

Procedural Guidance

Police Misconduct and Complaints against Members of Staff

Security Marking:

Not Protectively Marked

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1. Introduction

- 1.1 This procedural guidance explains Avon and Somerset Constabulary's procedure when investigating complaints against Police Officers, members of the Special Constabulary and other members of staff. It also deals with conduct matters and internal misconduct allegations. The procedures of any resulting misconduct hearing are also explained.

2. The Independent Police Complaints Commission

- 2.1 The Independent Police Complaints Commission (IPCC) is the regulatory body that oversees the police complaints system. It monitors and supervises complaints against police. It can 'Call In' and deal with public complaints and internal misconduct cases. There are five types of complaint investigation:

- a) IPCC investigated (Independent)
- b) IPCC Managed
- c) IPCC Supervised
- d) Local investigation
- e) [Local Resolution](#) (see policy reference 52QP-1039).

- 2.2 The IPCC will oversee and finalise complaints in categories a) – c), but will only have sight of other types of complaint on appeal from a member of the public. Complaints subject of Local Investigation and Local Resolution will be handled and finalised in-force. The IPCC will also oversee and finalise more serious conduct matters as defined at paragraph 13.7 below.

- 2.3 Members of the public may appeal in respect of the following issues:

- Failure by the force to record a complaint
- Against the use and procedure of local resolution (not the outcome)
- Outcome of local (formal) investigation

3. Complaints - Introduction

- 3.1 A "public complaint" is any complaint about the conduct of a member of staff that is submitted by a member of the public. Staff includes all Police Officers Special Constables and Police staff employed by the constabulary.

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- 3.2 All public complaints must be referred to the Professional Standards Department within 24 hours of receipt for recording, even if they are withdrawn after initial discussion.**
- 3.3 Complaints about force policy or procedure that do not fall under this heading and should be dealt with according to procedural guidance on Dissatisfaction with Service Complaints (see reference 52QP-1219-11).
- 3.4 The existence of a formal complaints procedure should not inhibit any member of staff from reacting appropriately to a complainant. An explanation and/or an apology should be given where appropriate. All complainants will be treated sympathetically.

4. Action on Receipt of a Public Complaint – Procedure

- 4.1 Complaints made personally or by telephone should be dealt with as follows:
- a) It is expected that a Police Inspector should see or talk with complainants in the majority of cases.
 - b) A complaint may be suitable for immediate local resolution.
 - c) Details of the complaint will be taken and accurately recorded on Form 352 “Public Complaint Notification”. This form is held on the intranet page of the Professional Standards Department (PSD) under “Forms and Templates”.
 - d) The complainant will be given the IPCC booklet ‘How to make a complaint’ in the appropriate language for the complainant. Copies of the booklet should be available at all police stations. Copies of the IPCC complaint booklet are available on the PSD intranet page under “Forms and Templates”
 - e) All necessary immediate steps will be taken to secure and preserve evidence, in particular CCTV and video evidence.
 - f) The Form 352 will be forwarded to the HQ PSD via electronic transfer within 24 hours. There is no requirement to submit the Form 352 via a District or Departmental senior manager. The officer receiving a complaint may wish to consider a separate briefing for senior management in appropriate cases.
- 4.2 Complaints made by letter are dealt with as follows:
- a) Immediate local resolution will not apply.
 - b) The letter must be acknowledged by the appropriate commander/head of department, with the explanation that it has been forwarded to The PSD for further action.
 - c) Acknowledgement letters should be expressed sympathetically, and be phrased in such a way as to be relevant to the incident in question.

- 4.3 Upon receipt of a complaint report The PSD will make an early assessment as to whether details of the case need to be brought to the attention of the relevant District / Departmental senior management, or in urgent cases the on-call Chief Officer Group representative. The PSD will then be responsible for such briefing in appropriate cases. Nothing in this requirement is intended to restrict a local briefing of senior management in appropriate cases.
- 4.4 Where the complaint involves an allegation that a member of Avon and Somerset Constabulary has:
- behaved in a way that has harmed, or may have harmed, a child
 - possibly committed a criminal offence against, or related to, a child; or
 - behaved towards a child or children in a way that indicates s/he is unsuitable to work with children

The matter must be raised immediately with the Assistant Chief Constable holding delegated authority for conduct matters relating to the Police Reform Act 2002 via the Head of The PSD. For further guidance on this refer to section 4 of The “Professional Standards Reporting” procedural guidance.

