



**Lincolnshire**  
**POLICE & CRIME COMMISSIONER**  

---

**SAFER TOGETHER**

**GUIDANCE/PROCEDURE FOR**  
**HANDLING COMPLAINTS AND CONDUCT MATTERS INVOLVING THE**  
**CHIEF CONSTABLE OF LINCOLNSHIRE POLICE**

**A. INTRODUCTION**

1. The Police and Crime Commissioner for Lincolnshire ("**the Commissioner**") is legally responsible for dealing with (i) Complaints, (ii) Conduct Matters, (iii) Death and Serious Injury Matters and (iv) Non-Police Reform Act matters that involve the Chief Constable of Lincolnshire Police Force ("**the Chief Constable**") which come to his/her attention.
2. This guidance is an aide to the Commissioner as to the procedure he/she should follow when dealing with such matters.
3. The Commissioner's website provides information on how members of the public can make a Complaint against the Chief Constable, and the Commissioner's staff are also able to assist.
4. The Commissioner also has a duty to ensure that if he/she receives a Complaint about the conduct of anyone other than the Chief Constable, then he/she shall notify the appropriate authority with responsibility for dealing with the Complaint.
5. The Commissioner has agreed a protocol with Lincolnshire Police Force to ensure that the Force forwards complaints about the Chief Constable to the Commissioner within 24 hours of receipt. The Commissioner has agreed a similar protocol with Lincolnshire Police to ensure that he/she forwards to the Force any complaints received by him/her or within his/her office about any person serving with Lincolnshire Police other than the Chief Constable within 24 hours of receipt.
6. There may be occasions when the Commissioner receives a complaint about the Chief Constable and the Force receives a complaint arising out of the same 'incident' that involves a lower ranking officer. In those circumstances, consideration will be given to ensuring that the handling of the complaints is coordinated (where appropriate).
7. The Commissioner has put in place a system by which his/her office will log all allegations received about the Chief Constable in a 'Complaints/Conduct Register' ("**the Register**"). The Register is maintained electronically, with an appropriate paper backup system. The Register includes details of the source of the allegation, and in the case of a Complaint, the name and contact details of the complainant; the nature of the allegations and date received. Further details logged depend upon the nature of the allegations, including whether or not there is a requirement for the Commissioner to refer it to the Independent Office for Police Conduct ("**IOPC**"); in all cases, the

Register will reflect the basis of the Commissioner's decision regarding referral, recording, and any other relevant steps taken.

8. This Guidance applies to any allegations the Commissioner receives after 1 February 2020. There is no bar on the Commissioner considering matters relating to former Chief Constables. Annex B of the IOPC Statutory Guidance provides comprehensive guidance on the process the Commissioner should follow in relation to former Chief Constables.

## **B. LEGISLATIVE FRAMEWORK AND SUPPORTING GUIDANCE**

9. This procedure must be read in conjunction with the following legislation and guidance:
  - a. The Police Reform Act 2002 ("**PRA 2002**");
  - b. The Police Reform and Social Responsibility Act 2011 ("**PRsRA**");
  - c. The Police (Complaints and Misconduct) Regulations 2020 ("**the Complaints Regs**");
  - d. The Police (Conduct) Regulations 2020 ("**the Conduct Regs**");
  - e. Statutory guidance on the police complaints system ("**the IOPC Statutory Guidance**");
  - f. Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing ("**the Home Office Guidance**");
  - g. College of Policing Guidance on outcomes in police misconduct proceedings ("**the College of Policing Guidance**"); and
  - h. College of Policing Code of Ethics ("**the Code of Ethics**")
10. This procedure sets out some of the key decisions and issues that the Commissioner must consider. The legislation and guidance listed above contain further key provisions including but not limited to record keeping, notifications, service of copies of material, legal and other representation and time limits, all of which must also be adhered to.
11. All references to Unsatisfactory Performance or Attendance and the Police (Performance) Regulations 2020 within the IOPC Statutory Guidance and Home Office Guidance should be ignored, as these provisions are not applicable to the rank of Chief Constable.

