

# FOCUS

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 (DSI). It supports them to handle complaints appropriately and improves standards. This issue is about the referral of DSI, complaints and conduct matters in line with the *Police Reform Act 2002*, as amended by the *Policing and Crime Act 2017*. This issue was updated in August 2022.

[www.policeconduct.gov.uk/focus](http://www.policeconduct.gov.uk/focus)

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## Referrals

### Quick links

<b>Referrals</b>	<b>2</b>
<b>Making a referral</b>	<b>3</b>
<b>Referral thresholds</b>	<b>7</b>
<b>Death or serious injury</b>	<b>10</b>
<b>Serious corruption</b>	<b>15</b>
<b>Serious assault</b>	<b>18</b>
<b>Discrimination</b>	<b>19</b>
<b>Relevant offence</b>	<b>21</b>
<b>Article 3</b>	<b>21</b>
<b>Voluntary referrals</b>	<b>22</b>

# Referrals

Information on when to refer cases to the IOPC is set out in chapter 9 of the IOPC Statutory Guidance. The referral of certain complaints, conduct matters or death or serious injuries (DSI) matters to the IOPC is fundamental to public confidence in the police complaints system. It is also one of the grounds that determine whether a subsequent review will be considered by the IOPC.

## Complaints that must be referred to the IOPC

A force must refer:

- allegations that the conduct or other matter complained of has resulted in death or serious injury
- complaints that fall within the mandatory referral criteria<sup>1</sup>, or
- complaints the IOPC notifies the appropriate authority (“AA”) that it must refer

## Conduct matters that must be referred to the IOPC

A force must refer:

- recordable conduct matters that relate to any incident where someone has died or suffered a serious injury during or in consequence of police contact

- recordable conduct matters that fall within the mandatory referral criteria, or
- recordable conduct matters which the IOPC notifies the AA that it must refer

If criminal behaviour occurred before an officer joined the police service (pre-attestation), the decision to refer is based on whether the behaviour is considered to be, and recorded as, discreditable conduct that could bring the police service into disrepute and not the specific criminal offence under investigation. This is likely to mean that discreditable conduct by itself does not require a mandatory referral. When referring discreditable conduct due to a criminal investigation relating to pre-attestation conduct, please make this clear in the referral.

All DSIs must be referred to the IOPC. In cases where the AA is unsure whether to refer a case, we encourage referral.

If on initial consideration a case does not meet the threshold for referral, but further information comes to light which indicates an incident is more serious than first thought and now meets the referral criteria, it must be referred to the IOPC.

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<sup>1</sup> The mandatory referral criteria are set out in Chapter 9 of the IOPC Statutory Guidance.

## Making a referral

The decision to refer must be made by the AA. To avoid delays, it is important that forces put in place an appropriate process to pass potentially referable matters to the IOPC. This includes complaints received by other areas of the force and complaints made to local policing bodies operating under models two and three. The AA will be responsible for assessing whether or not a referral should be made to the IOPC.

### Determining the AA

When a police officer/staff member<sup>2</sup> has transferred forces since the alleged conduct took place, the force where the officer/staff

member currently works is the appropriate authority and should make the referral. It is not the force where the officer/staff member was serving at the time of the alleged conduct. If the officer has retired, the AA is the force where the officer last served.

Where an incident crosses force boundaries (for example, a police pursuit or an investigation into a missing person), each police force involved must assess their own involvement. They should each make a separate referral to the IOPC if they identify a DSI, complaint or conduct matter involving one of their officers/staff members.

## CASE STUDY ONE

### DSI following contact with two forces

A woman was arrested after being stopped in a stolen car that was linked to a burglary in her hometown. The woman was taken to the nearest custody suite and her home force was notified of her arrest. On arrival at custody, she explained she was epileptic and required medication twice a day. She had last taken it that morning. The woman was held overnight and was due to be transferred the following morning to the area where she was wanted for the burglary. A risk assessment recorded that her medication would be collected from her home by her home force and it would be available on her arrival at their custody suite. There was a delay in her transfer and she was collected in the afternoon. By this point she had missed two doses of her medication. On arrival at the new custody suite, the female had a seizure in the holding area.

*A referral is required by both forces under the death or serious injury referral criteria. For the home force, consideration would need to be given as to whether the delay caused or contributed to the seizure she had. The arresting force would need to consider the impact of the delay in transferring her and the potential lack of medical provision provided to her while under their care.*

<sup>2</sup> Police officer/staff member also includes contractors working for the police.

## Making an assessment of a complaint

When deciding whether to refer a complaint to the IOPC, the AA must assess whether the **complaint alleges conduct which constitutes** the behaviour outlined in the referral ground(s). The AA should not engage in an assessment of the merits of the complaint. They should only consider the complaint and any enquiries made with the complainant to fully understand the complaint. The AA should not consider any available evidence to determine whether a referral of a complaint is required.

The AA should assess the nature of the conduct being complained about, rather than simply any label that may have been attached to it. A bare allegation or mere assertion that a person serving with the police “is corrupt”, or “has perverted the course of justice”, would not on its own be sufficient to meet the mandatory referral criteria. Where no further information is provided by the complainant, the AA should make early contact with them to ask exactly what behaviour or conduct is alleged to have happened. The AA can take this further information into account when deciding whether the mandatory referral criteria is met.

It is not necessary at the assessment stage for any particular person serving with the police to be named or otherwise identified within the complaint. AAs should not check and validate information about the complaint on police systems. For example, checking whether a person was in custody, or an officer complained about was on duty, at the time of the alleged incident. Where the incident has resulted in an injury, the AA should not seek medical evidence. These enquiries go beyond what is needed to decide whether a referral is required, although any information available should be provided with the referral, to assist the IOPC’s decision on necessity to investigate and mode of investigation.

