

|  |
| --- |
| **Complaints About the Police**  **Standard Operating Procedure** |

|  |
| --- |
| This SOP provides clear direction and procedural instruction to provide a consistency of response in accordance with force policy, however it is recognised that policing is a dynamic profession and the standard response may not be appropriate in every circumstance. In every situation, your decisions and actions should be supported by the National Decision Model and based on the values and ethics of Police Scotland. You may be expected to provide a clear and reasonable rationale for any decision or action which you take. |
| Notice:  This document has been made available through the Police Service of Scotland Freedom of Information Publication Scheme. It should not be utilised as guidance or instruction by any police officer or employee as it may have been redacted due to legal exemptions |

|  |  |
| --- | --- |
| **Owning Department:** | Professional Standards |
| **Version Number:** | 9.00 (Publication Scheme) |
| **Date Published:** | 07/10/2022 |

# Purpose

This Standard Operating Procedure (SOP) supports the Police Service of Scotland (hereinafter referred to as Police Scotland) Policy of Professional Standards.

Police Scotlandaims to deliver high quality policing services to the communities it serves across Scotland. It is accepted that on occasions things will go wrong and mistakes will be made. Members of the public need to have confidence that when they wish to raise a concern or make a complaint about either the quality of the policing service provided or the actions of an individual, their concerns will be listened to and appropriate action taken.

This SOP is mandatory for all police officers and police staff working for Police Scotland.

# Support to vulnerable complainers

All members of the public have the right to equal access to the Police complaints procedure and assistance should be given to anyone who wishes to complain, particularly those who are vulnerable or have a disability. It is important to recognise difficulties that vulnerable members of the public can have when making a complaint and put additional support measures in place when required. The Investigating Officer must ensure that language used in any written response must be easily understood by vulnerable complainer.

The list is not exhaustive but consideration should be given to reasonable adjustments in relation to an individual or group on the basis of their race, sexual orientation, faith, age, gender disability, marriage and civil partnership, pregnancy and maternity and gender reassignment.

Under the Equality Act 2010 members of the public with a protected characteristic have the right to reasonable adjustments and under the Mental Health (Care and Treatment) (Scotland) Act 2003 anyone with a mental disorder (including mental health issues, learning difficulties, dementia and autism) has the right to access to independent advocacy. The Investigating Officer must ensure that language used in any written response must be easily understood by vulnerable complainer.

Examples of how Police Scotland can support members of the public when making a complaint include:

* Proactively checking if any additional support is required;
* Providing interpretation services and/or translation services for British sign Language users;
* Assisting with access to independent advocacy, for example through Citizens Advice Scotland or the Scottish Independent Advocacy Alliance.

## Complaints about the Police (CAP) made by Children and Young People

The United Nations Convention on the Rights of the Child (UNCRC) articulates the right for every child and young person to express their views, feelings and wishes in all matters affecting them and supports these views being heard and taken seriously. Furthermore, the best interests of the child or young person must be paramount in all decisions and actions that affect them and must be a primary consideration when a CAP is received from or on behalf of a child or young person.

Officers / staff members should be aware that the UNCRC and the National Guidance for Child Protection in Scotland 2021 define a child as being a child or young person under 18 years of age. Notwithstanding, in general terms and for the purposes of complaint handling, if a child is under 16 years of age, or a child is 16 or 17 years old and subject to Compulsory Supervision Order or open referral to the Childrens Reporter, a parent, guardian or other suitable adult must be present when discussing the complaint, agreeing the Heads of Complaint and/or providing the account to the Investigating Officer. If a child is 16 or 17 years old, and not subject to a Compulsory Supervision Order or open referral to the Childrens Reporter, they must be informed of their right to have a parent, guardian or other suitable adult present in the above circumstances. A suitable adult will be dependent on the circumstances of each case and will for the Investigating Officer to decide who is suitable. Examples could be adult siblings or staff within a residential unit.

Where appropriate, liaison with specialist officers should be considered prior to any approach to the child or young person in order that due consideration be given to any additional measures that may be required to ensure that they feel supported and heard during the complaint process. The requirement to hear the views of the child should be judged on a case by case basis, this may require an in person meeting with the child and parent, guardian or other suitable adult. The child should only have to recount the complaint to the investigating officer once to avoid unnecessary re-traumatisation.

The Investigating Officer must ensure that language used in any written response must be easily understood by the child or young person. If the Investigating Officer has any concerns during the course of the investigation regarding the child in terms of trauma, the officer should submit a child concern form via the Interim Vulnerable Person Data Base (iVPD).

Further information is available via the Children and Young People’s Commissioner Scotland Help and Advice section https://cypcs.org.uk/get-help/young-people/feeling-able-to-contact-us/

# Definition of a complaint

The definition of a complaint is contained within Section 34 (2) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

A CAP can be made by a member of the public or any person acting on their behalf where they:

* Claim to be the person in relation to whom the act or omission took place;
* Claim to have been adversely affected by the act or omission;
* Claim to have witnessed the act or omission; or
* A person acting on behalf of a person falling within any of the above.

A complaint does not include a statement made by a person serving with, or who has served with, the police regarding any matter which is related to a person’s employment or service with the police. This should be dealt with by the internal grievance / whistleblowing procedure. Similarly it does not include a statement objecting to any part of proceedings which are subject to their own appeals process (for example vetting and conduct proceedings).

A complaint made by a person serving with the police may be a relevant complaint within the meaning of the 2006 Act, where such a complaint could have been made by a member of the public (i.e. does not relate to terms of service or an internal grievance).

# Categories of Complaint

There are three assessment tiers connected with complaint handling, namely:

* Tier 1 – Non-criminal complaints which are minor or trivial and can be resolved by early resolution.
* Tier 2 – Non-criminal complaints which are not suitable for front line resolution and are allocated to PSD investigations teams.
* Tier 3 – Criminal and serious/complex complaints which are allocated to PSD investigations teams, or as required by the PIRC.

## On Duty – Definition

A police officer is considered to be on duty when:

* Operating within duty hours;
* When off duty and identifies themselves as an officer verbally or by producing their warrant card **and** uses, or attempts to use, police powers to deal with a situation where it may be inferred they would be in neglect of duty had they not acted. In essence, by their actions, they return to an on duty capacity.

A member of police staff is considered to be on duty when they are operating within duty hours.

## On Duty Criminal Complaints about the Police

**Division**: Where a complaint has been received at the local division and there is a reasonable inference that a crime may have been committed, the matter must be referred to the Duty Inspector, who will arrange for immediate actions to be undertaken in respect of obtaining a statement from the complainer, seizing Closed Circuit Television (CCTV) evidence, or any other evidence which could be lost through the passage of time. This will then be passed to Professional Standards Department (PSD) without delay. Where a complaint of criminality is made out with normal office hours, and there appears to be supporting evidence, contact should be made with the On-Call PSD Officer for further direction if appropriate in the circumstances.

The process of completing an onlineComplaints Capture Formis thereafter followed.

**National Complaints and Resolution Unit (NCARU)**: Where a complaint has been received at the NCARU and there is a reasonable inference that a crime may have been committed, this will be assessed immediately and priority actions undertaken such as capturing of CCTV. Criminal Allegations Against Police Division (CAAPD) will be consulted regarding allegations were criminality is inferred to direct who investigates and how the allegation is categorised.

**Referral to the Police Investigations & Review Commissioner (PIRC):** The Lord Advocate has instructed that when a person makes an allegation of ‘on duty’ criminal assault to Police Scotland against a police officer or member of police staff, PSD will record the allegation and refer to PIRC for assessment and investigation in consultation with CAAPD. Depending on the circumstances and seriousness of the complaint, i.e. where there is an inference of criminality, excessive force and unlawful arrest may likewise require early independent investigation.

## On Duty – Non-Criminal Complaints about the Police

On receipt of an on duty non-criminal complaint PSD will make an assessment to determine whether or not it is suitable for Front Line Resolution (FLR). Where it is determined to be minor or trivial in nature, the NCARU will contact the complainer directly in an effort to resolve the complaint at an early stage.

Where the complainer cannot be contacted by telephone, the NCARU will write to or e-mail the complainer, requesting that they make contact within 14 days. In the event that NCARU cannot make contact there will be an assumption that the complainer does not wish to pursue the complaint and it will be closed as an ‘Abandoned Complaint’. If the complainer subsequently makes contact the original complaint can be re-opened.

If FLR is not achieved, or is not considered to be appropriate, the complaint will be allocated for further investigation (if it is proportionate to do so, see section 5).

## Off Duty Complaints

Complaints may also be made about the acts or omissions of a police officer or police staff member, who was off duty at the time of the matter giving rise to the complaint. In order for the matter to be considered as a CAP, it must directly relate to the individual’s role as a police officer or police staff member.

Complaints are often made about situations which are personal disputes. It must be remembered that police officers and member of police staff have a right to privacy away from work. Every complaint must be assessed objectively and consideration must be given to whether a link exists between the situation complained about and the role of the police officer or police staff. The complaint must be treated as a CAP only if the conduct (if it was to be established) relates to, or would have a bearing upon, the person's role as a police officer or member of police staff. Where no such link can reasonably be established the matter should not be recorded as a CAP and the complainer should be advised of this (see PIRC Statutory Guidance for more information).

If a criminal complaint is made about an off duty police officer or police staff member, it will be formally recorded and investigated in accordance with the nature of the criminality involved, under normal Crime Recording Standards. The police officer or member of police staff must be treated no differently to any other member of the public. If there is sufficient evidence, the matter will be reported by means of a Standard Prosecution Report (SPR) to COPFS, or, where appropriate, a ‘Direct Measure’. The SPR or ‘Direct Measure’ will be submitted as local procedures dictate.

Where, during an ongoing investigation, there is a likelihood of an officer or member of police staff being interviewed under caution, or arrested; PSD must be notified as soon as is practicably possible. The decision to interview, detain or arrest is entirely operational. However; PSD must be notified in the event that there is a requirement to consider restrictions or suspension. In the case of police staff, PSD will notify People and Development. The decision to interview, detain or arrest must not be delayed because of a requirement to notify PSD.

In circumstances where an off duty police officer or member of police staff is issued with and accepts any form of ‘Direct Measure’ for a criminal offence such as a Recorded Police Warning or Fixed Penalty Notice, the officer or member of police staff receiving the ‘Direct Measure’ must notify PSD at the earliest opportunity and the supervisor of the officer issuing the ‘Direct Measure’ must notify PSD within 24 hours.