5. Statements from Complainants

- 5.1 It is not normally necessary to obtain witness statements from complainants. A full account of the complaint should be recorded on the Form 352. It is useful for complainants to have sight of this document and to agree that it is an accurate record of their account. Witness statements should only be obtained in exceptional circumstances and after consultation with PSD.

6. Complaints - Obtaining and Preserving Evidence

- 6.1 Where a complaint of any kind is received, it is essential that action is taken to preserve evidence and carry out such immediate investigatory steps as are necessary, e.g. obtain medical evidence, have photographs taken, search for property alleged to have been stolen etc. Where a complainant alleges he/she has been assaulted and injured, he/she should be medically examined, even though there is no apparent sign of injury. Particular regard should be given to the preservation of any video/CCTV evidence of the incident.
- 6.2 Guidance further requires that the member of staff against whom the complaint of assault or injury is made should be examined medically and photographed, but it must be borne in mind that any such examination can only be carried out with the consent of the individual.
- 6.3 Preservation will also include the safeguarding of all original documents and potential exhibits, including telephone messages and Detained Property sheets. It must be borne in mind that investigations can sometimes be protracted and important evidential items may be lost by the routine destruction of documents and disposal of property.

- 6.4 The same considerations apply here as to all misconduct matters in deciding what action should be taken in the initial stages.

7. Withdrawn Complaints

- 7.1 If, during discussion with the complainant, he/she indicates that they do not wish to pursue a complaint, the matter must be reported on Form 352 in the normal way. The appropriate section of the Form 352 should be completed and the complainant invited to sign the entry. The completed document should then be forwarded to the Professional Standards Dept.

- 7.2 A complaint cannot be recorded as withdrawn without a written statement to that effect, signed by the complainant or the appropriate caption signed on the Form 352. Any written statement must be unequivocal.

8. Complaint - Local Resolution

- 8.1 See policy on [Local Resolution](#), unique reference number 52QP-1039.

9. Public Complaint Formal Investigations

- 9.1 Members of staff subject of complaint will, in addition to the notice required by regulations, be given information outlining the procedure and their rights. They will also be kept informed of the progress of the investigation in accordance with the legislation.

- 9.2 Where a member of staff subject of complaint is concerned in any way about the investigation he/she is free to contact The PSD or the investigating officer direct, at any time, for further information.

- 9.3 Where the report of an investigation is sent to the Crown Prosecution Service, the IPCC or received by an Assistant Chief Constable for a decision, members of staff subject of the complaint will receive the following information:

- a) A minute from the Head of PSD stating that this has happened.
- b) In the event that formal misconduct procedures are implemented, the procedures are described under the section entitled 'Police Misconduct' below.

10. Complaints - Specials - On Duty

- 10.1 Special Constables are subject to both the complaints procedure and the Standards of Professional Behaviour.

- 10.2 Where an allegation is made against a Special Constable, the commander concerned should ensure that it is dealt with in the same way as a complaint against a regular officer.

11. Complaints - Specials - Off Duty

11.1 Criminal allegations will be dealt with in the same way as off duty regular police officers.

12. Complaints - Police Staff

12.1 Police Staff fall within the IPCC area of responsibility and the complaint arrangements are dealt with in the same way as those relating to police officers.

13. Police Misconduct – Introduction

13.1 This section is concerned only with allegations arising other than from a complaint by a member of the public involving a Police Officer or Special Constable

13.2 Police officers are expected to maintain the highest standards of conduct both on and off duty. All officers should be aware of the Standards of Professional Behaviour.

13.3 It is recognised that minor errors and transgressions should be dealt with swiftly at a local level and in accordance with good management practices. However, the force will not hesitate to use formal misconduct processes where necessary.

13.4 All supervisory officers have authority to deal personally with any misconduct matter which they judge not to be serious enough to refer to their district or departmental commander and does not fall within the 'gross misconduct' category below.

13.5 District and departmental commanders have authority to deal locally with any misconduct matter which they judge not to be serious enough to refer to the ACC (PSD) and does not fall within the 'gross misconduct' category below.

13.6 More serious misconduct matters and all those falling within the below categories will be referred to the ACC via the Head of The PSD.

13.7 The 'gross misconduct' category (as defined by the IPCC) requiring to be referred to the ACC is as follows:

- Conduct resulting in death or serious injury to any person
- Serious sexual offence
- Serious assault (ABH or above)
- Serious corruption
- Any matter due to its gravity or exceptional nature
- Behaviour likely to lead to discipline and aggravated by discrimination based on Age, Race, Gender, Disability, Religion or Sexual Orientation.

