

# Oversight and scrutiny of professional standards matters

The role of police authorities

Guidance from the Association of Police Authorities



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# Executive summary

## Overview of this guidance

**1** This guidance aims to ensure that police authorities are fully aware of and able to effectively exercise their oversight role in regard to police professional standards. It is not prescriptive, but sets out issues and recommendations for police authorities to consider when determining their local approach to this area. It is intended to inform the development of a police authority approach to scrutiny that fulfils their statutory obligations, and, in partnership with the local police force and key stakeholders, contributes to the preservation of public trust and confidence in the police.

**2** The maintenance of a high level of professional standards in policing, and particularly the handling of complaints and misconduct, is vital to maintaining the trust and confidence that is the foundation of the relationship between police and the public. Accordingly, police authorities have a statutory responsibility under section 15 of the Police Reform Act 2002 to keep themselves informed as to the handling of complaints and misconduct matters by the force they maintain.

**3** Together with the general duty to maintain an effective and efficient force, this means that police authorities have a special responsibility to scrutinise their force and to ensure it has appropriate arrangements in this area. It also logically has a close relationship with other duties, including the general duties for public authorities in relation to race, disability and gender. These can be generalised as the duties to promote equality of opportunity no matter an individual's disability, gender or race (good practice would be to include age, faith and sexual orientation also), to eliminate discrimination and harassment, and to promote good relations between people of different racial groups and similarly to promote positive attitudes towards disabled persons.

**4** This guidance recommends that police authorities take a strategic and structured approach to oversight, undertaken primarily through formal protocols. In addition, police authorities should seek

to promote and maintain good relationships with their local force, Independent Police Complaints Commission (IPCC), Her Majesty's Inspectorate of Constabulary (HMIC), staff associations and support groups. This will ensure good communication and information flows, and in the case of groups such as IPCC, help to avoid duplication of effort and minimise burdens on forces.

**5** It is suggested that police authorities undertake the following key activities:

- **periodic scrutiny of force procedures** to ensure they comply with, among other things, statutory requirements, IPCC and Home Office guidance;
- **dip sampling of complaints files** according to formal protocols;
- keep under regular **review the protocol** with the chief officer on the provision of information to the authority on complaints and conduct cases;
- ensure that **robust statistical analysis of complaints and misconduct data**, including comparative data on other forces, is undertaken to identify trends, areas of concern, and draw conclusions as to the efficacy of current arrangements;
- **monitor significant incidents<sup>1</sup> and current cases** to ensure that sound risk management is applied, and, if necessary, cases are referred to the IPCC for independent consideration;
- **periodic strategic analysis**, encompassing key professional standards issues, but also to give insight into the force as a whole – this can give an indication as to the overall health of the force, including its culture, management, performance and relationships with the community;
- **promote effectiveness and efficiency** both by identifying areas requiring improvement through police authority scrutiny activity, and through ensuring that the force has appropriate arrangements for identifying and implementing organisational learning from complaints cases;

**1** Determining whether an incident is significant enough to require authority monitoring is ultimately for the judgement of the local police authority. However, authorities may wish to use the ACPO definition of a critical incident as a useful guide in the professional standards context. Critical incidents are defined as 'any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or the community'.

- ensure that scrutiny is **visible and transparent** by considering ways to inform the public of scrutiny activity and its effects; and
- consider the **implications for police authorities and members** in carrying out the role, in terms of organisation, particularly in establishing a specific committee for the purpose, ensuring that this has appropriate members with the appropriate skills, experience, and links to other related areas of police authority business, and sufficient support, such as appropriate training, and assistance from police authority officers.

**6** In undertaking these activities, it is recommended that police authorities have particular regard to the following key areas and issues:

- overall force **performance** in areas such as public satisfaction, recording, timeliness, proportionality, and case resolution, including success at appeal;
- requiring the force to demonstrate that it has **appropriate procedures** in place, to ensure compliance with statutory and other requirements, provide managerial oversight, and identify, disseminate and implement organisational learning from cases;
- **equality and diversity issues**, particularly to ensure that there is no disproportionality or adverse impact in regard to any particular group and that all community groups have access to and confidence in the complaints procedure;
- consideration of **reports and advice** from the force, IPCC, HMIC, and others that provide indications as to the overall health of force performance and procedure;
- the **risk management** (and if necessary and appropriate, referral to the IPCC) of high profile and serious cases that pose a risk to public confidence;
- areas of particular concern such as **custody and mental health** and any specific local issues;
- overall force efforts to promote a high level of **professional standards and integrity** among officers and staff, and associated preventive measures such as vetting, drug testing, and information security; and
- **monitoring** the implementation and impact of any steps taken as a result of issues identified either through scrutiny or organisational learning.

