



**Warwickshire**  
POLICE AUTHORITY

*The authority behind the force*

## **Complaints Procedure regarding the Conduct of Senior Police Officers of ACPO Rank**

Updated : June 2009

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## NOTE

- (a) Any reference in this document in bold type to a
- **Section** is a reference to the Police Reform Act 2002 (“PRA02”);
  - **Paragraph** is to Schedule 3 or PRA02;
  - **Regulation** is to either the Police (Complaints and Misconduct) Regulations 2004 (“PCMRO4”) or the Police (Conduct) Regulations 2004 (“PCRO4”); and
  - **Page** is to the Independent Police Complaints Commission (“IPCC”) Statutory Guidance (November 2005 version).
- (b) “Relevant Officer” in this document refers to the officer whose conduct is the subject of a complaint or conduct matter.
- (c) “Complainant” in this document includes references to an interested person where appropriate.

## Background

1. Under Part 2 of the PRA02, the Police Authority has responsibility for dealing with complaints and conduct matters concerning its Chief Constable, Deputy Chief Constable and Assistant Chief Constables. The Police Authority has delegated all relevant powers under these provisions to be determined by the Professional Standards Committee. The legal framework only recognises complaints and conduct matters that are personal to the actions of the Relevant Officer. One of the key aspects with regard to any allegation is to determine whether or not it involves the personal conduct of the Relevant Officer. The framework does not relate to the direction and control of a Police Force by such officers. “Direction and Control” is defined in Home Office Circular 19/2005.
2. Even if the allegation does concern personal conduct of the Relevant Officer, the framework under the PRA02 distinguishes a “Complaint” from a “Conduct Matter”. Both terms are defined in **section 12** of the PRA02. A person making a complaint is a complainant [**section 12**]. The PRA02 also recognises that other persons may have an interest in being kept informed about a complaint or conduct matter. It calls these “interested persons” [**section 21**].

## Stage 1 – Initial Steps

3. The first stage upon receipt of any complaint or conduct matter involves the determination of questions set out in Table 1 below and this will be undertaken by the Chief Executive. If the matter is not to proceed to Committee, the Chief Executive will discuss the issues involved, and any decision, with the Chair of the Committee.
4. In order to determine these questions it may be necessary to make some initial enquiries relating to the matter. In doing so, the Chief Executive may ask for brief comments from the Chief Constable or other suitable senior officer so that the potential gravity of the situation is evident.

<b>Table 1 – Stage 1 Steps</b>	
(a)	<p>Upon receipt of any allegation the first stage issues involve the determination of the following questions:</p> <ul style="list-style-type: none"> <li>• Has the allegation some credence (if the allegation is trivial and lacks evidence it should be promptly rejected).</li> <li>• Is the allegation a complaint <b>[section 12]</b></li> <li>• Is it from a person listed as able to make a complaint <b>[sections 12 and 29(4)]</b></li> <li>• Is Warwickshire Police Authority the appropriate Authority <b>[section 29]</b></li> <li>• Is it a direction and control matter <b>[section 14]</b></li> <li>• If not a complaint, is it a conduct matter <b>[section 12]</b> and if so, is it a conduct matter under <b>paragraph 12 or 11</b></li> <li>• If arising through <b>paragraph 11</b>, does it satisfy all the strict provisions of <b>paragraph 11</b>.</li> </ul>
(b)	<p>The obligation to obtain or preserve evidence <b>[paragraph 1(1) and 12(1)]</b> must also be addressed. Note that this is a continuing duty throughout the handling of the complaint or conduct matter.</p>

