

# FOCUS

ISSUE TWO

Practical guidance on handling complaints, conduct matters, and death or serious injury matters within the Police Reform Act 2002

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Reference: IPCC Statutory Guidance paragraphs 3.19 – 3.20 and 4.15 – 4.16	

## Fanciful, vexatious, oppressive, or abuse of procedure

The Police Reform and Social Responsibility Act (PRSRA) 2011 amended the Police Reform Act (PRA) 2002, and changed the way most complaints are handled.

The PRSRA introduced new exemptions (grounds for not recording complaints) at the recording stage. A number of these are based on assessing the nature of the complaint. There were also changes to the provisions for discontinuances and disapplications (formerly known as dispensations).

The legislation groups the terms 'vexatious', 'abuse of procedure' and 'oppressive' under the same ground. While they are cited as one ground for the purposes of the legislation, decisions made under this ground should include a clear rationale explaining which one (or more) of the terms are thought to apply, and why.

### Complaint definitions

Here we offer additional guidance on how to apply the grounds for not recording or disapplying/discontinuing a complaint.

The IPCC's Statutory Guidance gives a legal definition of each of the grounds:

#### Vexatious complaint

A complaint that is without foundation, which is intended, or tends to vex, worry, annoy or embarrass.

#### Oppressive complaint

A complaint that is without foundation that

is intended or likely to result in burdensome, harsh or wrongful treatment of the person complained against.

#### Abuse of the complaints system

Where there is or has been a manipulation or misuse of the complaints system to initiate or progress a complaint which, in all the circumstances of the particular case, should not have been made or should not be allowed to continue.

#### Fanciful complaints

A complaint is fanciful if no reasonable person could lend any credence to it. It is an objective test.

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It is important that the complaint is assessed when applying these grounds, rather than the complainant. Similarly, it is the nature of the allegation that should be assessed rather than its merits. Although previous complaint history might be relevant, evidence needs to be provided to demonstrate a reasonable belief that the current complaint meets one of the grounds. For example, to show that the complainant has made a series of similar complaints, which have already been addressed, or a number of complaints made against the same individual.

The language used in the complaint, and the way it is framed, can also be relevant evidence for the complainant's motives in pursuing the complaint. Again, it is supporting evidence – a letter written in offensive language is not enough to decide a complaint is vexatious, oppressive, or an abuse of procedure.

The decision should also be made on an assessment of the complaint alone, not the probable outcome of the complaint. It should not be investigated and answered before making this decision.

### Vexatious

A complaint is vexatious if it is possible to demonstrate it is without basis and it would tend to or is being made with an intention to, cause worry, upset, annoyance or embarrassment. If it is clear the person making the complaint genuinely believes their complaint has merit (even if the appropriate authority knows it is without foundation), then it is not a vexatious complaint. The complaint should be recorded and the outcome of a proportionate investigation would be that evidence does not support it, and it is not upheld.

### Case study one: preliminary evidence gathering

Following a verbal argument with an off-duty police officer about a neighbour dispute over noise, the complainant alleges that the officer was racist and threatened to arrest him. The complaint was not recorded on the grounds that it was 'vexatious, oppressive or otherwise an abuse of procedure'. Before making the recording decision, the relevant incident logs were reviewed. Since neighbours who witnessed the incident supported the officer's account, the conclusion was that evidence did not support the allegations.

The complaint should have been recorded and the witness accounts used as evidence to inform the outcome of an investigation. Before making a recording decision, the appropriate authority carried out an investigation and made a recording decision based on the evidence available, rather than judging the basis of the complaint alone. There is no clear rationale as to which one of the grounds applies and why.

### Case study two: neighbour dispute

Following a dispute between two families over parking, the complainant alleges that the police officers attending treated the other family favourably because they knew that the neighbour's son was a serving police officer.

There is insufficient evidence to demonstrate that the complaint is without foundation or is being made solely to influence the police response to the dispute. There might be credence to the allegation and the complainant might genuinely feel the other family has been treated differently.

### Case study three: judging the incident, not the complaint

The complainant reported to the police that a number of youths were cycling in a pedestrian area. He later submitted a complaint expressing his dissatisfaction at how the police handled the report. The complaint was dismissed on the ground that it was vexatious. The decision maker concluded there was no cause for a legitimate complaint, as the complainant was unaffected by the way the police handled the matter, which was to take no further action.

There is insufficient evidence or rationale to demonstrate that the complaint is without foundation or intended to vex. The complainant was affected – he made the call and is dissatisfied with the way the police responded to his call. Whether or not the cyclists were causing a particular nuisance to him has no bearing on this. Reference is made to the individual being a persistent complainer and it appears the complainant has been judged as opposed to the basis of the complaint.

