



PROTOCOL BETWEEN THE CROWN PROSECUTION SERVICE CASEWORK DIRECTORATE AND THE INDEPENDENT POLICE COMPLAINTS COMMISSION

1. INTRODUCTION

- 1.1 This protocol concerns the co-operation and exchange of services and information between the Independent Police Complaints Commission (IPCC) and the Casework Directorate of the Crown Prosecution Service (CPS).
- 1.2 The agreement is intended to serve as a general guide to co-operation between the parties and to allow the required flexibility in activities that are undertaken between them.
- 1.3 The primary function of the IPCC is to ensure that it and the police put in place arrangements to address effectively and efficiently the handling of police complaints, the recording of conduct matters, and the investigation of both. In addition, the IPCC has an overarching guardianship role over the police complaints/misconduct system.
- 1.4 Attached hereto at Annex A are details of the forms of investigation by, and the criteria for mandatory and other referrals to, the IPCC.

2. EARLY CONSULTATION WITH AND THE REFERRAL OF CASES TO THE CPS CASEWORK DIRECTORATE FOR ADVICE

- 2.1 This section of the protocol seeks to identify those cases that would benefit from early consultation with, or formal submission to, the CPS Casework Directorate for advice. It provides guidance on the types of case and circumstance where the early involvement of the Casework Directorate can assist investigating officers in bringing focus to investigations and can ensure that appropriate offences are charged at the commencement of proceedings.

Cases involving deaths in custody are considered separately at section 9 below.

- 2.2 The involvement of a Crown Prosecutor at an early stage is to be encouraged in the best interests of the investigation. The IPCC is encouraged at any stage to consult the CPS for advice. However, this protocol also recognises the role of lawyers within the IPCC's Directorate of Legal Services.
- 2.3 All cases referred to the IPCC may be regarded as serious; however, when the IPCC decides which form an investigation should take, the decision may be, in any given case, a local, supervised, managed or independent (IPCC) investigation. Given the CPS criteria for Casework Directorate work, the more serious a case referred to the IPCC is, the more likely that Casework Directorate will have conduct when there is CPS involvement. (See Annex B for Casework Directorate criteria).

Independent and Managed Investigations

- 2.4 The IPCC will apply the Lancet recommendations* That is to say, in independent and managed investigations, where the IPCC has direction and control of the investigation, the IPCC will, at the outset, decide the terms of reference and scope for the strategies that need to be put in place. The IPCC recognises the importance of obtaining early legal advice and such advice will be sought, if at a time prior to CPS involvement, from an IPCC lawyer (from the IPCC Directorate of Legal Services) as and when the need arises. The advice may concern, for example, the terms of reference and proposed form and nature of investigation (for example, whether it should be a supervised,

* The recommendations contained within the report compiled following the review by the late Sir John Hoddinott / Mr William Taylor into the Operation Lancet investigation into Cleveland Constabulary CID. The recommendations of relevance here are as to case conferences, particularly in relation to matters of any seriousness or complexity. A case conference in supervised, managed and independent investigations should be chaired by the IPCC. Representatives of the CPS, IPCC, (Police Authority), and investigation team, as well as both the IO and SIO should be present. Minutes should be kept. The following should be addressed and decided upon within the case conference: the strategic level approach, terms of reference, the sharing of key policy decisions, the general focus & direction of the investigation, the capacity to report on progress against the project plan, media handling (including joint media releases, and (without compromising the investigation) useful lessons learnt / to be learned.

managed or independent investigation); the strategies to be adopted; and any RIPA or 1997 Police Act authorisations sought/to be sought.