5. Unless to do so might prejudice the fair determination of the matter, the Chief Executive will copy the complaint or conduct matter to the Relevant Officer or notify him / her of its substance. The Chief Executive will acknowledge safe receipt of the matter as appropriate. The Chief Executive will also send the Relevant Officer and Complainant a copy of this procedure at an early stage.
6. If the matter is neither a complaint nor a conduct matter or if it is a complaint but not received from someone able to make a complaint, the Chief Executive will write to the Complainant explaining this. The Chief Executive will also write to the Relevant Officer. If the matter is a direction and control matter, it will be dealt with under the Authority’s policy on direction and control matters made pursuant to Home Office Circular 19/2005. The Chief Executive will write to the Complainant explaining this and write to the Relevant Officer.
7. if Warwickshire Police Authority is not the “appropriate authority” the Chief Executive will forward the matter to the appropriate authority.
8. If the allegation constitutes a legitimate complaint made by a person able to complain or if the allegation constitutes a legitimate conduct matter, the Police Authority has a duty to record it. The decision to record and the decision about subsequent steps will be dealt with by the Professional Standards Committee.

**Stage 2 – Professional Standards Committee Initial Meeting**

9. Being satisfied of the matters contained in Table 1 above, the Chief Executive will convene a meeting of the Professional Standards Committee as soon as possible to determine the recording of the complaint or conduct matter and to decide what next steps should be taken. Slightly different rules apply to Complaints than to Conduct

Matters. Paragraphs 10-16 in this document deal with Complaints; paragraphs 10-11 and 17-19 with Conduct Matters.

10. The Chief Executive will prepare a written report for the Professional Standards Committee, which shall, unless urgency dictates otherwise, be circulated to members of the Committee 5 clear days before the meeting. In view of the fact that the matter will involve personal information either of the Complainant or the Relevant Officer, and will likely involve the provision of legal advice, the report will be for consideration in the exempt part of the agenda. If so, in view of the personal and potentially sensitive nature of the information, the report will not be circulated to anyone other than the Members of the Committee.
11. Unless this would prejudice any subsequent step in the process, the Chief Executive will send a copy of the result from the Professional Standards Committee to the Complainant and the Relevant Officer. If the Relevant Officer or Complainant makes representations to the Committee in writing, such representations shall be disclosed to the investigating Officer if an investigation subsequently takes place.
12. The options open to the Committee dealing with a Complaint are set out in table 2.

<b>Table 2 – Dealing with a Complaint</b>	
(a)	The Committee will decide whether or not to record the matter. If a complaint is not recorded a Complainant (but not an interested person) has a right of appeal to the IPCC <b>[paragraph 3]</b> .
(b)	Where the complaint is of a serious or exceptional nature <b>[paragraph 4(1)]</b> , the Authority must refer the complaint to the IPCC. Similarly, it must do so if the IPCC so requests <b>[paragraph 4(2)]</b> . Responsibility for dealing with the complaint then falls to the IPCC. Sometimes the IPCC refers less serious complaints back to a Police Authority.
(c)	Subject to (b) above, the Committee, having recorded the complaint, shall decide whether to deal with it: <ul style="list-style-type: none"> <li>• By local resolution <b>[paragraph 6(2)]</b>;</li> <li>• By voluntarily referring the matter to the IPCC <b>[paragraph 4(2) and (3)]</b>;</li> <li>• By full investigation <b>[paragraph 16]</b>; or</li> <li>• In some other way or by taking no action in respect of it <b>[paragraph 7]</b>.</li> </ul>

13. Local Resolution. This is normally only possible if the complainant consents. Local Resolution is only possible if the Authority is satisfied that the conduct complained of, even if proved, would not justify the bringing of criminal or disciplinary proceedings, although even if it would the IPCC can still authorise the use of local resolution **paragraph 6(2)]**. Frankly, it would rarely be appropriate to resolve locally a complaint made against an ACPO officer. However, in some circumstances this may be correct and, if the Professional Standards Committee takes this option, the Chief Executive shall appoint an appropriate person to attempt to resolve the complaint. It shall be

paramount to ensure that the Complainant has freely given consent to deal with the matter in this way.