#### Oppressive

A complaint is oppressive if it can be demonstrated that the complaint is being made because the complainant has a personal issue with the individual they are complaining about, and that they are complaining intentionally to cause problems for that individual. It is insufficient to demonstrate that the complainant has made previous complaints against one individual, although evidence of repeated allegations against the same individual might be relevant.

### Case study four: targeting an officer

The complainant wrote to the police, alleging that everything that has happened to her recently is a result of the underhand, devious and scheming influence of PC Jones at her local police station. This includes the parking ticket she recently received. She states that she wants the officer removed from her local area, so she can peacefully get on with her life. The complainant has made 18 separate complaints against PC Jones within the last five months. Some have been investigated or locally resolved. In most instances, PC Jones was not involved in the issues she reported. In one instance, the officer was on annual leave and out of the country.

It is possible to demonstrate that the current complaint is oppressive. PC Jones does not work in the division that issued the parking ticket, a fact she is well aware of. The complaint history shows that the complainant has a personal issue with PC Jones, which is the motivation for asserting that he is responsible for her parking ticket. The previous complaints that were investigated and not upheld, and the evidence available, demonstrate that on many occasions the complainant had no interaction at all with PC Jones.

If PC Jones was the complainant's single point of contact (SPOC) for the last six months in response to an ongoing local matter, it might not be possible to demonstrate that this complaint is oppressive. This is because the complaints history is not necessarily indicative of a campaign against him, but of a frequency of contact as a result of his SPOC status. This latest complaint might be vexatious, but it would be necessary to demonstrate that the complainant knows that PC Jones could not be responsible for her parking ticket. It is not oppressive because a campaign against the officer cannot be demonstrated.

#### Abuse of procedure

The abuse ground is a far-reaching one covering a number of different scenarios where it can be demonstrated that the police complaints system is being misused or manipulated to influence another process or outcome. It should be used where it can be demonstrated that the complaint should not continue because the complaints system was not designed to cater for such a matter.

## Complaints about employment or personnel issues

The complaints system is not intended to deal with employment and personnel issues. Such complaints should be handled internally through the appropriate HR channels and force grievance procedures. There might, however, be some instances where such proceedings give rise to a legitimate complaint about the conduct of police officers or staff.

## Complaints against resolving or investigating officers

Where a complaint is made against investigating or resolving officers, careful consideration is needed about whether or not the complaint is against the conduct of the individual or the outcome of the complaint investigation. A complaint (or an appeal against an investigation) may contain both and it is important that conduct matters are identified and appropriately recorded.



### Case study five: handling of a misconduct hearing

A police officer's wife submits a complaint against the way the officer's misconduct hearing was handled and what evidence was heard.

This is an abuse of procedure because the officer should be challenging the hearing through the internal employment channels if he feels it was not conducted correctly. His wife using the complaints system instead is a misuse of the system.

If his wife was complaining that members of the panel made rude and derogatory comments to her during the hearing, this has nothing to do with the outcome of her husband's hearing and is a valid complaint in its own right.



### Case study six: dismissive investigating officer

The complainant states that they felt the investigating officer was dismissive during the complaint investigation and failed to return the complainant's calls or keep them updated.

This is a conduct complaint and should be recorded and handled separate to any subsequent appeal.

If the complainant states that the investigating officer has failed to understand the substance of their complaint and failed to interview a key witness, this would be something the complainant should raise as part of their appeal against the investigation and would represent an abuse of procedure.

## Escalating the complaint

If a complainant is unhappy about the outcome of their complaint, they have the right to appeal against any decision made. Re-wording the complaint or changing the officers complained against in a bid to re-open the complaint (rather than use the right of appeal or when the appeal right has been exhausted) might be an abuse of the complaints procedure. It might also be an abuse of the procedure to subsequently make a complaint about senior officers simply because they are ultimately responsible for the PSD's actions.

## Case study seven: dissatisfied with the outcome

An individual raised a number of allegations of treason against various senior political figures in the UK. He was told that there was insufficient evidence to support his allegations, and no further action would be taken. He subsequently complained about that decision.

The investigating officer concluded that the decision was right and the complaint was not upheld. The complainant then made allegations against the original officer who reviewed his allegations, the investigating officer who looked at his complaint and the Deputy Chief Constable (who is responsible for professional standards), stating that they were all corrupt and covering up the treason plot, which he believed he had uncovered.

The most recent complaints are vexatious and an abuse of procedure. The appropriate forum to challenge the decision on the first complaint is to make an appeal. Making further complaints instead of following that procedure is an abuse.

The aspect of the complaint against the Deputy Chief Constable is vexatious – there is no foundation for a complaint that the Deputy Chief Constable is corrupt and part of a conspiracy just because the department he is ultimately responsible for has disagreed with the complainant.