- 2.5 Where the CPS is consulted, the CPS lawyer will not advise on operational decisions, but may be consulted not only on the nature of any charges, but also as to legal and evidential issues surrounding the investigation, including advice about expert evidence.
- 2.6 The IPCC lawyer may advise both on operational decisions, and legal and evidential issues concerning investigations. Following the involvement of the CPS in a case, however, advice as to matters going to the future presentation of that case before a court, the likely form of charges and the application of the Code for Crown Prosecutors should be addressed to the CPS lawyer (with details of the request and of the response provided given to the IPCC lawyer). If such advice is to be sought from the CPS in conference, the IPCC lawyer should be notified and given the opportunity to attend.
- 2.7 In cases of urgency, where it is not practicable to seek advice from the CPS lawyer with conduct of the case, or if the advice relates to matters other than those set out in the preceding paragraph, advice may be sought from an IPCC lawyer. In the event that such advice is sought and given in a case in which the CPS is, or subsequently becomes, involved, details of the request and advice should be forwarded forthwith to the CPS.
- 2.8 To ensure that the parties gain maximum benefit from the present arrangements, the CPS will undertake to nominate a CPS lawyer to a serious, complex or sensitive case at the earliest opportunity. Having been thus nominated, the CPS lawyer will make him/herself known to the IPCC. Thereafter, throughout an independent or managed investigation, the IPCC will keep the CPS lawyer informed as to the progress of enquiries in order to reduce time at the conclusion of the investigation, in the event that a decision is taken formally to send the case to the CPS. In addition, as evidence is gathered a copy set of any material thus generated will be provided to the CPS lawyer at the same time as to his/her IPCC counterpart.

- 2.9 In the most serious of cases, a CPS lawyer will be nominated at a very early stage, and an early case conference should take place, when issues of terms of reference and scoping are being decided, to which the CPS lawyer, as well as an IPCC lawyer, will be invited.
- 2.10 In an independent or managed investigation, the Commissioner will decide, having considered all the available evidence and having taken advice from an IPCC lawyer, whether there is evidence that a criminal offence may have been committed. If it is concluded by the Commissioner that there is such evidence, the case will be formally sent to the CPS. Thereafter, it will be for the CPS lawyer to conduct his/her review in accordance with the Code for Crown Prosecutors.

Supervised Investigations

- 2.11 In supervised investigations, the IPCC will encourage the police to apply the **Lancet** recommendations in setting terms of reference and in scoping strategies to be put in place. The early involvement of the CPS lawyer is, again, to be encouraged, particularly in cases that are serious, complex or sensitive.
- 2.12 In addition to advice sought by the police from the CPS, the IPCC Commissioner appointed to the case will seek legal advice from an IPCC lawyer as is necessary. The advice sought may include, in particular, guidance as to legal issues and the consequences of the terms of reference and the scope of the enquiries and strategies decided upon. In the event of such advice being sought from and given by an IPCC lawyer, the details will be provided to the CPS upon the involvement in the case of a CPS lawyer.
- 2.13 Responsibility for direction and control of a supervised investigation will remain with the police, who will consult with the CPS for advice, not only as to charges, but also as to legal and evidential issues surrounding the

investigation. As with independent and managed investigations, such advice may include guidance in relation to expert evidence.

- 2.14 At the conclusion of the investigation, if it is determined that an offence may have been committed, it will be for the police to submit the investigator's report to the CPS, for them to determine whether or not there is sufficient evidence to provide a realistic prospect of conviction and, if there is, whether it is in the public interest to prosecute.
- 2.15 It will be for the police to inform the complainant that a report has been submitted to the CPS and to keep the complainant informed of progress thereafter.
- 2.16 In the event that the CPS concludes that there is insufficient evidence to prosecute, or that it is not in the public interest to do so, the CPS will be responsible for informing the complainant of their decision. The police will decide what, if any, subsequent action to bring and will inform the complainant accordingly. Disciplinary matters are not matters for the CPS. If the complainant in such circumstances is dissatisfied with the police decision in the case, an appeal will lie to the IPCC. In deciding that appeal, a Commissioner will take the advice of an IPCC lawyer as necessary.
- 2.17 The IPCC must seek the advice of the CPS before charging an individual with any offence arising from a complaint. Any proposal to charge before the submission of the final report in accordance with Schedule 3, paragraph 23 of the Police Reform Act 2002 (e.g. where a remand in custody is required and evidence gathering is not complete), must be referred to the appropriate CPS contact shown below at paragraph 10 (Schedule 3, paragraph 20.3). A decision will be taken in accordance with the Code for Crown Prosecutors and paragraph 11 of the Director of Public Prosecutions' 'Guidance to Police Officers and Crown Prosecutors in respect of the making of Charging Decisions'.

