

FOCUS

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SUSPENDING INVESTIGATIONS AND OTHER HANDLING PROCEDURES

Focus gives police force professional standards departments (PSDs) and local policing bodies practical guidance on dealing with complaints, conduct matters, and death or serious injury cases. It supports them to handle complaints appropriately and improves standards.

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Suspending an investigation or other handling

This issue sets out guidance for the appropriate authority (AA) on when and how to suspend and resume an investigation or other handling of a case being dealt with under the *Police Reform Act 2002* and associated regulations.

Suspending an investigation or other handling under Part 2 of the *Police Reform Act 2002* is temporarily pausing a case, because continuing it would prejudice a criminal investigation or criminal proceedings.

Relevant laws and regulations:

- Schedule 3 to the *Police Reform Act 2002*: Governs the handling of complaints and conduct matters
- Regulation 40 of the Police (Complaints and Misconduct) Regulations 2020: Allows the AA and Director General (DG) to suspend investigations or other procedures under Part 2 of the *Police Reform Act 2002*. **We will refer to this as Regulation 40 in this Focus.** As there are various provisions that apply for non-home office forces, they should seek advice on which suspension regulations would apply.
- Regulation 41 of the Police (Complaints and Misconduct) Regulations 2020: Sets out the steps that must be taken for resuming an investigation when a criminal matter is concluded. **We will refer to this as Regulation 41 in this Focus.**
- [IOPC Statutory Guidance \(2020\)](#): Provides operational guidance on when and how to suspend or resume cases.

Prejudice

The investigation or other handling under Part 2 of the *Police Reform Act 2002* of a complaint, conduct or DSI matter may be suspended when the subject matter of the complaint/investigation is closely connected to issues in a criminal investigation or proceedings, and continuing the investigation or other handling would prejudice the criminal investigation or proceedings.

[Chapter 15 of the IOPC Statutory Guidance](#), which is referenced in this Focus, states there should be specific and identified prejudice, and that prejudice should be significant.

In this Focus, please see section [Considering Key Factors](#) for examples of multiple factors that can help to inform whether the prejudice is significant.

Both the legislation and the IOPC Statutory Guidance should be considered collectively, when assessing and deciding whether there is prejudice.

If there is a closely connected criminal investigation or proceedings, the AA should make a careful assessment as to whether the investigation or other handling requires suspension, on a case-by-case basis. This is because there is no automatic assumption that the investigation or other handling should be suspended.

Suspension should only be considered where there is prejudice to the criminal investigation or

proceedings, not simply because another legal process is underway. This is a high threshold. It is possible that such processes could run concurrently with the complaint handling, unless proceeding with the handling would prejudice the closely connected criminal investigation or proceedings. The AA should record a clear reason for why proceeding with the handling would prejudice the criminal investigation or proceedings.

Who can make the decision to suspend?

Regulation 40(1) states the DG or an AA, may suspend any investigation or other procedure, under Part 2 of the *Police Reform Act 2002*, which would prejudice any criminal investigation or proceedings.

Although Regulation 40 requires the decision to suspend an investigation or other handling to be made by the AA (chief officer). This power can be delegated, and often is within police forces and the IOPC.

Regulation 46 of the Police (Complaints and Misconduct) Regulations 2020 permits chief officers to delegate the exercise or performance of all or any of their powers and duties under Part 2 of the *Police Reform Act 2002*. **We will refer to this as Regulation 46 in this Focus.** Specifically, it allows a chief officer to delegate these powers and duties to other individuals serving with the police.

If a case concerns the conduct of a senior officer (an officer holding the rank above that of chief superintendent), the chief officer can delegate to another senior officer, or a person serving in the police who, in their opinion, is of at least a similar level of seniority.

In all other cases the chief officer can delegate to an officer who is at least the rank of inspector, or a person serving within the police who, in their opinion, is of at least a similar level of seniority.

Regulation 46(2) provides that where a complaint is being handled by a chief officer in accordance with Paragraph 6(2A) of Schedule 3 to the *Police Reform Act 2002* (i.e. otherwise than by investigation), they may delegate the exercise or performance of their powers and duties under Part 2 to 'any person serving with the police'. This is subject to the condition that there must be no concerns as to whether the person could act impartially.

Criminal investigations and proceedings

When considering whether to suspend the investigation or other handling under Part 2 of the *Police Reform Act 2002*, it is essential to understand what constitutes a criminal investigation or proceedings. This ensures decisions are made lawfully, proportionately, and at the right time.

It is important to note that the criminal investigations or proceedings referred to within Regulation 40 are not limited to those that are brought solely against the complainant. Suspension may be appropriate where:

- the subject of the complaint is under criminal investigation
- a witness or third party involved in the complaint is part of a connected criminal case, or
- the matter overlaps with a broader criminal investigation, even if the complainant is not directly involved

What qualifies as criminal investigation or proceedings?

Criminal investigations

A criminal investigation is defined in the *Criminal Procedure and Investigations Act 1996 (CPIA)* as an investigation conducted by police officers to determine whether a person should be charged with an offence, or whether a person charged is guilty of it. Criminal investigations can also be conducted by other regulatory bodies such as the IOPC and National Crime Agency.

Criminal investigations will be deemed to have started, under the *Police Reform Act 2002* and associated regulations, at the point the investigator identifies an indication that a person serving with the police may have committed a criminal offence.

For criminal investigations that sit outside of the *Police Reform Act 2002*, and for those that are not against a person or persons serving

with the police, the AA is encouraged to make appropriate enquiries to establish whether, in cases where the report of a crime has been made to the police, an investigation has started.

The [College of Policing's Authorised Professional Practice](#) provides more information on the investigation process, and the positive and fast track actions that can be taken to help identify whether a criminal offence may have been committed and **may** therefore indicate that a criminal investigation has begun. **These actions are not an exhaustive list**, but could include:

- identifying and securing victim and witness accounts
- identifying and arresting the suspect
- securing or preserving evidence
- recording a crime in accordance with the [Home Office Crime Recording Rules](#)
- seeking early advice from supervisors or the CPS in more complex cases

There should be a record of any enquiries undertaken. To be sure that a criminal investigation has started, the AA would need to assess each one, on a case-by-case basis. The AA should also consider whether any criminal investigation is being conducted by another regulatory body. For example, where the AA is handling a local complaint, conduct or DSI investigation that is linked to an IOPC criminal investigation, and continuing the local investigation would prejudice the criminal investigation.

Criminal proceedings

The definition of 'criminal proceedings' can be found at Regulation 2 of the Police (Conduct) Regulations 2020 and the [IOPC Statutory Guidance, at page 175](#).

Criminal proceedings include:

- any prospective criminal proceedings, or
- all criminal proceedings brought which have not been concluded (apart from the bringing and determination of any appeal, other than an appeal against conviction to the Crown Court)

Criminal proceedings are considered active when a person is charged with a criminal offence.

Examples that do not qualify

For the purposes of Regulation 40, there are some legal processes that do not fall under the definition of criminal proceedings. These include but are not limited to:

- civil claims, such as personal injury claims, or judicial review applications
- civil orders, such as full Stalking Protection Orders
- coroner's inquest, even if it is about a death following police contact, a pending misconduct hearing or misconduct meeting

Criminal proceedings after a court case

Some post-court proceedings, such as appealing a criminal conviction to the Crown Court, fall within the definition of criminal proceedings. It is important to note that for suspension to apply under Regulation 40, there must be a connection between the appeal and the matters referred to within the investigation or other handling case.

Furthermore, there would be prejudice to the appeal if the investigation or other handling was to proceed.

For example, an appeal against a sentence is unlikely to be prejudiced by an ongoing investigation or other handling, as the appeal will not revisit the evidence that resulted in the conviction.

The IOPC has discretionary power to intervene and review suspension decisions made by the AA. Please see section ['IOPC's discretionary powers to intervene in suspension decisions'](#) for more information.

Avoiding premature suspension

Suspending a complaint, conduct or DSI matter, prematurely, such as when a criminal case is only under preliminary review or consideration, should be avoided. The complaint handler should ensure:

- there is evidence of a criminal investigation or proceedings
- that proceeding with the matter would prejudice the criminal investigation or proceedings
- that, in accordance with the [IOPC Statutory Guidance](#), the specific and identified prejudice is significant
- the decision is reviewed regularly and updated as the investigation or proceedings evolve
- the interested persons are notified if the decision is reviewed or changed

CASE STUDY ONE

Power to suspend - no criminal proceedings started

As part of an ongoing neighbour dispute, both sides made counter allegations to the police that a dividing fence had been deliberately damaged and of assault. The complainant was unhappy because the police did not take any action against her neighbour and made a complaint.

