

JOINT OPHSO AND IPCC PROTOCOL FOR THE HANDLING OF VICTIMS' CODE COMPLAINTS

AIM

1. This protocol outlines the distinct roles of the Parliamentary and Health Service Ombudsman (PHSO) and the Independent Police Complaints Commission (IPCC) with regard to Code complaints and identifies areas where cooperation between the two bodies is necessary for them to meet their respective responsibilities. This protocol does not attempt to anticipate all possible scenarios necessitating interaction between PHSO and IPCC on Code complaints, but it describes the general principles underpinning the working relationship between PHSO and IPCC with regard to Code complaints and provides specific guidance on the liaison and the exchange of information that will be necessary in particular circumstances.
2. This protocol comes into effect on 3 April 2006 and will be evaluated after an initial six month period, or when any necessary revision to legislation or the Code on rights of appeal to IPCC comes into force, whichever is the sooner. Thereafter, it will be subject to periodic reviews every two years.

Role of PHSO in Code complaints

3. PHSO has a statutory responsibility to consider complaints from victims of crime who allege a failure by any of the criminal justice agencies in England or Wales, which are subject to the Code, to meet their obligations under it and the victim has been unable to get their complaint resolved locally to their satisfaction. The police are subject to obligations under the Code and PHSO has jurisdiction to investigate their actions in relation to the Code. If PHSO finds a complaint to be justified, it can recommend that the agency correct the error; take action to prevent a recurrence; pay compensation for inconvenience and financial loss; apologise for the error; offer a full explanation; and, if necessary, revise practice and procedure.
4. It is envisaged that only a small proportion of Code complaints against the police will fall to be dealt with by PHSO. The vast majority will be resolved locally by the police themselves and will only be referred to PHSO as a last resort if the victim has failed to get their complaint resolved satisfactorily by the police at a local level, be it through the route for handling Code complaints that involve direction and control, or through their Local Investigation or Local Resolution route for breaches of the Code that include conduct matters.

Role of IPCC in Code complaints

5. IPCC has a statutory responsibility for ensuring that suitable arrangements are in place for dealing with complaints or allegations of misconduct against any person serving with the police in England or Wales (police officers up to and including Chief Constable, special constables, police staff and designated contracted escort and detention officers).

Those complaints may involve a breach of the Code which includes a conduct matter. The police normally determine at local level whether a complaint is a direction and control complaint or an allegation of misconduct and record it, subject to the complainant's appeal to IPCC against non-recording of a misconduct complaint.

JOINT OPHSO AND IPCC PROTOCOL FOR THE HANDLING OF VICTIMS' CODE COMPLAINTS

Direction and control complaints are dealt with by the police force concerned and the majority of misconduct complaints are also dealt with by the police at local level through Local Resolution or Local Investigation. The IPCC is engaged at the appeal stages for Local Resolution (procedure only) and Local Investigation.

IPCC may choose to independently investigate or manage the investigation into the most serious incidents, or supervise a police investigation. Its investigators have powers of a constable in an independent investigation. IPCC also has the power to call in particular cases of concern or sensitivity which might not otherwise be referred to them.

By law, the police must refer the most serious complaints and conduct matters such as incidents of death or serious injury, serious arrestable offences or a serious assault by a member of the police service.

It is anticipated that the majority of Code complaints will not include conduct issues, thereby falling to be dealt with by the police and with a subsequent right of complaint to PHSO. It is also anticipated that the majority of Code complaints which include conduct matters will be dealt with by Local Resolution or Local Investigation by the police, with IPCC being engaged only where there is an appeal against the Local Resolution process; or an appeal against the outcome of a Local Investigation; or when a Code complaint forms a minor aspect of a more serious conduct matter.

General principles

6. **Victim-focused:** The needs of the victim are to remain the primary focus of all complaint handling considerations by PHSO and IPCC wants to see good customer service at the heart of the police complaints system. Central to those considerations will be the nature of the redress sought by the victim, the need for speedy and effective resolution of complaints and the need to keep victims informed of the progress of their complaint.
7. **Joined-up:** PHSO and IPCC recognise the need to provide victims dissatisfied with the initial investigation with a one-stop-shop with regard to their Code complaints, wherever possible. PHSO and IPCC will seek to resolve speedily any issues as to which body should be dealing with which complaint to avoid any delay in resolution for the victim. PHSO and IPCC will agree guidelines for the handling of Code complaints where both bodies have jurisdiction i.e. the police service. Both PHSO and IPCC will undertake their duties in accordance with their statutory obligations, bringing with it their mutual independence and impartiality.
8. **Proportionate:** PHSO and IPCC acknowledge as unsatisfactory the fact that, under current legislation, victims will have parallel appeal routes to IPCC and PHSO in a number of situations. Both bodies understand the need for victims to take the route most beneficial for them, their complaint and the resolution they ultimately desire. The need to avoid wherever possible the 'second bite of the cherry' scenario is understood by both bodies.
9. **Information-sharing:** PHSO and IPCC appreciate their respective statutory responsibilities for the overview of complaints - the role of IPCC in providing oversight of all police complaints and the role of PHSO in providing oversight of all Code complaints. It is recognised that, while there is a need to interpret their occasionally conflicting jurisdictions in the interests of the victim, there is equally a need for both bodies to maintain an accurate overview of the complaints under their jurisdiction. PHSO and IPCC

JOINT OPHSO AND IPCC PROTOCOL FOR THE HANDLING OF VICTIMS' CODE COMPLAINTS

are mindful of the confidentiality of information provided by the victim and the need to obtain the victim's consent prior to sharing any such information with each other.