## **C. INITIAL ASSESSMENT**

12. Information concerning the conduct of the Chief Constable may come from a variety of sources, including: from a member of the public; from another officer within Lincolnshire Police Force; from the outcome of an internal Force investigation; from civil proceedings; from articles in the press, or even from the IOPC.
13. The source of the information is important as it has an impact on what type of matter it will be, which in turn dictates how the matter must be handled.
14. There are four types of matter:
  - a. Complaints;
  - b. Conduct Matters;
  - c. Death and Serious Injury Matters ("DSI Matters"); and
  - d. Non-PRA 2002 Matters.
15. On receipt of information concerning the Chief Constable, the Commissioner will need to decide whether the Chief Constable's alleged 'conduct' falls within any of these categories. It is important to note that the ordinary definition of 'conduct' (to mean 'behaviour') is distinct from a Conduct Matter as defined by PRA 2002 and other legislation; this is explained further below. 'Conduct' in the ordinary sense includes acts, omissions, statements and decisions (whether actual, alleged or inferred). This Guidance refers to conduct in the ordinary sense as 'conduct' to distinguish it from Conduct Matters.
16. Complaints, Conduct Matters and DSI Matters (and how they should be handled and investigated) are primarily governed by PRA 2002 and by the Complaints Regs. Non-PRA 2002 matters, as the name suggests, are matters which fall outside of PRA 2002 and are largely governed by the Conduct Regs.
17. For all four types of matter, the Commissioner will need to consider whether it is necessary for the Chief Constable to be suspended in accordance with Section (H) of this guidance.

### **Is it a Complaint?**

18. PRA 2002 defines a Complaint as an expression of dissatisfaction about the conduct of the Chief Constable that has been made by or on behalf of a member of the public. The member of the public must claim to be the person in relation to whom the conduct took place, or to have been adversely affected by the conduct or to have witnessed the conduct. A Complaint can also be about matters of 'Direction and Control'.
19. The full test for whether the matter is a Complaint is set out in s.12(1) of PRA 2002 and is explained in Chapter 5 of the IOPC Statutory Guidance. What is meant by being adversely affected, or to have witnessed the conduct is set out in s.12(3), s.12(4) and s.12(5) of PRA.

20. The Commissioner should be mindful of the IOPC Statutory Guidance on who is considered a 'member of the public' for the purposes of a Complaint, including the provisions regarding a person serving with the police who was off duty at the time and also partners and relatives of a person serving with the police. This is dealt with at paragraph 5.6 of the IOPC Statutory Guidance.

### **Is it a Conduct Matter?**

21. If a matter is not a Complaint, the Commissioner must decide if it is a Conduct Matter.
22. The full test for whether the matter is a Conduct Matter is set out in s.12(2) of PRA 2002 and is further explained in Chapter 8 of the IOPC Statutory Guidance.
23. Unlike Complaints (which always come from members of the public), Conduct Matters come to the Commissioner's attention from other sources (such as other officers, civil proceedings, or press reports). PRA 2002 defines a Conduct Matter as any matter which is not and has not been the subject of a Complaint where there is an 'indication' that the Chief Constable may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings.

### **Disciplinary proceedings**

24. 'Disciplinary proceedings' are any proceedings under the Conduct Regs during which an assessment is made as to whether the Chief Constable's 'conduct' amounts to misconduct or gross misconduct. The Conduct Regs define 'misconduct' as a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action. The Home Office Guidance makes clear that, in line with the Conduct Regs, *'disciplinary proceedings are focused on serious allegations that justify a formal disciplinary outcome, at a minimum a written warning, to address issues where increased formal accountability is needed.'*
25. Accordingly, it is necessary to consider whether the 'conduct' in question might justify, as a minimum, a written warning. The Commissioner will consider the College of Policing Guidance when making this assessment. The Standards of Professional Behaviour are set out at Schedule 2 of the Conduct Regs.
26. Paragraphs 10.7-10.8 of the IOPC Statutory Guidance give further assistance on whether there may be an 'indication'. The Commissioner can also seek advice from the IOPC.

### **Is it a DSI Matter?**

27. A DSI matter is any circumstance/s (other than those which are or have been the subject of a Complaint or which amount to a conduct matter) in or in consequence of which a person has died or has sustained serious injury and either:
- a. At the time of the death or serious injury the person:
    - i. had been arrested by the Chief Constable and had not been released from that arrest; or

- ii. was otherwise detained in the custody of the Chief Constable; or
- b. At or before the time of the death or serious injury:
  - i. the person had contact with the Chief Constable acting in the execution of their duties; and
  - ii. there is an indication that the contact may have caused or contributed to the death or serious injury.<sup>1</sup>

28. The full test for whether the matter is a DSI Matter is set out in s.12(2A) – 12(2D) of PRA 2002 and is further explained in Chapter 7 of the IOPC Statutory Guidance.