When a complainant makes the same or similar complaint to one made previously, and it meets the mandatory referral criteria, then the AA must still refer the complaint to the IOPC. Whether a complaint in the same or similar terms was

made previously and how it was handled, are factors the IOPC will take into account when determining whether it is necessary to investigate or whether to refer the matter back to the AA. If the AA is referring a complaint in these circumstances, it should highlight this in the supporting documents for any new referral, and state how the previous complaint was handled and finalised.

## Completing the 7.1 referral form

It’s important the 7.1 form is completed accurately and includes as much detail as possible. These details are used to assess whether the IOPC has remit to consider the matter being referred, to inform the mode of investigation (MOI) decision and to contact interested parties. It may also be used to inform the terms of reference of any subsequent independent investigation.

Before making a referral, the appropriate authority must record the matter as a complaint, recordable conduct or DSI and provide the relevant reference number with the referral.

For conduct referrals, the 7.1 form must include the following:

- details of the officer(s) or police staff who have had allegations recorded against them
- if allegations were recorded for multiple police officers/police staff, the referral form should clearly state which allegations each officer/police staff member is subject to
- for each allegation, please specify the conduct that was recorded, the standard of professional behaviour which may have been breached and why it is considered to justify disciplinary proceedings.
- any welfare considerations or risks around the IOPC contacting the officer(s)/police staff involved.

For DSI and complaint referrals, the 7.1 form must include the following:

- contact details for the complainant or injured party(s). This will be used to notify them of the MOI decision where it is appropriate to do so

- For each allegation, please specify the conduct/allegation that was recorded
- If allegations were recorded for multiple police officers/police staff, clearly state which allegations apply to each officer/police staff member
- For DSI referrals, where there is an injury, details of the injury and whether it is life altering or life threatening, and the nature of the police contact
- any welfare considerations or risks around the IOPC contacting the complainant/injured party/officer(s)/police staff involved.

For all referrals, ensure that the correct nature and origin of referral is selected. It is the responsibility of the AA to refer a matter to the IOPC, unless the matter has been ‘called in’ by the IOPC. Please do not select ‘called in’ on the referral form unless it actually has been, in writing, by an IOPC Regional Director.

### Providing supporting material

For all types of referral, we require AAs to send all supporting material that is readily available with the 7.1 referral form. The IOPC cannot make a reasonable assessment of the level of investigation required without all of the known facts. It is also important that we review any available information and material that either undermines or supports the credibility of the allegation.

At the point it becomes apparent that a matter is referable, no further action should be taken by the AA, save for preservation of evidence, safeguarding actions and gathering readily available information to inform the IOPC’s decision about whether an investigation is necessary.

“Readily available” means existing information and evidence that can be gathered by the AA. No new evidence should be created for the purposes of referral.

Readily available information	Generating new evidence
<ul style="list-style-type: none"> <li>• system research – conduct history, shift rotas</li> <li>• available CCTV/body worn video/ audio footage</li> <li>• incident logs, custody records, crime reports</li> <li>• police notebooks/arrest accounts</li> <li>• conduct assessment form/original complaints</li> </ul>	<ul style="list-style-type: none"> <li>• requesting a formal statement</li> <li>• interviews</li> <li>• instructing experts</li> </ul>

If you have a matter that meets the mandatory referral criteria, but information is readily available that may justify the officer’s/police staff member’s actions, the matter should still be referred. The IOPC will take into account all of the information available when making an MOI decision.

### When new complaints or conduct matters come to light

A further referral should be submitted where additional, referable conduct is identified or new referable complaints are made during the course of an investigation.

## CASE STUDY TWO

### Complaint following a DSI

Police officers saw a car being driven erratically by a member of the public. The driver failed to stop when signalled to do so by the officers and a pursuit began. The pursuit ended when the car being pursued collided with a tree. The driver died at the scene. The AA referred the matter to the IOPC as a DSI and we started an IOPC independent investigation. During the course of the investigation, the father of the deceased man complained that the actions of the officers caused the death of his son. The lead investigator informed the AA that a complaint had been made and the complaint was recorded.

*The complaint is also referable as it arises from an incident in which a person died following police contact. Although the complaint covers the same circumstances as the DSI, and the complaint was made to the IOPC, the AA must first record the complaint and provide a further referral form to enable the IOPC to consider the appropriate mode of investigation.*

If new information comes to light for a conduct, complaint or DSI matter that was previously referred and returned to the force for a local investigation, a re-referral should be made if the new information indicates that:

- Article 2 or 3 of the European Convention on Human Rights (ECHR) might be engaged, or
- there is a significant change in circumstances that may suggest that the mode of investigation decision should be reconsidered

### Power of own initiative and power of call-in

The power of own initiative<sup>3</sup> allows the IOPC to treat matters that have not been recorded or referred as if they have been. The purpose of this power is to allow us to seize the initiative

and quickly consider matters that have not been recorded by the AA. This power applies to complaints, conduct matters and death or serious injury matters. Where an AA receives notification that a matter has been treated as referred, it must record the matter if it has not already done so. As soon as possible after the notification, the AA should provide all relevant information that has not already been supplied.

The IOPC can require that any complaint or recordable conduct matter is referred to it by the AA. If the IOPC calls in a matter, it must be referred without delay, and no later than the end of the following day after we notify the appropriate authority that it must be referred. The AA should provide all relevant information with the referral, or as soon as practicable after.