Crown Prosecution Service - Case Allocation

2.18 In order to demonstrate publically and maintain the necessary independence of the CPS from other parties in the criminal justice system, including those involved in dealing with allegations of criminal offences against police officers, all cases submitted to the Casework Directorate will be handled in accordance with the following principles:

- the review and the handling of the case should be by CPS staff who have no knowledge or connection with the officer(s) under investigation in either a work or social context;
- where there is any doubt about the ability to satisfy the above principle, the case should be transferred to another branch of the Casework Directorate, preferably in a different location, or alternatively to a suitably experienced lawyer in one of the CPS Areas;
- in accordance with the recommendations of the Attorney General's review of the handling of death in custody cases, all such cases will be handled by a lawyer of at least level E, overseen by the Director of Public Prosecutions personally;

2.19 In addition to demonstrating independence and fairness, it is important that police officers can be confident in the consistency of decision making. It is, therefore, important that the Code for Crown Prosecutors and agreed charging standards are consistently and fairly applied in each case.

3. CONSULTATION AND ADVICE

3.1 Consultation and advice are likely to be of particular benefit in cases that are serious, complex or sensitive. This advice may lead to:

- the early establishment of a prosecution team, which will ensure that the ongoing investigation is focussed towards the case and charges likely to proceed to trial;

- ensuring that charges in indictable only cases are appropriate and that the case is ready for transfer to the Crown Court swiftly through the Crime and Disorder Act 1998 expedited provisions;
- the early identification of evidential difficulties and the means of resolving them;
- the early identification of possible lines of defence and lines of inquiry directed to rebut them;
- reduced post-charge consultation and investigation, and fewer adjournments at court;
- the early identification of appropriate CPS resources required, including the allocation of lawyers and caseworkers and in appropriate cases the early involvement of suitably experienced counsel;
- the improved presentation of evidence within file preparation;
- a reduction in discontinuance and late alterations to charges;
- the early identification of cases that cannot pass the requirements of the Code for Crown Prosecutors, thereby saving investigation time.

3.2 Early consultation may take place at any stage during the course of an investigation and does not require the submission of formal statements or reports. It is an early opportunity for investigators and/or IPCC lawyers to discuss the proposed investigation and its legal issues and consequences with a Casework Directorate lawyer, so that likely difficulties may be identified, potential charges discussed and emerging evidential issues advised upon. Such consultation may take place via a face to face or telephone conference. Casework Directorate lawyers may attend incident rooms where that will facilitate the assimilation of the evidence. The CPS lawyer will make a brief record of the issues identified and any guidance given.

4. REQUESTS FOR FORMAL ADVICE

4.1 Files submitted to the CPS for advice at the conclusion of an investigation must contain all relevant information, statements, copy documents, videos and transcripts of interviews (including video interviews), to enable a full

assessment of the case to be made. The files should be accompanied by a report containing observations as to the strength of the evidence, an assessment of the witnesses, and any other comments that may be pertinent. The investigating officer's view of the issues in the case should be set out and the points upon which advice is sought should be identified. The identity of the investigating officer and supervisor should be clearly indicated. Notwithstanding the generality of these requirements,

- where a file is submitted for advice on a limited evidential issue, the statements submitted can be directed to that issue only; and
- where, exceptionally, a file is submitted for advice on an overriding public interest factor, that file can be limited in content to material sufficient to decide on that aspect of the case.

4.2 The views of the investigator and his/her supervisors, and of the IPCC Commissioner and/or lawyer, will be of considerable assistance to the Casework Directorate lawyer in reaching a decision in the case. As already set out, in appropriate cases an early conference may be arranged prior to or following submission of the formal file.

4.3 Where a request for formal advice is sought before an investigation is complete, a copy file should be submitted, to be retained by the Casework Directorate while the investigation continues.