#### **Is it a Non-PRA 2002 Matter?**

29. Non-PRA 2002 matters encompass any allegation that comes to the attention of the Commissioner, which is not a Complaint, Conduct Matter or DSI Matter, but which indicates that the 'conduct' of the Chief Constable may amount to practice requiring improvement. The Conduct Regs define this as conduct that falls short of the expectations of the public and the police services as set out in the Code of Ethics. Under regulation 14 of the Conduct Regs, such matters may engage the Reflective Practice Review process in Part 6 of the Conduct Regs. Chapter 13 of the Home Office Guidance gives further guidance.<sup>2</sup> Some Complaints may ultimately be handled as non-PRA matters if they are not sufficiently serious to be dealt with under the PRA 2002.

### **D. HANDLING OF COMPLAINTS**

- 30. Schedule 3, Part 1 of PRA 2002 sets out how Complaints must be handled.
- 31. The Commissioner must ensure that all necessary steps are taken, both initially and from then on, for obtaining and preserving evidence relating to the conduct complained of.
- 32. In addition, it is important that the complaints system is accessible. Chapter 2 of the IOPC Statutory Guidance underlines the importance of an accessible system, and sets out further details on what the Commissioner should do to ensure this.

#### **Recording Complaints**

- 33. The Commissioner **MUST** record a Complaint against the Chief Constable if:
  - a. At any time, the complainant indicates a wish for the Complaint to be recorded;

---

<sup>1</sup> Given the very direct nature of the required contact, a DSI Matter will rarely involve the Chief Constable, but this is included for completeness.

<sup>2</sup> The Police (Performance) Regulations 2020 (which govern poor performance and attendance) do not apply to Chief Constables

- b. The Complaint is one alleging that the 'conduct' or other matter complained of has resulted in death or serious injury;
- c. The Complaint is one alleging 'conduct' which (if proved) might constitute the commission of a criminal offence or justify the bringing of disciplinary proceedings;
- d. The 'conduct' or other matter complained of might (if proved) have involved the infringement of a person's rights under Article 2 or 3 of the European Convention of Human Rights (i.e. the right to life and the prohibition on torture)
- e. The Complaint alleges any other 'conduct' which constitutes (according to guidance issued by the IOPC):<sup>3</sup>
  - i. serious assault;
  - ii. a serious sexual offence;
  - iii. serious corruption (including abuse of position for a sexual purpose or the purpose of pursuing an improper relationship);
  - iv. a criminal offence which is liable to lead to disciplinary proceedings which was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status; or
  - v. an offence where the sentence is fixed by law or where a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years or more);
- f. The Complaint arises from the same incident as (b) or (e) above;

In practice, a 'Complaint' may fall under one or more of these heads.

- 34. As far as 33(c) is concerned, the Commissioner must record any Complaint where he/she is unable to satisfy himself/herself, from the complaint alone, that the 'conduct' complained of (if proved) would not justify the bringing of criminal or disciplinary proceedings. The assessment should be based on the substance of the Complaint alone, not on the apparent merit of the allegations, and the Commissioner should not carry out any preliminary investigative steps. The Commissioner should have regard to the College of Policing guidance on outcomes when making this assessment.
- 35. However, the Commissioner is not required to record a Complaint where the Complaint has been withdrawn.
- 36. The Commissioner will acknowledge a Complaint within two working days of receipt wherever possible, and will seek the complainant's views on how to handle the Complaint as soon as possible after receiving it. Complainants must be informed

---

<sup>3</sup> Paragraphs 9.7-9.29 of the IOPC Statutory Guidance provide further guidance on these sorts of 'conduct'.

whether their Complaint has been recorded and is to be handled under Schedule 3, or if it has been (or is being) resolved by alternative means.