PSD in conjunction with the Investigating Officer / department will also ensure that any relevant notification to Scottish Police Federation or staff association / trade union is considered / made in order to facilitate any legal representation and or welfare support required. This may also be facilitated to the officer or police staff member through the custody process. The officer or staff member’s line management must also be informed to support the welfare provision which can include seeking advice / support from the Employee Assistance Programme.

Whilst the officer or member of police staff must not be treated any differently from a member of the public, a supervisory officer must be notified so that welfare arrangements can be considered.

This includes consideration about the place of interview, detention or arrest, which must not be the individual’s usual place of work or a place where they are well known to the staff working there. A supervisory officer must also give consideration to who investigates the case and where possible it should be officers who are not known to the subject officer / police staff member.

## Quality of Service Complaints

Quality of Service complaints fall under the following three headings:

* **Policy / Procedure:** - Complaints relating to policing policy, practice or procedure rather than the action of any particular member of staff;
* **Service Delivery:** - Complaints relating specifically to a policing response including policing presence, time and type of response;
* **Service Outcome:** - Complaints relating to the outcome of policing action including the failure to take action or a lack of satisfaction with the action taken.

## Non-Relevant Complaints

Where a complaint is assessed as not being a relevant CAP, this should be recorded accordingly and notification sent to the complainer, advising that they can contact the PIRC within three months should they disagree with Police Scotland’s assessment.

# Six Stage Complaint Handling Process

## Stage 1 – Notification of Complaint

Complaints About the Police can be received by various means including:

* In person by face to face contact;
* By telephone;
* In writing whether by letter, e-mail or online complaint form via the Police Scotland website.

Complainers may be directed to the Police Scotland website, where further information about the complaint process and the online complaint form can be accessed, by scanning the complaints QR code available to officers as a PDA quick link and in printable format.

Users directed to the website, by scanning the QR code with a smart device, may be automatically prompted to translate information in their home language, thereby improving accessibility to the non-English speaking demographic. The accuracy of Google Translate and other browsers should not be depended on however and standard translation / interpretation processes should be used where required.

PSD will aim to acknowledge all complaints within 3 working days and assess **relevant** complaints as soon as practically possible (see section 3 above for what is a relevant complaint). Acknowledgement that the complaint will be assessed should be given to the complainer by the person receiving the complaint either in person, by email or by telephone. An automatic acknowledgment is provided when a complaint is submitted online or through ‘Contact Us’.

From the outset, every complaint should be taken at face value and, in the absence of strong and clear evidence to the contrary, must be assumed to have been made in good faith. Complaints must be considered on their own merit. The six-stage process is flexible to allow staff to attempt to resolve the complaint at an early stage. A prompt and accurate explanation by knowledgeable staff can prevent the complaint from escalating to the stage where an investigation is required. However, it must still be formally recorded.

All complaints must be submitted to PSD on aComplaint Capture Form **within 24 hrs of receipt**, whereupon the complaint will be recorded, assessed and allocated. Once completed the Complaint Capture Form is automatically sent to the appropriate PSD office by e-mail (staff in receipt of a complaint from a member of the public should **not** use the ‘Police Complaint Form’ on the Police Scotland Website which is for the public to use. The Complaint Capture Form on the front page of the Intranet **must** be used). Where the complaint is received in writing or by e-mail the correspondence **must** be sent to PSD the same day it is received. PSD East, PSD West or PSD North should be emailed depending on the area the complaint relates to.

Once PSD receive a relevant CAP, NCARU will contact the complainer by telephone, and in the case of minor, non-serious complaints, attempt to resolve the complaint by telephone in the first instance (FLR). When FLR has not been achieved the complaint will be allocated for further investigation (if it is proportionate to do so, see section 5).

The NCARU should inform the relevant PSD Investigations Inspector if believed the CAP has any perishable evidence including Custody / public / private CCTV and Body Worn Video in an effort to recover and retain same for evidential purposes.

## Stage 2 – Recording and Initial Assessment

Accurate and consistent recording is a fundamental part of effective complaint handling. The Centurion recording database is maintained by PSD and is used to record all complaints about the police. All complaints must be entered into the Centurion database and, thereafter, updated and managed in accordance with the Professional Standards section within the Records Retention SOP, Data Protection SOP and the Management of Records SOP.

All complaints must be passed to PSD within 24 hours of receipt. The NCARU will consider whether it is a relevant complaint in terms of section 34 Police, Public Order and Criminal Justice (Scotland) Act 2006. Sometimes it is not clear at the outset whether the complaint is about the actions or behaviour of an individual, about the organisation and its delivery of service, or merely a request for an explanation or information about a particular incident. In such circumstances clarity must be sought, and the person should be asked if it is their intention to make a complaint.

Once a complaint has been received an assessment requires to be carried out to establish if it is a competent complaint, the type of complaint and the seriousness of what has been alleged. This initial assessment will determine if the complaint is required to be prioritised. All other complaints are assessed on a case by case basis and normally the oldest complaints will be dealt with first. All relevant complaints will be given a CO reference number.

In the majority of cases the complainer will be contacted by telephone by the NCARU in order to clarify the exact nature of the complaint. In some cases it will not be possible to determine whether a complaint is criminal or non-criminal from the initial information provided and some form of preliminary enquiry may require to be undertaken. This usually necessitates taking an initial statement from the complainer(s) and can include meeting with a limited number of witnesses and taking possession of items such as CCTV evidence.

It must be stressed that the purpose of these preliminary enquiries is to provide clarity and establish all known information in order to allow an assessment of the complaint. Generally PSD will arrange for a local supervisor to carry out the preliminary enquiry and return the information to the NCARU for assessment.

Allegations made against individuals which, if upheld, would be unlikely to result in misconduct proceedings or allegations made about the quality of service provided, which are not anticipated to have a significant impact on service reputation or public confidence, should be classified as minor or trivial and are suitable to be dealt with by FLR.

When assessing a complaint, any readily available information should be considered. This may, if relevant, include the history of the complainer and also that of the subject officer(s) / Police Staff member(s).

When recording a complaint, it is important to note that if an allegation is capable of being upheld or not upheld on its own merits, it should be recorded as a distinct allegation. Complaints should not be grouped together.

Complaints received by PSD (which have not been resolved through FLR) will be sent for investigation within three working days or as soon as reasonably practicable. A letter of acknowledgment, or e-mail of acknowledgement (where an e-mail address has been provided), will be sent by PSD to the complainer within the same time frame of the complaint being assessed. The letter or e-mail will inform the complainer that the complaint has been allocated to the relevant PSD for the necessary investigation and will include a copy of the leaflet 'A Guide for Complaints about the Police'.

## Front Line Resolution (FLR)

When a complaint is made face to face, or by telephone, it may be possible for a supervisor to resolve the matter by explanation, or a simple apology or assurance. This negates the need for investigation and is known as a divisional FLR.

Where a complaint has been resolved by divisional FLR, the supervisor who carried out the FLR should confirm with the complainer that they are satisfied that the complaint is resolved. Given the nature of FLR it is important that all complainers are provided with information on complaints about the police which will allow them to make an informed decision on how to progress their complaint if, on reflection, they remain dissatisfied. This can either be done verbally at the time or by giving them a ‘Guide for Complaints about the police’ leaflet. A letter explaining the outcome of the FLR is not required unless specifically requested by the complainer. The officer should then complete a [Complaints Capture Form](https://spi.spnet.local/policescotland/about-us/complaints/Lists/Received/NewForm-Custom.aspx). The [Complaints Capture Form](https://spi.spnet.local/policescotland/about-us/complaints/Lists/Received/NewForm-Custom.aspx) (and copy of the letter if required) should then be forwarded to PSD for recording purposes. It is important to record the rationale for the FLR and keep an auditable record of all contact.

FLR is suitable only where complaints are:

* + - Non-criminal;
    - Non-serious i.e. relatively minor or trivial ;
    - Non-complex; and
    - Can be resolved without investigation, other than familiarisation with the circumstances of the incident.

If the matter is resolved and the complainer indicates they are happy with the explanation, apology or assurance, they should be asked whether they are satisfied that the matter has been dealt with effectively to ensure they have no expectation of the matter being progressed any further.

Following an initial assessment by NCARU, complaints involving allegations that appear to be of a serious nature may **not** be suitable for FLR. This assessment may involve further contact with the complainer to clarify details of the allegation.

If a complaint is resolved by FLR, and the matter relates to a police officer or police staff member, then the officer or staff member and their line manager will be notified of the nature of the complaint and that it has been resolved. Any conduct issues or learning opportunities should be considered and recorded accordingly.

Where a complaint is about the actions of an officer or member of staff, the Police Scotland should consider whether that individual ought to be given a right of reply to the allegation before the complaint is concluded by FLR. If there is consideration of conduct issues, the matter should not be considered suitable for FLR.

NCARU staff assess all incoming complaints for suitability of FLR with the exception of those dealt with by Divisional FLR.

Where the complaint is assessed as suitable for FLR, contact will be made with the complainer by telephone. The complaint will be fully discussed and the FLR process explained. An appropriate explanation, apology or assurance will be provided and if the complainer agrees the complaint can be resolved, then it will be concluded at this stage.

NCARU staff must note details of the conversation with the complainer and what actions were agreed with them. This ensures that if the complainer changes their mind there is a record of what has already been discussed and agreed.

NCARU staff will confirm with the complainer that they are satisfied that the complaint has been resolved and to contact PSD in the first instance should they reconsider. Again, a letter explaining this is not required unless specifically requested by the complainer. The template FLR letter is generated from Centurion. When requested, the letter must include sufficient detail about the complaint and how it was resolved.

Officer(s) / Staff member(s) subject to the complaint and their first line manager will be made aware of the complaint and that it has been resolved by FLR. See FLR and Complaint Handling Guidance for more information.

## Stage 3 – Non-Investigation, Allocation and Investigation

Where FLR has not been achieved, or is not appropriate, the complaint will be allocated to PSD Investigations (Criminal / Non-Criminal) depending on the nature of the complaint (see below for exceptions). Complaints that require specialist knowledge may require to go to a specialist department for investigation. Each case must be assessed on a case by case basis and any transfer of investigation should be agreed by the relevant PSD Chief Inspector.

In circumstances where it may be more appropriate to be investigated by a specialist department there will be an identified PSD Single Point of Contact (SPoC) to provide ownership and potential reporting mechanisms.

**Non-Investigation**: It may not always be necessary or proportionate to progress a complaint to full investigation when FLR has not been successful. This may be appropriate in the following circumstances:

* + The complaint is particularly minor or trivial in nature, or;
  + Undue delay– a period of more than 12 months has lapsed between the incident giving rise to the complaint and the complaint being made, without any reasonable explanation, or;
  + There is sufficient information obtained by the NCARU to enable an adequate written response to the complaint and determine whether the complaint is upheld or not.

