



Race discrimination case handling: frequently asked questions

Contents and quicklinks

Click the headings or questions to jump to the relevant part of the document:

Patterns of behaviour evidence

1. If using an officer's history to assess the credibility of their account, can complaint handlers look at previous complaints from the same individual to assess their credibility?
2. Is there a prescribed sample period for examining previous incidents, for example, stop and search incidents?
3. How should the handling be approached where the complaint handler believes the race element is spurious at the outset or the complainant has a history of adding discrimination to every complaint?
4. How can we use the lived experience of Black, Asian and minority ethnic police officers if they are seen as 'institutionalised'?

Comparator evidence

5. How do we find good comparator evidence?
6. When should a hypothetical comparator be used?

Adultification

7. What is adultification? Does it occur outside of situations involving race?
8. Who will be the most appropriate person to support the child through the complaint handling?

General questions

9. How should complaint handlers explore complaints where a report of discrimination is perhaps not supported by other evidence, such as body worn video footage, or where the discrimination is not obvious and more a feeling-based complaint without any 'material' evidence?
10. Is it appropriate for an outcome letter to apologise for the need to complain without acknowledging the complainant's experience or potential trauma?
11. Where officers are responding to a dynamic situation, they will often be required to make split-second decisions. Is it reasonable to make decisions based on previous knowledge or experience of the person they are dealing with?

12. A third party, who is neither subject to the complaint nor a complainant, is quoted as saying that the police would have treated the incident differently if the complainant had not been of an ethnic minority. There is no discrimination complained about by the actual complainant and they have not responded to a discrimination questionnaire. Should this matter be considered as requiring a discrimination element?
13. How should decisions be presented where the Appropriate Authority's determination disagrees with the Investigating Officer's opinion?
14. If the subject has a previously upheld discrimination complaint, would you share that information with the complainant in the report/ outcome letter?
15. Where complaints are made about discrimination on the basis of multiple protected characteristics, do they need to be logged separately on Centurion?

Patterns of behaviour evidence

1. If using an officer's history to assess the credibility of their account, can complaint handlers look at previous complaints from the same individual to assess their credibility?

The purpose of a review of the officer's history is not to assess the credibility of the officer's account but can help the case handler to identify any patterns of concern about the officer's tendency to behave in a discriminatory way. This may involve a review of the officer's complaint history, their use of force records, and/or stop and search records.

It is generally not appropriate to consider the complaint history of the complainant unless potential repetition, or abuses, of the complaints system are identified. This may be reviewed early in the process to determine if the complaint has been made previously or is already being handled either inside or outside Schedule 3 of the *Police Reform Act (PRA)*.

A complaint handler may wish to consider the complainant's complaint history to see how previous similar, or identical, complaints have been handled. A pattern of similar complaints could help the complaint handler decide on the most appropriate method of handling.

For example, repeated complaints may result in an explanation that the matter has been dealt with previously and the circumstances and findings remain the same. Conversely, a pattern of repeated complaints may indicate that the matter has not been addressed satisfactorily previously and a fresh examination is warranted. A pattern of making repeated complaints should not be used to discredit the complainant, or as a reason in itself to dismiss the live complaint, without providing an explanation of why the previous handling was adequate.

The [Home Office Statutory Guidance](#) (paragraph 8.74) is clear that when making case to answer decisions, it is not the credibility of the witness or complainant that is being assessed but the credibility of the *witness account*. This is the approach that should be taken when analysing and weighing up the evidence.

2. Is there a prescribed sample period for examining previous incidents, for example, stop and search incidents?

Each force will have their own policies and practices regarding what is reasonable and proportionate when analysing data.

The sample should be identified using a set, but flexible, timeframe (e.g. six months or 12 months) which includes the date when the stop and search subject to investigation occurred.

It is preferable for the data set to be limited to the specific power used in the stop and search in question. For example, if the stop and search is for drugs under s23 of the *Misuse of Drugs Act*, it is preferable to consider a data set of other stop and searches where this specific power was used. You might make an exception to this principle if this results in a very small data set.