37. Where it is immediately obvious that the Complaint is one that must be recorded, the Commissioner must do so as soon as possible. The Commissioner may record the Complaint before contacting the complainant. After recording, the complainant must still be contacted. However, attempts to contact the complainant should not delay the referral of a Complaint to the IOPC where this is required or otherwise appropriate.
38. If a complainant is dissatisfied with the way that their Complaint has been handled, complaint handlers should remind them that:
  - a. They can ask for their Complaint to be recorded; and
  - b. If it is recorded, there may be a right to apply to have the outcome of their Complaint reviewed (unless it is subject to a directed or independent investigation).

### **Reference to the IOPC**

39. Where the Commissioner has recorded a Complaint, he/she must next consider whether he/she must refer the Complaint to the IOPC ("**Mandatory Referral**") or, if not, whether the Commissioner considers it is necessary in the given circumstances ("**Voluntary Referral**").

#### *Mandatory Referral*

40. The Commissioner **MUST** refer a Recorded Complaint to the IOPC if it falls under any of 32(b)-(f) above, unless the Complaint has already been referred to the IOPC on a previous occasion.
41. The Commissioner must also refer a Recorded Complaint to the IOPC if the IOPC requires it to be referred, regardless of whether the Complaint has already been referred to the IOPC on a previous occasion.
42. Where the grounds for Mandatory Referral of a Recorded Complaint are met, the Commissioner must refer the Recorded Complaint to the IOPC without delay and by no later than the end of following day.

#### *Voluntary Referral*

43. Where the grounds for Mandatory Referral are not met, the Commissioner may make a Voluntary Referral if he/she considers it would be appropriate to do so by reason of:
  - a. The gravity of the subject-matter of the Recorded Complaint; or
  - b. Any exceptional circumstances.<sup>4</sup>

#### *General matters relating to referrals*

---

<sup>4</sup> Paragraphs 9.31-9.33 of the IOPC Statutory Guidance provide further guidance on voluntary referrals.

44. If the Commissioner makes a Mandatory or Voluntary Referral, the Commissioner must inform the Complainant and, unless to do so might prejudice a possible future investigation of the Recorded Complaint, must inform the Chief Constable.
45. The purpose of the referral is for the IOPC to determine whether or not the Recorded Complaint should be investigated and if so, the form of investigation.
46. Guidance on making referrals to the IOPC is set out in Chapter 9 and Appendix A of the IOPC Statutory Guidance. The Commissioner can seek the IOPC's advice about whether a matter meets the threshold for referral.<sup>5</sup>
47. Where the Commissioner records a Complaint but the legislation does not require an investigation, the Commissioner must handle the complaint in any other such reasonable and proportionate manner as he/she determines (see 'Non-PRA 2002 Matters' below).

#### **Decision to investigate**

48. The IOPC must determine that it is necessary to investigate a Complaint which alleges that the Chief Constable may have committed a criminal offence or behaved in a way which would justify disciplinary proceedings. The IOPC may only direct an investigation by the Commissioner under the IOPC's direction, or an IOPC-led investigation. See section (I) below for handling of Investigations.

### **E. HANDLING OF CONDUCT MATTERS**

49. Schedule 3, part 2 of PRA 2002 sets out how Conduct Matters must be handled.
50. As with Complaints, the Commissioner has an on-going duty to ensure that all necessary steps are taken, both initially and from then on, for obtaining and preserving evidence relating to the conduct matter.

#### **Recording Conduct Matters**

51. The Commissioner must be mindful of the specific provisions that apply to Conduct Matters involving the Chief Constable which arise in actual or threatened civil proceedings, brought by a member of the public against the PCC for Lincolnshire or the Chief Constable of Lincolnshire Police Force. See Sch. 3, para 10 PRA.
52. The Commissioner MUST record all Conduct Matters relating to the Chief Constable. These are referred to as 'Recordable Conduct Matters'.
53. The only exception is if the Commissioner is satisfied that the matter has been, or is already being dealt with by means of criminal or disciplinary proceedings.

---

<sup>5</sup> Paragraphs 12.10-12.13 of the IOPC Statutory Guidance set out circumstances in which the Commissioner may conclude that it is reasonable and proportionate not to take any further action in respect of a matter that would otherwise meet the criteria for investigation. For example, the guidance refers to Complaints which are repetitious, fanciful, or where they are without foundation and appear simply intended to vex, worry, annoy or embarrass). Because the new regime expects the Commissioner to record and refer the majority of Complaints, the Commissioner will seek the IOPC's guidance in respect of such matters.