The rationale for any complaint not to progress to full investigation must be assessed / reviewed by the relevant Inspector and fully recorded. A letter of response will then be sent to the complainer containing the following information:

* + Acknowledging receipt of the complaint and the nature;
  + That the complaint had been recorded;
  + That an initial review / assessment has been conducted but that the matter would not be investigated further;
  + An explanation as to why it was not deemed necessary or proportionate to investigate;
  + If there has been any attempt to FLR;
  + If the matter is upheld / not upheld, following the initial review / assessment;
  + Issue apology if necessary in the circumstances;
  + Standard PIRC paragraph advising the complainer of their right to seek a review by the PIRC if they remain dissatisfied.

Application / consideration of this process will be assessed on a case by case basis. A good record of the rationale and a detailed explanation as to why the matter is not being taken forward are necessary to keep public trust in the process.

## Complaint Handling

The main focus of complaints will be to conduct a proportionate investigation to establish what, if anything, has gone wrong and to correct it where possible, identify learning and improvement opportunities, and to provide a full and transparent response to the complainer within 56 days.

Where the timescale for responding to a complaint has exceeded the 56 days, the complainer should be contacted without any undue delay and provided with an update on progress. The complainer should thereafter be updated at least once per month until such time as the complaint has been determined. Consideration must be given to providing an explanation for the delay, and an apology should be provided where appropriate. In certain circumstances consideration should be given to record an upheld Quality of Service complaint to account for the delay and the complainer should be advised that this has been done.

The Investigating Officer for the complaint should have had no prior involvement in the incident or specific actions being investigated, and be able to conduct an objective investigation. Complaints must be dealt with fairly, impartially and transparently in order to maintain public trust and confidence. Any conflict of interest on the part of the Investigating Officer is likely to undermine the integrity and independence of the complaint enquiry, and the outcome is unlikely to be accepted by the complainer.

A conflict of interest is when someone’s judgement or actions, and hence impartiality and independence, are or could be affected by something unconnected to their role. Conflicts of interest can be actual, perceived or potential. A perceived conflict of interest is one in which a reasonable person could consider it likely that some external factor might influence a person in the performance of their duties or exercising their judgement. A potential conflict of interest is a situation which could develop into an actual or perceived conflict of interest.

Cognisance should be taken of any perceived, potential or actual conflict of interest by the complaint handler, and any conflict of interest must be dealt with transparently and effectively. Where a conflict of interest is declared by the Investigating Officer or any other officer involved in the handling of the complaint, this should be clearly recorded in the complaint record, and that individual should have no further involvement in the handling of the complaint. Further guidance can be found in PIRC’s Learning Point Bulletin on Conflict of Interest.

Delay in initial contact can often lead to additional dissatisfaction, therefore the Investigating Officer should make contact with the complainer at the earliest opportunity. The focus of this first contact should be to establish exactly what has led to the complainer's dissatisfaction, what requires to be done to put things right and what the complainer’s expectations are. The complainer should be advised from the outset how the complaint will be progressed and reassured that a proportionate investigation will be undertaken in order to establish the facts. It is important to establish exactly what issues are of concern to the complainer.

Success in resolving a complaint relies on a shared understanding of the complainer's expectations of the process. For example; there is no point continuing to attempt to resolve a complaint with an explanation if the complainer is expecting financial compensation. It is helpful at the outset to clearly explain:

* + - What the Investigating Officer can and cannot achieve;
    - What practical action can and cannot be taken;
    - What action might be appropriate and proportionate to investigate the complaint; and
    - What the Service's policies and processes are in relation to the subject of complaint.

During the course of any investigation it is considered best practice to note full statements from the complainer and any relevant witnesses. The statement should cover all the complaints contained within the initial correspondence, and should note any allegation that the complainer no longer wishes to pursue. If, on this first contact with the Investigating Officer, the complainer now accepts the explanation provided then this should be captured in the statement. It is accepted that it may not always be possible to obtain a statement from the complainer.

A contact log should be retained, along with file notes detailing conversations and other information, including all e-mails, relevant to the complaint. The purpose of this is to maintain a full audit trail for all decisions, should the complainer decide to request to have the complaint reviewed by the PIRC at a later date.

There should be a clear understanding between the person noting the complaint and the complainer as to what is being investigated. At the conclusion of the statement there must be a summary of the agreed **Heads of Complaint under Investigation**, and the complainer should be asked to complete and sign a Heads of Complaint form which lists the description of each allegation. This document can be considered as the agreement between the complainer and the Investigating Officer and sets out exactly what is to be investigated. It also assists the recording process.

A copy of the Heads of Complaint Form **must** be provided to the complainer at the earliest opportunity. A copy can be provided at the time, or it can be posted or scanned and e-mailed to the complainer. Where the complainer wishes an amendment or addition, this should be accommodated and a new or amended version provided to the complainer.

If any aspect of a complaint could be upheld or not upheld on its own merits, then it should be recorded as a separate Head of Complaint. Further guidance can be found at PIRC’s Learning Point Bulletin on recording and responding to multiple complaints.

In every complaint where medical evidence in relation to illness / injury of the complainer may be relevant, the complainer should be asked to sign an Authorisation for Disclosure of Details of Medical Examination Form (Force Form 037-012) authorising the Investigating Officer access to any appropriate medical records.

The Investigating Officer should obtain an account from all relevant personnel. This may be in the form of operational statements, if required. However, where simple clarification is being sought, it is acceptable to get information by e-mail.

The Investigating Officer should notify the officer(s) / staff member(s) who are the subject of the complaint that a complaint is being investigated. Police officers have a duty to provide an account of their operational activity. However, distinction has to be made as to whether an officer is a witness or a Subject Officer in relation to a complaint.

Subject Officers, or potential Subject Officers, **cannot** be compelled to address allegations made against them, however all officers are obliged to provide an account of their actions whilst on duty.

The Investigating Officer needs to provide sufficient detail of the allegations made to enable officers to fully address it in their accounts. Where the Subject Officer provides an operational statement but has not addressed the specific allegations made by the complainer, the Investigating Officer should ask for a further operational statement covering the detail of all of the allegations that have been made. Alternatively, the Investigating Officer can take a statement from the Subject Officer covering these points, but only if the Subject Officer agrees to it.

A Subject Officer or police staff member subject to a complaint is not obliged to provide any response, however they should be made aware that, if their version of events is not available, the complaint may be upheld based on the information available particularly where there is no other evidence to the contrary and the complainer has provided a credible account.

Complaint determinations are made on balance of probability using the available evidence.

Witness officers must provide a full operational statement addressing the allegations made which **must be their own version of events and not a copy of a statement from other witnesses**. Where officers submit identical statements it undermines the integrity of the complaint enquiry and raises questions of credibility and reliability. All operational statements must contain the date on which they were created. The Investigating Officer should challenge near identical statements and request new ones if necessary.

If a complaint is made against an officer or police staff member who has since retired, resigned, or been dismissed, the complaint must still be recorded and investigated or resolved in the same manner as any other CAP. Although disciplinary procedures cannot be taken, this does not prevent the matter being treated as a CAP. Organisational and individual failings may be identified, and an apology can be issued on behalf of the Service, where appropriate.

PIRC must be advised when an officer has retired or resigned and a Complaint Handling Review (CHR) involving that officer is underway. While it may be disproportionate to contact ex-officers regarding low-level complaints, they should be contacted in more serious cases.

Risk assessment is important when handling complaints. Risks need to be identified and managed, whatever the nature of the complaint. Sometimes responding to complaints can provide complainers with information they do not expect, or indeed they do not like. Where family members, friends or associates are interviewed and provide versions of events and views which differ from that of the complainer, careful consideration must be given to the wording of the final response.

Investigating Officers must consider all risks that are presented, such as potentially vulnerable witnesses and complainers, and any risk to the police officers and police staff member involved. A file note must be made where a decision is taken not to include certain information in the final response, this ensures that during any Complaint Handling Review by PIRC they are able to understand the rationale being applied.

Complaint handling should be focussed to deal with the matter quickly, however this should not compromise the quality of the investigation.

## Allocation of Investigation

Depending on the circumstances, the following complaints will be investigated by either the PSD Investigations (Criminal / Non-Criminal), the Specialist Investigation team, the Anti-Corruption Unit or PIRC:

* Complaints alleging criminality;
* Serious or Complex complaints;
* Complaints of a nature which may later justify proceedings for misconduct; and
* Complaints alleging serious failures in policing services.

In certain circumstances (e.g. on duty sexual allegations), CAAP-D require to be consulted with regards to a decision around ownership/progression of the investigation.

In some cases there may be a requirement for a complaint to be investigated by a specialist department for which PSD will retain oversight.

## Conducting Effective Investigations

Non-serious investigations can often be straightforward and easily dealt with. They can be concluded by fully completing the sections within the Complaint Handling Form. In **all** cases a full and clear response to the complainer is required, detailing the enquiry carried out, the rationale for any decision to uphold or not uphold allegations and what, if any, action will be taken and why. There will be occasions when a complaint is properly addressed and a proportionate response is given to the complainer, but the complainer remains dissatisfied with the outcome. It is vital that all action taken is documented and reflects the position of Police Scotland that there is no more action that can reasonably be done to deal with the complaint.

The Investigating Officer must make every reasonable effort to investigate all of the relevant circumstances and information surrounding a complaint. The investigation should be proportionate, have sufficient detail to establish the material facts, and has to enable the provision of a reasoned response based on the balance of probabilities. Ultimately, the Investigating Officer is responsible for determining what level of information is required to conclude the complaint, and for ensuring the information gathered is of suitable quality and quantity to enable a full and informed response to be provided to the complainer. The following list, whilst not exhaustive, should be considered:

* CCTV evidence – custody suite, body worn video, public space and private systems. Where appropriate to do so, capture of CCTV should be prioritised early in the complaint enquiry. Further guidance can be found at PIRC’s Learning Point Bulletin on exploring the role of CCTV in handling public complaints.
* Custody records;
* Custody photographs;
* Forensic evidence (clothing, etc.);
* Crime reports / SPR’s;
* Officer’s notebook entries;
* Injury on Duty / Use of Force / Exposure to Violence reports;
* Command and Control entries;
* Door to door enquiries;
* Warrant Files;
* Medical reports;
* Forensic evidence;
* Check procedural issues, legislation and guidance specific to the complaint;
* Consider contacting other specialist departments relative to the complaint for advice.

Throughout the complaint investigation, the Investigating Officer should consider if the organisation can learn lessons and improve by considering what happened, what should have happened, what the failings are, what led to the failings, what could have been done to prevent them and what can be done to rectify them.