4.4 Where an offender has a duty to return to a police station on bail under Section 47 (3) of the Police and Criminal Evidence Act, 1984 (PACE), that return date should be clearly marked on the file. Any other factors requiring the advice to be provided within a certain time period should also be clearly identified. In complex and sensitive investigations, supervisory officers should contact Casework Directorate management to agree an appropriate time frame for the consideration of the case and the provision of the required advice.

4.5 There may be cases, following an independent or managed investigation, in which the IPCC concludes that the evidence does not justify any consideration

of criminal proceedings. Where the evidence in the case is manifestly insufficient to proceed, the IPCC may decide to take no further action and not to submit papers to the CPS. However, where the insufficiency of the evidence is less obvious, early consultation with a Casework Directorate lawyer may enable further lines of enquiry to be identified and any evidential/legal difficulties to be resolved, thus allowing the case to go forward for prosecution.

5. CASES IN WHICH EARLY CONSULTATION AND REFERRAL FOR ADVICE WILL ALWAYS BE CONSIDERED

5.1 Early consultation and advice will always be considered in complex and sensitive investigations. Such investigations will include those relating to:

- deaths in custody (see section 9 below);
- serious allegations of perverting the course of justice, perjury or misfeasance in a public office;
- cases involving surveillance or covert human intelligence sources, especially cases where public interest immunity (PII) applications may have to be made;
- cases involving integrity testing or test purchases, undercover officers or any other sensitive technique, including those covered by the Regulation of Investigatory Powers Act, 2000;
- cases involving a number of defendants, or a number, or series, of offences;
- cases involving difficult questions of evidence such as corroboration, similar fact evidence, or the evidence of accomplices;
- cases involving significant possible breaches of PACE codes, or difficult or disputed identification issues;
- cases potentially involving complex disclosure issues, especially where there is significant unused material, some of which may be in the possession of third parties;
- cases involving organised crime or drug trafficking;

- cases involving allegations of sexual offences (involving children or adults) where there is little or no corroboration;
- cases potentially involving contested points under the European Convention on Human Rights (Human Rights Act);
- allegations of incitement to racial hatred or conduct likely to stir up racial hatred; and
- other cases of exceptional difficulty, sensitivity or other public concern.

6. CONSULTATION AND ADVICE ON INVESTIGATIVE ISSUES

6.1 Separation of the functions of investigation and prosecution will be maintained. It is the role of the IPCC to investigate offences and the CPS to prosecute. However, the present protocol recognises that the IPCC also has wider functions (including that of guardianship) and legal services of its own which could be called upon when appropriate. Casework Directorate lawyers will not direct the course of an investigation, nor become involved in operational decision making. IPCC lawyers may, however, advise on such operational issues. Casework Directorate lawyers may advise on lines of enquiry, the legal elements requiring proof in each offence, the choice of charges, and the nature and extent of the evidence required.

6.2 Crown Prosecutors may provide the IPCC with advice and guidance in respect of any matter bearing on the need for and/or the quality, reliability and admissibility of evidence in any possible prosecution, including the manner in which that evidence may be presented.

7. AREAS AND ISSUES UPON WHICH ADVICE CAN AND SHOULD BE SOUGHT

7.1 A Crown Prosecutor may advise the IPCC about the legal and evidential consequences for any possible prosecution of any act or omission at the

investigative stage. However, it will be for investigators to make decisions about the appropriateness of any operational matter. For example, a lawyer will provide advice upon integrity tests and undercover operations to avoid possible claims of agent provocateur, and to safeguard the admissibility of evidence so obtained.

- 7.2 Advice should not be requested or given if its nature may necessitate the calling of a Crown Prosecutor, CPS caseworker or counsel as a witness in a prosecution.
- 7.3 The Casework Directorate should be consulted in any case involving a participating informant, a potential accomplice witness or resident informant/protected witness. The Casework Directorate lawyer should be consulted regarding any decision as to whether an individual should be treated as a defendant or a witness and in regard to the conduct of any debriefing procedure.
- 7.4 A Crown Prosecutor may advise investigators and represent the prosecution in any pre-trial applications (such as warrants of further detention), to ensure that the proper legal steps are taken and that an investigation may continue without prejudice to a possible prosecution.