54. The Commissioner also has a discretionary power to record any other Conduct Matter that does not meet the mandatory recording criteria.

### **Reference to the IOPC**

55. The Commissioner must next consider whether the Recordable Conduct Matter meets the grounds for Mandatory or Voluntary Referral to the IOPC.

#### **Mandatory Referral**

56. The Commissioner MUST refer all Recordable Conduct Matters to the IOPC, unless the Complaint has already been referred to the IOPC on a previous occasion.
57. The Commissioner must also refer a Recordable Conduct Matter to the IOPC if the IOPC requires it to be referred, regardless of whether the matter has already been referred to the IOPC on a previous occasion.
58. Where a Recordable Conduct Matter must be referred to the IOPC, the Commissioner must do so without delay and by no later than the following after they have identified the matter must be referred, or the following day after they have been notified by the IOPC that the matter must be referred.

#### **Voluntary Referral**

59. The Commissioner may make a Voluntary Referral if he or she considers it would be appropriate to do so by reason of:
- a. The gravity of the matter; or
  - b. Any exceptional circumstances.<sup>6</sup>

#### **General matters relating to referrals**

60. Unless to do so might prejudice a possible future investigation, the Commissioner must inform the Chief Constable once the matter has been referred to the IOPC.
61. The purpose of the referral is for the IOPC to determine whether or not the Recordable Conduct Matter should be investigated and, if so, the form of investigation.
62. Guidance on making referrals to the IOPC is set out in Chapter 9 and Appendix A of the IOPC Statutory Guidance. The Commissioner can seek the IOPC's advice about whether a matter meets the threshold for referral.

### **Decision to investigate**

63. The IOPC must determine that it is necessary to investigate Recordable Conduct Matters. The IOPC may only direct an investigation by the Commissioner under the IOPC's direction, or an IOPC-led investigation. See section (I) below for handling of

---

<sup>6</sup> Paragraphs 9.31-9.33 of the IOPC Statutory Guidance provide further guidance on voluntary referrals.

Investigations. If the IOPC decides that a matter does not require investigation, the IOPC may refer the matter back to the Commissioner.

## **F. HANDLING OF DSI MATTERS**

- 64. Schedule 3, part 2A of PRA 2002 sets out how DSI Matters must be handled.
- 65. As with Complaints and Recordable Conduct Matters, the Commissioner has an on-going duty to ensure that all necessary steps are taken, both initially and from then on for obtaining and preserving evidence relating to the DSI matter.

### **Recording of DSI Matters**

- 66. The Commissioner must record all DSI Matters which come to his/her attention.

### **Reference to the IOPC**

- 67. All DSI Matters require Mandatory Referral to the IOPC.
- 68. The IOPC may also treat a DSI matter that comes to its attention as having been referred. In such cases, the Commissioner must record the matter.
- 69. The Commissioner must refer any DSI Matter without delay and by no later than the following day after the DSI Matter comes to the Commissioner's attention, or the following day after they have been notified by the IOPC that the matter must be referred.

### **Decision to investigate**

- 70. The IOPC must determine that it is necessary to investigate DSI Matters. The IOPC may only direct an investigation by the Commissioner under the IOPC's direction, or an IOPC-led investigation.

## **G. HANDLING OF NON-PRA 2002 MATTERS**

- 71. There is no requirement to make a recording decision in the same way as with Recorded Complaints, Recordable Conduct Matters and DSI Matters. However, the Commissioner should keep a written note in the Register of any identified Non-PRA 2002 Matters.
- 72. There is no requirement to consider referral to the IOPC, as that is only required for Recordable Complaints, Recordable Conduct Matters and DSI Matters.
- 73. Complaints dealt with outside the requirements of Schedule 3 must be handled with a view to resolving them to the complainant's satisfaction. The IOPC Statutory Guidance makes clear that handling a complaint outside the requirements of Schedule 3 provides an opportunity to address promptly the concerns a complainant has raised.

Some Complaints do not require detailed enquiries in order to address them. Handling such Complaints outside of Schedule 3, promptly, may be the most efficient, effective, and beneficial way to resolve the complaints in a way that assures a complainant that their concerns have been listened to and addressed, while potentially providing a learning opportunity for the force (and, if appropriate, any individuals involved).