<sup>3</sup> The power of initiative and power of call-in are set out in Chapter 9 of the IOPC Statutory Guidance



# Referral thresholds

## Chief officer referrals

Local policing bodies must make a referral to the IOPC where a conduct matter relates to a chief officer<sup>4</sup> or where a chief officer is a relevant person involved in a death or serious injury matter<sup>5</sup>. They must also make a referral where a complaint relates to a chief officer and the AA is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of criminal or disciplinary proceedings. The local policing body must be satisfied that the conduct matter, complaint or DSI is about the chief officer. See [Focus 16](#) for more information about identifying and handling allegations against the chief officer.

### Referring complaints against a chief officer

There is a 7.1 form for chief officer referrals which sets out the information that needs to be included in the referral.

The decision to refer a complaint against the chief officer must be made on the nature of the complaint and without scoping the available evidence. The entirety of the complaint should be considered and not just the label attached to the allegation by the complainant. There are times that it will be clear, from the information provided, that the behaviour complained about does not amount to what the complainant alleges. For example, where a complainant alleges the chief constable has perverted the course of justice by not answering a question

about crime rates during a meet and greet session with local residents.

It is important that the LPB confirms they are the correct AA and they can conduct limited enquiries in order to establish that the complaint is truly about the conduct of the chief officer. Having a clear scheme of delegation in place will assist with identifying if the matter complained about relates to the conduct or duties and responsibilities of the chief officer. Limited enquiries may also be made with the complainant to clarify the allegations and to understand the complaint.

All available evidence should be gathered and provided to the IOPC to inform the decision on whether an investigation is necessary and the mode of investigation.

Once a complaint has been referred, the IOPC will apply the indication test. The readily available material provided with the referral will be used to inform this assessment. If there is an indication that the chief officer may have committed a criminal offence or behaved in a way that would justify the bringing of disciplinary proceedings, the IOPC will determine an independent or directed investigation. If the indication test is not met, the matter may be returned for reasonable and proportionate handling.

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4 For the purposes of this publication, 'chief officers' refers to chief constables and the commissioners of the Metropolitan Police Service and the City of London Police.

5 Section 29, *Police Reform Act 2002*



## CASE STUDY THREE

### Allegation of assault

*A member of the public complained that the Chief Officer assaulted him at a wedding reception he was attending while off-duty. The complainant alleged that during a disagreement at the bar, the Chief Officer punched him and then left the venue. The complainant provided video footage from a mobile phone to support his complaint. The footage shows the Chief Officer and the complainant at the bar in what appears to be a heated discussion. The Chief Officer is shown to leave some money on the bar, walk past the complainant and leave the building.*

*The complainant alleged that the Chief Officer assaulted him which, if proven, would result in criminal or disciplinary proceedings. Although the video footage does not appear to show that the complainant was punched, **based on the complaint alone**, the appropriate authority cannot satisfy itself that the conduct complained of, if proved, would not justify criminal or disciplinary proceedings. Therefore, this complaint should be referred. The footage and any other available evidence should be provided with the referral so that the IOPC can decide if the indication test is met.*

### Conduct matters involving a chief officer

For conduct matters involving a chief officer, the local policing body must review all of the available evidence and then complete the indication test<sup>6</sup>. If the indication test is met, the matter must be referred and the IOPC will conduct a directed or independent investigation. There is no discretion to make any other mode of investigation decision for conduct matters involving a chief officer. For this reason, local policing bodies are encouraged to consider contacting the IOPC to discuss their application of the indication test.

### What matters meet the indication test?

A matter will meet the indication test if the assessment of the readily available material shows that a chief officer may have:

- a) committed a criminal offence
- b) behaved in a manner that would justify the bringing of disciplinary proceedings, or
- c) infringed a person's rights under Article 2 or 3 of the ECHR

The term 'indication' takes the plain English definition. The threshold for meeting the indication test is low and there does not need to be confirmation that the alleged conduct did happen. However, if available information shows that the alleged conduct is undermined by evidence or is inherently unlikely to have happened, then there may be no indication.

<sup>6</sup> See paragraphs 10.7 to 10.9 of our Statutory Guidance.



## CASE STUDY FOUR

### Scoping Chief Officer conduct

A member of staff reported that the Chief Officer was using police funds for personal purposes by regularly claiming expenses for petrol, hotel and food bills for his family holidays taken each July. This was treated as a conduct matter.

#### Scenario A

*The AA conducted a review of readily available systems and expense records. From this scoping, it appeared that the Chief Officer was not known to have taken leave in July for the past three years and there were no expense records for hotels in those months. Only one food and drink receipt had been submitted as expenses in the month of July in the past three years. On this basis, there is no indication that the Chief Officer may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings. The indication test is not met and the matter does not need to be referred.*

#### Scenario B

*The local policing body undertook scoping of the readily available force systems and expense records with the assistance of the force's Professional Standards Department (PSD). This showed that hotel bookings had been made in July for the past three years. However, it was not clear if the booking was made for work or personal purposes as the Chief Officer was known to attend a work-related training course in the same area as the hotel. Food bills and petrol had also been claimed showing amounts that would be considered unusually high for a single person and receipts included children's meals. On this basis, the indication test is met because the available evidence appears to support the allegation that the chief officer behaved in a manner that, if proved, would justify criminal or disciplinary proceedings. The matter should be referred to the IOPC along with the supporting information. The IOPC would be required to begin a directed or independent investigation.*

### DSI matters involving a chief officer

Where a chief officer is a relevant person<sup>7</sup> involved in a death or serious injury matter, this would require a mandatory referral and the IOPC would determine a directed or independent investigation.