Auditable records will be kept in respect of all complaints detailing all enquiries undertaken and all significant steps taken during the complaints process. All evidence obtained or created as part of the investigation must be retained.

A completed investigation should:

* + - Explain the nature of the complaint and include all allegations;
    - Outline what the complainer’s expectations are;
    - Give a clear account of the investigation carried out and the evidence obtained;
    - Where a decision has been made not to obtain a statement or follow up information, provide an explanation as to why;
    - Outline all of the facts that are established, based on the evidence obtained;
    - Show that all of the complainers issues of concern have been fully considered;
    - State whether each allegation has been upheld or not upheld;
    - Show clear reasoning which draws out conclusions from the information and evidence;
    - Recommend action to be taken based on the outcome of the investigation;
    - Set out any learning for the Police from the complaint (if the complaint is not upheld, learning for the Service should still be considered).

As the complaint passes through the complaint system there must be an audit trail of all action taken by the Investigating Officer and the processes followed.

This includes:

* + - A record of all communication with the complainer and other witnesses;
    - Any visits carried out;
    - Reference to any policy and procedures considered;
    - Any evidence gathered.

For instance, some complainers may prefer to communicate by telephone rather than by e-mail or letter. If this is the case a record of all telephone conversations must be kept. Any internal correspondence relating to a complaint, including e-mails, must be retained and collated as part of the complaint documentation. With the potential for subsequent scrutiny and in order to demonstrate a fair and objective approach, all complaint correspondence should be professional in content and language.

Where a complaint has been referred to PIRC, who then request the complaint file, there is a requirement to submit allevidence gathered includingdocumentation, correspondence, e-mails, CCTV evidence and any other material used in the consideration of the complaint. A copy of any document or guidance or any other information relied upon or referred to in the final response must be retained and provided to PIRC with the papers provided. Materials should be provided to the PIRC within 14 days at the outset of a case and 7 days for any request thereafter.

## Investigating On Duty Criminal Allegations

All criminal complaints involving on duty police officers and / or staff members should be investigated and concluded within 56 days of the ‘Heads of Complaint’ being completed with the complainer.

Criminal Complaints about the Police are reported on a standard CAP report template which has been agreed with the COPFS Criminal Allegations Against the Police Division (CAAP-D). There are five categories or report as follows:

* + - **Category 1:** Allegations of criminality, which could not be described as minor in nature, which contain sufficient prima facie evidence. (CAAP-D require to be notified within 48 hrs of a Category 1 complaint and may instruct that the matter is reported directly by SPR within a shorter timescale);
    - **Category 2:** Allegations of criminality, which could not be described as minor in nature, which contain insufficient prima facie evidence but appear to have substance;
    - **Category 3:** Allegations of criminality, which could not be described as minor in nature, which contain insufficient prima facie evidence but appear to lack substance;
    - **Category 4:** Allegations of criminality, which could be described as minor in nature, and might properly be returned to PSD for action;
    - **Category 5:** Allegations of criminality which have been withdrawn immediately, or withdrawn after initial enquiry within the police station, or where the complainer has failed to co-operate with the Police in connection with the investigation of the complaint and the complaint does not meet the criteria for any of the above categories.

If during the early stages of an investigation, there is an indication that a crime may have been committed, PSD will contact COPFS and CAAP-D to advise them. This consultation will take place as soon as reasonably practicable and within two working days of the evidence coming to light. CAAP-D may advise further investigation action or enquiry to be undertaken or may refer the matter to PIRC to investigate.

Where a complaint to which Section 1 of the Road Traffic Offenders Act 1988 applies, a warning in terms of this Section must be given at the time of the offence or a Notice of Intended Prosecution (NIP) (Force Form 126-066) served on the subject officer / staff member within 14 days of the offence.

It should also be noted that, if the driver at the time of the offence is not identified and the offending vehicle is registered to the Chief Constable, the provisions of this Section should be complied with by serving the NIP on the Service as registered keeper within 14 days of the alleged offence. This is normally the Fleet Manager.

In relation to offences arising from road traffic collisions involving police vehicles, reference should be made to the Collisions and Incidents on the Roads Network SOP.

Any CAP report will thereafter be forwarded by PSD to CAAP-D.

Where a report involving an allegation of criminal conduct by an on duty police officer is referred to CAAP-D the DCC Professionalism or their representative will arrange for the officer(s) subject to the complaint to be informed and advised that misconduct proceedings may subsequently be taken, irrespective of whether or not criminal proceedings are brought against the officer(s).

All concluded complaints must be recorded on a Complaint Handling Form, which contains all information required for recording on the Centurion system. This includes the appropriate disposal code(s) relating to the complaint. Nationally agreed disposal codes On Duty, Off Duty and Quality of Service complaints are shown at Appendix E.

## Stage 4 – Determination

In order to determine the outcome of a complaint or allegation, i.e. if the allegations are upheld or not, the Investigating Officer must carry out an objective analysis of the evidence obtained. In determining their recommendations they should consider:

* + - What prompted the complaint?
    - What facts have been established?
    - Whether the police action was unsatisfactory and should be avoided in the future?
    - What can be done to prevent it happening again?
    - Whether an apology is appropriate?
    - What can be learned from the complaint?
    - Is any remedial action necessary?
    - Are existing processes and policies effective or do they require revision?

A conclusion to a complaint should include any explanation for poor performance that has been established. For example there may have been a lack of resources; inexperienced officers; training issues; poor planning and supervision; a lack of coordination; a misunderstanding or a genuine mistake on the part of the officer(s) or staff member(s). These factors should be considered when assessing any further action, training, or organisational learning identified as a result of a complaint.

An allegation should be **upheld** where the evidence based findings show that, **on the balance of probabilities**, the service provided did not reach the standard a reasonable person could expect or the actions or behaviour of the officer or staff member did not reflect the Standards of Professional Behaviour. More information and further guidance can be found in PIRC’s Learning Point Bulletin on the Balance of Probabilities.

Conversely; a complaint would be **not upheld** when the evidence-based findings show that the service provided or the conduct of officers and staff was of the standard that a reasonable person would expect. For example, if the facts uncovered were to illustrate that what the complainer has alleged, did not happen or did not happen in the manner they described, the complaint would be concluded as **not upheld**. A complaint would **not be upheld** when the circumstances described by the complainer did happen but were found to be reasonable and proportionate in the circumstances.

It is not necessary for an account to be corroborated by other evidence, provided the account is considered to be credible and reliable. Similarly, there is no requirement: for a ‘sufficiency of evidence’ (akin to what is required in criminal proceedings); for independent evidence; to reconcile accounts; or to establish facts or findings with certainty.

When deciding what a reasonable person would expect, any determination must be based on an objective analysis of the facts established. The Investigating Officer **must not** base their conclusion on assumption or personal opinion. Where relevant, the Investigating Officer should consider the complaint history of the officer and the complainer when assessing credibility or reliability. They must take into account all of the evidence gathered, any policy or SOP that can be applied to the situation and the Police Scotland Standards of Professional Behaviour.

There may be occasions when it is simply not possible to conclude that an account is more probable than another. This may occur when the evidence is equally weighted on both sides, for example where there is nothing in the surrounding facts to support either account, or where there is nothing to undermine the credibility of either account. In such circumstances the complaint will not be upheld. An explanation why the complaint is not upheld must be provided to the complainer. This explanation should describe what evidence the Investigating Officer found in the course of the enquiry for each allegation and notify the complainer why their account has not been preferred, i.e. the response needs to explain how the evidence was assessed and what weight was attached to the conflicting accounts/information in order to reach a determination.

During the complaint investigation, information may be uncovered which shows a failing on the part of the police that has not been made as a specific allegation by the complainer, however, if it had been made as a complaint, it would most likely have been upheld. This should not be ignored. Appropriate action should be taken and, where the failing is relevant to the complainer, an explanation should be provided to the complainer of the failing, what action was taken and why.

For non-serious, non-complex and non-criminal complaints, there is no requirement for the Investigating Officer to write a report. The details of the full investigation and the outcomes for each explanation should be clearly articulated in the final letter to the complainer. In non-criminal cases the final letter and the completion of the Complaint Handling Form is sufficient.

At the conclusion of the investigation, the subject officer and their line manager should be made aware of the determination. If the complaint is upheld, a rationale as to why it has been upheld should be provided and notification if the complaint is suitable for local management action or if it is being referred to Conduct.

## Withdrawn and Abandoned Complaints

If, when contacted by NCARU staff at the initial assessment stage, a complainer wishes to withdraw the complaint, NCARU staff will record this as a withdrawn complaint and direct them to contact PSD in the first instance should they reconsider. Depending on the nature of the complaint, CCTV, medical or photographic evidence where available should be retained.

In criminal complaints, or non-criminal complaints which have progressed to full investigation, and the complainer wishes to withdraw the complaint in full, the following actions are necessary:

* + - A statement of withdrawal should be obtained. Written statements are best practice however consideration can also be given to other means of recording such as email or recorded calls, depending on the circumstances. The statement must include the complainer’s reason for withdrawing the complaint;
    - CCTV / medical / photographic evidence where available should be retained.

For criminal and non-criminal complaints in any of the following circumstances where a complainer wishes to withdraw their complaint, a full enquiry will still be required if;

* + - The complainer states that their reason for withdrawing the complaint is that they have no faith in the complaints procedure and / or that the Police will not investigate the matter properly;
    - In the case of criminal allegations, evidence exists that supports the complainer’s allegations;
    - The complaint arises from a matter that is particularly sensitive, serious or high profile;
    - The subject officer has a concerning complaint history.

In cases where a criminal complaint is withdrawn by the complainer, the Subject Officer can be advised of this but there may be circumstances where a withdrawn criminal complaint still requires to be investigated and reported to CAAP-D as a ‘Category 5’ complaint.

It will be the responsibility of PSD to intimate the final outcome to the relevant officer / staff member.

When an explanation has been provided to a complainer and is fully accepted, the allegation should not be considered to have been withdrawn, nor should the complainer be prompted to withdraw the allegation. The appropriate outcome is that the particular allegation is *‘*concluded by explanation to complainer’ and requires no further investigation.

In some cases, complainers fail to co-operate with the complaint process and can include:

* + - Refusal to meet with the Investigating Officer without good reason (lack of trust in the police or system is considered good reason);
    - Failure or refusal to answer or return telephone calls without good reason;
    - Failure to reply to written correspondence without good reason;
    - Behaving in an abusive or offensive manner.

