

Policy on applying the amended use of force standard of professional behaviour to transitional cases

July 2026

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Introduction

1. [The Police \(Conduct\) \(Amendment\) Regulations 2026](#) (‘the regulations’) come into force on 30 June 2026 and amend the use of force standard of professional behaviour (‘the standard’) so that the “criminal law test” test will apply instead of the “civil law test”, when deciding if a police officer (or former officer) has a case to answer for breaching it.
2. Applying the civil law test, an officer would breach the standard if they had an honest but unreasonably mistaken belief about the circumstances and used force which was unnecessary, unreasonable and/or disproportionate under the actual circumstances. Applying the criminal law test, they would not breach the standard.
3. Under the transitional provisions, the civil law test will continue to apply to cases where an investigation began before 30 June 2026 and includes cases where proceedings have been directed but are outstanding (‘transitional cases’). If transitional cases go to disciplinary proceedings where there is a case to answer, when applying the civil law test only, officers may face dismissal for conduct which if repeated at the time of the proceedings could not amount to misconduct at all.

4. This policy provides guidance to those making determinations under paragraphs 23(5A) and carrying out reviews under paragraph 25 schedule 3 *Police Reform Act 2002* ('schedule 3') about a case to answer and directing (or withdrawing) disciplinary proceedings in transitional cases. It is intended that subject to the required consultation and the approval of the Home Secretary, it will also apply to appropriate authorities when making decisions under paragraph 24(5A)¹.

Background

5. The decision of the Supreme Court in *R (on the application of Officer W80) v Director General of the Independent Office for Police Conduct and others [2023] UKSC 24*, agreed with the IOPC that the unamended standard applied the civil law test. Following the acquittal of officer NX121 for the murder of Chris Kaba in 2024, the Home Secretary announced a "Rapid Review" by Tim Godwin and Sir Adrian Fulford ('the review') to include reviewing "*the legal test for use of force in misconduct cases, and whether it should be raised to the criminal test*"². During the review, the IOPC made submissions that the civil test should continue to apply.³
6. The review's [Recommendations by Tim Godwin and Adrian Fulford to the Lord Chancellor and the Secretary of State for the Home Department - GOV.UK](#) were published on 23 October 2025, together with the [Government response to the police accountability rapid review - GOV.UK](#) which explained:

"Based on their findings, they recommend that the Home Office change the test for use of force in police misconduct cases from the civil law test to the criminal law test, via an amendment to the Police (Conduct) Regulations 2020.

The Home Secretary has accepted this recommendation and will lay changes to the Police (Conduct) Regulations 2020,"

7. [The Police \(Conduct\) \(Amendment\) Regulations 2026 - Explanatory Memorandum](#) published with the regulations, explains:

'The change made by this instrument will address the perceived unfairness and lack of proportionality of the civil law test. In addition, it will provide clarity for police officers and improve operational confidence as it will enable police officers to act decisively in challenging situations by ensuring that actions taken on the basis of an honestly held belief are assessed in a manner that reflects the split-second and uncertain circumstances in which force is often used.'

¹ See section 22 *Police Reform Act 2002* for the power of the Director General to issue guidance.

² Paragraph 3 a) Rapid Review

³ Paragraph 21(vi) Rapid Review

The transitional provisions

8. Regulation 3 provides that the amendment does not have effect in relation to a “pre commencement matter” which is defined as an allegation against a police officer or former police officer which came to the attention of a local policing body, a chief officer of police or the Director General before 30 June 2026.
9. The transitional provisions in the regulations are consistent with how changes to the police disciplinary regime are usually brought into force⁴ and more general drafting practice⁵. No guidance has been issued by the Home Secretary in accordance with Section 87 and 87A of the *Police Act 1996*, about how to approach transitional cases and the explanatory memorandum does not reference any policy intent for the transitional provisions.
10. Issues of consistency and fairness will arise if transitional cases go to disciplinary proceedings and officers face dismissal for conduct which, if repeated at the time of the proceedings, could not amount to misconduct at all. Bearing these issues in mind, the Director General has decided it is necessary to issue guidance setting out how the IOPC, and others, should approach transitional cases.

The two-stage test process for determining case to answer and directing proceedings.

11. The current [Home Office Statutory Guidance](#)⁶ (‘HOG’), at paragraph 8.31(c)(ii) explains:

“... there is effectively a two-stage process for determining whether there is a case to answer for misconduct in cases investigated under Schedule 3. It requires a determination firstly as to whether there has been a breach (“misconduct” under the 2002 Act) and secondly “Is the breach of the Standards of Professional Behaviour so serious as to justify disciplinary action (which means a written warning or higher)?”

12. Where there is a case to answer for misconduct, but it does not justify disciplinary action, IOPC decision making documents will record that there is “a case to answer for misconduct” but no proceedings are directed.

⁴ See for example regulation 3 Police (Conduct) Regulations 2020.

⁵ *Craies on Legislation*, 13th Ed, updated to include amendments from First Supplement: Part 3- Chapter 10 Section 3 (Retrospectivity).

⁶ A new edition of the guidance is planned for the end of July 2026; it is not anticipated that the contents of this guidance will subject to any significant change, but the paragraph number may do.

13. Where there is a case to answer for misconduct which justifies disciplinary action (or dismissal), there is a presumption that proceedings will be directed, which is particularly strong for gross misconduct. However, the HOG explains this may be rebutted if there are compelling reasons⁷.

Stage 1: determining if there is a case to answer.