## Complaints about crime recording decisions

Complaints made about the decision not to record a matter as a crime will not usually amount to an abuse of procedure or constitute a vexatious complaint. A complainant might legitimately believe a crime has been committed – after all, they reported the matter to the police and the complaint is that an officer has made an incorrect decision.

A person questions an officer's decision not to record a matter as a crime, but does not formally complain. The person receives a thorough explanation why the decision followed force policy (for example, the matter is one which the force will never record). If the person then makes a subsequent complaint that the officer was wrong for not recording the crime, that complaint is vexatious. The force can demonstrate that the complainant knows about the force policy and the complaint against the officer has no foundation.

A complaint that the force policy is wrong is a direction and control complaint, rather than vexatious.



### Case study eight: 'no crime' decision

A member of the public reports to the police a number of youths trying to gain entry into a local village hall. The police attend and find no sign of forced entry or damage. The police tell the member of the public who made the report that the incident has been logged, but no crime will be recorded. The member of the public makes a complaint about this since he feels he witnessed an attempted burglary and the officers are wrong.

This does not amount to an abuse of procedure as the complainant believes he has witnessed a crime taking place and has reported it to the police. Therefore, he genuinely believes that their decision is the wrong one. The investigation might assess whether the officers' actions followed force policy on recording such matters.

If the officers attended the complainant's address and fully explained the force policy for recording crime (which is based on the National Crime Recording Standards), and the complainant feels the force policy is incorrect, this is a direction and control complaint. If the complainant refuses to accept the explanation and still wants to pursue a conduct complaint against the officer, then the complaint has no basis and is vexatious. If it is clear that the complaint was motivated by the complainant's personal feelings towards the officer, it may also be oppressive. If it can be demonstrated that the complainant has an ulterior motive for pursuing the complaint – for example, he is trying to be re-housed by his housing association and is citing a high crime rate in his area as a reason to be moved – then it might be possible to demonstrate that this complaint is an abuse of procedure. This is because he is complaining in a bid to overturn the police decision not to record the incident because he wants the official crime rate in his area to be higher, so he will be re-housed.

### Complaints about speed cameras or speeding tickets

A person might want to complain about police conduct resulting in a speeding ticket being issued – for example, where the police have placed the speeding camera. The police complaints system is not the correct forum to determine whether the speeding occurred, but provided the individual is challenging the ticket through the correct channels, i.e. the magistrates' court, they can still complain about the police conduct in respect of the issuing of the ticket. Complaints of this nature may need to be suspended pending the conclusion of the court proceedings.

If the individual has not tried to dispute the ticket through the magistrates' court, an attempt to use the police complaints system to challenge the speeding allegation is an abuse.

Complaints about the officer's conduct while issuing the ticket are a separate issue and are not an abuse of procedure.

### Case study nine: position of speed camera

A complainant challenges the issuing of a speeding ticket because he believes the camera was not well positioned to give an accurate speed reading. He also makes a complaint about an individual officer's decision to put the mobile speed camera in that particular place.

It is not possible to demonstrate that the complainant is manipulating the complaints system or attempting to use the complaints system instead of other proceedings, since he is challenging the ticket through the appropriate channels. This complaint does not represent an abuse of procedure.

If the complainant has already challenged the speeding ticket unsuccessfully, and then submitted the same issue as a complaint, this would be an abuse of procedure. This is because the complainant has already had the issues reviewed and is now using the complaints system as a further avenue to raise the same issue.

## Complaints from people who have been convicted

There can be no assumption that any person convicted of an offence who makes a complaint about their conviction is abusing the complaints process. The appeal courts are responsible for considering allegations of a wrongful conviction but a complainant might, at the same time, be making an allegation of police misconduct – this should be considered under the complaints system. The appeal courts will only be concerned with whether or not the alleged misconduct has rendered the conviction

unsafe. A police conduct investigation will review whether or not an officer has breached the Standards of Professional Behaviour, a much broader consideration.

A complaint might be an abuse of procedure if it is about something the complainant should clearly have raised when appealing their conviction, but failed to do so. A complaint might also be an abuse of procedure if the courts have already considered and made a determination about the issues within the complaint and no additional conduct matters are identified.

### Case study ten: allegation of perjury

Following his conviction in court for assault, a man made a complaint against the police officer giving evidence. He alleged that the officer lied under oath and perjured himself. The man also appealed against his conviction on the same basis.

The complaint is not made without foundation or with the intention of misusing the complaints system to overturn his conviction, as he is appealing through the appropriate channels. This complaint does not meet the definition of an abuse of procedure or vexatious complaint.

If the courts had specifically considered and rejected his argument of perjury, or if the complainant had made this claim after his appeal against his conviction was rejected, this would represent an abuse of procedure because the appropriate channels had been exhausted.