Each complaint / complainer must be considered according to individual circumstances. All contact and attempts to contact a complainer should be recorded. The Investigating Officer will make all reasonable efforts to secure a complainer’s cooperation. If they are satisfied that the investigation cannot proceed without the complainer’s further cooperation, consideration may be given to abandoning the complaint investigation. The decision to abandon a complaint should be communicated to the complainer in writing.

Alternatively, the Investigating Officer may consider that a final written response to the complainer is appropriate, based on the available information and evidence already obtained.

Occasionally it will not be possible to resolve all of the complainer’s issues. In certain cases, where a complainer continually adds new complaints to an ongoing investigation and persists in demanding further interaction with the Investigating Officer, the Investigating Officer must show that they have done all they can to explain the complaints process and conduct an adequate investigation. On occasion further engagement with the complainer will not add value for the complainer or the organisation and it is best to bring the complaint to a conclusion. If this happens a clear explanation of the reasoning behind the decision taken should be provided to the complainer along with information on how to refer their complaint to the PIRC, if they are not satisfied with how it has been handled.

## Unacceptable Actions by Complainers

Police Scotland is committed to providing a visible, fair, consistent and accessible complaint handling service to all users. We believe Individuals have the right to be heard, understood and respected and consider Police Scotland officers and staff to have the same rights. However, we retain the right, where we consider an individual’s actions to be unacceptable, to restrict, terminate or change access to our service.

The Unacceptable, Persistent and Unreasonable Actions by Complainers SOP sets out Police Scotland’s approach to the relatively small number of individuals whose actions or behaviour we consider unacceptable.

## Stage 5 – Identify Organisational and Individual Learning

The complaints process promotes a culture of learning. Continuous improvement is the primary objective of the complaints handling process. Complaints provide an opportunity to measure current performance, assess public expectation and improve service delivery.

Significant issues identified during the investigation of a complaint should be addressed without waiting on the conclusion of the complaint to prevent any recurrence. The Investigating Officer should alert such learning opportunities to the appropriate commanders. The Investigating Officer should not issue guidance or author reminders during the investigation, as it may appear to Subject Officers as though the outcome of the complaint investigation has been predetermined. The appropriate commanders can however issue reminders, general guidance and remedial training.

Any learning outcomes should be detailed on the concluded Complaint Handling Form and will be collated and, where appropriate, disseminated by PSD.

## Stage 6 – Notification to Complainer

Communication is a key element of any complaint handling system. From the outset there should be communication with the complainer. Additionally, any officers and staff involved in the complaint must be kept informed.

Throughout the complaint handling process, the complainer should be informed of progress at planned intervals. It is recognised that, on occasion, complaints may contain a combination of criminal and non-criminal allegations. In such cases criminal proceedings take primacy and may delay the final notification to the complainer of the non-criminal allegations. Wherever possible the Investigating Officer should address the non-criminal allegations as early as possible. When the non-criminal allegations arise from the same set of circumstances as the criminal allegations, it may not be possible to address the non-criminal allegations until the criminal allegations are concluded by CAAP-D.

When the complaint goes through the complaint process, it is necessary to provide the complainer with a final written response which considers the needs of the complainer. This should be signed off by an officer of an appropriate supervisory rank, usually an Inspector or above dependant on the circumstances / nature of the complaint. The officer responding to the complaint must be of a more senior rank than the officer(s) complained about. In the final letter clear, unambiguous language must be used, and if the complainer requires, translation into their own language should be provided. Where, because of a complainer’s specific requirements, a final letter is not appropriate and a response is provided verbally, a detailed record of this conversation must be kept, including whether allegations were upheld / not upheld and any apologies given, along with the reasons why a final letter was not provided. Where a complainer accepts a verbal response, if possible, they should be asked to sign the officer’s notebook / mobile device confirming that they have done so.

In certain circumstances, when taking into account the needs of the complainer or in sensitive cases, it may be beneficial to explain the result of the complaint investigation to the complainer before a final letter is sent.

The complainer’s needs must be taken into account throughout the process. For example; the needs of a person making a complaint about the way the death of a family member was dealt with differs to a routine complaint about the incivility of an officer, therefore the method of explaining the outcome of the complaint must be carefully selected. The complainer may indicate that they have other needs for a verbal response and this should be taken into account.

The explanation should be clear and impartial and should communicate whether each allegation is upheld or not. It should **fully** address the complainer’s allegations and concerns, and the reasoning behind any decision should be apparent. The explanation should also include any action to be taken as a result of the complaint, and any learning identified for Police Scotland.

The final letter of response should:

* Be clear and easy to understand, written in plain language and free from jargon;
* Not include disparaging remarks or unfounded judgements;
* Directly address each allegation raised and state clearly whether each allegation is upheld or not;
* Be based on the facts established by the Investigating Officer;
* Explain the facts and how they were used to inform the conclusions reached on the balance of probabilities;
* Contain a summary of the enquiries carried out in respect of each complaint;
* Explain any service or conduct failings identified;
* Communicate the details of any learning identified for Police Scotland;
* Communicate any action which has been proposed or taken;
* Provide clear apologies if failings have been identified;
* Where certain allegations are not being addressed, explain why. (For example if one of the allegations is a criminal matter and is still being dealt with by CAAP-D);
* Include details of what to do if the complainer remains dissatisfied.

The letter must reassure the complainer their complaints have been investigated fairly and where necessary, action will be taken to ensure there is no recurrence of the issue in question.

When explaining to the complainer how the facts were used to inform the conclusions reached, there should be a reference to any relevant legislation, policy or exceptional circumstance which supports the position of the Service.

An apology should always be given when things have gone wrong, either verbally or in writing. Any apology should be unambiguous and sincere. Please see Scottish Public Services Ombudsman guidance on apologies.

Where a decision has been made not to institute misconduct proceedings, the complainer should be informed of any other measures taken or intended to be taken in respect of the officer / staff member. If a decision is made to commence conduct proceedings the complainer should be advised. If no action is being taken in cases where failings have been identified, the reason for this should also be explained.

Providing complainers with this information promotes transparency in decision-making. Where individual or organisational learning has been identified an auditable trail must be retained. Where individual learning has been identified, for example corrective advice, the CAP Record should be updated when this had been delivered, and should include such information as what advice was given, who delivered it and when it was delivered. This information should be provided to PIRC when they are conducting a Complaint Handling Review.

Consideration must be given to the degree of information that it is possible to disclose. For example; is the information likely to be sub-judicial? However, as much pertinent information should be given to the complainer as is reasonably possible.

If any part of the complaint is sub-judicial, then a holding letter should be written to the complainer and once criminal proceedings have been concluded the complaint can then be brought to a conclusion. A determination of upheld / not upheld must not be reached until that stage.

When the final outcome of the complaint is communicated to the complainer, the complainer must be notified of what to do if he or she remains dissatisfied. The following paragraph will be included at the end of each final letter to a complainer:

**“**If you are not satisfied with the way in which your complaint has been handled, you may request a review by the Police Investigations and Review Commissioner (PIRC). If you decide to contact PIRC, you must submit an application form to them within three months of the date of this letter, otherwise they may not be able to deal with your complaint.”

The contact details for the PIRC are:

Telephone: 01698 542900

E mail: enquiries@pirc.gov.scot

Online: www.pirc.scot

Post: PIRC, 2nd Floor, Hamilton House, Caird Park, Hamilton, ML3 0QA

It is therefore imperative, that the date on the final letter is the date that the letter is sent to the complainer. The name of the supervisor signing the letter should be printed at the bottom of the letter, so it is clear to the complainer who is responding to them. Please see the PIRC learning point on response letters.

# Investigation – Wellbeing

The welfare and wellbeing of officers and staff involved in the complaints process, whether subject of complaint or as a witness to the incident, must be a primary consideration during the investigatory process. Consequently, the line management of the officer / staff member will initially be made aware of the complaint. The line management of the officer / staff member will have responsibility for supporting the officer or staff member and informing them of the complaint in an appropriate manner. Officers / staff members should be signposted to the PSoS Investigation - Wellbeing Guidance which has been created to support all individuals involved in internal and external investigations, including complaints about the police. Officers / staff members should be encouraged to complete and submit Investigation - Wellbeing Feedback Evaluation Part 1 with line managers/Supervisors asked to complete Investigation - Wellbeing Feedback Evaluation Part 2. All feedback will be anonymised and will inform organisational learning in this regard.

# Police Investigations and Review Commissioner (PIRC)

PIRC is established under the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended by the Police and Fire Reform (Scotland) Act 2012 (hereinafter referred to as ‘The Act’).

PIRC has the general, statutory remit to ensure the maintenance and review of suitable arrangements in Scotland for the handling of complaints. This includes the function of ensuring that such arrangements and processes are efficient and effective, have an appropriate degree of independence and that these processes are adhered to. PIRC may conduct audits of any arrangements and processes and make recommendations on how these might be amended or improved.

PIRC can conduct Complaint Handling Reviews (CHRs). Any complainer may refer a complaint to PIRC for review if they are unhappy with the way a complaint has been handled. PIRC will not normally commence a review until the Service has already concluded its own investigation and has responded to the complainer. A CHR report will assess whether the complaints were either reasonably handled or not reasonably handled, and may propose further action for Police Scotland.

Where PIRC have completed a CHR, any recommendations made should be implemented by Police Scotland within 56 days of the date on which the PIRC review was received. In exceptional cases (e.g. where the recommendation requires the amendment of internal procedures or there is difficulty in accessing witnesses) and in cases where a reconsideration direction has been given, implementation may take longer than 56 days. PIRC should be notified that the 56 day limit will not be met and should be provided with a target date for completion. For recommendations and non-supervised reconsideration directions, the onus is on Police Scotland to update the complainer where the 56 days’ timescale will not be met. The complainer should be advised at the earliest opportunity where the timescale is unlikely to be met, and should be provided with a further update every 28 days thereafter. The complainer does not require to be updated in respect of learning points.

In some CHRs, PIRC may specify that a recommendation should be dealt with by an officer or staff member who was not involved in Police Scotland’s handling of the complaint. Where a reconsideration direction in a CHR is issued it must be dealt with by an individual who was not previously involved in the complaint.

Where a reconsideration direction has been given, section 40 of The Act requires the new complaint handler to complete a new report (“section 40 report”) and submit it to PIRC. The section 40 report differs from, and forms the basis of, a further response. The purpose of a section 40 report is to allow PIRC to understand precisely what has happened in revisiting a complaint such as further enquiry, assessment of new evidence or the weighting of evidence.

In essence, a section 40 report is a new complaint report that must detail every action taken in the reconsideration of the complaint, and make clear the rationale behind these actions and any conclusions reached. The report should be proportionate to the complexity of the complaint made and the level of enquiry undertaken. No further response should be provided to the complainer until the section 40 report has been approved by PIRC. It is also best practice for a copy of a proposed further response letter arising from a recommendation to be submitted to the PIRC prior to the response being issued to the complainer.