### Police and crime commissioner (PCC) referrals

Police and Crime Panels should make a referral to the IOPC where a conduct matter or serious complaint<sup>8</sup> relates to the PCC or equivalent<sup>9</sup>. There is a separate referral form for matters

relating to PCCs. The Police and Crime Panel may be required to gather readily available information to support the referral. Gathering information that is readily available does not constitute taking an investigative step.

If conduct is recorded against a PCC or equivalent, it must be referred to the IOPC.

When a complaint is made against a PCC or equivalent, the Police and Crime Panel must refer it to the IOPC if it determines that it is a "serious complaint". Anyone can make a serious complaint and it is defined as one that constitutes or involves, or appears to

<sup>7</sup> Section 29, *Police Reform Act 2002*

<sup>8</sup> "Conduct matter" and "serious complaint" is defined by s.31(1) *Police Reform and Social Responsibility Act 2011*.

<sup>9</sup> Regulation 13, *Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012*

constitute or involve, the commission of a criminal offence. On receipt of a referral, the IOPC will consider whether there is an indication of a criminal offence and whether it

## Death or serious injury

Death or serious injury cases are mandatory referrals of incidents where no one has complained, **and no recordable conduct matters have been identified**, but where the circumstances of the incident need to be looked into. This may be because someone has either died or been seriously injured, and it might have been as a result of police action or inaction. This does not include police officers or members of staff who have died or been seriously injured while on duty. A death or serious injury, which may have occurred as a result of police contact, is one of the mandatory referral criteria. A DSI cannot be referred voluntarily.

Serious injuries are those where there is a significant impairment, either temporary or permanent, to a person's functional abilities. This can either be:

- physical, for example, broken arm, deep cut or laceration, ruptured spleen, or loss of consciousness, or
- mental, for example, personality change, memory loss or epilepsy, as a result of brain injury

### Making a DSI referral when there is no body

The definition of a DSI does not require there to be a dead body. The requirement is for the person to have died. In the absence of a dead body, the requirement that the person 'has died' can be proved by circumstantial evidence. In other words, evidence from which the death of the person can be reasonably inferred.

is necessary to investigate the referral. Where considered appropriate, the IOPC may begin an independent investigation.

For example, a person was apprehended by the police, but then escaped and jumped into a nearby river. The person is seen by a witness to go under the water but is not seen to come back up. Despite a search, the body is not found. The evidence from the witness who saw the person go under the water and not come up, is circumstantial evidence of their death. The death of the person can reasonably be inferred from that evidence.

While in the absence of a body, there is a possibility that the person could still be alive, referring these types of cases allows the IOPC to make a decision on whether to investigate in a timely manner.

Deciding whether an incident might have been the result of police action or inaction can be a fine distinction. It can be difficult to identify whether or not there may be a causal link between police action or inaction and what happened.

**Only when there is clearly no causal link between the death or serious injury and the action/inaction of the officers/police staff should forces not refer cases – if there is any possibility of a causal link, it should be referred.**

Please refer to [Focus issue 20](#) for more information on local DSI reports.



## CASE STUDY FIVE

### Death following contact

#### Scenario A

An AA was notified of a death following police contact. A paramedic had asked for police assistance to deal with an agitated man who said that his drink had been spiked. Two police officers were deployed. The man calmed down and complied with the paramedics. The police officers stayed with the man while he was taken to hospital. He was kept in for observation and the officers left the hospital. Thirty-one minutes later the man suffered a cardiac arrest and died.

*This does not need to be referred to the IOPC. The information indicates that the officers attended in a support role only. There is no suggestion that the police officers' actions may have caused or contributed to the death. The officers played a limited role in the incident, escorting the man to hospital, and no further disturbances were reported.*

#### Scenario B

The attending officers restrained the man in order to get him in to the ambulance.

*As it is not possible to rule out any causal link between the restraint and the subsequent cardiac arrest, the matter should be referred.*



## CASE STUDY SIX

### Loss of consciousness

A man in custody head butted his cell door repeatedly. Police officers and detention staff entered his cell and restrained him on the floor. An ambulance was called because he had a golf ball-sized lump on his forehead. He lost consciousness for about five seconds and was bleeding from his mouth. When paramedics arrived, they decided not to take him to hospital, but instructed police officers to make sure that he was woken up every 30 minutes. The loss of consciousness was momentary and the paramedics were not unduly concerned. The matter was not referred and the file was closed.

*Regardless of the paramedics' assessment that the head injury did not require further medical intervention, this incident involved a head injury that resulted in a loss of consciousness. This meets the definition of a serious injury. As the injury occurred while the man was in the custody of the police, it should have been referred.*

## CASE STUDY SEVEN

### Suicide

A police officer was arrested on suspicion of stealing money recovered during a drugs raid. During his interview he revealed he had a number of financial worries that had escalated over time and his personal debt was becoming unmanageable. He was bailed while enquiries continued. His Police Federation representative drove the police officer back to the town centre. In the early hours of the next morning, his partner called the police to tell them that he had not come home that night. The police officer was found dead in a nearby park later that day. He had taken his own life.

*This matter should be referred to the IOPC because the death did not occur while the officer was acting in the execution of his duties and because a causal link cannot be ruled out – the officer's arrest and interview may have contributed to his decision to take his own life.*

### Recognising potential links

It is important to assess any police contact (direct or indirect) or lack of police contact, leading up to an incident. Examples include:

- the management of a known risk of someone self-harming
- the way a missing person's report is graded and responded to
- failing to protect a vulnerable person who is at risk of harm

If any recordable conduct issues are apparent from the outset, the matter should be referred as a conduct matter and not a DSI.