The AA recorded the complaint and decided to suspend the investigation. The rationale for suspending was that investigating the complaint would prejudice the ongoing police investigation. However, a decision had already been made that no further action (NFA) would be taken on the criminal matter. The AA provided no specific details or rationale about what prejudice would be caused if the complaint was investigated at this stage.

The complainant wrote to the IOPC to ask them to intervene and consider the appropriateness of the decision to suspend. The IOPC assessed the suspension decision but disagreed with the AA's rationale, on the basis that a decision had been made to take NFA before the complaint was received. The AA was told to contact the complainant with a view to resuming the complaint investigation. They were also reminded about the need to clearly explain what prejudice would be caused when communicating their decisions to complainants.

The power to suspend only arises where continuing the complaint investigation or other handling would prejudice a criminal investigation or criminal proceedings. The decision to suspend was made at a time when there was no criminal investigation that would be prejudiced or interfered with, because a decision had already been made to take no further action. As a result, there was no power to suspend the complaint investigation under Regulation 40.

Should a criminal investigation or proceedings start, the complaint investigation should be reconsidered for suspension under Regulation 40 at that point. If the decision is to suspend the complaint investigation because prejudice may be caused, the complainant should be notified and told that the IOPC has a discretionary power to intervene if they object to that decision. The decision to suspend should be regularly reviewed to ensure it still applies.



Ask yourself...

- Would you have applied the same thought process as the AA did in this case and considered the police matter to be a criminal investigation?
- When assessing whether to suspend a complaint investigation or other handling, what factors would you consider to determine if a criminal investigation has started?
- Do you have processes in place to ensure that the suspension decision is reconsidered should criminal proceedings begin at a later stage?

Clarifying the scope of suspension powers

The power to suspend only applies to complaint, conduct and DSI matters formally recorded under Schedule 3 to the *Police Reform Act 2002*. This is a crucial distinction for practitioners when assessing whether suspension is legally permissible.

Complaints handled outside Schedule 3 to the *Police Reform Act 2002*

Some complaints are handled outside of Schedule 3 to the *Police Reform Act 2002*. These are typically expressions of dissatisfaction that:

- do not meet the statutory threshold for formal recording
- are resolved informally or through service recovery
- do not trigger the legal framework for suspension under Regulation 40

While complaints handled outside of Schedule 3 to the *Police Reform Act 2002* are logged and dealt with, they cannot be suspended because they are not subject to Schedule 3 handling.

When considering handling options for a complaint which may later be suspended, [Paragraph 6.26 of the IOPC Statutory Guidance](#) states that if, at any point, it appears to the complaint handler that remedying the matter to the complainant's satisfaction cannot be achieved in a timely manner, or without substantial additional steps being taken, this is likely to indicate the matter should be formally recorded. At this point, the AA should consider whether a referral to the IOPC is required. Where a referral is not required, the AA should decide how the matter should be handled.

The principles of handling a complaint outside of Schedule 3 are that resolution is quick and more immediate. [Focus 13 Handling complaints - decisions and thresholds](#) includes examples of reasons for when complaints initially assessed as suitable for handling outside of Schedule 3, need handling under Schedule 3.

Assessing links, identifying prejudice and consulting with the Crown Prosecution Service

Assessing links

When considering suspension, the AA must assess the extent to which the matter, that will be subject to investigation or other handling, is intrinsically linked to the issues in the ongoing criminal investigation or proceedings.

The AA should be mindful of the right first time principles, as set out in the [complaint handling toolkit guidance](#). Suspension should only be applied where proceeding with the matter would prejudice the criminal investigation or proceedings, not simply because a criminal process is underway.

Under Regulation 40, an AA may suspend an investigation or other handling under Part 2 of the *Police Reform Act 2002* if, in its opinion, continuing would prejudice any criminal investigation or proceedings. This power is not limited to cases involving the subject of the complaint, conduct matter or DSI.

As previously noted in section '[Criminal investigations and proceedings](#)', a witness to an incident may make a complaint about how they were treated, even though they are not the subject of the criminal investigation, or a victim of crime may complain about how their report was handled, and this may overlap with a criminal investigation or proceedings.

In such cases, suspension may be appropriate if progressing the complaint would prejudice the criminal process.

[Chapter 15 of the IOPC Statutory Guidance](#) provides more detail on the considerations involved, including the process for notifying the complainant of the reason for suspension. It also sets out that the complainant may ask the IOPC to consider whether to direct that the investigation or other handling continues. [\(Please see the section on the IOPC's discretionary powers to intervene in this Focus for more information.\)](#)

Identifying prejudice

Under Regulation 40, the AA must identify the specific prejudice that would result from continuing with the matter. This includes:

- whether the investigation raises issues that are the same as, or closely connected with, the criminal investigation or proceedings
- whether progressing the matter would interfere with evidence, duplicate actions, or compromise witness accounts
- whether some elements of the complaint can be split, allowing those elements unrelated to the criminal investigation or proceedings to continue, while suspending others.

If the complaint can be progressed without prejudice, then it should be. The AA should consider liaising with their legal services and/or the CPS to seek their views. The AA may also wish to consider seeking advice from the Senior Investigating Officer (SIO) or Officer in the Case (OIC) for the criminal investigation or proceedings. As the SIO/OIC will have an in-depth knowledge of the case and may be best placed to suggest how the prejudice can be mitigated. However, the decision to suspend remains with the AA for local investigations and the DG of the IOPC for independent and directed investigations.

Linked complaint, conduct or DSI matters

Where an AA has suspended the investigation or other handling, due to a related criminal investigation or proceedings, this does not automatically require suspension of other linked complaint, conduct or DSI matters. For example, a number of complaints that arise from the same incident, such as a protest. The AA should assess each complaint individually to determine:

- whether the linked matters are distinct in nature

- the degree of connection between them
- whether progressing would prejudice the criminal investigation or proceedings

If any linked matter can be progressed without prejudice, it should be. When in doubt, the AA should liaise with the CPS, their legal services, the SIO or OIC for the criminal investigation or proceedings, and document its rationale. This decision and rationale should also be shared with the complainant.

Consulting with the Crown Prosecution Service

[IOPC Statutory Guidance](#) states that before the AA (or DG in independent or directed investigations) decides whether to suspend the investigation or other handling, they should consider if advice should be sought from the CPS, or their own legal department. But the AA may also wish to consider seeking advice from the SIO or OIC for the criminal investigation or proceedings.

Seeking advice on the decision to suspend, can help the AA determine whether any investigative steps can safely be taken without prejudicing the criminal investigation or proceedings. This may include securing evidence such as CCTV that would otherwise be lost. The AA should take all reasonable steps short of causing prejudice, to secure evidence which is likely to assist. Please see [paragraph 15.8 of the IOPC Statutory Guidance for more examples](#).

The AA should also consider whether any actions, that are necessary as part of the investigation or other handling, would potentially prejudice the related criminal investigation or proceedings. This could include obtaining accounts from individuals who are witnesses in the related criminal proceedings. If information is disclosed to the witness during the witness interview, this may have the capacity to negatively impact their future evidence. Arguments could also be made that the individual's evidence had been rehearsed in advance of the criminal proceedings. There may also be safeguarding issues about the witness and their capacity to engage with more than one investigation simultaneously. The prejudice could also arise from asking officers to provide a response to the complaint against them, when it would form part of the evidence in the criminal investigation or proceedings against the complainant.

It's important to consider if any other measures can be taken to mitigate the prejudice to the criminal investigation or proceedings. As part of this consideration, CPS advice is important as any investigation or other handling could involve the disclosure of information generated from either a criminal investigation or proceedings. The CPS is best placed to identify what steps, if any, can be taken without prejudicing the criminal investigation or proceedings.

CASE STUDY TWO

Failure to consult the CPS when assessing whether to suspend

A man made a complaint he had been unfairly treated when he called the police to raise concerns about the handling of a report he had made in which he alleged he was a victim of domestic abuse. The man stated that there would be an injustice in not investigating his report and felt that he was discriminated against due to his gender. The man was contacted by the AA to advise him the investigation of his complaint had been suspended. This was due to related ongoing criminal proceedings, in which he was a suspect of alleged harassment.

