for completion of the complaint enquiry.

During our CHRs, we regularly see instances where complaint enquiries take much longer than the anticipated 56 days timescale.

Whilst the delays might be justified, regrettably, we still see final response letters that do not acknowledge or explain the delay in responding to the complaint, and do not provide an apology for the delay.

It is good practice for the final complaint response letter to acknowledge the delay in responding to the complaint, provide an explanation for the delay, and where appropriate, an apology. Where delays are extensive and there is no reasonable explanation, it may be appropriate to consider raising an additional Quality of Service complaint, specifically in relation to the delay.

Effective communication with the complainer during the complaint process is likely to help maintain trust and confidence in the police complaint process, avoid further dissatisfaction and complaints and assist with potential resolution of the complainer's concern to their satisfaction.

Our Statutory Guidance states:

**“ 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.”**







## PIRC Reviews

# Discretionary decisions

**Members of the public who are not satisfied with the way in which their complaints have been handled by the policing bodies in Scotland can request a CHR. However the legislation affords the Commissioner discretion in relation to what complaints are accepted for a review<sup>2</sup>.**

PIRC is therefore not required to review all complaints that we receive. The decision whether to conduct a CHR is not taken lightly. It is only made when we are satisfied that it is the most appropriate course of action in the specific circumstances of the individual case.

Although each case is decided on its own merits, the most common circumstances where we consider exercising our discretion to be necessary and appropriate are set out below:

<sup>2</sup> Section 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006

- Proportionality – cases where complaints are particularly trivial in nature, or the policing body has already taken, or offered to take, reasonable action to remedy or resolve the complaint, and undertaking a Complaint Handling Review would offer no additional value; or cases where it is clear from the outset that the a CHR will not be able to meet the complainer’s unrealistic expectations.
- Vexatious complaint
- Repeat complaints
- Alternative means – where another ombudsman or oversight organisation are best placed to address the complaint, or there is a judicial or statutory process that can deal with the issues raised.
- Undue delay – where applications for a CHR are made out with three months and the Commissioner is not satisfied that there are exceptional circumstances justifying the delay.
- Lack of cooperation or disengagement by the complainer.



**Did you know that PIRC may exercise discretion and decide not to proceed with, or to discontinue, all or part of a Complaint Handling Review?**





## News in brief

### Review of PIRC counting rules

A recent review of our performance data handling processes has resulted in new, bespoke counting rules for the Investigations and Reviews teams being developed.

These include changes in timescales to our preliminary assessment periods and the way we statistically record our casework. The way we categorise our cases will also be streamlined.

**Full details are being included into our relevant Memorandum of Understanding's (MoUs) and will be available over the coming months.**

### PSD audit

Our most recent audit of PSD regarding the triaging of complaints about the police, will be published shortly. Full details will be made available at [www.pirc.scot](http://www.pirc.scot) and shared with our stakeholders.



### Who we are

The Police Investigations and Review Commissioner (PIRC) carries out independent investigations into certain incidents involving the police.

- We review how policing bodies in Scotland have handled complaints made about them by the public.
- We ensure that Police Scotland and the Scottish Police Authority (SPA) have suitable systems in place for handling complaints.
- We are independent, and make our decisions entirely independently of the police and government.



# Contact us

Both our Reviews team and Investigations team are happy to offer support and guidance on any questions you may have around related work.

Please use the following details to contact the relevant team:

## Reviews team

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

(01698 542900)

## Investigations team

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

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