### Police authority standards

**7** While this guidance is not prescriptive, and it is up to each authority to determine the most appropriate approach to fulfilling its responsibilities, the following standards are proposed to promote a degree of consistency in regard to police authority activity in this important area. It is suggested that:

- every police authority should maintain a professional standards committee;
- the committee prepare an annual statement or plan setting out how it will fulfil its statutory duties, including ensuring that the police authority is fully informed, will promote efficiency and effectiveness, and how it will promote equality and good community relations, and eliminate discrimination, in this area – authorities should ensure that they receive a report from their force detailing the outcomes of complaint and misconduct investigations for the year, analysed by allegation, success at court, misconduct recommendations, learning and force action;
- in addition to statutory duties, the committee will set out its strategic priorities for oversight for the year and carry out its functions accordingly;
- the committee will carry out its functions through formal protocols, including:
  - concluding a protocol with the force setting out how any review of a selection of completed case files will be undertaken (dip sampling);
  - concluding a protocol with the force setting out how the committee will monitor current cases,

so it can exercise the power of the authority to refer cases to the IPCC;

- a protocol setting out the statistical information and analysis the force will provide to the authority; and
- a protocol setting out how lessons identified in the course of scrutiny activity will be identified, discussed with the force, and how implementation of any response will be monitored;
- the professional standards committee will undertake an annual overview of force policies and procedures in the area of professional standards, or matters identified as a consequence of a conduct or complaint cases, as it considers appropriate;
- the committee will seek to maintain a positive, robust and probing relationship with the local force, developing positive relationships with the regional HMI and IPCC Commissioner, and open relationships with police officer and staff associations and support groups, and relevant community groups; and
- the committee will actively consider how it may best communicate the nature and effect of its scrutiny activity to the public, including how any lessons learned have been implemented by the force – this may include publishing a report or a section of a report, holding meetings in public, or any other activities they consider appropriate.

# Introduction

**1** Effective policing depends on the consent and cooperation of the public. The manner in which professional standards issues are dealt with is central to preserving the trust and confidence on which this depends. The scrutiny of this area is therefore a key responsibility of police authorities, and is fundamental to their role in ensuring that police forces are efficient and effective, and uphold the trust invested in them by communities.

**2** The Commission for Racial Equality (CRE) published the final report of its formal investigation into the police service of England and Wales in March 2005. This report highlighted key areas of concern in the way that chief officers handled professional standards issues, and it also highlighted the important role of police authorities in holding their chief officer to account. A number of recommendations for police authorities were made in relation to their oversight and scrutiny role in professional standards, and these are included in this guide.

**3** This guidance provides recommendations for police authorities to consider when determining how to carry out their responsibilities in relation to the oversight of the handling of professional standards matters by their local police force.

## Aims of this guidance

**4** In producing this guidance, the Association of Police Authorities aims to achieve the following outcomes:

- police authorities are fully aware of their role and responsibilities in the area of professional standards;
- police authorities develop local arrangements that enable them to discharge this role appropriately; and
- police authorities contribute effectively, with partners, to the ongoing improvement of professional standards and the maintenance of trust and confidence in the police.

## Scope of this guidance

**5** Police authorities have a particular responsibility to scrutinise matters relating to complaints and misconduct involving police officers and staff, and these are the focus of this guidance. These matters form the core of an area of police business that has changed considerably in recent years, and is now known as 'professional standards'.

**6** This guidance therefore provides advice in relation to police authority scrutiny of the handling of professional standards issues by the police force they maintain. It does not specifically address, although it relates to, the following areas:

- complaints against officers of ACPO rank (above that of chief superintendent), where a police authority is the appropriate authority for the purposes of investigating and otherwise dealing with complaints;
- complaints about the direction and control of a police force;
- the maintenance of lists of independent persons to sit on disciplinary hearing panels in cases where the IPCC has been involved in the investigation;
- the conduct of Police Appeal Tribunals;
- forfeiture of police pensions; and
- related areas of human resources practice, such as employment tribunals and unsatisfactory performance procedures.

## The importance of professional standards

**7** Professional standards goes to the heart of policing, affecting trust and confidence in the police, the cooperation of the public with policing and the experience of policing as a service provided to communities. It can involve serious failures of service or inappropriate, even criminal, behaviour, and can have implications far wider than those for the people directly involved. On the other hand, an unjustified or poorly handled case can also have a significant impact, not least for the police officers and staff involved. In either

situation, a high-profile case can be extremely damaging to the police service.

**8** Proper handling can minimise these negative effects and is critical for protecting the relationship between police and the public. Fair, timely and proportionate treatment will also support the confidence of police officers and staff in the system, which will promote greater openness and transparency. Moreover, it is now recognised that this area can provide valuable insight into a police force's culture, training, resourcing, management, and relationship with the public, including ethnic minority groups. They therefore provide an opportunity to identify valuable lessons that can help to address the causes of complaints and improve policing generally.

**9** As a guardian of the public interest, these matters are vital to police authorities when seeking to ensure that forces deliver best value to communities. Police authorities must therefore work with other partners in the complaints system, including forces, ACPO, HMIC, and the IPCC, to ensure that this occurs.

### **The legislative framework and the role of police authorities**

**10** The Police Act 1996 and Police Reform Act 2002 set out the legislative provisions relevant to the role of police authorities in complaints and misconduct. The practical implications of these provisions are discussed in this section, but more detailed information can be found in **Annex A**.

**11** The legislative framework sets out the overall responsibility of a police authority to maintain an efficient and effective police force, and associated powers to hold a chief officer to account. It also gives particular emphasis to complaints and misconduct matters. Along with chief officers and HMIC, police authorities have a duty under section 15 of the Police Reform Act 2002 to ensure they are kept informed as to all matters about complaints and misconduct related to their force. This requirement ensures that those involved with

the maintenance, direction and control, and inspection of police forces are required to maintain close oversight of this area. Together with those provisions relating to the IPCC, this creates strong provision for oversight and accountability and, where necessary, the maintenance of public confidence through independent investigation.