The man objected to the decision to suspend his complaint and asked if this decision could be challenged. The complaint handler advised the man that there was nothing further that could be done. The man contacted the IOPC regarding his complaint and said he was unhappy with the AA's decision to suspend the complaint investigation. The IOPC informed the man that the IOPC has a discretionary power to intervene and consider whether to direct the investigation to continue.

During the IOPC's consideration of the suspension decision, it identified that the AA had not considered consulting the CPS and had not sought legal advice before making their decision to suspend. The IOPC concluded that due to the nature of the related criminal proceedings and the linked allegations, the decision to suspend the investigation was appropriate. The IOPC gave guidance to the AA on seeking advice from the CPS, or their own legal department, when making decisions to suspend an investigation in future. It was also highlighted that complainants should be made aware that the IOPC has a discretionary power to intervene if they object to the suspension decision.

*The AA did not appropriately handle the decision-making process for suspending this investigation. **IOPC Statutory Guidance** states that the AA should consider seeking the views of the CPS, or their own legal department, before making the decision to suspend.*

CPS advice, or advice from their legal department, can help the AA in identifying what specific and identified prejudice there could be for a complaint. They can also advise on whether any action can be taken by the AA to reduce or remove the prejudice to a criminal investigation or proceedings. For example, securing any evidence, such as the recording of the initial phone call the man made to the force control room about the domestic abuse incident. Taking this action ensures that the complaint investigation can be completed as swiftly as possible following the period of suspension and that time sensitive evidence is not lost.

Had the AA consulted with the CPS, and had this step been communicated to the complainant, the subsequent ask for the IOPC to use their discretionary power to intervene may have been prevented. Furthermore, the complaint would have been dealt with in a more timely manner.

*Also, incorrect advice was given to the complainant that there was nothing further that the complainant could do about the decision to suspend. **IOPC Statutory Guidance** advises that if a complainant objects to the suspension of the investigation or other handling, they should be informed that they may ask the IOPC to consider whether to direct that the investigation or other handling continue. **See the section on the IOPC's discretionary powers to intervene in suspension decisions.***



Ask yourself...

- Are you confident you know when CPS or legal advice is required in assessing the suspension decision?
- Do you have any guidance for when to consult with the CPS, or your legal department?
- If legal or CPS advice is not sought, do you have a sufficient audit trail setting out your rationale as to why you have not sought legal input?
- If a complainant objects to a suspension decision, do you always signpost them with the necessary information to contact the IOPC?

It may not always be necessary to seek advice from the CPS, the AA's legal services or the SIO or OIC, if the prejudice is abundantly clear, or where concerns raised in the complaint are matters that must be determined by the court. This might include elements of the complaint that would form part of the complainant's defence to the criminal allegation or because the complaint is about a challenge to evidence that was or was not admissible in court. Any decisions on whether to consult with the CPS, or not, should be made on a case-by-case basis.

However, in all cases the AA should clearly document if it has sought advice, who the advice was sought from and what advice was received. A rationale should also be recorded for any decision **not** to seek advice where a decision has been made to suspend the complaint.

Considering key factors: informed and proportionate suspension decisions

Suspension decisions must be based on a careful assessment of multiple factors. The AA should avoid blanket approaches and instead weigh the seriousness, strength of evidence, and potential consequences of delay in each individual case.

Seriousness of the allegations

The AA should consider:

- the gravity of the complaint against the police
- the seriousness of the criminal allegation against the suspect or defendant in the related criminal investigation or proceedings
- whether the complaint involves public protection concerns, vulnerable individuals, or systemic issues

Where the complaint is serious and could result in disciplinary or criminal proceedings against a person serving with the police, the public interest in prompt resolution of the complaint may outweigh the prejudice to the criminal investigation or proceedings.

Balancing public interest

While Regulation 40 allows the AA to make suspension decisions that protect the integrity of criminal investigations and proceedings, the use of this power must be weighed against the public interest in prompt and effective complaint handling. Suspension of an investigation or other handling should not be automatic simply because there is a criminal investigation or proceedings. The AA must consider whether delaying the investigation or other handling of the complaint, conduct, or DSI matter would undermine public confidence, particularly in serious or sensitive cases. Where the public interest in the prompt investigation or other handling outweighs the prejudice, suspension may not be justified.

The complaints system exists to ensure accountability, transparency, and learning. Delays in investigating police conduct, especially where serious allegations are made, can erode public trust in policing, undermine the rights of complainants, delay potential disciplinary or criminal proceedings, and impact the quality of evidence and recollection over time.

Prioritising complaint investigations over linked criminal investigations or proceedings

In most investigations or other handling, where the matter is intrinsically linked to a criminal investigation or proceedings, the criminal investigation or proceedings take priority.

However, there are occasions where it may be in the public interest to continue with a prompt investigation, and this outweighs prejudicing the criminal investigation or proceedings. This can be for various reasons, but is usually where the person serving with the police is alleged to have committed a more serious offence than the offence against the defendant in the criminal matter.

CASE STUDY THREE

Prioritising a complaint

Police were called to attend a protest about immigration. A police officer arrived at the protest when an argument between a protestor and a man in the street began to escalate. The protestor was waving a British flag at the man and his partner and shouting derogatory, racist remarks at both of them. In response, the man pushed the protestor to the ground. The officer then restrained the man, stating he was under arrest for assault. The man argued with the officer and in response, the officer was verbally and physically aggressive towards him, shouting racial slurs at the man. This incited racial hatred, with the other protestors in the crowd repeating the racial slurs at the man and pushing him repeatedly.

Following the man's arrest, he was released from custody, pending criminal proceedings for common assault. The man then sent a complaint to the police stating that he had been racially discriminated against by the arresting officer. In his complaint, the man described the verbal and physical abuse by the officer, including the racial slurs directed at him during his arrest. He also shared a video with the police, which his partner had taken of the incident.

The man's complaint was recorded. The AA assessed whether to suspend the complaint investigation, due to the close link with the ongoing criminal trial of the common assault. However, the AA considered the serious nature of the discrimination complaint when making their decision. After watching the video provided by the complainant (which evidenced extremely offensive and derogatory, racist language), they decided to investigate the complaint. This was because the allegation concerned a serious report of racial discrimination by the officer. The AA identified that there was an indication that the officer may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings. So, the AA decided not to suspend the complaint and suspended the officer while the investigation into the complaint took place.

The AA was correct in their decision not to suspend the complaint in this scenario. It may be necessary for the AA to do a 'balancing exercise' when determining if a complaint investigation needs to take priority and suspension may not be appropriate. This includes assessing whether any delays caused by suspension would significantly undermine public trust in policing. In this situation, the racial discrimination by the officer and the indication that he had committed an offence of 'inciting of racial hatred', means that it would be in the public interest to ensure this complaint be investigated promptly. This is despite the prejudice to the ongoing criminal investigation or proceedings of an offence linked to this case, i.e. the common assault. In such cases, there would need to be close liaison with the CPS for each of the criminal investigations or proceedings, to mitigate the prejudice, where possible, and deal with disclosure issues.



Ask yourself...

- Do you always consider the 'balancing exercise' when assessing whether suspension is appropriate and if a complaint should take priority?
- What other serious offences within complaints, other than discrimination, do you think would take priority over a decision to suspend?

Strength of the evidence

The decision to suspend the investigation or other handling should be informed by the relative strength of the evidence supporting each allegation. The complaint handler should:

- seek further information where the evidence is unclear, unless the information gathering would prejudice the investigation or proceedings
- consider whether the complaint is supported by independent evidence, such as CCTV, body worn video, or independent witness accounts
- assess whether the criminal proceedings are likely to resolve or clarify the facts relevant to the complaint

Where the evidence supporting the complaint is strong and/or distinct from the criminal case, suspension may not be necessary. This approach encourages proportionate decision making. The IOPC recognises that not all recorded complaints carry equal weight. Suspension should be reserved for cases where both the prejudice and the evidential strength justify it. This is because the strength of the evidence is an important consideration, but the key consideration is whether that evidence can be used in support of the complaint, without prejudicing the linked criminal proceedings.

Impact of delay

The complaint handler must consider the likely length of delay and its potential impact on:

- the ability to bring a prosecution of a summary-only offence before the end of the six-month statutory time limit
- the viability of disciplinary proceedings, including the availability of witnesses and preservation of evidence
- whether delay would lead to the 'frustration' of criminal or disciplinary proceedings against a serving officer, including abuse of process arguments being made because of timeliness

- the welfare of the complainant, any interested persons and the subject of the complaint, including the risk of injustice caused by prolonged uncertainty

For example, suspending a complaint involving an allegation of common assault could result in the expiry of the prosecution window, preventing criminal charges from being brought.