Stop and search under s60 of the *Criminal Justice and Public Order Act 1994*, where no suspicion is required, should not usually be included in the same data set as stop and search under powers requiring reasonable suspicion. In particular, the find rates and rationales provided across these two categories of stop and search would be expected to be different, and this should be considered in the analysis.

If only a small number of records is available (for example, the officer is a new recruit and has only conducted a small number of stop and searches), a smaller data set will still be relevant to consider to look for any apparent patterns – but the small size of the sample may make it more difficult to identify any relevant patterns and this should be acknowledged in the investigation report.

Example – risks with small data sets:

A complaint is made against a newly recruited officer and only five stop and search records are available. The officer is working in an area where the resident population is 80% White and 5% Black. If one of the five stop and searches involved a Black person, this would appear to be disproportionate as it would be 20% of the overall stops. But, as it is only one incident, this would not be a reliable finding as it could too easily be distorted by an atypical case. Presenting the data as showing 20% of stops involved Black people, without indicating that this is a single case, could be misleading. It is unlikely that any conclusions could be drawn from this data.

However, if all five instances involved Black people being stopped, this would perhaps indicate a disproportionate approach, despite the small data set, although other factors would need to be taken into consideration (for example, if all five stops were related to the same incident).

3. How should the handling be approached where the complaint handler believes the race element is spurious at the outset or the complainant has a history of adding discrimination to every complaint?

There will be occasions where the complainant reports that they were treated a certain way purely because of their race or ethnicity and does not elaborate on what has made them feel this way. It may be that the complainant has a history of making complaints in this way and the discrimination element may be perceived as an add-on rather than a truly felt motivation for the treatment.

Where a complaint handler is faced with this scenario, it is important to approach the handling with an open mind, free from bias and assumptions, about the complainant or indeed the subject. It is very important to avoid starting the handling and exploration of the complaint with a mindset that the complainant is just adding the discrimination element as a matter of course, or in an attempt to elevate the seriousness of the matter being complained about.

It may be possible that a person has added this to their complaint because they are frustrated by what they feel is an underlying motive for their treatment, which may or may not be informed by past interactions with the police. It could be that, at the time of making their complaint, the complainant has not been able to articulate the reasons why they felt they were discriminated against. If this is a repeated complaint, the person may continue to feel this way because of how previous complaints have been handled, and therefore has continued to raise discrimination as a motivating factor.

4. How can we use the lived experience of Black, Asian and minority ethnic police officers if they are seen as ‘institutionalised’?

Several forces have initiatives that aim to draw on the lived experiences of staff when considering race discrimination complaints. This has been done in a number of different ways ranging from working closely with Staff Network groups to having nominated advisers. This can help the case handler to get a greater understanding of the context of discrimination that is complained about.

However, it is important to bear in mind that drawing on other people’s experiences might cause greater harm if not done correctly and sensitively.

For example, there might be a concern from the complainant that a Black, Asian and minority ethnic police officer is ‘institutionalised’ or has internalised racism. Internalised racism is where a person of colour may stereotype those from their racial group and may refuse to associate with them. A person of colour may also overlook, excuse, or act in a discriminatory way to fit into a predominantly White environment or to maintain their position.

It is also important to be mindful of the power imbalance and burden that may be placed on police staff of colour to call out discrimination.

Complaints may have such concerns if the advisor is not trained in identifying discrimination or if there is not a clear framework / description of what they are providing advice on.

There are many different nationalities, cultures and histories between ethnic groups who experience discrimination differently. Complainants and police staff should be treated as individuals with their own lived experience.

It is inappropriate to use the experience of someone else to dismiss the complainant’s experience. Others can give helpful context and advice, but this should not be given the same weight as the statement from the complainant.

Comparator evidence

5. How do we find good comparator evidence?

For examples of comparator evidence please consult the [IOPC's Guidelines on handling allegations of discrimination](#).