You should consider whether a different response, behaviour or intervention by the police might have led to a different outcome. It is the police action/lack of action and the impact that may have had upon the outcome rather than the time that passed between the action/lack of action and the incident that is important.

**The IOPC does not set out a time period following release from police custody, during which any death or near miss must be referred to the IOPC.**

It is more important to assess whether there are any possible links between the police action and the subsequent incident. This might mean that someone who dies an hour after release from custody is not referred because there is no link, whereas a death three weeks later is referred because there is a clear link.



## CASE STUDY EIGHT

### Not preventing an assault

A police vehicle drove past a 50-year-old man who was being assaulted by teenagers in the street. It slowed down to take a look but did not stop as it was travelling to another incident. The man suffered a suspected fractured jaw.

*The serious injury was not caused directly by the officers in the police vehicle. However, the lack of intervention by the officers may have been a contributing factor to the man sustaining a suspected fractured jaw. Because of this, the case should be referred to the IOPC.*

*If officers/police staff are simply present at an incident and have no contact (direct or indirect) with the person involved, this does not necessitate a referral. In the same way, even if they have had contact, but it is clear that this could not have contributed to the DSI, then it does not need to be referred. However, if a police staff/officer's acts or omissions may have contributed to the DSI, then the matter should be referred.*



## CASE STUDY NINE

### Hostage situation

Police were called to a hostage situation where a man was holding a knife to his wife's throat. Police surrounded the building. A hostage negotiator was also called and was making his way to the scene. Before he arrived, the man shot himself.

*This matter should be referred to the IOPC. Although officers were not in the building and had no physical contact with the man before his death, their presence around the building and the psychological impact of that may have contributed to the man's decision to take his own life.*

## Reviews by other agencies

In England and Wales, reviews by other agencies may happen in cases where a child or vulnerable adult comes to harm and there are concerns about how organisations or professionals worked together to protect them. For example: serious case reviews, domestic homicide reviews and adult practice reviews.

These reviews are multi-agency and can involve not just the police, but also social services, the NHS, voluntary agencies, and families and friends of both victim and perpetrator. They

look at previous contact with the victim and perpetrator and identify whether there were any organisational failings and what lessons can be learned. It is important that any police involvement or contact should be reviewed, not only at the start of these cases, but also on an ongoing basis, to find out whether the case should be referred to the IOPC as a DSI or conduct matter.



## CASE STUDY TEN

### Suicide of vulnerable girl

Ms A was living with foster carers after witnessing domestic abuse and going missing several times. She did not return home one evening and her foster carers reported her missing. The next day she was found hanged and it appeared to be suicide.

Over the previous two years, concerns for Ms A were raised on 22 occasions. The concerns included her using drugs, being sexually abused, going missing, and self-harming. On one occasion when she went missing, her foster carers told the police that they were worried about her drug use. However, she was not referred to any drug services and this information was not passed on to any other agencies. Six months before she died Ms A was arrested by police for wasting police time – she was reported missing five times and had been found at a man's address. The Probation Service criticised the police at the time for criminalising a victim.

*The suicide of Ms A is not directly linked to the actions of the police. However, the force potentially missed opportunities to help a vulnerable young girl and the decision to arrest her may have exacerbated her vulnerability. The serious case review will look at the actions of all of the agencies to determine if there are any lessons to be learned, but the police involvement must be referred to the IOPC as a DSI matter immediately.*



## CASE STUDY ELEVEN

### Failure to protect

A man called the police because he was concerned about his mother's welfare after her partner had made threats to kill her. A background check showed that the partner had made threats to kill in the past. The call was graded as high-risk and police spoke to the mother. She provided a statement describing a history of domestic abuse. This included physical injury, threats to kill and sending text messages and harassing her at work. She told police she lived in fear of her partner and felt like a prisoner in her own home – he was controlling her finances and preventing contact with family or friends. She also told police he had once kept her prisoner at home for three days and she was unable to contact her family. A Domestic Abuse, Stalking and Honour Based Violence form was completed and the matter was graded as high-risk. He was arrested that day, interviewed and released on bail with conditions not to contact her either directly or indirectly.

Four days later her son called the police. He reported that the partner's daughter had sent him a text message telling him to tell his mother to drop the charges. The call was graded as high-risk, but no action was taken and the incident was closed. Two days after that, his mother was stabbed by her ex-partner and died of her injuries. During the subsequent domestic homicide review, it came to light that the police had not referred the mother to a Multi-Agency Risk Assessment Conference to arrange a support plan for her.

*The lack of police action following the man's breached bail conditions, and the missed opportunity to safeguard the woman, mean that this matter must be referred to the IOPC as a DSI.*



## Serious corruption

Information on the range of conduct that constitutes serious corruption can be found in Chapter 9 of the IOPC Statutory Guidance (which is available on our website).

### Abuse of position for a sexual purpose or for pursuing an improper emotional relationship

An abuse of position is any attempt by a person serving with the police, whether they are on or off duty, to inappropriately or illegitimately take advantage of their position, the authority their position affords them or any of the powers given to them as part of their role in the police.

The term 'sexual purpose' should be interpreted widely and will include any relationship, communication, or action of gratification of a sexual nature with a member of the public.

An improper relationship is any emotional or

personal relationship between a person serving with the police and a member of the public that a reasonable person would consider to be a serious breach of professional boundaries.

A relationship does not have to have been achieved to require a mandatory referral, only an allegation that a person serving with the police has sought to abuse their position.