8. DISCLOSURE

- 8.1 Casework Directorate lawyers can also advise investigators as to the retention, recording and revealing of unused material, including where appropriate the arrangements for disclosure to the defence.
- 8.2 Early consultation will assist to ensure continuity in the management of unused material. It will enable early identification of potential PII issues and ensure that the prosecution team, including counsel, have a comprehensive knowledge of the unused material, both disclosed and subject to PII.

8.3 Early contact should include decisions regarding the future disclosure of the identity of any confidential source and any intercept material that may undermine the prosecution case, or assist the defence case, and so require disclosure.

9. DEATHS IN CUSTODY

9.1 In July 2003 the Attorney General published his review of the role and practices of the CPS in these cases. The review covered deaths in custody, including those who die having been arrested or otherwise detained by police; deaths occurring whilst a person is being arrested or detained; fatal shootings where a police officer fired the fatal shots; and deaths following or during some form of contact with the police which did not amount to arrest, but where there is a link between the contact and the death.

9.2 The review recommended that all death in custody cases should continue to be handled by senior lawyers in the Casework Directorate of the CPS. Further, in addition to advocating the benefits to the investigators of these incidents of seeking early advice from the CPS, the review recommended that the CPS lawyer allocated to such a case should make contact with the family of the deceased and arrange a meeting as soon as the CPS receives notification that an investigation is underway that could lead to a prosecution. The purpose of the meeting is to explain the role of the CPS, how decisions are made and how the criminal process works. It will also be an opportunity for the family to raise any pressing concerns they have at that early stage, or pass on any information that they feel might be relevant.

9.3 In order to fulfil this role it is essential that the CPS is notified of an investigation at the earliest possible stage. The IPCC in its role as investigator, or when managing an investigation in these circumstances, will be responsible for notifying the Casework Directorate that such an investigation has commenced and for providing details of the family or interested parties.

- 9.4 A death in custody case may be investigated by means of an independent, managed or supervised investigation, depending on all the circumstances of the particular case. The provisions and guidance set out in this protocol as to the respective roles and functions of CPS and IPCC lawyers should be noted and applied accordingly. The IPCC will actively encourage its own investigators and those it manages in these cases to seek early consultation with the CPS.
- 9.5 On being notified of an investigation, the CPS will appoint a lawyer to take responsibility for contacting the family and providing advice to the investigating officer. The CPS will notify the IPCC of the name and contact details of the allocated lawyer.
- 9.6 The Senior Investigator will make early contact with the appointed CPS lawyer, with a view to identifying preliminary issues and obtaining advice upon the likely offences and potential lines of inquiry.
- 9.7 The CPS lawyer will make contact with the Family Liaison Officer (FLO), if appointed, to establish a suitable time for offering and arranging the initial meeting with the family of the deceased. The FLO will advise on timing and will facilitate the arrangements.
- 9.8 It will be important, following the first meeting with the family, to keep them informed on a regular basis as to the progress of the case. This should be achieved through liaison between the appropriate member of the IPCC (either the Family Liaison Officer or the officer in charge of the investigation), the IPCC Commissioner and the CPS lawyer.
- 9.9 Following submission of the final report of the senior investigator, and before any decision has been reached by the CPS lawyer, another meeting will be offered to the family.

- 9.10 The purpose of this meeting is to explain the issues in the case, the elements of the offence that have to be proved and perhaps to go into more detail about the evidential requirements of the Code for Crown Prosecutors in the context of the particular case.
- 9.11 Where the family has additional information, or a new perspective to offer on the case that is relevant to the prosecutor's decision on evidential sufficiency, it is perfectly legitimate, and indeed right, for the prosecutor to take this into account before reaching a final decision and possibly seek further evidence or inquiries as a result.
- 9.12 When the final decision is reached, in the absence of solicitors representing the family, the CPS lawyer will again consult with the FLO regarding the most appropriate way to deliver the decision letter to the family.
- 9.13 A further meeting will also be offered to explain the decision that has been made. The advice and assistance of the FLO should be obtained in the intermediate and final meetings.
- 9.14 The senior investigator will inform the CPS lawyer of the date fixed for the inquest. The investigator and the CPS lawyer will agree arrangements for attendance at the inquest, or for the provision of the necessary reports to enable the CPS lawyer to conduct a final review following the inquest, which will take into account matters arising and any evidence emerging during the course of those proceedings.