The 'comparator' is the other person, who does not have the same protected characteristic, who the complainant is comparing their treatment against.

- In some cases, you will need to consider a comparison when determining whether there is a case to answer for direct discrimination. This will not be necessary where it is clear that the behaviour complained about is discriminatory even without making a comparison – for example, the use of discriminatory language.
- This does not mean that there needs to be an actual person to compare against to be able to assess the discrimination complaint.
- However, consideration will need to be given to the question of whether the complainant would have been treated in the same way if they were White instead of Black, for example.
- You should ask the complainant about possible comparators when exploring their complaint – for instance, did the complainant note any differences in the way they were treated compared with others?

This is not about comparing how the officer treats people belonging to the same group. It is about comparing how the complainant was treated with someone from a different race and then determining whether the complainant received 'different treatment in the **same circumstances**' and if they did receive different treatment was the reason because of their race? What were the non-discriminatory reasons provided – are these plausible?

6. When should a hypothetical comparator be used?

It is not always possible to find an actual comparator, where the circumstances and behaviours of the complainant and another person, who does not share the relevant protected characteristic, are materially the same. If there is no actual comparator, a 'hypothetical comparator' can be used.

A hypothetical comparator is constructed from evidence about how other people have been treated in situations that are still similar but not identical to the complainant. This evidence can be used to help form a view about how another person *would probably have been treated* in the same circumstances as the complainant.

Another approach is to construct a hypothetical comparator by drawing on elements of the treatment of several people, for example, by looking at a pattern of behaviour in relation to one group compared with another. You can consider:

- Constructing the comparator from evidence about how other people have been treated in similar situations (not identical).
- Looking at patterns of behaviour in relation to one group of people compared to another.
- Examining force policy and considering how far from this the actions of the police were and whether this aligns with known stereotypes, concerns and biases.

This can help you form a view about how another person would probably have been treated in the same circumstances as the complainant.

Adultification

7. What is adultification? Does it occur outside of situations involving race?

Adultification is a form of bias where children from Black, Asian and minoritised ethnic communities are perceived as being more 'streetwise', more 'grown up', less innocent and less vulnerable than other children.

Adultification can impact on children of all ethnicities and can be associated with other factors such as poverty, homelessness, within the care system, or involvement in the criminal justice system. For example, the Rotherham child sexual exploitation cases where girls were adultified by social services as 'making a choice' when they were in fact being abused.

However, it is widely accepted that adultification particularly impacts Black children and is a form of racial bias (links to relevant research and resources are provided below in [question 8](#)).

Examples of adultification may include situations in which:

- A child is not treated like a child – such as expecting a level of understanding and communication beyond the child's developmental age (including communicating to or referring to the child as if they were an adult).
- A child's true age is disbelieved by authority figures like police officers.
- A child is treated as older than they are (including having adult agency), regardless of whether they are known to be a child.
- A Black child is given a criminal sanction through police intervention where White children would be excused the same actions on the grounds of their age.

- Safeguarding and the welfare of the child have not been considered or not been given appropriate weight.

8. Who will be the most appropriate person to support the child through the complaint handling?

The complaint handler should consider what type of support would be most helpful for the child they are dealing with. For example:

- Providing additional support where a child has learning disabilities.
- Consider holding an Achieving Best Evidence (ABE) interview or otherwise make sure that the complainant is appropriately supported to make their complaint. All children have a legal right to be interviewed via ABE and receive special measures. If they are older, 15-17 years of age, they can make an informed decision to give a written statement if they would prefer, however our preferred option would be an ABE.
- Engaging advocacy services, support workers, and legal advisers where the child has used these types of services previously.
- Appointing an officer of the same gender, or with specialist knowledge about the type of discrimination complained about, where it is possible to do so and appropriate.
- Providing an interpreter or other assistance where English is not their first, or preferred, language.
- Giving appropriate recognition and accommodation of cultural or religious needs.