### Case study 11: civil versus criminal

The complainant pursued his previous business partner through various avenues after their company collapsed and his house was repossessed. The courts did not decide in his favour. He then reported his former business partner to the police for committing fraud. The police say that there is nothing they can do, as this is a civil law matter. The man makes a complaint against the police's decision, saying that it is wrong.

The complainant is saying that a police decision is incorrect and that needs to be looked at to find out if there is any merit to the allegation. His lack of success in the civil courts does not affect his right to report the matter to the police, or to complain about their response to his allegation. Unless it is possible to show that the complainant is only complaining because he is trying to overturn the civil court decision, this is not an abuse of procedure.

## Fanciful

A complaint is fanciful if no reasonable person could lend any credence to it. The complaint should be considered, not the person making it. The likelihood of a complaint not being upheld is not a reason to consider it fanciful.

It is important that the complaint is assessed when applying these grounds, rather than the incident giving rise to the complaint. There might be complaints where the original incident was fanciful, but an allegation that the police failed to investigate the matter is not fanciful.

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### Case study 12: surveillance

A complainant states that the police are bugging his apartment and have put him under surveillance.

While this might be assessed as unlikely, the police do have powers to monitor and observe individuals in certain situations. Therefore, it cannot be said that no credence can be given to the allegation.

### Case study 13: mind control

A complainant states that the police use technological devices (lasers) to control people.

The complaint is fanciful. A reasonable person would not give credence to the suggestion that the police are controlling people using lasers.

### Case study 14: tracking device

A complainant was recently treated in hospital and reported to the police that the hospital planted a tracking device in his brain during surgery. The police refused to investigate the matter further. The complainant made a further complaint against the police for refusing to investigate. The force declined to record the complaint on the basis that it was fanciful.

The original allegation against the hospital could be considered fanciful, but the complaint against the police is about refusing to investigate a reported crime. This complaint is not fanciful.

There is also a basis for the complaint, which is that the force refused to investigate the report further, so it cannot be considered vexatious either.

This is also not an abuse of the complaints procedure, unless it is possible to show that the complainant knows the police were right to refuse to investigate further. For complaints like this, recording the complaint and explaining why there was no further investigation might be sufficient.

### Case study 15: police helicopter

A complainant reported to the police that he was being followed by a police helicopter while carrying out his daily duties. He alleged that the helicopter followed him at eye level and waited while he went into the supermarket.

This complaint is fanciful because a reasonable person is unlikely to believe that the police would follow an individual in a helicopter, at eye level, and wait for them while they were in the supermarket.

### Case study 16: Facebook hacking

A man complained that the police were hacking into his Facebook account and invading his privacy because his ex-wife raised concerns. The complaint was assessed as fanciful and was not recorded.

The complaint is not fanciful. It is credible that the police can access information on social networking sites and other computer systems, albeit through legitimate policing legislation rather than hacking.

## Disapplication loophole

When a complaint is received that is repetitive, vexatious, oppressive or an abuse of procedure, it should not be recorded. If the complainant feels that decision is wrong, they can appeal to the IPCC.

The right of appeal against the decision not to record a complaint is always to the IPCC. The right of appeal against the decision to disapply the legislation to a complaint is usually back to the police force. Recording the complaint and then disapplying the legislation to it can be perceived as an attempt to limit IPCC oversight of that assessment.

An appropriate and timely decision not to record the complaint at the outset is the most efficient way to deal with such complaints and manages a complainant's expectations. Recording a complaint and then disapplying the legislation could further undermine a complainant's confidence in their police force. Recording their complaint raises a complainant's expectations that their concerns will be looked at, only to be told the force has changed its decision and no longer considers their concerns should be looked at.

Disapplying the legislation to a complaint allows a further opportunity to remove complaints from the system where it was not apparent at the time of recording that the complaint was repetitive, vexatious, oppressive or an abuse of the complaints procedure.

## Documentation and explanation of rationale

Complaint files must clearly record the reason for applying a particular ground(s) for not recording or disapplying a complaint. Letters to complainants must explain the recording/disapplication decision, and the grounds applied to the particular circumstances of the complaint. A letter should always include the following:

- a) the specific ground(s) being applied;
- b) an explanation or definition of the ground(s);
- c) an explanation of how the grounds apply to the particular complaint and circumstances.

While the legislation groups the terms 'vexatious', 'oppressive' and 'abuse of procedure' under one ground, they each have distinct criteria. Letters should make clear which term is being applied and why.

When a complaint is not recorded or disappplied for a specific reason, the complainant must be able to understand why. They can then make an informed decision about submitting an appeal or making representations against the decision. Letters to complainants should be clear, use sensitive language, and explain the decision in plain English.

When a complaint letter is long or unclear, the points of complaint should be drawn out or the police should contact the complainant to get a clear understanding of the complaint. It is not appropriate to define a whole complaint letter as fanciful or vexatious, for example, without identifying the main issues of complaint.

## Get in touch

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