This can include starting, or attempting to start, a relationship with a victim of the crime they are investigating, accessing personal/contact information held on police systems, or contacting victims of crime for a non-policing purpose.

A referral should be made without delay. Forces should notify the IOPC if they are planning to arrest an officer. However, this should not override the force's responsibility to manage any risk to the public of possible further offending.

## CASE STUDY TWELVE

### Pursuing a sexual relationship

An officer had been communicating privately with a victim of domestic abuse, whom he met in the course of his duties. He had communicated with the woman for up to a year with the aim of establishing a relationship with her, using his personal email address to do so. Eventually, the woman reported his behaviour to the police.

*This conduct matter should be referred to the IOPC on the grounds of serious corruption. The officer allegedly abused his position in an attempt to start a relationship with a vulnerable person whom he met while on duty.*

## CASE STUDY THIRTEEN

### Accessing databases

A grievance was raised by a colleague about a police officer and his highly sexualised behaviour toward women on his shift. During the course of the grievance investigation, an audit of the Police National Computer showed that the officer accessed the details of rape cases and other serious sexual assaults regularly, and had printed the forensic examination reports. There was no legitimate policing purpose for this.

*This is a mandatory referral for serious corruption – this is a conduct matter where the officer is alleged to have used his powers and access rights to obtain information for his personal gratification*

### Perverting the course of justice

If police officers fail to carry out a certain action or make (unintentional) incorrect policing decisions, this is not **conduct constituting the offence of perverting the course of justice**. Perverting the course of justice refers to someone taking deliberate action to alter the course of public justice. This may include:

- an officer lying in their statement about the behaviour and actions of the complainant in order to justify an unnecessary use of force by the officer
- accepting benefits or favours in return for preferential treatment
- disposing of evidence because they know the person under investigation

When considering whether to refer an allegation that the officer has perverted the course of justice, the first thing to assess is whether the substance of the complaint/conduct matter actually suggests that the officer took deliberate action. A mere assertion that an officer has lied would not on its own be sufficient to meet the serious corruption referral criteria. In order to meet this criteria, the allegation should explain how the lie has, or would have, perverted the course of justice.

Where no additional information is provided other than a bare allegation, early contact with the complainant may assist the AA to assess whether there is an allegation of conduct constituting serious corruption, as defined in the Statutory Guidance.

## CASE STUDY FOURTEEN

### Lying in a statement

An officer reported his colleague when he felt he had used unnecessary force on a member of the public during an arrest. The officer whose conduct had been reported gave a statement with false rationale for both the arrest and the use of force, justifying them when there was no basis for either the arrest, or the level of force used.

*The potential for this deliberate act to have resulted in the member of the public being inappropriately prosecuted and potentially convicted makes this a mandatory referral. If proven, this may amount to perverting the course of justice which is a relevant offence.*



## CASE STUDY FIFTEEN

### Failure to investigate

A man reported his former business partner to the police for fraud. The police reviewed the dispute and decided that it was a civil matter, not fraud. The man then complained that the officer who had reviewed the matter had made the wrong decision. He alleged that the officer was corrupt and by not investigating the matter further, he was perverting the course of justice by allowing his former business partner to evade prosecution.

*The basis for the complaint is that the officer made the wrong decision about the fraud case. The complaint does not allege deliberate action to alter the course of justice on the part of the investigating officer. This is not referable – it does not meet the definition of perverting the course of justice. Whilst the appropriate authority should not consider the merits of the complaint in order to make a referral decision, they should consider the nature of what is being alleged and not just the headline applied by the complainant. It is important to consider whether, if the conduct were substantiated, it would constitute serious corruption as defined in the Statutory Guidance.*



## CASE STUDY SIXTEEN

### Lying in court

A woman complained that during criminal proceedings, an officer testified before the courts and lied under oath to get her convicted of a more serious crime. She said that she was charged with public order offences and assault, and pleaded guilty. She complained that at the trial, the officer had made up a story about her being racist and as a result of their perjury, the magistrate sent her case to the crown court for sentencing.

The complaint handler noted that it appeared that the complainant had misunderstood the criminal process and it was unlikely that she had attended a trial.

*The complaint should be referred on the basis that there is a specific allegation of perjury, which falls under serious corruption as defined in the Statutory Guidance. Although it appears that the events may not have happened as alleged, the merits of the allegation cannot be considered when determining whether a referral is required. The referral assessment is based on whether the alleged conduct would, if substantiated, constitute serious corruption.*

## CASE STUDY SEVENTEEN

### Perverting the course of justice

A man made a complaint that the investigating officers who dealt with his criminal allegation of assault failed to do their jobs properly, had perverted the course of justice and should be sacked. He wanted his case to be looked at again by a different officer. No further information was provided in the complaint.

The complaint handler contacted the complainant to get more detail about his allegation of perverting the course of justice, and in what way the investigating officers had not done their job properly. The man said that officers had not initially provided him with an update about his case and had not arrested a suspect whom he alleged assaulted him. He said that because of the officers' failure to make an arrest, the officers had perverted the course of justice and were encouraging bad behavior by not dealing with matters correctly. The man asked whether the suspect had been arrested.

The complaint handler assessed the information provided by the complainant and decided that a referral was not required. This was on the basis that the behaviour complained about did not constitute conduct that met the mandatory referral criteria, for serious corruption.