14. Voluntary referral to IPCC. The complaint can be referred to the IPCC on specified grounds, even where there was no obligation to do so. The IPCC may refer the matter back to the Authority or supervise the investigation of the matter or manage the investigation of the matter or undertake the investigation itself **[paragraph 17-19]**.
15. Full investigation. If the Authority decides to deal with the complaint by full investigation it shall appoint a police officer to investigate the matter. The officer must not be a person under the direction and control of the Relevant Officer **[paragraph 16(4)]**. Nor shall the officer appointed be of less rank than the Relevant Officer. The Terms of Reference for the investigation will need to be determined. The initial decision to undertake an investigation will be made by the Committee. All subsequent determinations flowing from that principal decision shall be the responsibility of the Chief Executive.
16. If the Authority decides to deal with the complaint in some other way, or to take no action in respect of it, the Authority must obtain a dispensation from the IPCC. Such dispensation is only available if the type of complaint falls within a list prescribed by regulations **[paragraph 7(1) and regulation 3 PCMR04]**. If the Committee propose to take further action, the Relevant Officer shall be able to make oral or written representations personally or by his/her representative.
17. Dealing with a conduct matter concerns fewer options for the Committee. If the issue has arisen from civil proceedings pursuant to **paragraph 10** or arisen in another way that falls within **paragraph 11**, the Committee must consider the matters in table 3.

<b>Table 3 – Handling a Conduct Matter</b>	
(a)	The Committee will decide whether or not to record the matter. If a conduct matter is not recorded there is no right of appeal by an interested person. However, the IPCC can insist that a <b>paragraph 11</b> matter be recorded <b>[paragraph 11(5)]</b> .
(b)	<p>If it records the conduct matter, the Committee shall deal with the matter in one of three ways:</p> <ul style="list-style-type: none"> <li>• Refer the matter to the IPCC because it must <b>[paragraph 10(4)(a), 11(3)(a) and 13(1)]</b>, or</li> <li>• Refer the matter to the IPCC even though not obliged to do so <b>[paragraph 10(4)(a), 11(3)(a) and 13(2)]</b>, or</li> <li>• Deal with the matter as it sees fit <b>[paragraph 10(4)(b) and 11(3)(b)]</b>.</li> </ul>

18. Therefore there is no Local Resolution procedure involved in conduct matters, nor any IPCC dispensation required provided there is no obligation or desire to refer the matter to the IPCC.

19. If the matter is referred to the IPCC, it may hand the matter back to the Authority or take another role as mentioned in paragraph 13 of this procedure. If the matter is not referred to the IPCC but the Committee propose to take further action, the Committee shall be re-convened on a subsequent occasion to determine the Conduct Matter. The Relevant Officer shall be able to make oral or written representations personally or by his/her representative at the re-convened meeting.
20. Whether the allegation involves a complaint or a conduct matter, the Chief Executive shall be responsible for keeping the Complainant and Relevant Officer up to date with progress.

## **GUIDANCE ON THE HANDLING OF COMPLAINTS RELATING TO THE DIRECTION AND CONTROL OF A POLICE FORCE BY A CHIEF OFFICER**

### **Authority of this Guidance**

1. This guidance is issued under Section 14 of the Police Reform Act 2002, which provides a power for the Secretary of State to issue guidance to chief officers and police authorities on the handling of complaints relating to the direction and control of a police force by a chief officer.
2. Section 14 also places a duty on a chief officer and a police authority to have regard to this guidance when handling such complaints.

### **Purpose of this Guidance**

3. Parliament has conventionally distinguished between a complaint about the conduct of a police officer and a complaint relating to the direction and control of a force by a chief officer.
4. The Government is clear that a complaint about direction and control can often be significant and, whilst rightly relating to the operational discretion of the Chief Officer, requires a meaningful and timely response. Many forces already have procedures in place for handling such complaints. Nevertheless this guidance is intended to ensure consistency in the way forces respond to such complaints and to give members of the public confidence that their complaint will be responded to in a timely and appropriate manner. It is intended to be supportive of the work of police forces and police authorities.
5. The requirement for each police force is to develop a procedure for the effective and efficient handling of complaints on direction and control and to write its own local guidance. The purpose of this guidance is to provide forces with both a structure and minimum requirements for their own local procedure. It is not, in itself, a procedure for handling these complaints. Where necessary, forces should review their procedures to ensure they comply with this guidance.