**12** The practical effect of this duty is to make police authorities responsible for scrutinising the handling of complaints and conduct matters that are the responsibility of the chief officer of their local police force, which are those involving police staff and officers up to and including the rank of chief superintendent. Police authorities are thereby concerned with ensuring that these cases are dealt with appropriately and in compliance with relevant statutory and other duties. Police authorities are not themselves responsible for the investigation or any other aspect of these cases other than the specific functions outlined below or those outside the scope of this guidance, such as police appeal tribunals. Where a police authority receives a complaint that is not their responsibility to investigate, they should facilitate its resolution by prompt and appropriate referral of the issues raised to the chief constable of the local force.

**13** Viewed in the context of their general duties, this also means that police authorities should concern themselves with promoting efficient and effective practice in this area, including the consideration of the issues and lessons arising out of complaints and misconduct matters. They should see that action is taken to address the causes of complaints and misconduct, as well as improve policing generally.

**14** Police authorities have specific responsibilities in regard to the proper operation of the complaints and misconduct system. These include providing assistance, and where relevant, evidence and information to those investigating complaints and misconduct cases. It also includes supporting the IPCC when exercising its oversight responsibilities. Police authorities are required to:



- on receiving notice of a complaint or misconduct matter, determine whether they are the appropriate authority for that matter, and if not, refer it to the appropriate authority. They must inform the complainant and/or the subject of the misconduct allegation (subject to not prejudicing any investigation) that they have done so;
- make arrangements with the police authorities of other forces for meeting the costs of assistance provided to their police force as appropriate;
- provide a police officer or member of the IPCC investigating a complaint or conduct matter with such assistance as they reasonably require;
- provide the IPCC with evidence and information that may be prescribed in regulations or is necessary for carrying out its functions, as soon as it is practicable to do so;
- having been given 48 hours notice, provide the IPCC with access to police premises for the purposes of an investigation or inspection, subject to considerations of reasonableness and practicality; and
- have regard to guidance issued by the IPCC.

**15** The last point, coupled with the general duties outlined above, mean that authorities must have regard to the IPCC's guidance in their own actions, while also scrutinising the compliance of their local police force with the guidance.

**16** It is mandatory to refer certain cases to the IPCC. There is a statutory duty to refer to the IPCC incidents where persons have died or been seriously injured following some form of direct or indirect contact with the police and there is reason to believe that the contact may have caused or contributed to the death or serious injury. They will be cases that do not involve a complaint or conduct matter when first identified and categorised. Complaints and conduct matters that include the following allegations also must be referred:

- serious assault by a member of the police service;
- serious sexual assault by a member of the police service;
- serious corruption;
- criminal offence or behaviour aggravated by discriminatory behaviour; and
- serious arrestable offences.

**17** The appropriate authority may also refer a case to the IPCC voluntarily where it considers this is justified by the gravity of the matter or exceptional circumstances. This power is exercisable at any time even if the matter is under investigation, although if the matter has already been referred to the IPCC it may not be referred again without the IPCC's consent. For the issues that are the subject of this guidance, these matters are the responsibility of the chief officer who has direction and control over the officers involved.

**18** However, police authorities also have the power to refer a complaint or recordable conduct matter that is the responsibility of the chief officer of their local police force to the IPCC, where the police authority considers that this is justified by the gravity of the matter or exceptional circumstances. This power is exercisable at any time even if the matter is under investigation, although if the matter has already been referred to the IPCC it may not be referred again without the IPCC's consent. In practice, this means that police authorities can choose to intervene where they consider that a complaint or misconduct case should be the subject of an independent investigation. The IPCC can then make its own decision as to whether and how this should occur.

**19** While the information set out here and in **Annex A** is intended to guide police authorities when fulfilling their responsibilities in this area, police authorities should consider the need for legal advice when taking decisions in regard to their responsibilities in the area of professional standards.

## **Duties in the area of equality and diversity**

**20** When considering professional standards matters, police authorities must also have regard to their other statutory obligations, such as those under the Human Rights Act 1998, the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 as amended in 2005 and the Equalities Act 2006 which amends the Sex Discrimination Act 1976. In particular, authorities should have regard to their duties, existing and forthcoming, to promote equality of opportunity no matter an individual's disability, gender or race (good practice would be to include age, faith and sexual orientation also), to eliminate discrimination and harassment, and to promote good relations between people of different racial groups and similarly to promote positive attitudes towards disabled persons. Authorities should therefore take particular care to ensure that these issues are given due consideration and emphasis when carrying out their duties in the area of professional standards. This includes giving this area appropriate consideration in the authority's equalities schemes.

# Strategic oversight of professional standards matters

**21** Given the significance of this area, together with the complexity of the processes and number of partners involved, it is recommended that police authorities take a strategic and structured approach to oversight. The goals of police authorities should be:

- to ensure that they are fully informed on complaints and misconduct issues in relation to their local force, in line with their statutory duty. In addition, it is recommended that they maintain a close focus on professional standards issues generally; and
- to promote efficiency and effectiveness with the overall aim of maintaining and enhancing public confidence in the police.