### **Assessment**

74. Where the Commissioner has received a Non-PRA 2002 Matter (whether as a Complaint or otherwise), the Commissioner must first conduct an assessment to determine whether the alleged conduct, if proved (or admitted), may amount to practice requiring improvement.
75. If the Commissioner considers that the alleged conduct would not amount to practice requiring improvement, the Commissioner may take no action. The Commissioner's duty to hold the Chief Constable to account means that the Commissioner may discuss/deal with such a matter informally, but the Commissioner has no authority to sanction the Chief Constables in such cases.
76. If the Commissioner considers that the alleged conduct would amount to practice requiring improvement, the Commissioner should record the matter and must refer the matter to be dealt with under the reflective practice review process in Part 6 of the Conduct Regs.
77. Although proceedings under the Police (Performance) Regulations 2020 do not apply to senior officers, where the Complaint includes allegations about the performance of a senior officer, the IOPC considers that it would be appropriate to record matters that would otherwise have met the criteria for recording, had the officer in question not been a senior officer.
78. As soon as practicable, the Commissioner should notify the Chief Constable of any decision to take no action or to refer the matter to be dealt with under the reflective practice review process.

### **Reflective Practice Review Process**

79. Part 6 of the Conduct Regs provides for a 'Reflective Practice Review Process', which, although not a disciplinary outcome, is designed to improve the conduct of the Chief Constable.
80. Paragraphs 4.44-4.58 and Chapter 13 of the Home Office Guidance give further guidance.
81. The conclusion of handling a Complaint outside of Schedule 3 must be communicated to the complainant within five working days of the outcome being determined

## **H. Suspension**

82. Regulation 11 of the Conduct Regs gives the Commissioner power to suspend the Chief Constable. Paragraphs 13.58-13.59 of the IOPC Statutory Guidance, and paragraphs 5.20-5.34 of the Home Office Guidance give further guidance.
83. The Suspension Conditions are:
- a. A temporary redeployment to alternative duties or an alternative location is not, in all the circumstances appropriate; and
  - b. It appears that either:
    - i. The effective investigation of the case may be prejudiced unless the Chief Constable is suspended; or
    - ii. The public interest, having regard to the nature of the allegation and any other relevant considerations, requires the Chief Constable be suspended.
84. Suspension shall be with pay, unless:
- a. The Chief Constable is detained in prison, or is in custody between conviction and sentence; or
  - b. The Chief Constable has absented him/herself from duty and their whereabouts are unknown to the Commissioner.
85. The suspension will have effect from the date and time it is notified to the Chief Constable. Notification can be given either orally or in writing, including a summary of the reasons for the suspension. If given orally, then written confirmation must be sent before the end of 3 working days beginning with the first working day after suspension. (e.g. If a decision to suspend is notified orally on Monday, written confirmation must be sent by the end of Thursday. If a decision to suspend is notified orally on Friday, written confirmation must be sent by the end of Wednesday).
86. The Chief Constable has a right to make representations against their suspension.
87. The Commissioner must review the suspension:
- a. Upon receipt of any representations against suspension from the Chief Constable;
  - b. Within 4 weeks of the suspension, and thereafter within 4 weeks of each review;
  - c. If the Commissioner becomes aware that circumstances relevant to the suspension conditions may have changed.
88. The Commissioner must notify the Chief Constable of the outcome of any review within 3 working days.

89. If the IOPC is independently investigating or leading a directed investigation into a matter, then the Commissioner will have to consult with the IOPC before making a decision to suspend the Chief Constable, or before ending a suspension on the grounds that the suspension conditions are no longer met.

**I. INVESTIGATION OF COMPLAINTS, RECORDABLE CONDUCT MATTERS AND DSI MATTERS**

90. Schedule 3, Part 3 of PRA 2002 governs the investigation of Complaints, Recordable Conduct Matters and DSI Matters. The Complaints Regs and Chapters 11 and 13-17 of the IOPC Statutory Guidance comprehensive details of the process and requirements.