### **Scope of a Local Procedure**

6. A member of the public is entitled to ask questions about the way in which policing is delivered locally and if dissatisfied to complain about that service. For the purpose of this guidance, a member of the public is not taken to mean a person serving with the local police force i.e a police officer, a member of police staff, a member of the Special Constabulary, volunteer or contractor nor anyone acting on his or her behalf in that capacity.
7. A complaint can be about any matter to do with the delivery of the policing service in a police area. However, this does not include matters to do with:
  - Internal management and organisation support, practices and procedures (see paragraph 17); or
  - General functions of a police authority.

### Definition of Direction and Control

8. Direction and control of a police force is taken to be the legitimate independent operational responsibility and discretion that is held by a chief officer. For the purpose of this guidance, a complaint that relates to the direction and control of a force by a chief officer is one that relates to:-
- Operational policing policies (where this is no issue of conduct)
  - Organisational decisions
  - General policing standards in the force
  - Operational management decisions (where there is no issue of conduct)
9. Direction and control of a police force by a chief officer shall be taken to include the direction and control by any person servicing under the chief officer who operates by virtue of a formal delegated authority from the chief officer, either directly or indirectly.

### Establishing a Local Procedure

10. A chief officer should agree a procedure with his or her police authority for handling complaints about direction and control of the force. In establishing (or reviewing) a procedure, a chief officer should ensure it is responsive to the needs of complainants, proportionate in the handling of the complaint and it is as open and transparent as the maintenance of effective policing will allow. Also, the procedure should be flexible so that complaints can be dealt with at the lowest appropriate level, with an emphasis on early resolution.
11. The guidance on the local procedure should be in writing and it should include appropriate guidance for all those who are likely to use it. That guidance should include, as a minimum, sections on:
- Responsibilities – (see paragraphs 21-22)
  - Categorising a complaint – (see paragraphs 12-15)
  - Recording a complaint – (see paragraphs 16-20)
  - Handling – The guidance should include how direction and control complaints will be allocated and handled within the force. The local guidance may provide the opportunity for complaints to be resolved immediately. It should include how to identify and promulgate lessons to be learned.
  - Openness/keeping the complainant informed – Local guidance should set out minimum standards for keeping the complainant informed about progress of the complaint. There should be a presumption towards openness but any decision on disclosure of information should be subject to a sensitivity test. Forces should also be aware of the requirements and their responsibilities under the Freedom of Information Act.
  - Performance Standards – Chief Officers and police authorities should ensure the local procedure contains minimum standards of performance in regards to both quality and timeliness of response. The local direction and control procedure should include a process to monitor the standards of performance achieved, and identify any lessons to be learned.

## **Categorising a Complaint**

12. Categorising a complaint needs to be well articulated in local guidance because it is crucial to the way the complaint is to be handled and, indeed, crucial to the oversight function of the chief officer and the police authority. In paragraph 8 above, it was stated that a complaint that relates to the direction and control of a force by a chief officer is one that relates to one of the following : operational policing policies, organisational decisions, general standards in the force and operational management decisions. It may be that these form the categories under which complaints are recorded and handled but this should not preclude the further breakdown of categories, if a chief officer and police authority requires it.
13. In addition to direction and control complaints, a police force will receive complaints to do with conduct of a member of staff, management and organisation support and police authority affairs. It is envisaged that almost every complaint will fall under one of these four general areas and everyone should be clear about how each should be handled. It is not intended that the local guidance on direction and control complaints should include guidance on handling these other complaints. Instead, the local guidance on direction and control complaints should simply inform the reader to whom other complaints should be directed.