**22** A strategic approach means that police authorities should focus on the overall health of their local force in regard to professional standards and the proper operation of relevant functions. They should not, as normal practice, become involved in the detail of an individual case that falls within the scope of this guidance. Given their responsibility to hold their local force to account for its overall performance, and other roles such as those relating to police appeal tribunals, it is recommended that oversight is maintained through formal structures and protocols.

## Relationships

**23** There are a range of key participants involved in the field of professional standards and particularly in the area of complaints and misconduct. Police authorities should develop good working relationships with each, and seek to align their role with that of the other participants to avoid duplication. In particular:

- **police force** – the authority should have a positive, robust, and probing relationship with their local force. Effective scrutiny depends in part on the cooperation of the scrutinised party, and ideally this relationship will be open and transparent, with the force providing appropriate support to facilitate the exercise of the police authority's functions. In particular, the force should provide the authority

with access to information, analysis, and advice as required by the authority within agreed protocols.

- **IPCC** – the authority should have an effective relationship with the regional IPCC Commissioner, and promote a good relationship between the local force and the IPCC, to ensure that it can access independent support and promote information sharing. In regard to the latter, this should be a reciprocal arrangement whereby the authority and regional IPCC Commissioner share performance and other information, such as the progress of key investigations. This relationship will also have benefits for the IPCC, as the police authority plays a key role in promoting a local approach to professional standards that will support the achievement of shared objectives.
- **HMIC** – HMIC baseline assessment and inspection provide the authority with an independent assessment of performance and identify areas for attention, while HMIC provides an independent and professional source of advice to authorities.

**24** At the local level, police authorities will also wish to have a constructive relationship with key stakeholders such as the Crown Prosecutions Service, staff associations, trade unions and staff support groups (including national representative bodies such as the British Association of Women in Policing, National Black Police Association, National Disabled Police Association and the Gay Police Association) and independent advisory groups. The APA, ACPO, the Home Office, and other forces and police authorities can also provide advice and support.

## Steps to ensure the police authority is fully informed

**25** Police authorities should ensure they have regular meetings and other close links with their local force in order to carry out their scrutiny function. When determining the information and advice they require to fulfil their statutory responsibilities, police authorities should consider the following areas:

- scrutiny of processes and procedures;
- statistical analysis;
- significant incidents and current cases; and
- strategic analysis and risk assessment.

### **Scrutiny of processes and procedures**

**26** The police authority should carry out such checks it considers necessary to satisfy itself that the local force has appropriate policies and procedures, and the necessary resources, to deal appropriately with complaints and misconduct issues. In particular, the police authority will want to be assured that the force complies with:

- its own policies and procedures;
- statutory requirements;
- IPCC statutory guidance; and
- Home Office guidance.

**27** The level of scrutiny required should be based on an assessment by the police authority as to the minimum requirements for effective oversight, coupled with its current level of confidence in the practice or overall performance by its local force in this area. In addition to any local arrangements, this scrutiny may include some or all of the following:

### **Policy and procedure**

Authorities should undertake periodic analysis of force policy and procedure to ensure that it is best practice and conforms with statutory and other requirements, such as those in the area of equality and diversity.

### **Managerial oversight**

The authority may require the force to demonstrate that it has robust procedures for managerial oversight of the relevant processes.

### **Access to the complaints system**

The authority may require the force to demonstrate that it has appropriate and sufficient ways for complainants to access the complaints

system. This should include provision for confidential reporting.

### **Reports and briefings**

The authority may require the force to provide reports and briefings, and/or file walkthroughs by force professional standards personnel.

### **Review of complaints files**

The authority may review completed complaints files, usually through a dip-sample or other form of formal audit of completed complaints and misconduct files. The aim of this exercise is to determine, through a structured process, whether or not proper procedures are being followed and an appropriate approach is taken to complaints and misconduct. While this includes consideration of managerial decision making – for example, in whether or not cases are suitable for local resolution – police authorities should not seek to review the conclusion reached in individual cases. This activity may also identify learning and other issues for discussion with the force. When dip-sampling, a police authority should agree a protocol with their local force that will specify:

- the number or proportion of files to be reviewed;
- how files will be selected for review. This should provide for file selection to be made by the police authority, not the force, to ensure proper scrutiny;
- arrangements for access to files and other information held by the force. These should provide for free access to all files, including those involving covert investigations or other activities, to ensure that they have the information to carry out their statutory duties (in addition to completed files, authorities should also consider how they will deal with current cases as discussed below);
- whether specific types of files should be a focus for review. These could include particular issues (such as discrimination or oppressive conduct), types of complaint or misconduct, areas, geographic or functional units, or outcomes (such as cases that are substantiated or resolved by dispensation);

- the specific checks that will be applied to each file. These should be agreed with the local force, and set out in a checklist to be applied to each file examined. The completed checklist should be placed on the file itself. When determining these checks authorities should have regard to IPCC guidance, and it may be useful to discuss them with the regional IPCC Commissioner;
- who will be involved in the review and their role. Authorities should consider the best approach according to local conditions, such as the size of the force. This includes matters such as the level of involvement and support from police authority officers, determining whether files are reviewed by one or two members from the authority (having each file jointly reviewed has benefits such as enabling new members to learn from those with more experience, but is also resource intensive), and whether or not a force representative should be present during reviews to answer queries;
- arrangements for recording when a file has been examined and by whom. These should include provision for recording whether a file has been offered for examination but not viewed; and
- outline procedures for considering the results of the review, including discussion with force representatives and steps to record and act upon any concerns or organisational learning identified by the police authority or others.