Risk of injustice

The complaint handler should assess whether suspending the investigation or other handling would:

- cause unfairness to the complainant, such as denying access to justice or delaying resolution
- cause unfairness to the subject, such as prolonged, reputational harm or uncertainty
- undermine public confidence in the complaints system

Where delay could result in material injustice, suspension should be avoided or kept to the shortest possible duration.

Failing to identify prejudice

Failing to identify, as early as possible, if there would be prejudice attached to proceeding with an investigation or other handling, has the potential to prejudice a criminal investigation or proceedings. This could result in a prosecution being discontinued or the case being dismissed by the court.

Action that would prejudice a criminal case includes, but is not limited to:

- duplicating enquiries which could result in there being conflicting accounts
- making disclosures to a suspect or key witness during the course of a complaint investigation, which could affect the evidence they will give during the criminal investigation or proceedings
- the risk that suspect or witness evidence could be viewed as being 'rehearsed' if they are interviewed about the complaint

- investigation, before giving evidence during the criminal investigation or proceedings
- the risk that information, which was disclosed to suspects/key witnesses during the complaint investigation, could find its way into the public domain
- the risks associated with disclosure and how material generated during the complaint investigation would feed into the criminal investigation/proceedings under the provisions of the CPIA
- risks associated with the management and safeguarding of vulnerable witnesses.

Furthermore, failure to identify prejudice and suspend a complaint investigation or other handling may also lead to confusion for complainants if prejudice is identified at a later stage, through a different process such as an IOPC review.

CASE STUDY FOUR

Failure to suspend complaint handling

A woman was stopped in a vehicle by two officers on suspicion of having no insurance. The woman later made a complaint to the police about her treatment during the stop, including the officers' decision to stop her for driving without insurance and their actions during the stop.

The complaint against the police was recorded and investigated. The complaint handler requested a response to the complaint from the two officers concerned. Both officers declined to respond stating that the complaint related to the ongoing traffic offence investigation that could result in them being required to give evidence in court. The complaint handler continued with the complaint investigation, using other evidence to reach a decision that the level of service was acceptable.

The complainant applied to the IOPC for a review of the outcome of the complaint investigation as she was unhappy with the AA decision. During the IOPC's review, it was identified that the AA should have considered suspending the complaint investigation due to the linked criminal proceedings. The IOPC decided that the outcome of the complaint investigation was not reasonable and proportionate. This was because the investigating officer did not conduct the appropriate lines of enquiry, i.e. obtaining accounts from the officers while the linked criminal proceedings were ongoing. The IOPC upheld the review and directed the AA to re-investigate the complaint. The AA was advised that the re-investigation should be suspended until the criminal proceedings had ended.

In response to the IOPC's decision, the complaint handler contacted the complainant to advise that they would re-investigate her complaint, but the complaint investigation was suspended pending the outcome of the related criminal proceedings. In response, the complainant emailed the complaint handler stating she did not understand why the complaint investigation had not been suspended when she first made her complaint.

Once aware of the ongoing criminal investigation linked to the complaint, the complaint handler should have made further checks and considered suspending the complaint investigation to avoid any potential prejudice to the connected criminal proceedings.

Proceeding with the handling of the complaint without the officers' responses has affected the information available to provide a reasonable and proportionate response to the complainant's concerns.

Also, failure to consider suspending the complaint investigation resulted in an impact on the complainant's right of review. This can lead to confusion for the complainant if the possibility of the need to suspend is not identified early on.



Ask yourself...

- Would you have considered the potential prejudice to the ongoing criminal investigation at the outset of the complaint handling?
- What would be your response if officers who were the subject of a complaint refused to provide an account? How do you assess whether you have sufficient information and evidence available to provide a reasonable and proportionate response to a complaint?
- Consider the impact on the complaint if the criminal investigation reached a decision that the officers acted incorrectly in stopping the woman.

Alternatives to suspending, or actions that can be taken during suspension

When a complaint, conduct or DSI matter is closely connected to a separate criminal investigation or proceedings, there may be alternative actions that complaint handlers can take to avoiding suspending the entire investigation or other handling. These actions can address part or all of the matter, while mitigating any prejudice to a criminal investigation or proceedings.

IOPC Statutory Guidance confirms that there are steps that complaint handlers may take to reduce or remove the prejudice to a criminal investigation or proceedings, while still allowing the investigation or other handling of the matter to proceed. These include:

- carrying out a single interview with each relevant witness, covering both the subject matter of the criminal investigation or proceedings and the matter under investigation
- interviewing witnesses to the matter in the presence of the solicitor for the defendant to the criminal investigation or proceedings

There may also be enquiries, which have no relation to the criminal investigation or proceedings, that complaint handlers can pursue to progress the investigation or other handling. However, complaint handlers have an obligation to share material they uncover, with the SIO/OIC for the criminal investigation or proceedings, if it could support or undermine

the criminal case. They should also take care to ensure that the criminal investigation or proceedings has concluded **before the outcome of the complaint investigation is finalised** and shared with the complainant. This is to avoid disclosure of the outcome of the complaint investigation prejudicing the criminal investigation or proceedings.

Misconduct and criminal elements of a *Police Reform Act 2002* investigation

There will be cases where the report of a crime against a person serving with the police, is also a complaint or conduct matter. If a decision is taken that the matter can be investigated by the police, a local investigation will be carried out under paragraph 16 of Schedule 3 to the *Police Reform Act 2002*. There will be both a criminal and misconduct element to the investigation. The criminal element of the investigation should not delay the investigation of the misconduct element of the case. This is because both the criminal and misconduct elements form part of one investigation, under the *Police Reform Act 2002*.

Paragraphs 7.72 to 7.74 of the Home Office Guidance 2020 outlines the interview process where the matter includes both misconduct and criminal allegations. The legislation advises that ‘good practice in many

cases will be to immediately commence the misconduct interview on completion of the criminal interview’.

The misconduct element should not be suspended because it does not present prejudice to a separate criminal investigation or proceedings. **This is because it is the same matter being looked at for both the misconduct and criminal element of the *Police Reform Act 2002* investigation.** An assumption is sometimes made because there is a criminal element of the investigation, albeit not a separate one, then the misconduct element should be suspended.

It might also occur when the criminal element of the *Police Reform Act 2002* investigation is being carried out by a specialist unit, outside of the professional standards department. In these cases, the criminal element can be investigated by the specialist department, with information and evidence shared with the complaint handler to form part of the misconduct element of the *Police Reform Act 2002* investigation.

Examples of this include, but are not limited to:

- **Police perpetrated domestic abuse** – An ex-partner reports domestic abuse against a person serving with the police. The ex-partner decides to exercise their right to become a complainant under the *Police Reform Act 2002*, and both the crime of domestic abuse and the complaint are handled at the same time.
- **Sexual assault** - A victim-survivor reports a rape, and the suspect is identified as a person serving with the police. As well as the criminal element of the investigation, the matter is also recorded as a conduct matter, as the victim-survivor chose not to be a complainant under the *Police Reform Act 2002*. Both elements of the criminal and conduct investigation are dealt with at the same time.
- **Fraud** - a vulnerable person’s advocate makes a complaint that an officer, who is a relation, is removing money from the vulnerable person’s bank account. The criminal element of the investigation into

the allegation of fraud is dealt with at the same time as the complaint element against the police.

- **Misuse of police systems** – a person makes a complaint that her neighbour, an officer, is obtaining and sharing sensitive information about them. The criminal element of the investigation into the unlawful use of police systems is dealt with at the same time as the complaint element of the investigation.

Once the criminal and misconduct elements of the investigation are complete, the AA should assess whether there is a case to answer. Furthermore, the AA should decide whether to refer the matter to the CPS, so a decision can be made whether the criminal investigation will proceed to court. The outcome of both decisions can potentially be communicated to the complainants and IPs, subject to the [harm test as summarised in the glossary of the IOPC Statutory Guidance](#). A right of review should also be provided, if there is a complainant.

Although there is a presumption that misconduct proceedings will progress ahead of, or at the same time as any criminal proceedings, they can be suspended if they would prejudice any criminal proceedings (Regulation 10(1) of the Police (Conduct) Regulations 2020).