### **Conduct of a member of staff**

Any complaint wholly or partly to do with conduct must be recorded and handled under the provisions of Part 2 of the Police Reform Act 2002. The IPCC will provide guidance on handling this type of complaint. Complaints which are partly to do with conduct and partly to do with direction and control must also be recorded under the direction and control procedure. However, the guidance must be very clear about how such complaints should be handled. It is likely that the IPCC guidance will cover such complaints. Local guidance should make clear that a complaint about conduct which has been wrongly categorised as direction and control may be subject of an appeal to the IPCC and the IPCC may direct the chief officer to record it under Part 2 of the Police Reform Act 2002.

### **Management and organisational support**

These are to do with support functions; for example, personnel, finance, procurement, common services (eg stationery, catering, postal services ...) etc. Complaints on these matters are not considered to be direction and control for the purpose of this guidance. It is for the chief officer to decide how such complaints are dealt with.

### **Police Authority affairs**

Any complaint about the conduct of a member of the police authority or a complaint about police authority affairs should be directed to the Chief Executive of the police authority. Such complaints are not considered to be direction and control for the purpose of this guidance.

14. Local guidance should explain how to identify complaints that are not about direction and control and it should explain the advice to be given to a complainant on how to make his or her complaint. The key objective here must be to ensure that the complainant has full confidence in the police service to deal effectively and efficiently with the complaint. Failure at this stage will not only dent that confidence but it may also attract another complaint.

15. In some cases, it may be difficult to determine if a complaint is about direction and control or about conduct. Where there is this difficulty, a force should proceed with it as if the complaint is about conduct, until such time as any preliminary inquiries or investigations demonstrate this not to be the case. This is to avoid prejudice to the application of the conduct procedures, should they be later shown to be appropriate.

**Recording a complaint**

16. After a complaint has been categorised as direction and control, a decision is required on whether or not it should be recorded.
17. It will be for the chief officer and police authority to agree a policy on the recording of direction and control complaints. There may be legitimate direction and control complaints, which the chief officer will not require to be recorded in the direction and control register. These could include a complaint:
- Where an immediate satisfactory explanation is given to the complainant and where there are no ongoing lessons to be learned or policies that require reviewing.
  - Which has been dealt with previously and which was made by the same complainant, or
  - Which is considered to be frivolous, vexatious, anonymous or out of time (for example over 12 months old).
18. A complaint that is to be recorded must be so recorded in a register which will allow information on a complaint or series of complaints to be retrieved effectively and efficiently for the purpose of those who need to manage, oversee or inspect the local procedure. Therefore, the chief officer should agree the form of the record with his or her police authority.
19. The register should contain information on each recorded complaint but the nature of that information must be a matter for each force and the police authority. However, for the information to prove useful, it should include:-
- Details of the complaint (dates, classification, summary of the substance, etc)
  - Details of the complainant (name, address, gender, ethnicity, age, etc if known)
  - Outcomes (i.e, response to the complaint, complainant satisfaction, performance achieved, lessons etc)
20. Other sections in local guidance may include :-
- Purpose and Objectives – it is important for all staff to understand the benefits of the local system. Therefore, the guidance could explain the importance attached by the chief officer and the police authority to public confidence in their police service and the contribution made by the effective and efficient handling of direction and control complaints.
  - Monitoring and oversight – if there is to be a central control, it may be helpful for all staff dealing with complaints to understand the arrangements and what will be expected of them in assisting with those arrangements. The guidance

should clearly set out the division of responsibility between any central control and staff dealing with complaints.

- Training – the local guidance could include force arrangements for training staff who will be dealing with the complaints; or it could include specimen complaints and how they should be handled.
- HMIC role – HMIC will want to include in its normal force inspection the adequacy of a force's procedure for handling direction and control complaints and will want to scrutinise the effectiveness of both its operation and its oversight function. Guidance could, therefore, have a reference to the inspection role of HMIC in direction and control complaints.
- IPCC role – the IPCC has no role in the handling of direction and control complaints. However, as guardians of the complaints system for the conduct of police officers and police staff, it will be concerned about a complaint against conduct that has been wrongly categorised as direction and control. The IPCC will want to be assured that a local procedure contains the necessary checks to both avoid and correct a wrongly categorised complaint.