### Other reports and advice

Consideration should be given to reports and advice from the force, IPCC, HMIC and others that provide indications as to force performance and procedure.

### Statistical analysis

**28** Scrutiny of this area should be informed by regular statistical analysis. It is recommended that police authorities ensure the local police force has a robust approach to collecting data, including being assured that they comply with the data standards for complaints set down by the IPCC in

guidance and other accepted data standards, such as ethnicity recording standards.

**29** It is recommended that police authorities agree an information protocol with their local force setting out the statistical information and analysis they require to be able to effectively scrutinise the area. As a minimum, this should include:

- numbers of incidents, in terms of raw numbers, cases per officer, and (for complaints) per incident, with appropriate breakdowns, for example by basic command unit;
- nature, cause and type of complaints or misconduct – forces should also be able to identify the context of cases, for example whether a complaint arises out of an arrest;
- information about the police personnel involved, including demographic information and details as to which geographical or functional unit they belong;
- demographic data on complainants, including age, disability ethnicity, and gender – ensuring that chief officers comply with the Race Relations (Amendment) Act specific duty to prepare and publish relevant employment monitoring data is a direct recommendation from the CRE;<sup>2</sup>
- information on the timeliness of investigations and other processes – timeliness is particularly critical as it has implications for proportionality and ultimately whether a matter can be resolved effectively from the standpoint of all parties;
- information on cases subject to local resolution;
- the use of different avenues for making a complaint, including confidential reporting lines (this includes officers raising issues which are not defined legally as a ‘complaint’). This should include specific monitoring of the diversity of persons using different avenues for making complaints, as an indication of issues such as prejudice and discrimination. Regular reporting to the police authority<sup>3</sup> on confidential reporting is a direct recommendation from the CRE;

**2** Commission for Racial Equality, *The Police Service in England and Wales – Final report of a formal investigation*, March 2005, recommendation 91

**3** Commission for Racial Equality, *The Police Service in England and Wales – Final report of a formal investigation*, March 2005, recommendation 94

- information on interactions with the IPCC, including appeals, the number and types of cases referred to the IPCC, the grounds for referral, and the number and success rate of applications for discontinuation or dispensation; and
- public satisfaction data, for example that relating to keeping complainants and officers informed.

**30** The police authority should consider this and other information, such as comparative data on other similar forces, to identify what it reveals about the overall health of the force in regard to professional standards, general trends and areas of concern, and specific indications as to the effectiveness and efficiency of particular policies or processes, such as timeliness information. The police authority may wish to conduct detailed analysis of this information independently and/or in concert with the force and other partners when using it to come to judgements in this area.

**31** When analysing statistical information in regard to professional standards care should be taken to consider the wider context. For example, increasing numbers of complaints could be an indication of wider problems with a force's culture, training, or management. Alternatively, it could reflect growing public confidence in the complaints system and increased awareness of complaints mechanisms.

### **Significant incidents and current cases**

**32** As noted previously, public confidence and internal morale can be greatly affected by high profile cases. It is prudent for police authorities to ensure they kept informed of any potentially significant incidents and are advised of new cases. This should include cases subject to independent or managed investigation by the IPCC, and may include inviting the relevant IPCC Commissioner to respond to questions as appropriate. Effective scrutiny may assist a force in risk-managing these incidents, including the adoption of an appropriate communication strategy. This should include ensuring that the police authority is fully informed

of any case likely to involve media attention.

**33** As part of this monitoring and scrutiny, authorities should ensure they rigorously monitor the timeliness of investigations and other key processes following significant incidents. While it is in the interests of all parties that any case is resolved in a timely fashion, this is particularly important in significant or otherwise sensitive cases. Protracted and unnecessary delays in high profile cases can undermine confidence in both misconduct processes and the actual proportionality and fairness of the eventual outcome.

**34** Another reason why it is important that police authorities keep themselves informed of cases that are in progress is the power of a police authority to refer a case to the IPCC where it considers that due to its significance or exceptional circumstances it would be appropriate to do so. These include failure on the part of the police force to refer the case. A sound approach to this area would involve regular review of the complaints and misconduct caseload of the local force.

**35** Where a police authority considers that a case should be referred to the IPCC, it should first discuss the matter with the local police force. If following consultation with the force the authority still considers that the case should be referred, the police authority may choose to refer the case to the IPCC at any stage in the investigation.

**36** The IPCC will provide general policy advice on the referral of cases, but not advice on a particular case. The IPCC Statutory Guidance states that the general test that should be applied when considering a referral is whether the failure of the IPCC to intervene will undermine public confidence in the police.