14. Breaches of the 'Standards of Professional Behaviour'- Police Officers and Special Constables Only

- 14.1 Where it appears that a police officer or special constable may be guilty of misconduct, the facts will be reported to a substantive supervisory officer.
- 14.2 Unless the matter is dealt with locally, the facts must be reported to Assistant Chief Constable immediately via the Unit Head, Professional Standards Dept by the appropriate commander.
- 14.3 Where a matter is to be reported to headquarters, no further enquiries should be made locally. If it has already been necessary to speak to the member of staff subject of enquiry, he/she should be told that the matter is to be referred. Otherwise, that individual should not be questioned or informed of the allegation at this stage.
- 14.4 Commanders must ensure that their procedures allow for reports to arrive in The PSD within 48 hours of the facts becoming known.
- 14.5 The most serious cases (at paragraph 13.7 above) should be discussed immediately with the ACC or Head of The PSD by telephone, or referred by facsimile.

15. Police Misconduct - Criminal Offences

- 15.1 All allegations of criminal offences, including traffic offences, committed by Police Officers or Special Constables, whether from this force or outside, will be referred to the ACC. Those offences that fall into the serious category as defined by paragraph 13.7 will be recorded as conduct matters.
- 15.2 Allegations that involve traffic offences only, may be investigated locally before reference to headquarters. Other offences will not be investigated until the ACC has given directions.
- 15.3 Where such an investigation is carried out locally, the matter will be allocated to a substantive supervisory officer of at least the same rank as the subject officer.

16. Police Misconduct - Suspension from Duty

- 16.1 See policy on [Suspension](#), unique reference number 52QP-1008.

17. Police Officer Misconduct - Formal Investigation

- 17.1 Officers appointed to conduct a formal investigation should refer to the guidance provided.
- 17.2 Officers subject of investigation will, in addition to the notice required by regulations, also be given information outlining the procedure and their rights. They will be kept informed of the progress of the investigation as required by the regulations.

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- 17.3 Where a report into a conduct investigation requires to be sent to the Crown Prosecution Service, the officer under investigation will receive:
- A minute from the Unit Head Professional Standards Dept saying that this has happened.
 - Formal notification from the Unit Head of the outcome, unless criminal or disciplinary charges are to be brought. In addition a copy of this notification will be supplied to the officer's District or Departmental Commander
- 17.4 If any member of staff, subject of an investigation, is concerned about any aspect of the investigation they should raise this with the Deputy Head of PSD.

18. "Friends"

- 18.1 Any officer subject of investigation is entitled to have a "friend" to advise him/her at all stages of the enquiry.
- 18.2 A "Friend" can be any serving police officer, Special Constable or person nominated by a staff association. The friend must not be an "interested party" in the matter under investigation. The role of friend will normally be undertaken by a specially nominated and trained staff association representative.
- 18.3 A "friend" will normally be allowed to be present whenever an accused officer is interviewed. No restrictions are placed upon them, but it should be noted that:
- a) whilst the Assistant Chief Constable will invariably offer facilities to such officers in preparing a defence, their primary role remains that of a police officer and that the two functions are not always easy to reconcile. In cases of doubt, "friends" should seek the advice of permanent Staff Association representatives or the Unit Head, Professional Standards Dept.
 - b) it is normally accepted to be inappropriate for a "friend" to interview police officers or civilian witnesses who have already made statements to the investigating officer, without first informing the Assistant Chief Constable of his/her intentions, via the Unit Head, Professional Standards Dept.

19. Police Staff Misconduct – Formal Investigation/Misconduct Meetings/Hearings/ Recordings of Results

Officers appointed to conduct a formal investigation should refer to the guidance provided in the "Disciplinary Procedure for Police Staff"

20. Searches of Personal Lockers etc on police premises

- 20.1 A Police staff/ officer's individual locker (or personal belongings, desk etc.) will normally only be searched in his/her presence and with their consent. It may, however, be done in their absence and without their consent if it is necessary in the investigation of a crime or serious disciplinary matter, and then only with the

consent of the Head of PSD. The decision and rationale for authorizing a 'locker search' will be recorded within PSD.

21. Identification Parades

21.1 Where a complaint or allegation is received and the identity of the officer is not known, identification parades will not be arranged without prior consultation with the ACC. In the event of authority being so obtained, the normal procedure for identification parades will be followed. Where the suspect is in uniform, all officers' numerals will be concealed.