CASE STUDY FIVE

Misconduct and criminal elements of a *Police Reform Act 2002* investigation

A member of the public contacted the police to make a complaint against her former partner, a serving police officer, for domestic abuse. Within her complaint she reported experiencing coercive and controlling behaviour over several years. She decided to make her complaint because her ex-partner had started to use their children to further control her and she was scared he might take them away one weekend when he has custody of them. She explained that he told her that if she reported him, he could lose his job and wouldn't be able to pay for things for the children. He threatened her, saying that no-one would believe her over him because he is a police officer and he would make her sound crazy.

The AA recorded the complaint and referred the matter to the IOPC. The IOPC decided that the matter should be locally investigated by the police.

The complaint handler engaged with the complainant who disclosed years of domestic abuse by her former partner. From the outset of the investigation, it was identified that the officer may have committed a criminal offence and behaved in a manner which would justify the bringing of disciplinary proceedings. A decision was taken that, due to the nature of the allegations made, the criminal element of the investigation would be progressed by specialist officers in the domestic abuse unit, while PSD progressed the misconduct element of the investigation. The domestic abuse unit would also be able to provide the complainant with the relevant support, including assigning an independent domestic violence advocate (IDVA). While the criminal element was being investigated, the PSD progressed the misconduct element at the same time. The domestic abuse unit worked with the PSD to share information and evidence obtained.

The PSD was correct in their decision not to suspend the complaint, and to progress the misconduct element alongside the criminal element of the investigation. The report of domestic abuse by a serving police officer is one complaint that incorporates both a criminal and misconduct element. Where an incident of police perpetrated domestic abuse involves investigation of both criminal and misconduct matters, PSDs should not delay the investigation of the misconduct element until the completion of the criminal element of the investigation. The evidence obtained for the criminal element of the investigation is the same evidence that would be used to form part of the misconduct investigation. By progressing the two elements alongside each other, this reduces the need for the complainant to have to re-live traumatic experiences with a PSD complaint handler after the criminal element is concluded.



Ask yourself...

- How are police perpetrated violence against women and girls cases handled within your AA – would any criminal element be investigated within PSD, or by specialist units?
- Where specialist units are used to investigate, what processes do you have in place to ensure information is shared with PSD on a regular basis?
- How often do you consider if the criminal and misconduct elements of an investigation can proceed at the same time?
- In this case, would you have sought legal advice about the decision to investigate both the criminal and misconduct elements of the investigation at the same time?
- Who would be responsible for updating the complainant on the progress of the investigation, where the criminal element is being investigated outside of PSD?

In cases where a *Police Reform Act 2002* investigation for both criminal and misconduct elements is being pursued, careful management is required throughout. Decision making about disclosure may present challenges. Disclosure obligations for case material can be complex, yet crucial in preventing inadvertent breaches of rules and duties and prejudice to the case. For example, disclosing any evidence that will be relied on in court or anything that would present a risk of harm. For this reason, there is a need for close liaison between the investigator or complaint handler and officer in the case for the criminal investigation or proceedings, if they differ, to ensure that any decisions and actions do not have an adverse impact.

In all cases, there should be close liaison with the CPS throughout, with a clear audit trail to reflect any discussions.

Splitting complaints

In cases where some aspects of the complaint are not intrinsically linked to a criminal investigation or proceedings, it's important to assess if those complaints could be split from other aspects of the complaint. Regulation 14 of the Police (Complaints and Misconduct) Regulations 2020 provides the power to combine and split investigations. Splitting complaints allows some aspects of the complaint to be progressed at the earliest

opportunity, without prejudicing a related criminal investigation or proceedings. Where complaints are split, the AA should provide a separate right of review when each complaint is concluded.

Seeking the views of the complainant may help to determine if they would prefer this approach, rather than suspending the investigation or other handling of the entire complaint until the related criminal proceedings are concluded. Good communication with the complainant throughout will help to understand their preferences and manage expectations. However, the decision to suspend rests with the AA.

[Focus issue 12 – Data capture: logging a complaint](#) and [Focus issue 19 – Reviews](#)

provide more information, including some case studies on splitting complaints.

Securing readily available evidence

Where a decision is made to suspend an investigation or other handling, readily available evidence, which can be safely obtained without prejudice, should be secured for consideration once the related criminal proceedings are concluded. This can be police documentation such as custody logs, body worn video footage and CCTV evidence. Complaint handlers should also consider obtaining statements from witnesses whose accounts

will not affect the criminal investigation or proceedings. These decisions should be made in consultation with the CPS.

Pursuing these enquiries early on will ensure

vital evidence is not lost, especially when considering that a criminal case may not be heard in court until months or years after the date of the original incident.

Communication

Notifying complainants of decisions to suspend

Once a decision is made to suspend an investigation or other handling, the complainant should be notified in writing and given the reason for the decision.

It's important the communication to the complainant explains what complaints have been recorded, and if some allegations are being split and handled separately, which ones these are.

The communication needs to be clear about which elements of the complaint investigation or other handling are being suspended and include the rationale for that decision, unless disclosure might impinge on the criminal

investigation or proceedings. **It is not enough to say the complaint investigation is linked to a criminal investigation or proceedings and that the issues are the same or closely linked. The rationale should be specific as to how continuing with the investigation or other handling would prejudice any criminal investigation or proceedings.** This will help the complainant to understand the reasons for the decision to suspend.

If the complainant objects to this decision, they should be informed that the IOPC has a discretionary power to intervene and consider whether to direct the investigation or other handling to continue. See [IOPC's discretionary powers to intervene in suspension decisions](#), in this Focus, for more information.

CASE STUDY SIX

Communicating suspension decisions and splitting out a complaint

Following his arrest for assault of a police officer, a man made several complaints to the police about how he was treated during his arrest and while in custody. In his complaints, the man alleged that the arresting officers had shouted at him during his arrest. The man also raised concerns that despite asking for a copy of the PACE codes of practice while in custody, he wasn't provided with them until shortly before he was released.

The police recorded the man's complaints and contacted him to advise that the investigation into his complaints had been suspended, pending the outcome of his criminal trial. The rationale for this was that the criminal investigation and the complaints were closely related. Therefore, the decision to suspend the investigation into the complaint was taken to avoid potential prejudice to the criminal investigation.

The man contacted the IOPC and asked them to intervene in the decision to suspend the investigation into his complaints. In his correspondence to the IOPC, the man said that he was confused by the information provided to him about the suspension decision. The letter he received from the police only listed some of the complaints he had made about his arrest. The complainant asked for clarification on whether his other complaint about his request for a copy of the PACE code of practice in custody had been recorded, and whether it would be looked into. The IOPC contacted the AA to clarify this issue. The AA said that the man's complaints had been split so that they could address the police custody complaint at an earlier stage. The remaining allegations relating to his arrest were suspended, due to their link with the criminal investigation.

The IOPC agreed with the decision to suspend the investigation into the complaints relating to the man's arrest. The IOPC's decision letter advised the complainant that the police would separately handle his complaint about his request for a copy of the PACE code of practice in custody. The complaint related to his arrest would be suspended until the outcome of his criminal trial. The IOPC advised the AA that they should provide clearer information for complainants on which complaints have been suspended and which complaints will be progressed. They were also directed to provide regular updates to the complainant on the progress of his complaint investigation.

The decision to suspend the investigation of the man's complaint relating to his arrest was appropriate in this case. The man's arrest for assault of the officer was intrinsically linked to his complaint and any investigation of this would prejudice the criminal investigation. The AA also made the correct decision to split out part of the man's complaint not linked to the arrest, to ensure it could be dealt with at the earliest opportunity.

However, the AA failed to clearly communicate the suspension decision to the complainant. It is important to set out all the details in the letter to the complainant. This includes what has been recorded, the complaints that are suspended and the rationale for suspension, and if any split-out complaints will be progressed earlier.



Ask yourself...

- How often do you consider if a suspended complaint could be split out, so part of the complaint could be handled without delay?
- What steps could you take to ensure that a complainant is clearly informed of a suspension decision and any investigation updates (e.g. splitting out a complaint)?

CASE STUDY SEVEN

Failing to provide a proper rationale for suspending each allegation

The complainant was arrested for assaulting their neighbour. They later made a police complaint about how the attending officer had failed to take any action against the neighbour for instigating the incident. The complainant received a letter from the complaint handler telling them that their complaint would not be investigated, until the criminal proceedings against them had concluded. They said this was called 'sub-justice'.