### **Strategic analysis and risk assessment**

**37** Given the range of information police authorities may consider in this area, together with the significance of the area itself, it is recommended that police authorities conduct a

periodic strategic analysis of the wider situation. While this will encompass particular professional standards issues and should provide a means to identify key risks to public confidence, it should also provide insight into the force as a whole. In particular, it may give an indication as to the style, culture, management and performance of the force and its relationships with the wider community. As part of this assessment, it is recommended that police authorities take into account other relevant information, such as data on overall performance, human resource issues, comparisons with similar forces, HMIC baseline assessments, and draw on the views and advice of a range of participants and stakeholders in policing.

**38** While the specific issues and key risks identified will depend on the circumstances of each force, authorities should have particular regard to:

- non-recording of complaints, given the presumption to record set out in IPCC statutory guidance;
- complaints and conduct matters in relation to persons with mental health issues, due to their vulnerability;
- the number and success rates of appeals, as these indicate how processes and decisions are perceived and whether they are operating correctly;
- the timeliness of case handling;
- the proportionality of the response to complaints and misconduct issues, including the use and effectiveness of local resolution;
- good management decision making, particularly in regard to initial assessment of cases and proportionate response – this should include the appropriate use (and review) of suspension, and due consideration of potential organisational learning;
- complaints and conduct matters in relation to stop and search activity, particularly involving allegations relating to discrimination;
- overall satisfaction and confidence in complaints and misconduct processes, whether of complainants or police officers and staff;
- complaints and conduct matters in relation to persons held in custody, due to the risk of harm in this environment;
- complaints and conduct matters in relation to intrusive powers such as those used in covert operations and activity;
- appropriate and timely communication with complainants and staff involved in complaint or misconduct cases; and
- complaints and misconduct cases involving diversity issues, whether complaints arising from particular sections of the community, or the proper handling of complaint or conduct cases involving specific groups of officers and staff – police authorities should take care to scrutinise the use of disciplinary action to monitor whether there is any disproportionality in its application and possible reasons for it.

**39** A key focus of all parties involved in professional standards is maximising the organisational learning that can arise from consideration of complaints and misconduct cases, both for addressing the causes of these cases and for their wider lessons for improving policing. This is discussed further below, but it is recommended that police authorities require forces to indicate what learning is being drawn from completed cases, and how this is being acted upon.

# Promoting efficiency and effectiveness – and learning the lessons

**40** Having built a strong understanding of this area through scrutiny activity, police authorities will be able to use this to contribute to their primary duty of maintaining an efficient and effective force, and working with their force and stakeholders to enhance and maintain public confidence in the police.

**41** In addition to the general benefits of effective scrutiny by the authority itself, and the areas for improvement this identifies, a key aspect of promoting efficiency and effectiveness is ensuring that forces maximise the benefits of organisational learning derived from complaints and misconduct cases. These cases will contain lessons both for addressing the causes of complaints and misconduct and wider lessons for improving other aspects of policing. Police authorities will therefore wish to see that the local force actively seeks to identify, disseminate, and act on organisational learning and has appropriate structures and procedures in place to do so. This should include monitoring the implementation and impact of any changes resulting from organisational learning, to ensure it has the desired effect.

**42** While the specific areas for improvement identified by either scrutiny or organisational learning will vary, and the approach to securing improvement will depend on local circumstances, police authorities may wish to consider the following areas:

- whether the force has an effective strategy for improving professional standards, which is properly implemented and regularly reviewed;
- whether professional standards receives proper prioritisation and ownership in the force, at the top level and cascaded throughout the organisation;
- whether diversity issues and responsibilities are properly and effectively addressed, including the appropriate handling of cases with a diversity dimension and ensuring professional standards and other personnel have appropriate training in

this area. This is especially important after ET race case, as the CRE have recommended that authorities should ensure that they receive a report detailing the wider race equality impact of the case, lessons learned, and an action plan to address any changes in policy or practices following every case;<sup>4</sup>

- whether the force takes a proactive approach to professional standards generally, seeking to identify and address issues in a preventive rather than reactive fashion;
- whether proper linkages are made between key aspects of professional standards and other areas, including complaints, conduct, proactive investigation, civil cases, and aspects of human resources such as employment tribunals;
- whether resourcing for professional standards and other functions (such as human resources and training) is appropriate to the task and utilised efficiently. If additional resource is allocated police authorities will wish to see corresponding improvement;
- whether managers are well versed in professional standards matters and have the capability to deal with these issues and oversee locally managed cases effectively;
- whether policies and procedures are fit for purpose, and are regularly reviewed;
- whether complaints and conduct issues indicate there are training needs for staff, including professional standards staff;
- whether there are sufficient avenues for the reporting, including confidential reporting, of complaints and misconduct issues; and
- whether the promotion of ethical conduct through other aspects of professional standards work, such as internal drug testing, vetting, anti-corruption, and analysis is effective and sufficient.

**4** Commission for Racial Equality, *The Police Service in England and Wales – Final report of a formal investigation*, March 2005, recommendation 96



## Visible and transparent scrutiny – informing the public

**43** Informing the public of scrutiny activity, where possible and appropriate, will support the overall goal of maintaining trust and confidence in the police. By making scrutiny and oversight public, police authorities can contribute to achieving this aim and to promoting an understanding of the role of police authorities themselves. Furthermore, those who act in the public interest, as police authorities do, have a responsibility to communicate the nature and results of this activity to the wider community. Making appropriate information public can also contribute to meeting other duties such as the promotion of equality and diversity.