### Responsibilities

21. Issues concerning direction and control of a force, by their nature, have the potential to have an impact on a force's efficiency and effectiveness. A police authority has statutory responsibility for the efficiency and effectiveness of its police force and it is also accountable to local communities for the delivery of policing. That is why a police authority has a key role in overseeing and scrutinising force performance in handling complaints about direction and control. The chief officer and police authority should agree the level and extent of oversight arrangements for direction and control complaints. They should also agree the data, format and frequency for the provision of reports to assist them in their oversight roles.
22. A chief officer may want to delegate responsibility for the management of the local procedure to an appropriate senior person. That senior person will want to ensure that suitable arrangements are in place to co-ordinate and manage the recording, handling and reporting of complaints across the force. The local guidance should make clear the roles and responsibilities of all those involved in the process, including those who will eventually deal with the complaints.

### Commencement

23. The guidance comes into immediate effect. It will be reviewed after one year to take into account operational experience. Therefore, comments on its application should be sent in writing to :-

Home Office  
Police Integrity and Community Confidence Team  
Police Leadership and Powers Unit  
2<sup>nd</sup> Floor  
Allington Towers  
Allington Street  
London  
SW1E 5EB

24. A chief officer should have a formal procedure with local written guidance in place as soon as possible but no later than 1<sup>st</sup> June 2005.

**WARWICKSHIRE POLICE AUTHORITY**  
**DIRECTION AND CONTROL COMPLAINTS**

**Handling Complaints and Expressions of Dissatisfaction**

The Home Office has issued guidance to Forces in relation to handling expressions of complaint and dissatisfaction from the public. This guidance took effect from April 2005.

The guidance is an attempt to bring uniformity nationally to the way in which Forces handle expressions of dissatisfaction and formal complaints received from the public. The IPCC have the power to scrutinise ALL complaints and Direction and Control matters recorded by Forces. However, no proper definition of what constituted a Direction and Control matter was provided, and therefore little direction given to Forces in respect of how complaints should be recorded. For this reason, from April 2005, all expressions of complaint have either been recorded as a formal complaint on a BC21, or have been classified as a Direction and Control issue.

Complaints are formally recorded if they are complaints about the **conduct** of any member of staff. A complaint will relate to the **Direction and Control** of a Force by a Chief Officer if it relates to :-

- Operational policing policies (where there is no issue of conduct)
- Organisational decisions
- General policing standards in the Force
- Operational management decisions (where there is no issue of conduct)

This new definition broadens the scope of a Direction and Control matter and “Direction and Control” will cover nearly all letters or expressions of dissatisfaction that do not fall within the remit to be formally recorded as complaints.

The Professional Standards Department have requested that all Departments forward to them ALL letters of complaint or expressions of dissatisfaction. There were two reasons for this.

Firstly this allows the PSD to scrutinise all expressions of dissatisfaction to ensure that they are recorded appropriately in advance of any inspection by the IPCC.

Secondly, a more practical reason is to enable the Force to have an overview of the issues that are of concern to the public.

The IPCC will visit a selection of Forces and have the power to visit Professional Standards Departments to scrutinise Direction and Control matters and complaints to ensure that concerns from the public are being recorded appropriately.

Departments are advised to keep copies of their finalised correspondence/ enquiries with members of the public for 12 months. This is because complainants now have a right of appeal to the IPCC, if their complaint is not recorded as a formal complaint and their complaint concerns the individual conduct of a member of staff.

The Professional Standards Department will continue to record ALL complaints and Direction and Control matters either received from the public or on notification from the relevant Area/LPU/Department. Effectively PSD will hold a central register of all expressions of dissatisfaction from the public, and therefore should be able to handle all enquiries or audits undertaken by the IPCC.

Direction and Control matters will only be chased and formally closed by PSD if they are of a particularly sensitive or complex nature. In all cases Departments should either finalise a Direction and Control complaint within 28 days or provide an up-date to the complainant within this timescale. Failure to do this is frequently the source of further complaint.