The National Society for the Prevention of Cruelty to Children (NSPCC) provides further information on how to identify and safeguard children that are affected by adultification:

learning.nspcc.org.uk/safeguarding-child-protection/children-from-black-asian-minoritised-ethnic-communities

General questions

9. How should complaint handlers explore complaints where a report of discrimination is perhaps not supported by other evidence, such as body worn video footage, or where the discrimination is not obvious and more a feeling-based complaint without any ‘material’ evidence?

In some discrimination cases it may not be necessary, or proportionate, to conduct extensive lines of enquiry when the complaint handler has clear evidence such as Body Worn Video (BWV) that they can rely on.

There may also be circumstances where the complainant’s account points towards discrimination yet convincing non-discriminatory reasons for the subject’s behaviour have been provided that might show that they followed local and national guidance, which would point away from direct discrimination. In these situations, the complaint handler must be careful not to dismiss the complaint, and how the complainant felt they were treated, and acknowledge the impact of the encounter on the complainant, even if the conclusion is that the evidence points away from direct discrimination. Where the complaint handler finds that the policy or guidance that was followed may be discriminatory, this should be brought to the attention of the department/body responsible for the document and could be a reason for finding the service level unacceptable. This should be acknowledged and explained in the outcome, even if no individual failings are found, together with a recognition of how the complainant was impacted by it.

In other cases, it may be appropriate to widen the lines of enquiry where the available information points to concerns about the tendency to behave in a discriminatory way or there is limited objective evidence available, particularly in cases where there are concerns about the plausibility of the officer’s account. This may involve a review of the officer’s complaint history, their use of force record or stop and search record. Other lines of enquiry could include comparing the subject officer’s actions to local and national policy.

It is important to consider the cumulative picture of evidence; for example, an issue about courtesy and respect together with poor level of service during an encounter could be an indication of discrimination and should be further explored to understand the reasons for this behaviour. BWV itself may not capture whether assumptions were made based on stereotypes or biased attitudes but may have captured types of behaviour that cannot be explained by non-discriminatory reasons. Therefore, if the complaint is about poor attitude and service underpinning discriminatory motives, this would have to be explored through questioning the subject and looking at evidence that may demonstrate a tendency to behave in a discriminatory way.

Setting out the evidence in terms of what may be indicators pointing towards and away from discrimination can help the complaint handler to weigh up the evidence and explain decisions clearly and sensitively.

10. Is it appropriate for an outcome letter to apologise for the need to complain without acknowledging the complainant's experience or potential trauma?

Discrimination complaints will often involve a complainant who already has very low levels of trust in the police.

Open, effective, and empathetic engagement with the complainant from the start of the complaints process to its end is essential to building and maintaining confidence in the complaints process.

Think about how you can:

- explore the complaint sensitively and with an open mind
- tailor a list of questions
- tell the complainant how the information will be used
- use this information when questioning/ probing the subject
- recognise impact
- evidence what happened and how the incident was experienced

Where there is a complaint or witness statement reporting discrimination, this will be key evidence to consider. This can be drawn on to inform an assessment about whether discrimination was a factor in police actions or behaviour, and sensitively referred to in order to acknowledge the impact on the complainant.

11. Where officers are responding to a dynamic situation, they will often be required to make split-second decisions. Is it reasonable to make decisions based on previous knowledge or experience of the person they are dealing with?

As a complaint handler you may review a case where an officer has had to make a split-second decision and it is important to consider whether that decision was made based on their training, and in adherence to local and national policy guidelines.

It is also helpful to set out what indicators point towards and what may point away from discrimination.

With regards to previous knowledge or experience of a person, on its own previous knowledge of a member of public is weak grounds for a stop and search. The complaint handler might want to consider if someone that is repeatedly stopped and

searched by the police could be perceived as harassment. This may point towards discrimination.

However, there might be reasonable grounds for suspicion. In addition to the officer's previous knowledge of the person, the officer may have received other intelligence. For example, a recent incident involving a knife and the suspect matches the person's description.