The complainant asked the IOPC to intervene. They said they were aware they were on bail pending further investigation and were concerned they might be charged and taken to court without being informed. They also wanted to know why the AA refused to investigate their complaint.

The AA recorded a rationale for the decision to suspend the investigation and provided this to the IOPC. They explained the complaint raised the same issues that may be used as evidence should the criminal investigation result in court proceedings. They said that progressing the complaint investigation would prejudice the criminal case and provided details on the specific prejudice.

After considering all the information, the IOPC agreed with the decision to suspend the complaint investigation for the reasons provided. However, feedback was provided to the AA about their communication with the complainant.

Where a decision is made to suspend the investigation of a complaint, the complaint handler should notify complainant, in writing, of the decision and give a clear rationale for the decision.

Communication with the complainant should be in plain English, free from jargon and use appropriate terminology. In this case, the complaint handler should have used 'suspended complaint' rather than sub-justice. This terminology caused the complainant concern and confusion.



Ask yourself...

- Where do you record your rationale for suspending a complaint investigation?
- Are you confident that your written decisions to complainants clearly explain the reason for suspending a complaint investigation?
- Do you have templates that could be reviewed to ensure communication is clear, free from jargon, and prompts the author to explain what the specific prejudice is?

Updates to complainants

There is a requirement to provide regular updates to a complainant or interested person about the progress of the investigation or other handling. This should happen every 28 days, until the investigation or other handling is concluded. **This also applies to cases that are suspended.** However, there are some exceptions to the duty to provide information. The exception which might be most relevant in this context would be where premature, or inappropriate disclosure might impinge on the criminal investigation or proceedings.

In cases that are suspended, the information that can be provided may be limited. However, there are several steps that complaint handlers can take to help keep the complainant informed, to foster good and transparent communication and build a level of trust, such as:

- making initial contact to introduce yourself as the complaint handler or investigator so they have a point of contact

- establishing preferred method of contact and taking all reasonable steps to achieve this
- obtaining regular updates on the criminal investigation or proceedings and regularly reviewing any suspension decision when appropriate
- explaining any reasons for the ongoing delay, such as trial dates being moved, and the reasons why certain actions can't be taken to progress the investigation or other handling, and
- reviewing and adjusting any originally planned timescales

More information on how often and what considerations should be made when communicating with complainants and interested persons can be found in [chapter 11 of the IOPC Statutory Guidance](#).

CASE STUDY EIGHT

Communication with the complainant - 28-day investigation update requirements

A man complained to the police about the mishandling of evidence in an investigation in which he was suspected of harassment. The man alleged that the police had lost video evidence which the complainant had sent to them following a police interview. The complaint was recorded, then suspended on the grounds that investigating it would prejudice the ongoing criminal inquiry. The complainant was informed of the suspension and the complainant said he was unhappy with this decision. The police told the complainant that the IOPC has a discretionary power to intervene if he objects to the suspension decision.

A couple of months later, the complainant contacted the police to request an update and ask whether his complaint was still suspended. Following a lack of response from the police to his enquiry, the complainant asked the IOPC to intervene and consider the appropriateness of the decision to suspend. The complainant explained his frustration with the lack of communication he had received from the police about his complaint. While the IOPC emailed the AA to ask for an update, the AA failed to respond despite several attempts to contact their professional standards department.

Following an escalation by the IOPC, the complaint handler responded to the IOPC to advise that the complaint investigation was no longer suspended, as the criminal proceedings had concluded. The complaint investigation had since resumed, but the complainant had not been made aware of this. The IOPC asked the AA to contact the complainant to advise him that the investigation had resumed and to provide meaningful updates on the progress made so far. The force was reminded by the IOPC of their requirement to provide regular, timely updates to complainants every 28-days, including when a complaint investigation is suspended.

It is important that complaint handlers provide complainants with clear, consistent updates on the progress of complaint investigations. This applies to all complaints, including those under suspension. Failure to provide the required 28-day updates can lead to a breakdown in trust and frustration in the complaints process for the complainant. This includes updating the complainant once their complaint is no longer suspended after criminal proceedings have concluded, and asking if they wish for the investigation to be resumed.



Ask yourself...

- What processes do you have in place to ensure that complainants are updated every 28 days, even where a complaint is suspended?
- Do you always contact a complainant at the conclusion of criminal proceedings, asking if they would like the complaint investigation to be resumed?
- What processes do you have in place to ensure that any enquiries from the IOPC are addressed and dealt with in a timely manner?

Updates for cases open for longer than 12 months

Regulation 13 of the Police (Complaints and Misconduct) Regulations 2020, states that the local policing body (LPB) and the DG of the IOPC should be notified in writing, by the AA, of any cases where the investigation is not completed within 12 months of either:

- the date the complaint is made to the AA or
- the date a conduct/DSI matter comes to the attention of the AA

This also applies to cases that are suspended. The IOPC is responsible for reporting its own independent or directed investigations to the LPB and chief officer of the police (unless the chief officer's conduct

is under investigation) if the 'relevant period' exceeds 12 months.

The updates should continue every 6 months until the investigation is concluded. Please see the [Operational Advice Note for 12-month timeliness reports](#) for more information on this process and what information should be provided.

The AA must send a copy of the information to the complainant, any interested person and the subject of the complaint. The information would not need to be provided if doing so might prejudice the investigation. [Please see paragraphs 11.16 – 11.20 and paragraph 13.85 of the IOPC Statutory Guidance](#) for more information on when there may be exceptions to the duty to provide information.

Record keeping and updates on criminal proceedings

As well as providing the rationale for deciding to suspend an investigation or other handling to the complainant, complaint handlers should make a record of the decision. This will provide a necessary audit trail for the rationale and be beneficial if the service user asks the IOPC to use their discretionary power to intervene on this decision. Also, the decision to suspend the investigation or handling should be regularly reviewed and the review decisions noted on the record.

Reviewing decisions to suspend

Part of that review should include establishing and maintaining dialogue with the officer handling the criminal investigation or proceedings the complaint is linked to. This ensures the complaint handler remains updated on the status of the criminal investigation or proceedings. It also helps to inform whether continued suspension is appropriate and avoid any unreasonable delay to the investigation or other handling. This can also help with providing meaningful updates to the complainant – [see the section on communicating with complainants](#) for more information.

There can be various reasons as to why a decision to suspend an investigation or other handling can change. This will primarily be when the criminal investigation or proceedings are complete, and suspension ends. However, there could be other factors that may not have contributed to the original decision to suspend, but subsequently inform a decision to bring an investigation or other handling out of suspension.

There is no prescriptive list, but [key factors](#) should always be considered when reviewing a decision to suspend. It could be that evidence has come to light that increases the seriousness of the complaint investigation, versus the criminal proceedings, and tilts the balance in favour of progressing with the complaint investigation first. The CPS should always be consulted where criminal proceedings have started or are anticipated.

If the decision is made to continue with the suspension of the investigation or other handling, and the complainant objects to this decision, complaint handlers should inform them that the IOPC has a discretionary power to intervene and consider whether to direct that the investigation or handling continues.

Repeat representations from the complainant

In cases where there are no changes to the suspension decision, but the complainant is repeatedly challenging the decision to suspend, the AA should inform the complainant that the IOPC has a discretionary power to intervene and consider whether to direct that the investigation or handling continues.

Failing to keep up-to-date with the criminal investigation or proceedings can prevent the investigation or other handling from being dealt with at the earliest opportunity. It could also result in the complainant asking the IOPC to intervene in a decision to suspend, when the criminal investigation or proceedings have concluded.

IOPC's discretionary powers to intervene in suspension decisions

Paragraph 15.9 of the IOPC Statutory Guidance states that when the investigation or other handling is suspended, the complainant should be informed that they may ask the IOPC to consider whether to direct that the investigation or other handling continues, if they object to the suspension decision. This is not a statutory right to review, rather a request that the IOPC consider using their discretion to direct that a process resumes. A complainant can request IOPC consideration, at any point during the complaint's suspension.

The option to ask the IOPC to use their discretionary power to intervene is not limited to the complainant. While the IOPC Statutory Guidance specifically refers to complainants, Regulation 40 grants the IOPC a general power to direct resumption, which may be triggered by requests from an interested person. The IOPC's power to direct resumption applies to **any investigation or other handling** under Part 2 of the *Police Reform Act 2002*, encompassing complaints, conduct matters and DSIs.