List of Annexes

Annex A - Operationalisation of General Principles

Annex B - Flowchart - PHSO/IPCC interaction in Code complaints

JOINT OPHSO AND IPCC PROTOCOL FOR THE HANDLING OF VICTIMS' CODE COMPLAINTS

ANNEX A

OPERATIONALISATION OF GENERAL PRINCIPLES

While it is neither possible nor necessary to anticipate all potential scenarios or issues requiring liaison between PHSO and IPCC, the following situations are likely to arise and should be dealt with in accordance with the above principles and in the manner prescribed below:

(i) **When the complainant is the victim of an alleged criminal offence by someone serving with the police:** IPCC will assume the Code obligations of the police in cases where the complainant is the victim of alleged criminal conduct by someone serving with the police, and IPCC has carried out an independent or managed investigation. While PHSO may not criticise any failure by IPCC to execute those obligations (as IPCC themselves are not subject to the Code), PHSO may comment on the Code's failure to ensure that victims in this category are entitled to the same standards of service provided to other victims. PHSO will monitor the number of Code complaints in which the complainant is the victim of an alleged criminal offence by someone serving with the police and share that information with IPCC.

(ii) **Double handling of appeals:** Under current legislation governing IPCC and the Code, victims who have a conduct Code complaint may have both a right of appeal to IPCC and right of complaint to PHSO. Conduct complaints of a less serious nature are normally suitable for the Local Resolution process provided in the legislation. PHSO and IPCC will encourage police forces to incorporate a right of referral to PHSO in the Local Resolution process if dissatisfied with the process or outcome. In any event, where a victim who has chosen the Local Resolution route is dissatisfied with the process or the outcome, IPCC will (unless it has called in the complaint) encourage the victim to complain to PHSO and to pursue any appeal in respect of procedural (as well as other) issues with PHSO rather than with IPCC. Where a complaint is suitable for Local Resolution, but the victim refuses Local Resolution, IPCC will encourage the victim, if dissatisfied with the outcome of the investigation by the police, to utilise their right to complain to PHSO rather than pursue an appeal with IPCC. Similarly, where Code complaints involving conduct matters are not suitable for Local Resolution, PHSO will encourage victims who are dissatisfied with the investigation by the police to appeal to IPCC. The IPCC will remain responsible for appeals on non-recording of conduct complaints.

Nevertheless, victims will still have a statutory right to exercise both avenues of complaint. It is therefore important that, on receipt of a complaint in which the alternative right of appeal has been exercised, PHSO and IPCC make it clear to the victim the limits of their jurisdiction and the likelihood or otherwise of securing the outcome they desire. In the event that the victim insists on exercising the additional right of appeal, PHSO and IPCC will exchange information relating to their consideration of the complaint. In the course of their consideration of the complaint they will be mindful of their jurisdiction prohibiting any consideration of, or comment on, the other body's handling of the complaint.

(iii) **A conduct complaint containing peripheral non-conduct Code complaints:** PHSO consider it to be in the interests of the victim that where a conduct complaint (or appeal on a conduct complaint) that is not suitable for Local Resolution contains peripheral

JOINT OPHSO AND IPCC PROTOCOL FOR THE HANDLING OF VICTIMS' CODE COMPLAINTS

non-conduct Code complaints, IPCC should consider all aspects of the complaint in its entirety. Central to this consideration is the redress sought by the victim. Only when it would not be possible, should the complaint be upheld, for IPCC to secure the redress sought by the victim, should alternative handling arrangements be considered (ie splitting out the peripheral non-conduct Code matters and referring the victim to PHSO for consideration of such). IPCC will consult with PHSO in cases in which splitting-out the peripheral Code matters might be appropriate. If those matters are split-out, PHSO and IPCC will consult each other with regard to the coordination of progress reports and the reporting of investigation outcomes. If IPCC deals with a complaint in its entirety, they will notify PHSO of the outcome of their investigation in relation to the Code aspects of the complaint.

(iv) **Parallel investigations:** There may be cases in which the Code aspects of the complaint that involve conduct and those that do not are of equal weight and will therefore fall to be investigated in parallel by both PHSO and IPCC. In those circumstances, both bodies will liaise with one another to agree the coordination of arrangements for the respective investigations (i.e interviews with victim and police officers); keeping the victim informed of progress and reporting the results of the investigation. In the event that either PHSO or IPCC finds itself the recipient of both aspects of the complaint, they will contact the victim, explain the requisite referral route to the other body and notify the other body (with the victim's consent) of the existence of the complaint and the anticipated referral.

(v) **Re-routing of misdirected appeals or complaints:** The separate police and Code complaints procedures are a potentially confusing process for victims and it is to be expected that victims may, on occasion, misdirect their complaint to the wrong body. In such a situation, PHSO and IPCC will ensure that the victim is provided with all necessary information to enable them to re-route their complaint to the appropriate body. PHSO and IPCC will exchange information on such misdirections (with the victim's consent) in order to alert one another to the existence of the complaint and the anticipated referral.

If a victim is unhappy with the fact that the police have chosen not to 'record' their complaint but does not want to appeal to IPCC, the victim may erroneously refer their complaint to PHSO. In such a situation PHSO will contact the victim and, provided they consent, will pass the information of the non-recording to IPCC so that they can 'call in' the complaint.

(vi) **Additional information-sharing requirements:** In addition to the information-sharing requirements cited above, PHSO will share with IPCC the outcomes of all non-conduct Code complaints considered by them to enable IPCC to maintain their overview of complaints against police. Likewise, IPCC will share with PHSO the outcome of all conduct Code complaints investigated by them. In each case the information will be anonymised as appropriate.