The [IOPC's National Stop and Search Learning Report](#) provides more information on strong/weak grounds.

12. A third party, who is neither subject to the complaint nor a complainant, is quoted as saying that the police would have treated the incident differently if the complainant had not been of an ethnic minority. There is no discrimination complained about by the actual complainant and they have not responded to a discrimination questionnaire. Should this matter be considered as requiring a discrimination element?

There may be a situation where the complainant has not made a complaint of race discrimination but bystanders witnessing the incident raise concerns, or concerns are raised by affected communities perhaps after the release of social media footage.

If the case is a complaint, the race discrimination allegation must be recorded before it can be investigated or handled otherwise than by investigation under Schedule 3. However, if the complaint handler identifies conduct that may indicate discrimination, then regardless of the complainant, that element can be investigated as a conduct matter. Like all police officers and staff, complaint handlers are subject to the [Public Sector Equality Duty](#) and must have due regard to their role in eliminating discrimination, advancing equality and fostering good relations.

Significant community concern about an incident can point towards discrimination in a case and the complaint handler should consider a conduct investigation if there is no other convincing reason for behaviour that is below what would be expected.

There are many reasons why the complainant would not wish to make a complaint about race discrimination, the obvious being that they feel that their race had nothing to do with their treatment.

However, some may feel afraid of being accused of 'playing the race card', or not being able to evidence or articulate why they feel race was a factor. Or discrimination has occurred, but the complainant says they are not personally offended or minimises the effect of the discriminatory behaviour. For that reason, this should be approached sensitively by the complaint handler with the complainant.

13. How should decisions be presented where the Appropriate Authority's determination disagrees with the Investigating Officer's opinion?

The IOPC Statutory Guidance states the following at paragraph 14.5: *'In a local investigation, the final report is submitted to the appropriate authority by the appointed investigator. Any opinion expressed in the report must be that of the investigator and not the appropriate authority. The appropriate authority can only make its own determinations following submission of the report'*.

Paragraph 14.19 goes on to say: *'The opinion of the investigator should be accompanied by a clear rationale, for the benefit of the appropriate authority and the complainant (see paragraphs 17.67 – 17.74 about communicating the outcome to the complainant)'*.

Whilst the guidance is not prescriptive on how the Investigating Officer (IO) and Appropriate Authority (AA) should reconcile their opinions and determinations where there is disagreement, in the spirit of the guidance, forces are encouraged to be open and transparent about how they have reached their decisions. As such, it is important that where the AA's determination differs to the complaint handler's or IO's opinion, this is clearly explained in the outcome to the complainant.

14. If the subject has a previously upheld discrimination complaint, would you share that information with the complainant in the report/outcome letter?

Complaint handlers must weigh up any concerns about disclosing what evidence has been gathered together with an explanation of its relevance against the application of the harm test. Disclosing high level details about the complaints history and how it has been taken into account may be sufficient. The outcome letter or report may simply include an explanation that the complaint handler has reviewed information relating to an officer's complaints/conduct history and what part that has played in their decision-making process.

Decisions around disclosure may also depend on what awareness (if any) the complainant already has of any such previous incidents and whether that awareness forms part of their concerns.

15. Where complaints are made about discrimination on the basis of multiple protected characteristics, do they need to be logged separately on Centurion?

Yes. Complaints involving different protected characteristics should be logged separately. This will enable decision-makers to make accurate determinations

around service level or case to answer decisions against the appropriate Standards of Professional Behaviour and for wider monitoring purposes.

While allegations involving different protected characteristics should be logged or recorded separately, it is important that they are not considered in isolation during the handling as the complaint handler will need to have an awareness of the cumulative effective of multiple protected characteristics. Similarly, where discrimination is reported to be the motivating factor of the underlying conduct, such as use of force, while they will be recorded as separate allegations, the complaint handler must not lose sight of how the allegations intersect and this should be reflected in how findings and outcomes are presented.

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