Any additional documentation generated / gathered as a result of further enquiry following a recommendation or reconsideration direction, such as further statements, must be provided to PIRC with a copy of the further response or section 40 report.

# Scottish Police Authority (SPA)

The SPA has a statutory responsibility in scrutinising complaint handling arrangements. The SPA will meet regularly to examine Police Scotland’s complaints processes. A statistical report will be provided to the SPA on a quarterly and annual basis.

# Complaints about Senior Officers

Senior officers are defined as the Chief Constable, Deputy Chief Constables, and Assistant Chief Constables.

When a complaint about a Senior Officer is received, it must be passed to the SPA. The SPA has its own procedures for dealing with complaints about the Police involving Senior Officers.

Where the SPA receive a complaint and consider it does not relate to a senior officer, they may refer the complaint to Police Scotland with the complainer’s agreement. Complaints made about senior staff members are investigated by Police Scotland in the normal manner.

Where a historic complaint has come to the attention of Police Scotland regarding the conduct of a senior officer occurring before he/she was appointed to senior officer rank (i.e. of a rank lower than ACC) this should be reported to and considered by the SPA in the first instance, as per the normal process.

# Complaints about Anti-Corruption Unit (ACU) and Professional Standards Department (PSD) Police Officers and Members of Police Staff.

Complaints, both criminal and non-criminal, regarding ACU / PSD police officers or police staff will be allocated to an independent Investigating Officer, external to the department, by the Head of PSD.

If the complaint relates to the Head of PSD, the matter will be referred to the ACC Professionalism & Assurance for the necessary allocation, to ensure independence/transparency.

This includes police officers / police staff no longer working in ACU if the complaint relates to their tenure within the department and was a result of their operational duties.

All complaints made regarding ACU or PSD police officers / police staff are subject to mandatory notification to the SPA. This notification will be undertaken via the Head of PSD, or the ACC Professionalism & Assurance if the complaint refers to the Head of PSD.

The SPA will review all new complaints through a process of dip sampling.

At the conclusion of any complaint investigation, SPA will be informed of the outcome via the Head of PSD or the ACC Professionalism & Assurance if the complaint refers to the Head of PSD.

Allegations of criminality, in their initial form, will be reported to COPFS in order for them to consider the complaint and direct their progression.

# Early Intervention Process

The Early Intervention Process is designed to identify officers / staff members who generate repeated complaints, the aim being to intervene timeously and take appropriate action to address issues. The purpose of this is to consider officer / staff welfare, improve performance, reduce future complaints and improve service delivery to the public. The process is based on pre-determined triggers, analysis and profiling an officer / staff members complaint history. This determines the risk that the officer / staff member poses and provides measures to improve individual behaviour thereby minimising the impact on the reputation and operational efficiency of Police Scotland. By their very nature complaint processing and investigations consume a considerable amount of police time.

An officer / staff member will be identified for consideration of the Early Intervention Process following the activation of a trigger which has been set on the complaints recording database.

This process triggers when an officer / staff member receives four separate complaints within the preceding year. This is effective as a rolling year.

An assessment will be carried out by a PSD officer of at least Inspector rank. Following this assessment liaison will take place with the relevant Divisional Superintendent for appropriate action to take place. This action will include one of the following: -

* Category A Intervention – ACU Review / Investigation;
* Category B Intervention – PSD / ACU Intervention;
* Category C Intervention – Divisional / PSD Intervention;
* Category D Intervention – Divisional Intervention;
* Category E Intervention – Officer to be notified.

An Early Intervention Assessment will be completed within three weeks of initial notification of the trigger. The Early Intervention Meeting and process should be concluded within a further three weeks.

### Appendix A

**Investigating** **Officer**

**On Duty Complaints - Checklist**

This checklist is a guide for Investigating Officers who have been allocated a complaint. The notes provided below should provide a useful checklist to ensure that all the information is gathered during the enquiry.

**Before Seeing Complainer**

Obtain as much background information as possible relating to the complaint. Consider the following:

* Viewing any available CCTV evidence;
* Familiarise yourself with any relevant documents;
* Crime Reports;
* Police Reports;
* System for Tasking and Operational Resource Management (STORM) Incidents;
* Medical Reports;
* Injury on Duty Reports;
* Use of Force / Baton / CS Spray forms;
* Vulnerable Persons Database (VPD);
* Any police statements (i.e. retrieved from any associated criminal case – not including operational statements which should only be requested after specific allegations are known);
* Any witness statements (i.e. retrieved from any associated criminal case); and
* Check procedural issues, legislation, guidance, etc. (This will ensure that you are prepared to answer any questions posed by the complainer and that any advice you offer is in accordance with the law and Service policy / procedures).
* Consider contacting other Departments for advice such as Legal Services Department.

Also have relevant documents available;

* Production labels;
* Business cards / contact cards;
* Scottish Government Complaints leaflet; or
* Medical Mandate.

At this stage you must also give consideration to any issues relating to Equality and Diversity that may have a bearing on how you deal with the complaint and allegations. There may be a need to consider having an interpreter or an appropriate adult. In the case of a child, arrangements must be made for the child to be accompanied by a parents, guardian or other suitable adult. As with any investigation, this adult should not be a witness.

**Interviewing the Complainer**

Discuss nature of complaint and where required provide the complainer with information and clarification on police systems, procedures and powers, etc. Although conciliation or FLR is possible at this stage for all non-criminal and non-serious complaints, you may find it useful to conduct some further enquiry and thereafter return to see the complainer with this in mind. It may not provide a complainer with much faith in the system if you appear to conciliate the complaint without making any obvious attempt to clarify facts given by the complainer. Providing the complainer has faith in the procedures adopted they may be quite happy to receive an explanation or even an apology if that is appropriate at that stage. It is not, however, your function to arbitrate and this should not be attempted.

If the complainer wishes to withdraw the complaint following interview, ensure that they provide a statement to that effect or signs your notebook indicating clearly that the complaint is withdrawn entirely, that they do not wish to give a statement and that they do not wish any further enquiries made. Although hand written statements are best practice, other means of recording can be considered such as recorded calls or emails, depending on the circumstances. In effect the withdrawal should be spontaneous and unequivocal, and you must ask the reason for the withdrawal and record it in the statement. Details of the withdrawal should be included on a completed Complaint Handling Form. Even although the complainer has withdrawn the complaint, officers should, if appropriate, seize CCTV, medical and photographic evidence. That said, if independent evidence exists that any wrongdoing took place or if the complainer states they have withdrawn because they have no confidence in the complaints system, then a proper structured enquiry is required, irrespective of the complainer’s wishes.

As Investigating Officer you should clarify the precise nature of the complaints being made, in order that a more detailed and accurate statement can be recorded focusing on the specific areas of complaint. All areas of concern must be gone over and the complainer asked exactly what they are complaining / not complaining about. The information detailed below should be incorporated in the complainer’s statement wherever practicable:

* Time, date and location of incident;
* Who was present / possible witnesses;
* What the complainer did in lead-up to contact with police;
* Exactly what the Police did to cause complaint;
* Description of officer(s) concerned (each allegation); Complainer under influence of drink / drugs?
* Other relevant information to prove / disprove allegation;
* The final paragraph should clearly outline each allegation and record the fact that the complainer is aware that only these allegations will be investigated (Allegations initially made that the complainer no longer wants to pursue need to be captured as such at the end of the statement. Otherwise, as these are relevant complaints that have been made to the police, they will be reviewed or referred back as missed complaints should the complainer bring them to us, irrespective of whether they are listed on the Heads of Complaint form).

It is essential that the exact nature of the allegation is made known. Crucially it must be established if the allegation is criminal or non-criminal, the complainer must be asked to clarify where any ambiguity exists. Once the statement has been completed a Heads of Complaintform must be completed. This form should list a brief description of each allegation being made. The complainer should then sign this document. This can be considered as the contract between the complainer and the police, leaving the complainer in no doubt what will be investigated.

You must also ascertain the expectations of the complainer. It may be that they only wish to receive an explanation or an apology. On the other hand they may have completely unrealistic expectations of what can be delivered to them from the complaints process. Asking the correct questions will allow you to gauge how to conduct your enquiry. You may also have to advise the complainer that their expectations, if unreasonable, cannot be met. Although they will be disappointed, it is better that this disappointment is managed at the beginning of the process rather than building up their expectations only to leave them even more disappointed at the conclusion.

Also remember that the complainer can be interviewed in the presence of a friend, representative or solicitor if desired, providing this person is not a witness to the circumstances being complained about.

Members of the public are not necessarily skilled in deciding when an allegation is criminal or non-criminal. It is, however, crucial that their perception of why they consider an allegation to be criminal is known, and what information they have used to come to that conclusion.

**Witnesses and Evidence Gathering**

All available evidence should be gathered by the Investigating Officer proportionate to the nature of the complaint. Statements of any witnesses to the incident should be noted. Telephone numbers where available for all complainers and witnesses should be included in the report. If any subsequent contact is made with the complainer, or witnesses after the initial statement, ensure a detailed file note containing a record of the contact is entered into the complaint file. Similarly any e-mails received should be retained. Investigating Officers should go back to the witnesses (or subject officers) if they do have not actually addressed the allegation.

**Final Report / Final Letter - Your Conclusions**

In most cases no Final Report is required. All of the evidence is weighed up and conclusions reached in the Final Letter to the complainer. On occasions where the complaint is particularly serious or complex, there are a large number of witnesses or productions, there are issues of a sensitive nature which cannot be provided in the final letter or there are conduct matters to be considered a final report may be beneficial.

When compiling the final letter you should not show bias but consider the facts and circumstances impartially. There is no value in attempting to discredit the complainer unless there is clear evidence to support that position. Conclusions should reflect a balanced appraisal of the evidence gathered during the course of your enquiry. Where there is evidence in support of either the complainer or the officer(s) subject to the complaint this should be detailed.

Remember that there are legitimate disposals available locally for all allegations that are considered to be minor or trivial and non-criminal. However, they can only be considered on the basis of the evidence gathered up to that time.

You must bear in mind that the evidence required in relation to all complaints that are non-criminal is the same as the civil standard of proof, that is, the balance of probabilities. In essence what this means is that to decide in favour of the complainer the evidence need only show that the complainer’s allegation is the more probable version of events. There is no need to prove the allegation(s) beyond reasonable doubt. That may mean that evidence, which would not be admissible or sufficient in terms of the criminal law, may be adequate to prove the allegation in terms of the complaint. Hearsay evidence may, for example, be admissible and sufficient, under certain circumstances, to lend sufficient support to an allegation where that same evidence may not be competent in criminal cases.