However, it does not apply to IOPC independent or directed Investigations, where decisions on suspension rest with the IOPC itself. In such cases, complainants should first lodge any objection with the IOPC for consideration, but ultimately, the decision may need to be pursued via judicial review.

Where the IOPC disagrees with the AA's decision to suspend the investigation or other handling, it must first consult with the AA before issuing a direction to resume. This ensures that

the AA's rationale is fully considered and that any direction is proportionate and informed. Even where a comprehensive explanation has been provided, consultation remains a necessary step.

The IOPC may also seek input from the CPS, especially in complex or high-profile criminal proceedings. However, there is no statutory obligation to do so.

The AA also needs to update the IOPC if the criminal process has concluded and the matter is no longer suspended, in order for the power to intervene process to stop.

Premature disclosure

The AA should avoid the practice of progressing the handling of a complaint that ought to be suspended and providing the complainant with a heavily redacted copy of the outcome report, to minimise the prejudice to the ongoing criminal proceedings. Redacting outcome reports can undermine transparency, significantly affect the complainant's ability to understand the outcome of their complaint and lead to a perception that information is deliberately being withheld. It will also result in the complainant receiving a right of review against the outcome of their complaint, when a linked criminal matter remains open. The correct decision where linked criminal proceedings are ongoing, and prejudice is identified, is to suspend the handling of the complaint.

Potential impact on reviews

The relevant review body (RRB) might receive a review from a complainant about the outcome of their complaint and become aware that a linked criminal matter remains ongoing.

Where the AA has not suspended the investigation or other handling, the RRB may uphold a review on the basis that key enquiries could not be pursued as it would prejudice the criminal matter, and therefore the outcome was not reasonable or proportionate. In those cases, it would likely be identified that it was both premature and prejudicial to attempt to address

the complaint before the criminal proceedings had concluded.

In circumstances where the IOPC is the RRB, they may direct a re-investigation. The AA should consider whether the investigation should be suspended, under Regulation 40, until the criminal proceedings have concluded. See [case study 4](#) and the paragraph [‘Failing to identify prejudice’ in the ‘Considering Key Factors section](#) for how this may apply in practice.

These considerations may also apply where a victims’ right of review is ongoing.

Resumption of suspended complaint investigations and other handling

Resuming complaint investigations

Regulation 41 relates to the resumption of complaint investigations that were suspended under Regulation 40, once a criminal investigation or proceedings have concluded. For information on next steps that should be considered for other handling, please see the section on [resuming other handling](#).

A criminal case is considered concluded when a conviction, acquittal or sentence is imposed. A guilty plea does not equate to concluded proceedings as the plea may be withdrawn or changed in court, and the outcome remains undetermined until sentencing. Until that point, if there remains a prejudice, the matter should remain suspended.

Before a complaint investigation can be resumed under Regulation 41, unless the complainant has indicated that they wish for the investigation to start or to be resumed, the AA must contact the complainant. This is to ask whether they wish for the complaint investigation to start or be resumed, and review and confirm the main points of the complaint.

This communication with the complainant is essential. No enquiries should be pursued until this step is completed. The AA is expected to take all reasonable steps to contact the complainant. This includes:

- exploring multiple contact methods i.e. telephone, email, letter, or in person (where appropriate). Consider whether the complainant’s circumstances have changed or that at the conclusion of the criminal proceedings, the complainant may be serving a prison sentence
- documenting all attempts to contact the complainant to demonstrate reasonable efforts were made, via different methods
- allowing a minimum of 28 days before making decisions on next steps

Failure to make meaningful contact could undermine the fairness and legitimacy of decisions surrounding whether the investigation should be resumed.

CASE STUDY NINE

Resuming a complaint investigation when no longer suspended

A member of the public was arrested at a protest for an offence under section 5 to the *Public Order Act 1986*, due to their use of abusive language and disorderly behaviour. The police later received a complaint about the conduct of the arresting officer. The complainant raised concerns about offensive language used by one of the officers during their arrest.

The AA suspended the complaint, explaining that it was intrinsically linked to the ongoing criminal proceedings and that investigating it now would prejudice the case. This was because the complainant had raised concerns about the conduct of the arresting officer during the arrest, and the two matters were identified as intrinsically linked. The complainant was advised that the IOPC has a discretionary power to intervene if they object to the suspension decision.

The complainant asked the IOPC if they could direct the police to continue investigating their complaint, as they would be pleading guilty at the criminal trial. The complainant said that they had told the police that they would plead guilty, but their complaint had not been progressed. The IOPC assessed the suspension decision and agreed with the AA's rationale for suspending the complaint investigation. The criminal trial took place, and the complainant subsequently changed their plea to not guilty during court proceedings. The criminal trial found the complainant not guilty.

A complaint handler sent a letter to the complainant to advise that all criminal proceedings had now concluded. The complaint handler asked the complainant if they would still like their complaint to be investigated. There was a lack of contact from the complainant, despite multiple attempts to contact them. After two months of no contact from the complainant, the AA decided to take no further action on the complaint.

The AA made the appropriate decision to suspend the complaint investigation in this scenario. They also made the correct decision to continue the suspension after the complainant stated they would plead guilty to the offence. Criminal proceedings will only be concluded once there is an outcome for a criminal investigation and trial, i.e. a conviction, acquittal or sentence provided.

The process the AA took in resuming the complaint investigation was also followed appropriately. Under Regulation 41, the AA must write to the complainant to determine how the complainant wishes to proceed.



Ask yourself...

- What do you consider to be meaningful attempts to contact a complainant?
- What would you do if the complaint investigation had resumed, but the complainant submitted an appeal against their conviction?
- A complainant may choose not to resume the handling of a complaint investigation, but the matters reported against the officer are of a serious nature. Would you be confident that the investigation would proceed as a conduct matter, where appropriate?

When a complainant does not respond

If a complainant fails to respond following reasonable attempts to contact them under Regulation 41, the AA can close the complaint investigation. The AA should issue a final communication to the complainant explaining that, as attempts to contact them were unsuccessful, the matter will now be closed without a right to review.

Under Regulation 41, the AA must decide whether the subject of the complaint raises serious issues that warrant a conduct investigation, perhaps about conduct, performance or criminal behaviour. If it does, the AA must:

- determine whether it would be in the public interest to investigate the complaint as a recordable conduct matter, if the legal thresholds are met (see [Chapter 8 of the IOPC Statutory Guidance](#))
- proceed with a conduct investigation where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings.

Can the matter be reopened if the complainant later contacts the AA?

While there is no formal reopening mechanism under the regulations once a complaint investigation is closed, the AA may choose to reconsider the matter if:

- the complainant contacts the AA with a reasonable explanation for the delay (for example, health issues, housing matters, issues with the methods of contact etc.)
- there is new evidence relating to the allegations, and this still meets the threshold for investigation
- the complaint raises issues of serious misconduct, or it is in the public interest

If the complaint is already closed at the point the complainant re-engages, and the AA decided it was not in the public interest to treat the complaint as a recordable conduct matter, the AA may choose to record it as a new complaint or reopen the original.

Resuming other handling

While the AA can suspend a complaint being handled otherwise than by investigation under Regulation 40, there is no automatic resumption process for these cases under Regulation 41. It is, however, best practice to contact the complainant to discuss how to resolve their complaint, following similar principles as set out in Regulation 41. In these cases, the AA should also:

- ensure that once criminal proceedings are concluded, document any decisions about next steps.
- assess if the matter is still suitable to be dealt with otherwise than by investigation. Consider if new information has come to light that may result in an investigation being more suitable.
- maintain open lines of communication with the complainant.

Action following the decision to resume

[Chapter 15 of the IOPC Statutory Guidance](#)

provides more information on the process and considerations that should be made when resuming an investigation or other handling following suspension. Resuming the handling can happen when criminal proceedings have concluded, the AA has reconsidered their decision to suspend, or where the IOPC has made the decision it should resume when asked to intervene by the complainant.

