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IOPC re-investigation policy

21 January 2026

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Introduction

This policy has been developed to assist the Independent Office for Police Conduct (IOPC) in determining whether a re-investigation of a previously concluded case is required.

Re-investigating concluded cases requires careful consideration of the original investigation and any new information or evidence that has emerged since the original investigation was completed. We recognise that it may be a challenging time for those involved and therefore the decision to re-investigate must be approached with rigour and reserved for circumstances where it is clearly justified.

Decisions to re-investigate will depend on a range of factors specific to the case in question. This policy sets out the principles and procedures that will be followed when deciding whether to re-investigate, alongside the key considerations that will inform the decision-making process.

What is a re-investigation?

Under Section 13B, Police Reform Act 2002, the IOPC has the power to re-investigate a complaint, conduct matter or death or serious injury (DSI) matter where the Director General is satisfied there are ‘compelling reasons’ for doing so. The statutory scheme gives no further guidance as to when ‘compelling reasons’ could be satisfied. Therefore, in order to assist IOPC decision-makers exercise this discretion appropriately, the following threshold test¹ has been formulated.

¹ The threshold test has been reformulated following the interpretation given to the original threshold test featured in the ‘Re-investigation of an IOPC investigation policy January 2021’ by the High Court in the case of **R (the King application of the Skelton) v the DG of the IOPC** [2024] EWHC 983 (Admin). The threshold test has been revised to provide clarity of meaning and to ensure that the threshold for re-investigation is a sufficiently high threshold to properly accord with the statutory test of ‘compelling reasons’.

To find 'compelling reasons' the IOPC decision-maker must be satisfied on the balance of probabilities, that:

- A. the original investigation was flawed to the extent that but for the flaw the IOPC would have reached a different end of investigation conclusion on discipline, performance and/or referral to the Crown Prosecution Service (CPS) would have been reached, or
- B. there is significant new information that requires further investigation which, had it been available, would have led to a different end of IOPC investigation conclusion on discipline, performance and/or referral to the CPS; and
- C. in respect of either condition A or B a re-investigation is necessary in the public interest.

The power to re-investigate cannot and must not be used solely to change a decision following completion of the investigation report.

If there is a decision to re-investigate, it will result in the completion of a new investigation report and decision-making document.

What circumstances does it apply to?

The power to re-investigate is available where a completed report on a directed or independent investigation of a complaint, recordable conduct matter or death or serious injury matter has been sent to the IOPC decision maker.

The power under section 13B can be used for all independent and directed investigations. However, section 13B cannot be used to re-investigate a managed investigation.

It applies to these investigations regardless of when the complaint was made or when the matter came to the attention of the appropriate authority.

It will not be necessary to use this power where the IOPC has not discharged all its functions under the Police Reform Act 2002 such as a Victims Right to Review (VRR).

A successful VRR application may affect the decisions around police officer or staff conduct but it will not necessarily lead to a re-investigation. For more information, please see our VRR policy.

How is a decision made?

On receipt of an indication that a re-investigation may be required, the IOPC will conduct a review to inform a decision on whether the ‘compelling reason’ test is satisfied.

An indication may come to the IOPC’s attention in a variety of ways, including, but not limited to, new evidence being identified or a potential material flaw in the investigation, coming to light through, or following:

- IOPC internal evidence
- A public law challenge
- A complaint
- An inquest
- A criminal trial

Where an IOPC internal review is carried out, the fact that the reviewer disagrees with a decision or outcome will not necessarily mean that it is wrong. Whilst it will be a consideration, the reviewer should allow a margin of discretion when assessing if there was a material flaw in the investigation. It is reasonable to expect that two decision makers might have differing opinions, especially when engaging in complex decision-making involving analysis of extensive evidence. The focus will be on whether the original decision-maker had considered all relevant issues and came to a well-reasoned and justifiable decision.

An inquest may investigate the same incident as an IOPC investigation but, bearing in mind the different purpose of an inquest² and any additional evidence heard at an inquest, may reach a different conclusion to an IOPC investigation. Whilst the findings will be considered, a different conclusion at an inquest will not necessarily mean an IOPC re-investigation will follow. The original investigation is not necessarily flawed simply because an inquest reaches a different conclusion, particularly when IOPC decision makers are reaching their conclusions applying a different statutory regime and for a different public interest purpose. There will be some cases where although the inquest conclusion is different, the original investigation is not flawed, and neither is there significant new information warranting a reinvestigation. Careful consideration will be given to each individual case.

The steps to be taken in any review will be informed by the volume and nature of

² The purpose of an inquest is to identify the medical cause of death, and to answer four statutory questions: who died, when and where they died, and how they came by their death – in article 2 ECHR engaged matters, this includes ascertaining in what circumstances the deceased came by his or her death (see s.5 of the Coroners and Justice Act 2009)

material that needs to be examined.

The review may consider, but is not limited to, the following:

- the seriousness of any allegations in the original investigation
- the strength, reliability and significance of the new evidence or information and reasons why it was not considered in the original investigation
- the extent to which any identified flaw is likely to have affected the end of investigation conclusion on disciplinary and performance proceedings and/or referral to the CPS.
- the community impact of the incident

Before the review starts, the IOPC will consider notifying any affected parties associated with the investigation. It is necessary, however, to consider whether any prejudice (i.e. harm or unfairness) to a subsequent re-investigation would result from the notification.

The time it takes to complete a review will depend on the circumstances of the case. For example, the cross referencing of material from the previous IOPC investigation with new evidence and/or material may take longer depending on the volume of material. If appropriate, the IOPC will update relevant stakeholders every 28 days during the review process.

Following the conclusion of the review, the IOPC will reach a provisional decision. The decision will provide a detailed rationale of how the decision was reached.

This will then be shared with relevant stakeholders and interested parties. Stakeholders will then typically have 28 - days to make representation on the provisional decision.

Following the representations received, the IOPC will consider all views provided before making a decision and will communicate the outcome to all relevant parties.

Material flaw/and or significant new information definition

A material flaw does not require the investigation to be so flawed as to give rise to grounds for judicial review. However, it must be determined that the material flaw was so significant that on the balance of probabilities it would have led to a

different end of investigation conclusion on discipline, performance and/or referral to the CPS. For example, this could be a failure to take proper account of relevant evidence and/or affording undue weight to irrelevant evidence.

Significant new information must be something that, had it been known at the time, on balance of probabilities would have led to a different end of investigation conclusion on discipline, performance and/or referral to the CPS. This is likely to be video or audio evidence not available to the IOPC during our investigation but can include other evidence such as additional witness accounts given to inquest proceedings after the conclusion of an IOPC investigation.

A different end of investigation conclusion on discipline or performance definition

In the public interest, a re-investigation will usually be necessary and therefore only proceed if, on the balance of probabilities, it will lead to a different IOPC conclusion.

For condition A, the material flaw must be significant enough that, but for the flaw, the investigation would likely have led to gross misconduct, gross incompetence, or misconduct which could potentially result in dismissal.

For condition B, the new information must be significant enough that it would likely lead to gross misconduct, gross incompetence, or misconduct which could potentially result in dismissal.

It is unlikely that the public interest would be best served by carrying out a re-investigation which is only likely to lead to a low-level misconduct outcome. This will depend on the circumstances of the case as well as the misconduct history of officers and staff.

Internal Learning

Any consideration of conducting a re-investigation represents an opportunity to identify internal learning, particularly where it appears that we have got things wrong. When learning is identified it will be communicated, as appropriate, to the individuals involved, or at wider organisation level.

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