14. At the first stage as a matter of law, decision-makers must still, in accordance with the transitional provisions, apply the civil test and determine:

“Could a reasonable disciplinary tribunal find, on the balance of probabilities, that the officer’s use of force was unnecessary, unreasonable, and/or disproportionate in all the circumstances as they honestly and reasonably believed them to be?”

15. If so, they must move to the second stage and determine if the breach is so serious as to justify disciplinary action. Where there would be a case to answer when applying the criminal test in any event, whether disciplinary action is justified will be assessed as previously, giving particular regard to the College of Policing’s [Guidance on outcomes in police misconduct proceedings](#). This policy note is directed solely to transitional cases where there is a case to answer for misconduct when applying the civil test only.

Stage 2: is disciplinary action justified for a case to answer applying the civil law test only in a transitional case?

16. The issues of fairness and consistency are illustrated most starkly in the case of officer NX121. In that case, the IOPC determined it would continue to direct proceedings for gross misconduct for their use of force on 5 September 2022, applying the civil test only. If the misconduct hearing proceeds, the IOPC will present the case on the basis that the use of force justifies dismissal, when if the same events repeated themselves on 5 September 2026, there could be no misconduct hearing at all (because even if the facts/state of mind alleged were proved, there would not be a breach of the amended standard).

17. Parliament has legislated for the Government’s policy intent as set out in the explanatory memorandum, *‘to remove perceived unfairness and a lack of proportionality which results from the application of the civil law test’*.

⁷ Paragraphs 8.81-8.93

18. The effect of the regulations is that for a case that comes to attention after commencement, a case to answer applying the civil law test only cannot result in disciplinary action. The explanatory memorandum says that is because it is perceived to be unfair and disproportionate for it to do so. There does not appear to be any basis to believe it could be less unfair or disproportionate for it to do so in a transitional case.

19. Neither the HOG nor the outcomes guidance provide guidance which is directly relevant to assessing whether disciplinary action is (still) justified (fair and proportionate), in the circumstances of transitional cases. However, some assistance is provided by:

- a) The outcomes guidance at paragraph 4.73 which reminds decision makers that harm, including death or serious injury, can result where an officer has behaved appropriately and no misconduct has been established. That, in substance, will be the position after 30 June 2026 where a use of force would have breached the standard applying the civil test only.
- b) The current HOG guidance at paragraph 8.93 concerning when it may be appropriate not to direct proceedings, explains:

‘Ultimately, it is for decision-makers to be able to exercise their discretion and judgment and to be able to set out and explain in writing the reasons for their decisions, so that all relevant parties can understand why such a decision has been taken.

This guidance does not override the discretion of decision-makers, nor is it exhaustive.’

20. Looking outside the police disciplinary system, there is at least one case where an offence was repealed without retrospective effect, but where the policy intent was lawfully applied to whether to continue to bring proceedings for transitional cases.⁸

21. The IOPC’s statutory duties include maintaining public confidence in the police disciplinary regime⁹. The inconsistency, in outcomes for identical conduct, and perceived unfairness/disproportionality of pursuing transitional cases applying the civil law test, may undermine that confidence.

⁸ R v West London Stipendiary ex parte Simeon [1983] 1 A.C.234, paragraph 20

⁹ Section 10 *Police Reform Act 2002*

22. Having considered all the matters set out above, the IOPC believes it should apply the government's policy intent in transitional cases, that a case to answer for breaching the use of force standard applying the civil law test only, will not justify disciplinary action. Further or in the alternative proceedings should not be directed (or continue) in such cases, because it would result in inconsistency and perceived unfairness which would likely undermine public confidence in the police disciplinary system. There may be exceptional cases where it is appropriate to depart from this guidance. For these cases, the decision maker will need to set out and explain their reasons in writing.

Director General's guidance on transitional cases following amendment to the use of force standard of professional behaviour

23. Where there is a case to answer in transitional cases applying the civil law test only, it will not justify disciplinary action, and proceedings should not be directed or if they have been directed but not concluded, should be withdrawn. If there are exceptional case specific factors for not following this guidance, the decision-maker will need to set out and explain their reasons in writing.

24. To try and assist decision-makers, Annex 1 sets out the questions a decision-maker will need to address in sequence.

Annex 1 - Deciding if there is a case to answer for breach of the use of force standard where the case came to the attention of the appropriate authority before 30 June 2026

1. Decision-makers must continue to apply the civil law test when deciding if there is a case to answer for breach of the 'Use of Force' standard by asking:

*“Could a reasonable disciplinary tribunal find, on the balance of probabilities, that the officer’s use of force was unnecessary, unreasonable, and/or disproportionate in all the circumstances as they honestly **and reasonably** believed them to be?”*

2. If so, they should record that there is a case to answer for misconduct. They should then go on to analyse whether they would have reached a different decision had the criminal test been applied, by asking:

“Could a reasonable disciplinary tribunal find, on the balance of probabilities, that the officer’s use of force was unnecessary, unreasonable or disproportionate in all the circumstances as they honestly believed them to be?”

3. **If the answer is yes**, then the decision-maker should determine if it justifies disciplinary action and whether to direct proceedings in accordance with existing guidance and in particular by reference to the [Guidance on outcomes in police misconduct proceedings 2022](#) and [Home Office Statutory Guidance](#).
4. **If the answer is no**, the decision-maker should apply this guidance and determine that it does not justify disciplinary action and not direct proceedings, unless there are exceptional case specific factors, which the decision maker will need to set out and explain in writing.

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