10. CONTACT POINTS AND LOCATION

- 10.1 The Casework Directorate has three offices located in London, York and Birmingham.

London Branch 2:

Forces covered: Bedfordshire, Cambridgeshire, Essex, Hampshire, Hertfordshire, Kent, Norfolk, Surrey, Sussex, Thames Valley, Suffolk.

London Branch 3:

Forces covered: Metropolitan and City.

York Branch 1:

York Branch 2:

Forces covered: The two York branches handle cases from the following forces: Cheshire, Cleveland, Cumbria, Derbyshire, Durham, Dyfed-Powys, Greater Manchester, Humberside, Lancashire, Leicestershire, Lincolnshire, Merseyside, Northamptonshire, North Wales, North Yorkshire, Northumbria, Nottinghamshire, South Yorkshire and West Yorkshire.

Birmingham Branch:

Forces covered: Avon & Somerset, Devon & Cornwall, Dorset, Gloucestershire, Gwent, South Wales, Staffordshire, Warwickshire, West Mercia, and West Midlands, Wiltshire.

11. IPCC CONTACT POINTS

Out of hours the CPS lawyer should be alert to any immediate issues that might engage the IPCC, such as the form of the investigation or changes to its form (for example, an investigation which begins as supervised might be changed to managed as new material / information emerges)

12. TIMELINESS OF REVIEW AND REPLY

12.1 The Casework Directorate undertakes, so far as is reasonably practicable, to:

- ensure that decisions on routine cases are made within 28 days of the receipt of the full case papers;
- agree an appropriate timetable, where it is clear at the outset that due to the size and complexity of a case the 28 day target is unrealistic;
- give priority to the handling of cases where the officer is suspended from duty, or where there is a high level of public concern;
- meet requests to discuss cases in conference during the investigation and to respond within 14 days to formal requests for advice, or provide a written indication of when the advice can be given;
- if advice is required urgently, endeavour to provide that advice within the timescale requested by the IPCC.

13. INFORMATION AND FILE CONTENT STANDARDS

13.1 The investigator will ensure that all the necessary information for the review of the case, or the provision of the advice sought, will be included in the papers. In particular, the investigator will ensure that sufficient information is provided:

- to enable the lawyer to discharge the requirements of the Code for Crown Prosecutors in reaching a decision on the prosecution and handling of any case;
- to identify any sensitive or unusual feature of the case, complainant, witness or potential defendant, or any group or interest who are involved or concerned in the case;
- about the officer's work locations or other relevant matters, which may have a bearing upon the need to ensure independence in the handling of the case.

14. COSTS

14.1 The costs of investigations will be borne by the IPCC and/or police. This will include the submission of evidential material in a suitable format.

14.2 The CPS will bear the costs of the prosecution and any costs incurred in obtaining the advice of counsel regarding the decision to prosecute, or any other issue deemed appropriate by the CPS.

- 14.3 Where the issue is complex, or agreement cannot be reached regarding the amount of material which is to be prepared, or the cost of preparation is unusually high, consultation between the CPS and IPCC should take place to determine which agency will be responsible for any costs incurred.

15. COMPLAINTS

- 15.1 Where problems arise, these should initially be handled locally between IPCC staff and Casework Directorate staff handling the case. Where disagreement persists, line managers should be involved. If issues remain unresolved after involvement of the relevant Head of Division, the Director, Casework and the Chairman of the IPCC will consider the matter.

16. TRAINING

- 16.1 The IPCC and the Casework Directorate will consider joint training on key initiatives. Liaison will take place between the IPCC and the Directorate at a strategic level to identify and implement joint training initiatives.

17. LIAISON

- 17.1 A joint agency group comprised of the Head of Investigations and Head of Legal Services for the IPCC and the Heads of Division of the Casework Directorate will formally review this agreement every six months. This meeting will also review other matters of joint interest and concern.