All available evidence must be gathered and considered proportionate to the nature of the complaint. Any CCTV evidence must be seized at the earliest opportunity regardless of whether or not it provides supporting evidence. You must be able to demonstrate that it was viewed and taken into account. If CCTV evidence is not seized at the time the complaint is lodged and subsequently lost, this could lead to criticism.

If evidence is not gathered for any reason, the report or final letter should clearly state why, together with a clear indication where the evidence is stored. This can often happen in cases where the complainer is the subject of a report to COPFS and productions have been lodged in respect of the ongoing criminal case.

All statements associated with a complaint should be typed, with the exception of local FLR procedures and withdrawals.

During the course of an enquiry relating to a complaint there may be issues identified that do not form part of the original complaint and allegations. In these cases it is expected that the Local Police Commander or Head of Department will address these matters. Providing that the issues do not have an impact on the allegations being investigated it is expected that an explanation of the action taken to address issues is included in the initial report. Any such issues identified should also be shared with the complainer in the response (unless there is good reason not to, which should be noted on file so as PIRC are aware).

### Appendix B

**Responsibilities of PSD Chief Inspector / Inspector**

In respect of complaints where a level of enquiry is required, ensure that a suitable officer is appointed to carry out the initial enquiry timeously.

Constant monitoring of complaint enquiries will provide the necessary support to the Investigating Officer and ensure that the full range of options available is explored with regard to concluding the complaint. If there is a delay in dealing with / concluding the complaint enquiry then the complainer should be updated verbally or in writing every 28 days and a file note placed in the file.

When the Investigating Officer’s report / Complaint Handling Form is received ensure that:

* The Complaint Handling Form is completed accurately and that all allegations are recorded;
* A Heads of Complaint form has been completed and signed by the complainer;
* The officer(s) subject to complaint have been correctly identified. If uncertainty exists leave blank;
* All relevant documents and productions are included;
* The CCTV evidence has been secured. Consider viewing same to ensure that any evidence is properly reflected in the final letter;
* Medical and photographic evidence has been obtained or reasons provided if not available;
* The final letter addresses all of the allegations as set out in the Heads of Complaint form and / or statement and that each allegation is properly addressed as upheld or not upheld and a full rationale of why, on the balance of probabilities, that conclusion has been reached. It is important that a full and transparent rationale is provided.
* Consideration has been given to any procedural issues that are not the subject of complaint but are identified and ensure appropriate action has been taken to address any service delivery or quality of service issues.
* Any actions committed to for upheld complaints have been carried out.

### Appendix C

**Definitions of Categories of Complaint**

**Assault**

An allegation that a member of Police Scotland was responsible for a criminal attack on another person as defined by the common law crime of assault:

“Every attack directed to take effect physically on the person of another is assault, whether or not actual injury is inflicted. There must be **criminal intent**: an accidental injury, even although caused by a mischievous act, does not amount to assault.”

In order for a CAP to be recorded as an allegation of assault the same standard of evidence in the complainer’s version of events which is required under Scottish Criminal Recording Standards (SCRS) is required i.e. the allegation being made by complainer should be such that it would justify recording and investigating the event as the crime of assault in circumstances where the perpetrator is not in the police service. Even though a complainer may use the word assault in their allegation, careful consideration should be given to the context in which they are claiming assault i.e. is the complainer alleging that an officer deliberately tried to hurt them? Where there is no inference from the complainer or from the circumstances described that there has been criminal intent the category of excessive force is more appropriate. In cases where a person complains that they have been assaulted purely because they claim they have been wrongly arrested the allegation should be recorded as Unlawful / Unnecessary arrest.

**Excessive Force**

An allegation that a member of Police Scotland has used excessive force in circumstances where, for example, they are exercising police powers to control a prisoner, or to control persons in a crowd, or the use of defensive tactics to prevent a person from interfering with officers in the execution of their duty. In general, this classification should be used where officer safety techniques have been utilised and the complainer perceives them to have been excessive for the circumstances. One of the deciding factors in distinguishing this allegation type from assault is intent. Where a complainer infers, or the circumstances appear to infer that there was ‘criminal intent’ to injure then the allegation would be recorded as assault.

**Incivility**

Incivility should be recorded when a member of the public perceives a member of Police Scotland to have been rude in a manner of speech, language or action. This definition includes allegations where the complainer alleges the police officer / staff member has spoken to them in an unnecessarily loud, harsh, inappropriate or impolite manner. It may include swearing which does not amount to a breach of the peace. It also includes circumstances where the complainer states that a police officer / staff member did not seem to care, or gave the impression that they were not interested or didn’t listen to them. Other examples include abruptness, lack of sympathy or adopting an aggressive tone. However, allegations about aggressive behaviour should be recorded under ‘Oppressive Conduct / Harassment’, and allegations about discriminatory language should be recorded under ‘Discriminatory Behaviour’. Incivility complaints are by their nature relatively minor and this category should not be used for more serious complaints.

**Neglect of Duty**

An allegation of Neglect of Duty is one where it is alleged a police officer / police staff member has **failed** to perform a duty set out by law or under service procedures. Where a complaint amounts to an officer / staff member having not done something which the complainer expects the Police should do and there is no defined policy covering the issue an allegation should be recorded under Quality of Service and may provide a learning outcome for the Service to amend Service procedures. The distinction between neglect of duty and irregularity in procedure is that with neglect of duty the police officer / staff member has **failed** to do something which was required, or reasonably expected by law or procedures. Examples would be:

* Failing to breath test of a driver involved in a reportable road accident when procedure states that all drivers involved in reportable road accidents should be tested;
* Failing to record a production in the production register;
* Failing to secure found monies in a safe;
* Failing to follow up enquiries; or
* Failing to provide any updates to a complainer.

**Irregularity in Procedure**

Irregularity in Procedure relates to instances where it is alleged a member of Police Scotland has carried out procedures, or an activity, which is incorrect, incomplete, unreasonable in the circumstances, or not in accordance with the legislation or standard operating procedures. In this category the police officer / staff member will have been carrying out procedures, but did not carry them out correctly or in accordance with the rules. It is distinct from neglect of duty, which relates to an omission to carry out an act at all. There are a number of sub-categories which should be used to ensure that the procedures which regularly feature in complaints are monitored and where learning opportunities exist they are identified at an early stage whether through the complaint handling process or by requiring a review of procedures. Examples are:

* Where updates have been given to a complainer but they are insufficient, infrequent or don’t meet the expectations of the complainer;
* A police officer carried out breath test procedures but they were not carried out according to the guidance; or
* A person complains they were arrested at their home address and was taken to the police van without being given the opportunity to put on their shoes.

**Traffic Irregularity / Offence**

Complaints involving the conduct of officers / staff members while driving fall into this category. Common complaints such as allegations of speeding, parking on double yellow lines, dangerous driving, use of mobile phone when driving should be included under this heading.

**Oppressive Conduct / Harassment**

This category should be used where it is claimed the police officer / staff member acted in a manner that was oppressive and unnecessarily forceful or they pursued a course of conduct, which could be considered as harassment towards a member of the public. Allegations where an officer / staff member has bullied, intimidated, threatened or displayed overly aggressive behaviour fall into this category. It does not include situations where the complainer perceives an officer’s tone was aggressive (see incivility). Where harassment is alleged to be based on discrimination, then the allegation should be recorded under discriminatory behaviour, not under Oppressive Conduct / Harassment. Examples of oppressive conduct/harassment allegations include:

* A member of the public reports that they have been stopped and searched over twelve times within the last month and officers have had no grounds for doing so;
* An allegation is received from a parent that their 15 year old son was told that if he did not tell officers who had sold him alcohol he could be locked up;
* A suspect alleges that during the course of a police interview the officer adopted an intimidating attitude and threatened that if they did not provide an explanation they could end up in jail;
* A driver reports that they have been stopped in excess of five times over the preceding two weeks because they drives an old car. They believe that officers are victimising them; or
* A search for stolen property was conducted in a dwelling house using the authority of a warrant. The householder later complained that the number of officers within his/her house was intimidating, unnecessary and oppressive.

**Unlawful / Unnecessary Arrest or Detention**

This category includes two distinct types of allegations. Firstly unlawful arrest or detention is where there is an allegation that an officer did not have power to arrest or detain an individual because there was no provision for the arrest or detention under common law or within statute. It should be noted that there is no criminal offence of unlawful arrest contained in common law or statute. Secondly there is **unnecessary** arrest or detention where there are relevant powers but the complainer believes that an officer should not have arrested them, on the grounds of necessity or proportionality.

**Discriminatory Behaviour**

An allegation that a police officer or member of police staff either engaged in a course of action or behaved in a manner which was discriminatory towards an individual or group on the basis of their race, sexual orientation, faith, age, gender disability, marriage and civil partnership, pregnancy and maternity and gender reassignment. Some examples where discriminatory behaviour should be recorded are as follows:

* Officers attend a neighbour dispute. One neighbour is charged with a breach of the peace and the other is not charged. The neighbour who is charged complains that the only reason that police have not charged their neighbour is because their ethnicity. They believe that this has led to different treatment.
* A male complains to police that he has been sexually assaulted by his ex-partner. He believes that officers did not treat his complaint seriously because he is male and that had he been female the matter would have been more thoroughly investigated.
* Officers stop a vehicle for a routine road check. The female driving the vehicle later complains that she is transgender and the officer who approached her vehicle to speak to her continued to refer to her as “sir,” after she had corrected him.

**Corrupt Practice**

There is no authoritative single legal definition of the word ‘corruption’, however included under this allegation should be any allegation that a police officer or staff member has abused their position as a member of the police service for personal gain or for gain for others. The motive for gain is irrelevant and need not be for financial advantage. Any allegation that an officer or staff member has acted in contravention of the Bribery Act 2010 should also be recorded under this allegation category. Some other examples of corrupt practice are:

* Following a disturbance in licensed premises two men are arrested for breach of the peace. One was kept in custody and the other was charged and liberated to be cited. The male who was kept in custody alleges that the other male was liberated because his sister is a senior officer who arranged for his release.
* A staff member leaked police information to the media for monetary advantage.
* An officer assisted in securing employment for their friend’s daughter with the police service, circumventing the normal application process.

**Other (Criminal)**

Any allegation that an on duty police officer or staff member has committed a crime under common law or statute which is not contained in any of the other headings. There are a number of sub-headings for recording criminal allegations.

**Other – (Non-Criminal)**

Any non-criminal allegation, which is not covered under the other headings.