**Form of investigation**

91. Where the Commissioner has referred a matter to the IOPC and the IOPC determines that the matter meets the criteria for investigation, the IOPC must decide whether to determine a directed or independent investigation:

- a. **Directed investigation:** An investigation conducted by the Commissioner under the direction and control of the IOPC. The IOPC directs the investigation in terms of its scope, investigative strategy and findings of the report. Tasks such as completing the policy log and writing the final report will be carried out by the Investigating Officer ("IO") under the IOPC's direction. The IOPC will review policy books and confirm that a completed investigation has met the terms of reference.
- b. **Independent investigation:** An investigation carried out by the IOPC itself. An independent investigation is often used for the most serious incidents and/or those with the greatest public interest. For example, those that cause the greatest level of public concern, have the greatest potential to impact on public communities, or have serious implications for the reputation of the police service.

**Appointment of the IO**

92. An investigation into a chief officer involves certain requirements regarding who can be appointed as the Investigating Officer ("IO"). In particular, the IO must:
- a. Be a person serving with the police or a National Crime Agency Officer of suitable rank;
  - b. Not be under the Chief Constable's direction and control;
  - c. Have the appropriate level of knowledge, skills and experience to plan and manage the investigation; and
  - d. Not be a person whose involvement as IO could reasonably give rise to a concern as to whether they could act impartially.

93. The requirements for who can be appointed as an IO usually results in the need for the investigator to be a Chief Constable from another police force.
94. For a Directed Investigation, the Commissioner is responsible for appointing the IO, but the IOPC can veto any appointment and require the Commissioner to select an alternative IO (subject to the IOPC's approval).
95. For an IOPC Investigation the IOPC has sole responsibility for identifying and appointing the IO, who will be a member of the IOPC's staff.

### **The investigation**

96. *Terms of reference:* The IOPC expects all investigations to have terms of reference. The detail of any terms of reference will vary according to the complexity of any investigation. Paragraph 13.10 of the IOPC Statutory Guidance sets out further details. Paragraph 13.11 gives further guidance on whether and the circumstances in which these should be shared with the Chief Constable and/or complainant.
97. *DSI matter becoming recordable conduct matter:* Paragraphs 13.13-13.19 of the IOPC Statutory Guidance provide further details on the approach the IO or IOPC should take if there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner justifying disciplinary proceedings. In particular, they discuss whether and how that should be investigated as a conduct matter.
98. *Special requirements:* For the investigation of a Complaint, the IOPC will have to consider whether the Complaint needs to be certified as being subject to Special Requirements (see Sch. 3(3), para 19B(1) PRA), and if so, as soon as is reasonably practicable make a Severity Assessment (see Sch. 3(3), para 19B(2) PRA). These exist to protect the rights of those under investigation for more serious matters that might suggest that they have either committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings. In practice, all investigations into Chief Constables about Complaints or Recordable Conduct Matters will be subject to Special Requirements.
99. Paragraphs 13.20-13.24 of the IOPC Statutory Guidance provide further details.
100. *Severity assessment:* Where an investigation is subject to Special Requirements, the IOPC will have to make a Severity Assessment as soon as reasonably practicable (see Sch. 3(3), para 19B(3) PRA). A Severity Assessment considers (i) whether the conduct, if proved, would amount to misconduct that is so serious as to justify disciplinary action or gross misconduct, and (ii) if the conduct were to become the subject of disciplinary proceedings, the form which those proceedings would be likely to take.
101. Paragraphs 13.25-13.42 of the IOPC Statutory Guidance provide further details.
102. *Accelerated procedure:* The Commissioner will need to follow the accelerated procedure (see Sch. 3(3), para 20A-20I PRA) where there is sufficient evidence to establish on the balance of probabilities Gross Misconduct and it is in the public

interest for the Chief Constable to cease to be a member of Lincolnshire Police Force without delay. Paragraphs 13.48-13.57 of the IOPC Statutory Guidance provide further details

103. *Additional matters:* The IOPC Statutory Guidance sets out further details of a range of matters the IOPC or IO may need to consider in the course of an investigation as follows:
- a. *Notices of investigation and providing terms of reference:* paragraphs 13.38-13.42;
  - b. *Representations to the IO:* paragraphs 13.43-13.45;
  - c. *Conduct of the investigation:* paragraphs 13.60-13.63;
  - d. *Interviews:* paragraphs 13.64-13.73;
  - e. *Early referral to the CPS:* paragraphs 13.74-13.79;
  - f. *Timeliness of investigations:* paragraphs 13.80-13.86.