SIGNATORIES

Signed on behalf of the Crown Prosecution Service

Chris Newell, Director, Casework

Signed on behalf of Independent Police Complaints Commission

Nick Hardwick, Chairman

Dated:

Schedules

IPCC

OPERATING ADVICE NOTES TO POLICE FORCES

MANDATORY REFERRALS

These notes are produced for the assistance of the police service in their preparation for the introduction of the new complaints system in the Police Reform Act. The notes are intended to supplement the guidance provided in the Home Office interim guidance manual, *The New Complaints System and the IPCC*. As a result, readers may notice some duplication between the two documents.

The IPCC has responsibility under the Act for issuing Statutory Guidance. However, the IPCC has no statutory authority to do so prior to 1 April. Furthermore, it considers that formal Guidance should be informed by experience of the new system and widespread consultation. It recognises however that the police service has an essential need to prepare for the new system. These operating advice notes are therefore available as a representation of IPCC policy as currently proposed. They are not formal Guidance.

This advice note is divided into 6 main sections: definitions; serious assault; serious sexual offences; serious corruption; criminal and other behaviour aggravated by discriminatory behaviour; manner in which referrals are

to be made to the Commission. A schedule is also attached that deals with guidelines for assault and serious corruption cases.

Definitions

1(1) In this Advice Note –

‘the 2002 Act’ means the Police Reform Act 2002;

‘the Regulations’ means the Police (Complaints and Misconduct) Regulations 2004;

‘appropriate authority’ has the meaning given to it in section 29 of the 2002 Act;

‘the Commission’ means the Independent Police Complaints Commission.

Serious Assault

2(1) For the purposes of paragraphs 4(1)(b) and 13(1)(b) of Schedule 3 to the 2002 Act and regulations 2(2)(a)(i) and 5(1)(a) of the Regulations the term ‘serious assault’ shall be construed in accordance with the charging guidelines agreed between the Crown Prosecution Service and the Association of Chief Police Officers in relation to assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861¹, the terms of which are set out Part A of the Schedule to this Guidance.

(2) Any harm or injury cause to a person in relation to which a complaint alleging conduct resulting in serious injury or any conduct resulting in serious injury which is more serious than assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861 should be referred to the Commission in accordance with paragraphs 4(1)(a) and 13(1)(a) of Schedule 3 to the 2002 Act.

Serious Sexual Offences

3(1) For the purposes of paragraphs 4(1)(b) and 13(1)(b) of Schedule 3 to the 2002 Act and regulations 2(2)(a)(ii) and 5(1)(b) of the Regulations the term ‘serious sexual offences’ shall be construed as including all offences under the Sexual Offences Acts 1956 to 1992² that are triable only on indictment and such other offences under the said Acts of 1956 to 1992 appearing to an appropriate authority to be an offence where a Magistrates’ Court would be likely to decline jurisdiction.

(2) References to the Sexual Offences Acts 1956 to 1992 in paragraph (1) above shall be replaced by references to the Sexual Offences Act 2003³ when, and to the extent, the said 2003 Act comes into force and repeals provisions of the said Acts of 1956 to 1992.

(3) Any attempt, incitement or conspiracy to commit any offence referred to in paragraph (1) above shall be referred to the Commission.

Serious Corruption

4(1) For the purposes of paragraphs 4(1)(b) and 13(1)(b) of Schedule 3 to the 2002 Act and regulations 2(2)(a)(iii) and 5(1)(c) of the Regulations the term ‘serious corruption’ shall refer to conduct which shall be construed in accordance with Part B of the Schedule to this Guidance.

(2) Any such conduct referred to in paragraph (1) above and any conduct that reasonably appears to the appropriate authority may involve such conduct shall be referred to the Commission.