**44** However, the sensitive nature of professional standards issues means that a large part of scrutiny activity in this area will need to remain confidential. This confidentiality is important to preserving the trust of members of the police service and others, such as witnesses and complainants, involved in discipline and complaints cases.

**45** Authorities need to balance these two considerations when determining what aspects of their activities can be made public and how these are presented. It is recommended that authorities:

- consider whether any authority meetings or parts of meetings dealing with professional standards matters can be made open to the public – this may be possible when discussing issues unrelated to individual cases, such as statistical performance or initiatives to improve professional standards and complaints systems generally;
- consider the publication of authority professional standards committee papers and minutes on the authority website, subject to steps to prevent disclosure of sensitive and confidential information; and
- consider the publication of a regular report, either in its own right or as part of other authority documents such as the annual report, on the

activities undertaken to fulfil duties in the area of professional standards. This document need not be lengthy or contain large amounts of information, such as statistics that are available elsewhere, and could:

- clarify the role of the authority and partners in professional standards;
- explain how the authority carries out its duties and functions in the area;
- outline the ways in which the authority has influenced the force and wider agenda through its scrutiny activity; and
- set out how lessons have been responded to by the force.

## Implications for police authorities and members

**46** Effective scrutiny of the area of professional standards with all the aspects outlined above, together with the requirements of related functions and responsibilities that are outside the scope of this guidance, have particular implications for police authority activity. Police authorities should therefore consider:

### Organisation

Police authorities should delegate responsibility for this area to a committee specifically convened for that purpose. It is recommended that police authorities give careful consideration to the terms of reference of the committee, to ensure it has sight of or is linked to relevant issues for the wider field of professional standards. As with all other police authority committees, race and diversity issues should be a standing item on the committee's agenda.<sup>5</sup>

### Membership

Police authorities will want to consider carefully the membership of the committee. In particular:

- the committee should be of a sufficient size to undertake the relevant business and allow it access to a range of appropriate skills;

<sup>5</sup> Commission for Racial Equality, *The Police Service in England and Wales – Final report of a formal investigation*, March 2005, recommendation 121

- authorities should consider the skills and experience of members, and issues of balance, when considering the membership of the committee;
- it may be useful to ensure that the membership of the committee includes members with responsibilities for other relevant areas, such as performance, human resources, and race and diversity; and
- it is important to maintain some members trained to sit on Police Appeals Tribunals outside the professional standards committee, to provide against an instance where all the trained members have had prior involvement in a case (see further below).

### **Support**

Authorities should also give consideration to the resources required to support the committee and its functions. This may include:

- appropriate training for police authority members and staff, such as familiarisation training with complaints and misconduct policy and procedure, and diversity and equality impact assessment training;
- access to policy and other support from police authority staff with relevant knowledge, training and skills, such as those relevant to dip-sampling;
- access to independent statistical analytical capability; and
- access to legal advice, although this is likely to be more relevant to other professional standards functions outside the scope of this guidance.

**47** Irrespective of whether an individual police authority member sits on the committee that deals with professional standards issues for their authority, all members should be mindful of the need to maintain an appropriate distance from operational matters and the detail of cases that fall within the scope of this guidance. Members should take particular care to avoid conflicts of

interest or other forms of involvement with individual cases which could be perceived as inappropriate.

**48** Members and authorities should be aware that if a member becomes personally involved in the detail of an investigation or other activity related to the handling of the case, this may mean that it will be inappropriate for them to have any further involvement in that case in their capacity as a member of a police authority. This relates both to activities that are within the scope of this guidance, such as scrutiny activity, and outside the scope of this guidance, including involvement in police appeals tribunals, and complaints and disciplinary issues involving chief officers.

**49** Police authority members should therefore ensure that they keep their authority informed of any involvement they have had with a case. Where necessary, the police authority should determine whether or not it would be appropriate for that member to play any further role in scrutiny or other police authority activity in regard to that case.

**50** It may sometimes be necessary, particularly when dealing with potentially significant or high profile cases and incidents, for an authority to deliberately isolate some members from involvement in order to ensure that there are some members available to participate in subsequent Police Appeals Tribunals or other activities. This can particularly be the case in incidents involving chief officers (whether subject to complaints and misconduct themselves, involved in administering complaints or misconduct systems, or in some other capacity).

# Annex The legislative framework

Police authorities have specific statutory obligations and powers that are relevant or specific to the area of complaints and misconduct under the Police Act 1996 and Police Reform Act 2002. These include:

## Police Act 1996

- **s.6(1)** sets out the general duty to secure the maintenance of an efficient and effective police force in their area.
- **s.10(1)** – each police force is under the direction and control of a chief constable (or equivalent).
- **s.77** – a specific duty to ‘keep themselves informed’ of the operation of sections 66 to 76 of the Police Act 1996 relating to the handling of complaints (revised and expanded under the Police Reform Act 2002). Chief Officers and HMIC also have this duty;
- **s.22(3)** requires Chief Constables to provide a report to authorities on matters they determine relating to efficiency and effectiveness, subject to appeal to the Home Secretary on the grounds that the information should not, for reasons of public interest, be disclosed or is not relevant to the functions of police authorities; and
- **s.9, 11** and **s.12** give a police authority the power to require an officer of ACPO rank to retire or resign on the grounds of efficiency or effectiveness, with the approval of the Secretary of State. Before doing so, the authority must give the officer in question the opportunity to provide an explanation in writing, and make representations, which must be considered by the authority prior to taking action. They also give an authority the power to suspend a chief officer, subject to the approval of the secretary of state.

