



Complaints against the Chief Constable policy

Under the Police Reform and Social Responsibility Act 2011, Police and Crime Commissioners are responsible for complaints against Chief Constables. This policy outlines how they will be managed in accordance with legislation.

Information on how the public can make a complaint against the Chief Constable is published on the Commissioner's website, and is supported by this accessible, public-facing policy.

Receiving a complaint

1. A complaint is defined by the Independent Office for Police Conduct (IOPC) as "an expression of dissatisfaction by a member of the public". It covers matters of conduct (acts, omissions, statements, decisions), and those issues considered direction and control (organisational decisions, policies and procedures, and standards).
2. A complaint does not have to be marked as such to be considered a complaint, nor does it need to be in writing.

Recording the complaint

3. The Commissioner will keep a formal record of complaints received and action taken.
4. When a complaint is received by the Office of the Police and Crime Commissioner (OPCC), within three working days a member of staff will write to the complainant to acknowledge receipt and explain the next steps.
5. The Chief Executive as Monitoring Officer will then decide whether the complaint should be recorded, in line with the IOPC's [Statutory Guidance](#). This decision will be made within 10 working days.
6. If the complaint is recorded, the complainant will receive written notification and be provided with a record of the complaint. The complainant will also be asked:
 - for their preferred method of contact; and
 - if they agree with how their complaint has been worded (if there is a dispute, the Commissioner will try to resolve the matter with the complainant).
7. The Chief Constable will also be informed of the complaint, unless to do so: i) might prejudice any criminal investigation; and/or ii) is other-wise contrary to the public interest.

Disapplication

8. When a complaint is recorded, a decision may be taken to disapply the regulations. The grounds for disapplication can be found at 4.7 of the [Statutory Guidance](#).

9. If a decision is taken to carry out a disapplication, the OPCC will inform the complainant and allow them to make representations. The complainant will have (and will be told they have) 28 days to do so. Any representations will be taken into account when considering how to proceed with the potential disapplication.
10. When the OPCC carries out a disapplication, it will inform the complainant of their right of appeal to the IOPC (this does not apply where the complaint relates to direction and control issues).

Non recording

11. If the complaint falls under 3.19 of the [Statutory Guidance](#), it will not be recorded. In this case, the complainant will be informed in writing of:
 - the decision;
 - the grounds for the decision; and
 - the complainant's right of appeal to the IOPC, and timescales for doing so.

IOPC/Special Requirements (and Severity Assessment) test

12. A complaint or conduct matter will be referred to the IOPC if:
 - the complaint alleges that the conduct complained of has resulted in serious injury or death;
 - the complaint includes any of the mandatory referral criteria, namely:
 - allegation of a serious assault
 - allegation of a serious sexual offence
 - allegation of serious corruption, including abuse of position for sexual gain
 - allegation of a criminal offence or behaviour, aggravated by discriminatory behaviour
 - allegation of a relevant offence¹
 - the IOPC notifies the authority that it requires the complaint to be referred;
 - the IOPC considers the complaint sufficiently serious or there are other exceptional circumstances.
13. In all other circumstances, an initial assessment as to whether, if substantiated, the alleged conduct would amount to potential misconduct or gross misconduct, or that the Chief Constable may have committed a criminal offence will take place. If this is the case, the investigation will be subject to Special Requirements and must be recorded as such.
14. If it is believed that Special Requirements apply, then another Force will be drafted in to investigate the matter (see paragraph 21). The Investigating Officer will review whether the matter is subject to Special Requirements.
15. If they find the matter is subject to Special Requirements, the Investigating Officer will also conduct a Severity Assessment, and the Chief Constable will then be issued with the required notices.

Investigating the complaint

Complaints suitable for Local Resolution

16. Those complaints suitable for Local Resolution include where the conduct being complained about:
 - would not, even if proved, justify bringing criminal or disciplinary proceedings, nor infringe a person's rights under Articles 2 (Right to Life) or 3 (Inhuman Treatment) of the Human Rights Act;
 - relates to direction and control issues.