### **Suspending and resuming handling**

104. Chapter 15 of the IOPC Statutory Guidance provides further information on the power to suspend and investigation or other handling, and the resumption of an investigation after criminal proceedings.
105. In summary, the power to suspend arises only where continuing the investigation or other handling would, in the opinion of the IOPC (in an independent investigation) or Commissioner (in a directed investigation), prejudice a criminal investigation or criminal proceedings. The IOPC may direct that a directed investigation which has been suspended should continue/resume, if it considers that it is in the public interest to do so.
106. There should be specific, identified prejudice, and that prejudice should be significant. Consideration should be given to whether it is appropriate to exercise the power to suspend, or whether measures can be put in place to reduce or remove the risk of prejudice.

## **J. OUTCOME OF AN INVESTIGATION**

### **Investigation Reports**

107. The purpose of an investigation is to establish the facts and to reach conclusions. Chapter 14 of the IOPC Statutory Guidance gives detailed guidance on concluding an investigation report, the process to be followed, and the contents of any report.
108. Paragraphs 14.7-14.16 of the IOPC Statutory Guidance contain detailed provisions on the content of an investigation report.

109. The report in a directed investigation of a Complaint or Recordable Conduct Matter must be submitted to the IOPC and a copy sent to the Commissioner. The report in a DSI investigation (where there has been no related Recordable Conduct Matter) must be submitted to the IOPC and a copy sent to the Commissioner.

### **Outcomes**

110. Chapter 17 of the IOPC Statutory Guidance provides detailed guidance on outcomes.
111. *Directed investigation*: On receipt of a report of a directed investigation, the IOPC will determine whether the report indicates that a criminal offence may have been committed, and whether the circumstances are such that it is appropriate for the CPS to consider it, or whether it falls within a prescribed category. The IOPC will also seek the Commissioner's view on:
- a. Whether the Chief Constable has a case to answer for misconduct, gross misconduct or no case to answer;
  - b. Whether or not disciplinary proceedings should be brought, and, if so, what form those proceedings should take (taking into account, in particular, the seriousness of any breach of the Standards of Professional Behaviour); and
  - c. Whether or not any matter that was the subject of the investigation should be referred to be dealt with under the Reflective Practice Review Process.

The IOPC expects to receive the Commissioner's views on these matters as soon as practicable, and within 28 days unless the IOPC extends the time limit.

112. Having considered the Commissioner's views, the IOPC will reach a conclusion on whether there is a case to answer for misconduct, gross misconduct, or whether there is no case to answer and - depending on the that conclusion – whether disciplinary proceedings should be brought and, if so, what form they should take.
113. The IOPC will not seek the Commissioner's view in an independent investigation.
114. The IOPC will inform the complainant of the outcome of a directed or independent investigation.
115. If it determines that disciplinary proceedings should take place, the IOPC will at the same time direct the Commissioner to bring those proceedings. The Commissioner will be required to comply with that direction, keep the IOPC informed of their progress, and ensure that they are brought to a proper conclusion.
116. *No case to answer*: If there is no case to answer in respect of either Misconduct or Gross Misconduct the Commissioner may:
- a. Take no further action; or
  - b. Refer the matter to be considered under the Reflective Review Process (see paragraphs 79-81 above).



117. On receipt of an investigation report, or the conclusion of handling otherwise than by an investigation, the Commissioner should always consider whether there are any other opportunities for individual or organisational learning, at a local or national level, and act on this. Whilst there are certain prescribed routes into the Reflective Practice Review Process, the principles of reflective practice can be applied at any time.

**Separate Guidance deals with the Commissioner's duties and responsibilities in relation to Appeals and also to Misconduct Proceedings.**

<b>OPCC Version Control Details</b>		
Document Title:	Chief Constable Complaints procedure v1.1	
Owner: (Job Title)	CAO	
Author: (Title & Name)	CAO – J King	
Reviewer: (Title & Name)		
Publication Date: (First published)	February 2020	
Review Date: (Next due)	October 2025	
Suitable for Public Release: <b>YES</b>		
<b>Review Completed / Reason for Update</b>		
<b>Version:</b>	<b>Date:</b>	<b>Review / Update details</b>
1.1	Jan 2024	Document reviewed and no changes required. Version control table added.