Criminal and other behaviour aggravated by discriminatory behaviour

5. For the purposes paragraphs 4(1)(b) and 13(1)(b) of Schedule 3 to the 2002 Act and regulations 2(2)(a)(iv) and 5(1)(d) of the Regulations any criminal offence or other behaviour that is aggravated by discrimination

caused by the actual or perceived sexual orientation of the person subject to the conduct, or disability discrimination, whether physical or mental, or

¹ 24 & 25 Vict., c.100

² 4 & 5 Eliz.2., c. 69: as amended by 1976, c. 82; 1988, c. 33; 1992, c. 34; 1999, c. 23.

³ C. 42

age discrimination shall be referred to the Commission in addition to any criminal offence or behaviour aggravated by discrimination on the grounds of a persons race, sex or religion that is required to be referred to the Commission by the said regulations 2(2)(a)(iii) and 5(2)(a)(iii).

Manner in which Referrals are to be made to the Commission

6(1) The appropriate authority may refer any complaint to which paragraph 4(1) of Schedule 3 to the 2002 Act refers or any conduct matter to which paragraph 13(1) of the said Schedule refers in such manner as appears to the appropriate authority most appropriate having regard to all the circumstances of the case, subject to paragraph (2) below and having regard always to the requirement of regulations 2(4)(a) and 5(4)(a).

(2) Where the referral is communicated orally to the Commission the referral shall be confirmed in writing sent to the Commission by means of e-mail or other electronic medium, fax or letter within twenty four hours of the oral referral.

(3) Where ever possible the information to be provided at the time of the first referral shall include the name of the referring authority, the nature of the complaint or conduct being referred, the location of the incident that is subject to the referral, the date and time of the incident, the name of the complainant or victim, the date of birth of the complainant or victim, the address of the complainant or victim, where there is a complaint the number of complaints, where there is a complaint or conduct matter the number of allegations, the number of police witnesses, the number of independent witnesses.

Schedule

Part A

Assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861¹

Charging Guidelines²

1. The offence is committed when a person assaults another, thereby causing actual bodily harm to that other person.

2. It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment and/or an unlimited fine.

Summarily, the maximum penalty is six months' imprisonment and/or a fine not exceeding the statutory maximum.

3. The only factor in law that distinguishes a charge under section 39 of the Criminal Justice Act 1988³ from a charge under section 47 is the degree of injury. By way of example, the following injuries should normally be prosecuted under section 47:

- loss or breaking of a tooth or teeth;
- temporary loss of sensory functions (which may include loss of consciousness);
- extensive or multiple bruising;
- displaced broken nose;
- minor fractures;
- minor, but not merely superficial, cuts of a sort probably requiring medical treatment (e.g. stitches);
- psychiatric injury that is more than fear, distress or panic. (Such

injury will be proved by appropriate expert evidence).

4. Although any injury can be classified as actual bodily harm, the appropriate charge will be contrary to section 39 of the Criminal Justice Act 1988 where injuries amount to no more than the following:

- grazes;
- scratches;
- abrasions;
- minor bruising;
- swellings;
- reddening of the skin;
- superficial cuts;
- a 'black eye.'

¹ c. 24 & 25 Vict., c.100

² The text and terms used in Part A are extracts from the charging guideline agreed between the Crown Prosecution Service and the Association of Chief Police Officers

³ c. 33

5. Any conduct in relation to which, if a criminal charge were to be preferred, would be a charge under the said section 39 shall not be referred to the Commission in accordance with this guidance unless, in the opinion of the appropriate authority, the circumstances of the matter is exceptional.

Part B

Any complaint alleging conduct or any conduct appearing to an appropriate authority to involve any of the following matters shall be treated as being serious corruption for the purposes of this guidance.

1. Any attempt to pervert the course of justice or other conduct likely to seriously harm the administration of justice, in particular the criminal justice system.
2. Payments or other benefits or favours received in the connection with the performance of duties where a Magistrates' Court would be likely to decline jurisdiction.
3. Corrupt controller / handler/ informer relationships.
4. Provision of confidential information in return for payment or other benefits or favours where the conduct goes beyond a possible prosecution for an offence under section 55 of the Data Protection Act 1998¹
5. Extraction and supply of seized controlled drugs, firearms or other material.
6. Attempts or conspiracies to do any of the above.

¹ c. 35