## Police Reform Act 2002

- **s.15** sets out the general duty to ensure an authority is kept informed of matters relating anything that is done under or for the purposes of any provision of Part 2 of the Act, which relates to complaints and misconduct. Chief Officers and HMIC also have this duty. The section also sets out:

- that where a police authority requires of a chief officer of their own or any other force to provide a member of that force to investigate a matter where they are the appropriate authority or the IPCC is managing or supervising an investigation, that chief officer must do so;
- that a police authority must provide anyone so appointed with all such assistance and cooperation that they may reasonably require; and
- that police authorities must provide the IPCC with any assistance and cooperation it reasonably requires for carrying out its duties under Part 2 of the Act.
- **s.16** sets out provisions governing how the costs involved in providing assistance to other forces or the IPCC may be paid to the authority of the force providing that assistance.
- **s.17** specifies that every police authority must provide the IPCC with evidence and information as set out in regulations or for carrying out its functions, as soon as it is practicable to do so.
- **s.18** specifies that, having been given 48 hours notice, a police authority may be required to secure access by the IPCC to any premises occupied by a police force for the purposes of an investigation or examining the effectiveness and efficiency of arrangements for handling complaints or recordable conduct matters, subject to reasonableness and practicality.
- **s.22** states that following consultation, the IPCC may issue guidance in relation to specific complaints and misconduct matters, including procedure, local resolution and disclosure.
- **s.29** defines ‘appropriate authority’ – that is, the person or group responsible for determining the course of action (including recording, investigation, and subsequent action) in regard to a complaint as:
  - for a senior officer (that is, someone holding a rank above that of chief superintendent), the

appropriate authority is the police authority maintaining the force of which they are a member; and

- if not a senior officer, the appropriate authority is the chief officer under whose direction and control they are.

### Schedule 3 to the Police Reform Act 2002

#### Part one – handling of complaints

- **Paragraph 2** states that where a complaint is made to a police authority it should determine whether or not it is the appropriate authority, and if it is not, notify the appropriate authority of the complaint. The authority is then to inform the complainant that this has been done.
- **Paragraph 3** sets out the procedure to be followed where an authority decides not to notify or record a complaint, particularly notifying the complainant of this decision, the grounds for the decision, and their right to appeal.
- **Paragraph 4** sets out the duty to refer to a complaint to the IPCC if it involves an allegation of death or serious injury, is of a type specified in regulations that should be referred, or if the IPCC requires it to be done. Moreover:
  - an appropriate authority may also choose to refer a complaint to the IPCC if it considers that the gravity of its subject matter or its exceptional circumstances make it appropriate to do so;
  - a police authority may also refer a complaint to the IPCC if it is one in relation to which the chief officer of the force it maintains is the appropriate authority, and if it consider that the gravity of the subject matter or exceptional circumstances make it appropriate to do so;
  - the power to refer a complaint is exercisable at any time irrespective of whether the complaint is already being investigated by any person or has already been considered by the IPCC;
  - any reference of a complaint to the IPCC shall be communicated to the complainant, and, except

where it might prejudice any future investigation, to the person complained against; and

- any complaint that has already been referred to the IPCC cannot be referred again without the IPCC's consent.

#### Part two – conduct matters

- **Paragraph 10** states that where a police authority is notified that civil proceedings have been brought against it or a chief officer, it should consider whether those proceedings involve a conduct matter. Where this is the case, it should determine whether or not it is the appropriate authority to consider this matter, and if it is not, notify the appropriate authority of the complaint. The authority is then to inform the complainant that this has been done.
- **Paragraph 13** sets out the duty to refer recordable conduct matters to the IPCC where they involve a death or serious injury (even where there is no conduct matter or complaint identified), are specified as a matter that must be referred in regulations, or the IPCC requires it to be done. Moreover:
  - an appropriate authority may also choose to refer a recordable conduct matter to the IPCC if it considers that the gravity of its subject matter or its exceptional circumstances make it appropriate to do so;
  - a police authority may also refer a recordable conduct matter to the IPCC if it is one in relation to which the chief officer of the force it maintains is the appropriate authority, and if it consider that the gravity of the subject matter or exceptional circumstances make it appropriate to do so;
  - the power to refer a recordable conduct matter is exercisable at any time irrespective of whether the complaint is already being investigated by any person or has already been considered by the IPCC;

- any reference of a recordable conduct matter to the IPCC shall be communicated to the complainant, and, except where it might prejudice any future investigation, to the person complained against; and
- any recordable conduct matter that has already been referred to the IPCC cannot be referred again without the IPCC's consent.

As noted in the main body of the guidance, other statutory provisions apply to the investigation of complaints against officers of ACPO rank, where the police authority is the appropriate authority for the purposes of legislation. In addition, both acts set out particular requirements for the conduct of investigations generally.

Authorities must also ensure they exercise their responsibilities in this area with regard to their other statutory obligations, such as their duties, existing and forthcoming, to promote equality and eliminate discrimination across the six strands of diversity.





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