*The decision to not refer this allegation is reasonable. While the complainant stated that officers had perverted the course of justice, the nature of the conduct being complained about is that officers have not arrested a suspect or provided an update on their case. This conduct, if proved, would not constitute perverting the course of justice, or conduct likely to seriously harm the administration of justice or otherwise amount to serious corruption as defined in Statutory Guidance.*

## Serious assault

Serious assault is defined as any injury that amounts to actual bodily harm or more serious. Crown Prosecution Service (CPS) guidance (which is not exhaustive) states the following can amount to actual bodily harm:

- significant medical intervention and/or permanent effects have resulted
- the need for a number of stitches (not the superficial application of steri-strips)
- a hospital procedure under anaesthetic
- psychological harm that involves more than emotions such as fear, distress or panic

In general, if the likely sentence would be more than six months' imprisonment, the offence will be actual bodily harm, not common assault and should be referred.

As with any other potential referral, the available evidence, such as the custody record or the incident log, should be reviewed before you make a decision about whether to refer. In some cases, you will need to verify the details before making a referral. For example, it is reasonable to ask for supporting medical evidence before making a referral if an allegation of a broken arm has been made six months after an incident, there is no documentation to indicate that force was used during the arrest, and no complaint was made while the person was in police custody. However, if there is evidence that a person was taken to hospital while in police custody and they walk into a police station with their arm in a cast the following day reporting that the police broke their arm the night before, there is no need to seek further evidence. A referral should be made immediately.

## CASE STUDY EIGHTEEN

### Actual bodily harm

A complainant was arrested for public order offences. While being booked into custody, he alleges that during his arrest he was thrown to the ground and that an officer stamped on his head and hand. He complains that he was not aggressive and the officers used excessive force, which resulted in him sustaining a broken rib and bleeding eye. He is examined by medical staff. They confirm that he has a broken rib.

*There is information available that supports the allegation made by the complainant. Based on the information available, the injuries are serious enough to amount to actual bodily harm and the matter should be referred to the IOPC.*

## CASE STUDY NINETEEN

### Dog bite

Mr A complained that he was bitten by a police dog. After arguing with and being pushed by the officer, the dog nipped him on the leg. He feels that the use of force was unnecessary and the officer should have listened to him rather than setting the dog on him. He was subsequently arrested for public order offences. The custody record confirms Mr A had sustained injuries to his leg after a dog bite. He received medical treatment while in custody for a minor puncture wound. He did not require hospital treatment.

*The force does not need to refer the complaint to the IOPC as the level of injury sustained does not meet the definition of serious assault.*

## Discrimination

When assessing the gravity of a discrimination<sup>10</sup> complaint and whether it should be referred to the IOPC, it is important to separate the two elements of the complaint. This establishes whether the alleged behaviour, **without the discrimination element** would, if proven, lead to criminal or misconduct proceedings, **and** whether the alleged discrimination is an aggravating factor. Both conditions must be met for the matter to meet the mandatory referral criteria. On its own, an allegation of discrimination does not need to be referred to the IOPC. Where someone makes an allegation of serious discrimination, but there is no

underlying criminal offence or behaviour that is likely to lead to misconduct proceedings, forces may consider referring the matter on a voluntary basis. This may be because of the gravity of the matter or concerns about public interest.

Harassment or victimisation is not a form of discrimination as defined by the mandatory referral criteria. Therefore, conduct aggravated by harassment or victimisation does not meet the definition of a mandatory referral. In these cases, forces may wish to consider whether a voluntary referral is appropriate.

<sup>10</sup> For further information, please see the [IOPC's Discrimination Guidelines](#) and [advice note](#) to assist with applying the discrimination guidelines to cases after 1 February 2020.



## CASE STUDY TWENTY

### Sexual predator

A member of police staff made a number of allegations against his colleagues. These included:

- male officers showing pictures of naked women and other pornographic material at work
- a male officer using the police helicopter camera to look for women going about their business
- during a protest, using the camera to look at naked women in the shower/toilet area

*These allegations are extremely serious and meet the threshold for a mandatory referral. This is because some of the allegations involve conduct that is likely to lead to criminal or misconduct proceedings and are aggravated by sex discrimination.*



## CASE STUDY TWENTY ONE

### Racial targeting

A man said that he was the subject of racial targeting by a police dog handler. He claimed the officer influenced the police dog to give an indication that he was carrying drugs in order to justify a stop and search. He also said that the dog handler and other police officers present used intimidation and threats of unlawful arrest so he would co-operate. The man said he was then strip searched in the back of a police van with the doors left open meaning people passing could see.

*The behaviour complained about – engineering grounds for a stop and search and then conducting a full strip search in the van, with the doors open – would, if upheld, lead to criminal or misconduct proceedings. The man also says this conduct was motivated by racial targeting. Therefore, this complaint meets the referral criteria.*

*The allegation also invokes Article 3 of the ECHR (the right to freedom from torture and inhuman and degrading treatment or punishment). This increases the severity of the allegations and adds to the reasons for referral of this case. If the complaint did not allege the officers' actions were motivated by racism, we would expect the force to consider voluntary referral (see page 21).*



## Relevant offence

A relevant offence refers to any offence that a person aged 18 years or over may be sentenced to imprisonment for seven years or more.

This does not apply to those who have been previously convicted of the same offence. You will need to refer to the sentencing guidelines for the offence in question to apply the correct definition ([see CPS website for guidance](#)).

When making this assessment, you cannot

consider what the likely sentence would be – to do that would be to take over the role of the judge. The person making the assessment can only consider whether the offence has the possibility within law to be given a sentence of seven years or more. For example, theft carries a maximum sentence of seven years' imprisonment. Therefore, any allegation that a police officer or staff member has committed theft must be referred to the IOPC.