22. Misconduct Meetings

22.1 The procedure for misconduct meetings is set out in the Police (Conduct) Regulations 2008. Meetings deal with misconduct that is not assessed as 'Gross Misconduct'. Officers will be notified of their requirement to attend a misconduct meeting by the service of notices under Regulations 21 & 24, Police (Conduct) Regulations 2008. The meeting will normally be chaired by a district officer of at least the rank of Chief Inspector, who has not previously been connected with the investigation.

22.2 Misconduct Hearings

The procedure for misconduct hearings is set out in the Police (Conduct) Regulations 2008. Hearings deal with misconduct that has been assessed as 'Gross Misconduct'. Officers will be notified of their requirement to attend a misconduct hearing by the service of notices under Regulations 21 & 24, Police (Conduct) Regulations 2008. The hearing will be chaired by the Deputy Chief Constable, who will be accompanied by two additional panel members who will be appointed in accordance with the regulations.

22.3 Witnesses called on behalf of accused officers will be compensated in respect of their reasonable expenses and the ACC will, if required, arrange for such witnesses to be warned and provided assistance with transport arrangements.

23. Recording Misconduct Results

23.1 Formal findings of a breach of the Standards of Professional Behaviour at misconduct meeting or hearing will be recorded:

- a) Upon the officer's personal record, to be expunged in accordance with regulations.
- b) In the case of hearings, in the Chief Constable's Misconduct Book that is retained within The PSD.

23.2 Advice given as a result of minor disciplinary matters not requiring a written warning, or where the conduct is not admitted, will be the subject of pocket book entries by the supervisory officer concerned.

24. Conduct of Police Officers whilst Off Duty

- 24.1 Off-duty conduct is covered by the Standards of Professional Behaviour. Whether or not a particular incident of off-duty conduct is potentially assessed as Misconduct or Gross Misconduct will depend upon the circumstances of the incident in question. Off-duty conduct that brings discredit upon the police service or that undermines public confidence in the service is likely to lead to the consideration of a misconduct investigation.
- 24.2 When any officer chooses to introduce his/her position as a police officer or special constable into a purely private dispute, there will be two direct consequences:
 - a) The other party may feel, or may allege, that unfair or undue pressure is being placed upon them.
 - b) The circumstances will be more likely to fall within the Standards of Professional Behaviour and it may even be necessary for any allegation made by the other party to be recorded as a complaint.
- 24.3 All officers are strongly advised not to reveal their position, and if it is impossible to avoid, they should carefully consider calling an independent police officer, particularly in circumstances where police action may be necessary, such as a road accident.

25. Conduct of Police Staff whilst off Duty

- 25.1 Off duty conduct is covered by the Police Staff Standards of Professional Behaviour.

26. Legal Proceedings involving Police Officers and Special Constables

- 26.1 Any officer who receives a summons, order or any other document in connection with criminal or civil action being taken against him/her through any court or is arrested for any reason, must report particulars of the matter to the ACC immediately.
- 26.2 The report should be accompanied by a copy of any document in question. Every subsequent document must be submitted, notwithstanding that the action itself may already have been the subject of a report.
- 26.3 An officer who receives a questionnaire under the Race Relations (Questions and Replies) Order 1977 (hyperlink not available), and the [Equality Act 2002](#) will immediately forward the questionnaire to his/her commander, who will pass it to the ACC.

27. Character References

- 27.1 A review of the policy on character references, in particular in respect of court appearances, is currently awaiting a formal decision by ACPO. In the interim, officers should seek advice from The PSD.

28. Organisational Learning

- 28.1 In accordance with Home Office circular 28/2002 any 'adverse incidents' identified by districts or departments must be reported at the first available opportunity to the head of Professional Standards Dept. for the information of the Assistant Chief Constable.
- 28.2 An 'adverse incident' can be defined as any incident or matter which indicate that there are lessons to be learned by the service with the aim of preventing similar incidents from occurring elsewhere and developing good practice. These issues include 'direction and control' matters and organizational issues as well as matters identified from complaints made about staff.
- 28.3 It is anticipated that in the main these incidents will be identified from complaint investigations. However it should be recognised that districts and departments may well identify matters, which need to be reported. District and departmental heads should therefore ensure the necessary procedures are in place within their areas of responsibility to capture such incidents for reporting purposes.

29. How to Complain

- 29.1 Complaints against this guidance can be made via Dissatisfaction with Service Complaints.

30. Tactics

- 30.1. There are no tactical issues relating to this document.

Procedural Guidance Information	
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