**Off Duty Allegations**

An off-duty allegation of criminality should be recorded when a member of the public uses the complaint process to make a complaint about an officer, which if proved, would amount to a crime or offence. If the allegation would not ordinarily be recorded under SCRS and investigated as a crime or offence it should be recorded as an off-duty complaint under the category of ‘incivility’ or ‘other’. It must be borne in mind that police officers and police staff have the right to a private life away from work therefore the complaint must be assessed as objectively as possible and where no link exists between the officer’s / staff member’s role it should not be recorded as a CAP. Non-criminal allegations should be treated as complaints about the police only if the conduct (if it was to be established) relates to, or would have a bearing upon, the person's role as a police officer or member of police staff.

**Quality of Service Allegations**

**Quality of Service Allegations - Policy / Procedure**

This type of complaint relates to a complaint about policing policy, practice or procedure rather than how an officer / staff member delivered the particular service. Often Quality of Service Policy / Procedure complaints are resolved by explanation to the complainer, however some of these complaints will result in changes to policy or procedure and these changes would be recordable for the Service as a Learning Outcome. Examples of this type of complaint are:

A member of the public writes in to complain that when she contacted the Police after a minor non-injury road accident no officers were dispatched to the scene. Police Scotland has a policy whereby if it is a minor non-injury road accident, the vehicles are drivable and there is no obstruction of the road, drivers are advised to exchange details and officers are not dispatched. If the officers have followed the Policy, then the complaint is about the Policy and is a Quality of Service complaint. If, however, a staff member had not followed the Policy and officers should have been dispatched, then this would be an “On Duty” complaint because it was the actions of a staff member, rather than the Policy which has resulted in the complaint.

**Quality of Service Allegations – Service delivery**

This type of complaint relates to an expression of dissatisfaction about policing in general, or in a specific geographic area or in relation to a specific incident or event. It may also be about policing capacity, or ability to provide some form of specific service to the public. Examples are:

* A complaint that insufficient officers were deployed to an incident or an event;
* A complaint that officers, in general, take too long to attend calls in a specific geographical area;
* A complaint of lack of police presence in a particular area;
* A complaint that the police take too long to investigate fraud.

**Quality of Service Allegations – Service Outcome**

Service outcome complaints relate to the outcome of policing action and include instances where a complainer was expecting a particular outcome and the outcome was different or where a policing response has not effectively dealt with a situation. Examples are:

* A member of the public is involved in a dispute with a neighbour and expected a charge to be preferred against their neighbour. The outcome was that both parties were issued warning letters about their behaviour. The complainer believes the police should not have used warning letters on this occasion.
* Numerous calls have been made to the police about anti-social behaviour in a particular location, and despite police attendance the anti-social behaviour is still going on.
* A member of the public reports that they have been assaulted. A full investigation was carried out and there is insufficient evidence to report to the Procurator Fiscal (PF). The complainer believes that if further resources had been used there would have been sufficient evidence to have the assailant charged. The complainer is dissatisfied that the crime remains undetected.

### Appendix D

**Categorisations for All Complaints about the Police**

**On Duty Allegations**

|  |  |
| --- | --- |
| **NO.** | **Category** |
| 1 | Assault |
| 2 | Excessive Force |
| 3 | Incivility |
| 4 | Neglect of Duty |
| 5 | Irregularity in Procedure – (see sub-category list) |
| 6 | Traffic Irregularity/Offence |
| 7 | Oppressive Conduct/Harassment |
| 8 | Unlawful/Unnecessary Arrest or Detention |
| 9 | Discriminatory Behaviour – (see sub-category list) |
| 10 | Corrupt Practice |
| 11 | Other – Criminal – (See Off Duty Allegations 1 – 7) |
| 12 | Other – Non Criminal |

**Irregularity in Procedure (No. 5) Discriminatory Behaviour (No. 9)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **NO.** | **Sub-Category** |  | **NO.** | **Sub-Category** |
| 1 | ASBO/Fixed Penalty Procedures |  | 1 | Race |
| 2 | Custody Procedures/Care of Prisoners |  | 2 | Sexual Orientation |
| 3 | Disclosure of Information (non-criminal) |  | 3 | Faith |
| 4 | Forced Entry to Premises |  | 4 | Age |
| 5 | Inaccurate Information Placed on Police Systems |  | 5 | Gender |
| 6 | Insufficient Enquiry Carried Out |  | 6 | Disability |
| 7 | Interview Procedures |  | 7 | Gender Reassignment |
| 8 | Length of Time Taken to Investigate/Carry out Enquiries |  | 8 | Marriage / Civil Partnership |
| 9 | Method of Arrest / Detention |  | 9 | Pregnancy and Maternity |
| 10 | Officer Did Not Provide Name or Shoulder Number |  |  |  |
| 11 | Other |  |  |  |
| 12 | Productions / Lost & Found Property |  |  |  |
| 13 | Provide Insufficient Explanation Regarding Police Procedures |  |  |  |
| 14 | Provide Insufficient Updates to the Complainer |  |  |  |
| 15 | Road Traffic Procedures |  |  |  |
| 16 | Search Procedures – Person or Property |  |  |  |
| 17 | Statement Taking |  |  |  |
| 18 | Vehicle Recovery Scheme |  |  |  |

**Quality of Service Allegations**

|  |  |  |
| --- | --- | --- |
| **NO.** | **Category** | **Sub-Category** |
| 1 | Policy / Procedure | Policing Policy |
|  |  | Policing Procedure |
| 2 | Service Delivery | Policing Response |
|  |  | Time of Response |
|  |  | Type of Response |
| 3 | Service Outcome | Lack of Satisfaction with Action Taken |
|  |  | Police Failure to Take Action |

**Off Duty Allegations**

|  |  |  |
| --- | --- | --- |
| **NO.** | **Category** | **Offence** |
| 1 | Crimes of Violence | Causing death by dangerous driving |
| Cruel and unnatural treatment of children |
| Serious assault |
| 2 | Crimes of Indecency | Assault with intent to ravish |
| Indecent assault |
| Lewd & libidinous practices & indecent exposure |
| Procuration & other sexual offences |
| Rape |
| Unnatural crimes |
| 3 | Crimes of Dishonesty | Breach of trust & embezzlement |
| Fraud |
| Housebreaking |
| Theft |
| Theft by shoplifting |
| Theft of motor vehicle |
| 4 | Fireraising, Malicious Mischief etc. | Fireraising |
| Vandalism |
| 5 | Other Crimes | Attempt to Pervert |
| Breach of Data Protection Act |
| Drugs Offences |
| Having in a public place an article with a blade or point |
| Perjury |
| Possession of offensive weapon |
| Resist arrest |
| 6 | Miscellaneous Offences | Breach of peace and Section 38 |
| Children & young person’s offences |
| Drunkenness |
| Petty Assault |
| Post Office, telecoms & data protection |
| Racially aggravated conduct |
| Racially aggravated harassment |
| Urinating |
| 7 | Offences involving Motor Vehicles | Accident offences |
| Construction & use offences |
| Dangerous & careless driving |
| Driver’s contravention of pedestrian crossing regulations |
| Driver’s neglect of traffic directions |
| Driving whilst disqualified |
| Driving with no insurance |
| Driving with no MOT |
| Drunk Driving |
| Failing to provide the identity of the driver of a motor vehicle |
| Mobile telephone offences |
| Motor vehicle, other offences |
| Parking offences |
| Seat belt offences |
| Speeding |
| Vehicle excise licence offences |
| 8 | Incivility |  |
| 9 | Other |  |

### Appendix E

**Complaint about the Police Disposal Codes**

**Allegation Result Description For On Duty and Off Duty Allegations**

|  |
| --- |
| **Allegation Result Description** |
| Upheld - Leading to criminal proceedings |
| Upheld - Alternative to Prosecution by APF |
| Upheld - Leading to misconduct disposal |
| Upheld - Concluded by explanation |
| Not Upheld - Leading to No Proceedings by APF |
| Not Upheld - Concluded by explanation |
| Not Upheld - Insufficient evidence |
| Not Upheld - Malicious complaint |
| Withdrawn |
| Abandoned |

**Officer Disposals For On Duty and Off Duty Allegations**

|  |
| --- |
| **Officer Disposal** |
| Criminal conviction leading to misconduct proceedings |
| Misconduct Proceedings |
| Advice to officer or training provided |
| No action |
| Staff member no longer employed |

**Disposals for Quality of Service Allegations**

|  |
| --- |
| **Result Disposal** |
| Upheld - Concluded by explanation |
| Upheld - Change to policy / procedure |
| Upheld - Training needs identified |
| Not Upheld - Concluded by explanation |
| Withdrawn |
| Abandoned |

**Compliance Record**

|  |  |
| --- | --- |
| Equality and Human Rights Impact Assessment (EqHRIA):  Date Completed / Reviewed: | 19/07/2022 |
| **Information Management Compliant:** | Yes |
| **Health and Safety Compliant:** | Yes |
| **Publication Scheme Compliant:** | Yes |

Version Control Table

|  |  |  |
| --- | --- | --- |
| **Version** | **History of Amendments** | **Approval Date** |
| 1.01 | Initial Approved Version | 29/03/2013 |
| 1.02 | Amended to add other sub categories under the Equalities Act for discriminatory behaviour | 07/05/2013 |
| 2.00 | Update of Force Logo and Police Division Information – Full Cyclical Review carried out | 25/06/2014 |
| 3.00 | Full Cyclical Review – completely revised – significant changes | 30/05/2017 |
| 4.00 | Sect 7.4 amended to reflect revised deadline for implementation of PIRC recommendations following Complaint Handling Reviews (as per Force Memo  PS 004/18) | 09/01/2018 |
| 5.00 | Updated to reflect Complaints About PSD/ACU Police Officers / Police Staff | 16/05/2018 |
| 6.00 | Error corrected at section 7.4 to replicate change made re v4.00 which wasn’t implemented in v5.00. | 05/07/2018 |
| 7.00 | Content fully revised, rationalised and reformatted in line with new SOP Review Principles. | 16/05/2022 |
| 8.00 | Addition of instruction regards dealing with out of hour’s complaints on page 4. Removal of ‘Completely Revised’ rider from page 2. No other change. | 25/07/2022 |
| 9.00 | Removal of one line from P12 of Version 8.00 regarding timescales. | 05/10/2022 |

**Feedback**

All Police Scotland service delivery policies, standard operating procedures (SOPs) and national guidance are subject to regular reviews. It is important that user feedback is taken into account when documents are reviewed.

If any officer / staff member wishes to provide comment, or make suggestions for improvements to this SOP or any associated document, Force Form 066-014 should be used.