## Article 3

Article 3 of the European Convention on Human Rights provides an absolute right that no one shall be subjected to torture or to inhumane or degrading treatment or punishment. Where there is a credible claim that Article 3 is engaged, the state has a duty to provide adequate ways to achieve an independent and effective enquiry. Torture is a higher threshold than inhumane or degrading treatment. The use of handcuffs or reasonable force during arrest would not normally breach Article 3.

The seriousness of the alleged conduct and its effect, as well as any justification for what happened, should be reviewed. The vulnerability of the member of the public involved in the incident should also form part of the assessment. Article 3 is more likely to be engaged where the person is disabled, very elderly/young, or otherwise vulnerable.

### CASE STUDY TWENTY TWO

#### Complaint following the arrest of a vulnerable young person

A 15-year old's parents made a complaint on her behalf after her arrest for a public order offence. It was alleged that excessive force was used causing bruising to her body, arms, and head. The complaint further alleged that no appropriate adult was present while she was interviewed, despite her being under 18 and suffering from mental health issues.

*This complaint would be suitable for a voluntary referral because the allegations and the vulnerability of the young person involved raise concerns about whether her rights under Article 3 of the ECHR had been breached.*

## CASE STUDY TWENTY THREE

### Lack of medical treatment

Police were called to a domestic incident involving a mother and her daughter. During the incident, a violent exchange took place between the two family members and the mother was thrown over the sofa by her daughter. Both women were arrested. The mother complained during arrest that she had injured her hip and was in pain while being transported to custody. When she arrived at the police station, she also told the custody sergeant that she was in pain. However, her complaints were ignored and she was dismissed as being drunk. The woman was left in custody for six hours with no medical intervention, despite her cries that she was in pain. It emerged later that she had sustained a broken hip.

*There is no suggestion that the broken hip was caused by a police officer/staff member, but the matter is suitable to be referred to the IOPC as a voluntary referral. This is owing to the potential breach of Article 3. The woman was left in custody for a prolonged period without access to medical treatment, despite telling officers on numerous occasions that she was injured and in pain. She was dismissed as being drunk, without any proper medical assessment taking place.*

## Voluntary referrals

Complaints or conduct matters will be raised that do not meet the mandatory referral criteria. However, in some of these cases, the circumstances of the case – for example, the gravity of the subject matter or the public interest – may warrant a voluntary referral. Examples include:

- near misses in custody suites
- missed opportunities to prevent harm to a vulnerable person
- significant public interest

When making a voluntary referral, you should include clear reasons for doing so. The complaint or conduct matter must still be recorded and the allegations/conduct must be clearly specified. There is also the option for local policing bodies to refer complaints voluntarily.

## CASE STUDY TWENTY FOUR

### Voluntary referral

Mr A reported to the police that he had been subjected to constant abuse from a number of people in his local area because he was a Goth. He stated this included verbal abuse, harassment, threats of violence, and damage to his property. He was visited by two neighbourhood police officers who advised him to consider dressing differently. More incidents were reported to the police as the abuse became more serious, including threats of violence to his wife and children. However, nothing was done. Mr A made a complaint to the police that his reports were not taken seriously and the police had failed to investigate his reports because he was a Goth. He stated the officers' attitude in advising him to dress differently was ignorant and unfair, and that his community had a distinct lack of confidence in the police. He added that because of this, the Goth community would stop reporting incidents to the police and instead retaliate against the people involved, unless the police took action.

*While a failure to investigate repeated reports of a crime may lead to misconduct proceedings, the alleged difference in treatment relates to a group that is not protected under the Equality Act 2010. Therefore, the two elements required for mandatory referral are not met. However, on the basis that the confidence of the Goth community has been damaged, the force may wish to consider voluntary referral. Independent oversight of the complaint may be necessary to gain the co-operation of the complainant and his community.*

### Child sexual exploitation (CSE) cases

Child sexual exploitation (CSE) and child sexual abuse (CSA) cases may feature allegations that:

- a police officer/staff member is alleged to have carried out or assisted in the commission of the offence
- there was a failure to investigate an allegation of CSE/CSA properly
- there was a failure to act on or record intelligence relating to CSE/CSA
- intelligence indicated that a person was at risk of CSE/CSA, but no action was taken
- police failed to share information with partner agencies
- a police officer/staff member developed inappropriate relationships with vulnerable children

A child is someone aged 17 years or under. Because of the historic nature of some of these cases, forces may take reasonable time to identify and properly assess whether complaints, conduct matters or DSIs should be referred to the IOPC. Initial enquiries may include identifying the people involved, establishing the dates of potential offences, and securing any documentation available.

## CASE STUDY TWENTY FIVE

### Failure to investigate CSE adequately

Police were notified by Childline that a teenage boy had told them he had been sexually assaulted. Over the next three years, the boy told the police about a further 13 sexual offences. His carers complained about the slow pace of the investigations and the lack of impartiality shown by the investigating officers. A dedicated team was then allocated to investigate all of the offences against the boy. More than 35 people were identified using evidence on seized electronic devices, intelligence and video evidence from the victim. All of this evidence was available to the original investigation.

*In the original investigation, there is an indication that the police failed to investigate adequately. They also failed to pursue evidential opportunities, which resulted in the young person being subjected to further sexual exploitation by the offenders. The force may wish to consider referring this to the IOPC on a voluntary basis due to the sensitivity of the subject matter and as there is a potential failure to protect a vulnerable victim.*

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### Get in touch

This guidance was published by the Independent Office for Police Conduct (IOPC) in May 2021, and was correct at the time of publication.

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



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