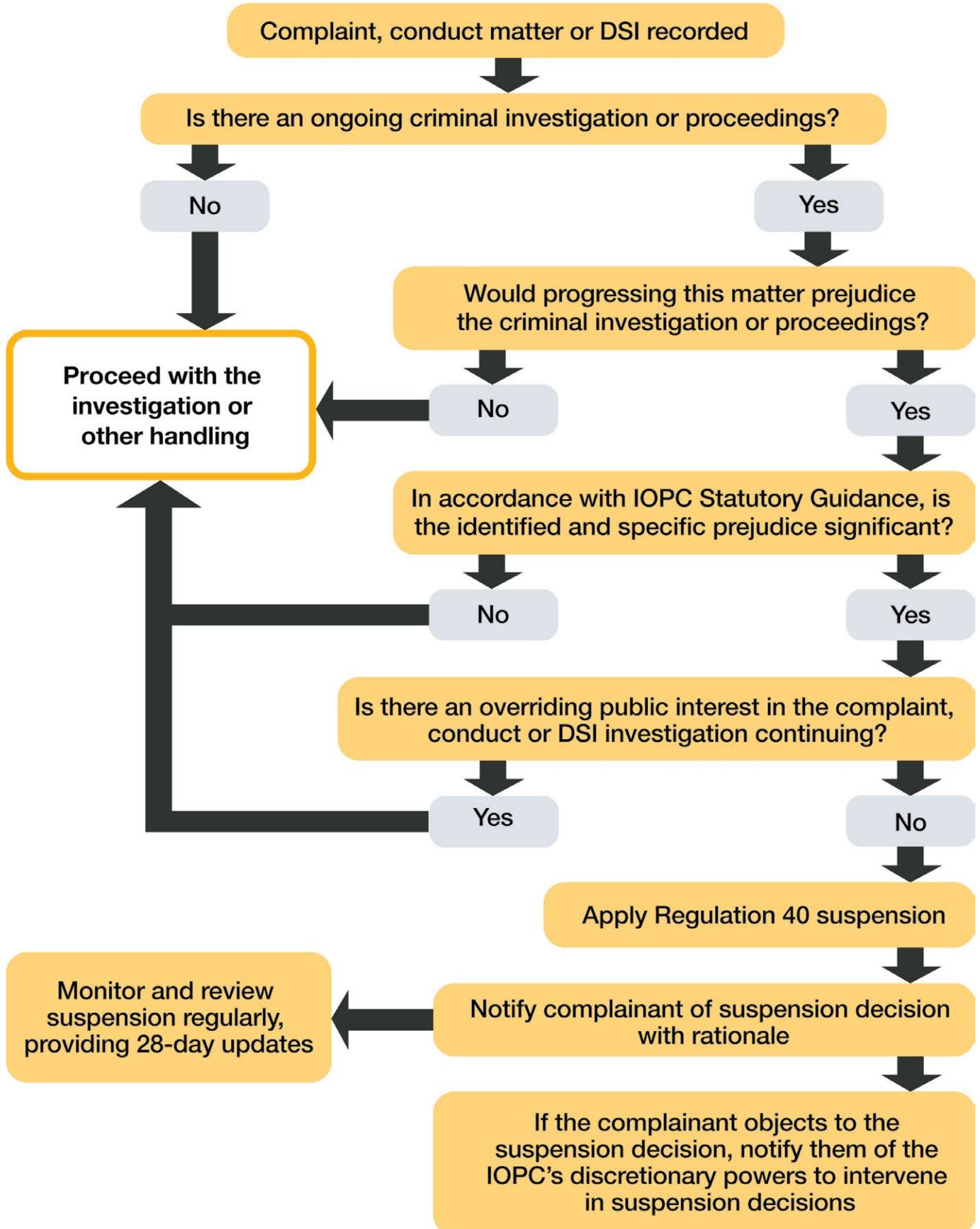
It is important that once resumed, the investigation or other handling should be prioritised. This includes cases where the IOPC decide that only part of the investigation or other handling should resume. This is because of the potential passage of time since the complaint was made and bringing the matter to a timely conclusion should take precedence.

This guidance was written to support the IOPC Statutory Guidance. By following the steps outlined in this guide, we aim to equip complaint handlers with the practical knowledge to suspend investigations and other handling where a specific, identified and significant prejudice applies. Consistent application

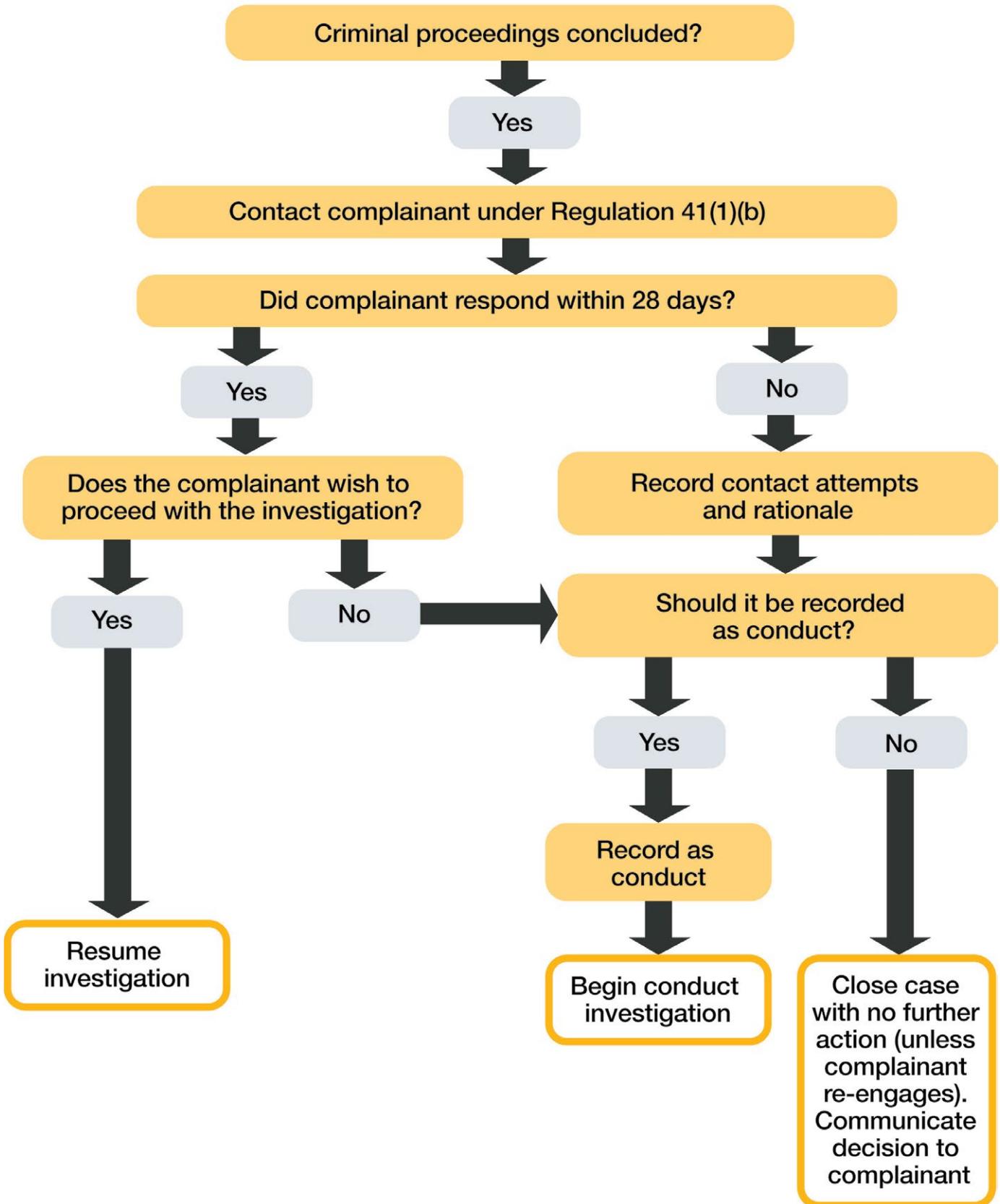
of these principles is key to success. To support the AA to apply these principles, we designed a [learning tool to help aid understanding of the process](#). It includes more case studies and questions to assess knowledge and understanding of suspension of investigations and other handling procedures.

Annex A: Workflows

Appropriate authority workflow for suspending a complaint, conduct matter or DSI (Regulation 40)



Appropriate authority workflow for resuming a suspended investigation (Regulation 41)



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Get in touch

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Contact the IOPC for further advice, or if you need a copy of this issue in another language or format.

We welcome correspondence in Welsh. We will respond to you in Welsh and that this will not lead to delay.

*Rydym yn croesawu gohebiaeth yn Gymr aeg.
Byddwn yn ymateb i chi yn Gymraeg ac na fydd hyn yn arwain at oedi.*

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