¹ In essence, one which carries a term of imprisonment of seven years or more.

17. A complainant's consent is not required for Local Resolution, but it is in the best interests of all concerned to secure this, to reduce the likelihood of an appeal.
18. A member of staff from Kent Police's Professional Standards Department will carry out the Local Resolution, and this may include:
- providing information and an explanation;
 - providing an apology;
 - concluding the matter through correspondence that explains the circumstances and action taken; or
 - any other action considered appropriate for the circumstances of the case.
19. When the matter is concluded, the complainant will be informed of their right of appeal to the IOPC. However, there is no right of appeal for direction and control issues locally resolved.

Complaints suitable for investigation

20. Where a complainant has refused Local Resolution and it is deemed not appropriate to proceed; and/or where the alleged conduct complained about, if substantiated would amount to potential misconduct or gross misconduct, an investigation may be carried out.
21. The person appointed to investigate must, as per the Police (Complaints and Misconduct) Regulations 2012:
- have an appropriate level of knowledge, skills and experience to plan and manage the investigation;
 - not work, directly or indirectly, under the management of the Chief Constable; and
 - be a person whose appointment could not reasonably give rise to concerns of partiality.
- It is therefore advisable that any investigation is carried out by the Chief Constable of another Force².
22. The first decision the Investigating Officer will make is whether the case should be subject to Special Requirements. If so, they will conduct a Severity Assessment before following appropriate procedures, including the issuing of relevant Regulation 16 notices.
23. Bespoke Terms of Reference will be drafted, which will be approved by the Commissioner and agreed with the Investigating Officer. The Terms of Reference should:
- be clear and carefully drafted to specify the Investigating Officer's remit and extent of their brief;
 - define access levels for any Kent Police material, including arrangements for appropriate security vetting;
 - specify arrangements for interviewing the Chief Constable, the complainant and any other witnesses;
 - identify the date for completion of the investigation and submission of the final report;
 - include a timetable for the provision of interim statements/progress reports - to enable updates to be given to the Commissioner and allow the OPCC to keep the complainant and any interested persons informed (as a general rule, interested parties should be updated at least once a month);
 - prohibit the circulation of updates and reports to, or discussion of the investigation with anyone except the Commissioner or the IOPC; and
 - specify the Investigating Officer's report should be prepared in the knowledge that it is likely to be disclosed.
24. The Investigating Officer will have full access to any Kent Police material and/or staff which they consider necessary to conduct a full and thorough investigation.

² Her Majesty's Inspectorate of Constabulary may provide assistance in finding an appropriate officer.

Reporting the findings

25. Upon completion of the investigation, the Investigating Officer will submit a report to the Commissioner.
26. The Chief Executive as Monitoring Officer will convene a meeting to consider the report. Where possible, this will be within two weeks of the Commissioner receiving the report.
27. The meeting will consist of the Commissioner and an independent advisor. They will consider the report and make a judgement on whether they agree with the findings, and also decide what action to take. This will include whether to uphold the complaint, and whether to refer the case to misconduct proceedings or take some other action.
28. If it is determined that there is a case to answer in respect of misconduct, misconduct proceedings will be brought as required by legislation³.
29. The Commissioner is under a duty to refer a case to misconduct proceedings if:
- The IOPC has issued a recommendation or direction that proceedings should be brought;
 - The Chief Constable has a live final written warning;
 - They determine there is a case to answer in respect of gross misconduct.
- In such cases a panel will be arranged as required by statute.
30. Where investigations are supervised or managed by the IOPC, a copy of the report will be sent to the Commissioner, who will convene a meeting to consider it.

Action following consideration of the report

31. Within a reasonable time period, the Commissioner will notify the complainant (and all other interested parties as defined by the Act):
- of the findings of the report;
 - whether any action is to be taken, and if so what that action is;
 - what learning has been gained from the matter and how it will be used;
 - of their right of appeal to the IOPC.

This policy is subject to revision by the Monitoring Officer; it was last reviewed in Jan 18

Date	Name
October 2016	Adrian Harper
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³ The Police (Conduct) Regulations 2012.