



Appeal Procedure for Complaint and Conduct Matters

Introduction

1. On 22nd November 2012 changes to the police complaints system came into effect as a result of the Police (Complaints & Misconduct) Regulations 2012, the Police (Conduct) Regulations 2012 and the Police Reform and Social Responsibility Act 2011.
2. Whilst the Independent Office for Police Conduct (IOPC)¹ remains the statutory organisation, which oversees the police complaints system, it will no longer have responsibility for determining certain appeals.
3. The Chief Constable is the 'appropriate authority' for complaint and conduct matters relating to Cheshire Police officers and staff. The Head of the Professional Standards Department has delegated responsibility to handle complaint and conduct matters on behalf of the Chief Constable.
4. When finalising any complaint the Professional Standards Department will inform the complainant of their right of appeal and the identity of the relevant appeal body.
5. An appeal offers a final opportunity to consider whether the complaint could have been handled better and where appropriate to put things right.
6. The right of appeal allows the complainant to challenge a decision or outcome. If the appeal is upheld, corrective action must be taken.
7. Any appeal must be in writing and state the details of the complaint, the date on which the complaint was made, the name of the force or local policing body whose decision is subject of the appeal, the grounds for the appeal and the date on which the decision to which the appeal relates was given to the complainant.
8. All appeals will be handled proportionately, consistently and in a timely manner. The complainant will be notified in writing of the appeal decision.

¹ Changed from the Independent Police Complaints Commission (IPCC) on 08 January 2018

Appeal against the Non-Recording of a Complaint

9. Under the Police Reform Act 2002, the police have a duty to either record a complaint or tell the complainant why a decision has been made not to record the complaint under the Act.
10. The police do not have to record a complaint if they consider the matter:
 - is already the subject of a complaint made by or on behalf of the same complainant
 - the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address
 - the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints
 - the complaint is repetitious or
 - the complaint is fanciful.
11. The IOPC is the relevant appeal body in respect of appeals by the complainant against the decision not to record their complaint.
12. The IOPC must receive the appeal within 28 days of the complainant receiving the letter from the police informing them the complaint was not recorded.

Appeal against Disapplication

13. The regulations allow the 'appropriate authority' to dispense with the need for an investigation into a complaint if it identifies that:
 - More than 12 months have elapsed between the incident and the latest incident giving rise to the complaint and the making of the complaint and either no good reason for the delay has been shown, or an injustice would be caused by the delay
 - The matter is already subject of a complaint
 - The complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain
 - The complainant is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints
 - The complaint is repetitious
 - It is not reasonably practicable to complete the investigation of the complaint or any other procedures under the 2002 Act
14. Before a decision to disapply is made the complainant must be notified of the intention to disapply, the grounds on which the application will be made and given 28

days to make any representations. Any representations that are made must be taken into account before a final decision to disapply is made.

15. If the complaint or conduct matter has been referred to the IOPC and it has referred the complaint back to Cheshire Police or the matter has been referred to the IOPC and it has determined the form of investigation then any disapplication must be made to the IOPC.
16. In all other cases a representative from the Professional Standards Department, will determine whether or not an investigation into a complaint can be dispensed with.
17. If the IOPC grants the disapplication the complainant has no right of appeal.
18. Where the Professional Standards Department, grants the disapplication the complainant has a right of appeal to the Head of the Professional Standards Department.
19. Appeals against the disapplication decision should be made within 28 days of the complainant receiving notification of the decision.

Appeal against Discontinuance

20. Discontinuance ends an on- going investigation into a complaint or conduct matter. Discontinuance can only be sought in certain limited circumstances.
21. Discontinuance can be applied for on the following grounds:
 - The complainant refuses to co-operate to the extent that it is not reasonably practicable to continue the investigation
 - Where the appropriate authority had determined the complaint is suitable for local resolution
 - The matter is vexatious, oppressive or an abuse of procedures
 - The matter is repetitious
22. Before a decision is made to discontinue the complainant must be notified of the intention to discontinue, the grounds on which the application will be made and given 28 days from the day to make any representations. Any representations that are made must be taken into account before a final decision to discontinue is made.
23. As with the disapplication process if the complaint or conduct matter has been referred to the IOPC and either the IOPC have referred the complaint back to Cheshire Police or it has determined the form of investigation then the application to discontinue must be made to the IOPC.
24. In all other cases a representative from the Professional Standards Department, will determine whether or not a complaint can be discontinued.

25. If the IOPC grants the discontinuance the complainant has no right of appeal.
26. Where the Professional Standards Department grants the discontinuance the complainant has a right of appeal to the Head of the Professional Standards Department.
27. Appeals against the discontinuance of a complaint should be made within 28 days of the complainant receiving notification of the discontinuance decision.

Appeal against Local Resolution

28. A complainant has a right of appeal against the outcome of any complaint which is subject of local resolution if they believe the determination reached is not a proper outcome.
29. However, a complainant does not have a right of appeal if the outcome of a complaint relates to a direction and control matter not relating to individual conduct i.e. policing policies, operational decisions, general policing standards and operational management decisions.
30. Appeals against the local resolution of a complaint should be made within 28 days of the complainant receiving notification of the outcome.
31. In most circumstances the relevant appeal body will be the Head of the Professional Standards Department.
32. However, the IOPC is the relevant appeal body for locally resolved complaints which relate to the following:
 - Conduct of a Senior Officer (Deputy or Assistant Chief Constable)
 - Where the complaint had been referred to the IOPC
 - Any complaint which is in contravention of Article 2 (The Right to Life) and 3 (Torture) of the Human Rights Act
 - Special Requirements Apply i.e. the complaint met the threshold for misconduct.
 - Any complaint or part of a complaint arising from the same incident as any of the above
33. When deciding whether the outcome is a proper one, the focus should be on whether the outcome is appropriate to the complaint, not simply on the process followed to reach that outcome. The decision should be made on the basis of the evidence.
34. In making a decision about the appeal, the relevant appeal body should take the following into consideration:

- Any representations the complainant has provided as part of their appeal as to why the outcome was not a proper outcome
- Whether an action plan was drawn up and agreed with the complainant setting out the steps to be taken when locally resolving the complaint. The outcome of the local resolution should be a clear consequence of the actions agreed
- Whether both the complainant and the person complained against had the opportunity to comment on the complaint during the process
- Whether any explanation given was sufficiently clear and comprehensive to address the complainant's concerns
- If no apology has been given as part of the outcome, whether an apology would be appropriate, taking into the account the substance of the complaint, and
- Whether there is any learning from the complaint and whether this has been identified and communication to the complainant

35. If the person dealing with the appeal finds that the outcome of the complaint is not a proper outcome, the appeal must be upheld.

36. If the outcome is a proper outcome but it had not been effectively communicated then the appeal should not be upheld but further information about the outcome should be provided to the complainant.

Appeal against Local Investigation

37. A complainant has a right of appeal against the outcome of any complaint which is subject of a local investigation if they believe the determination is not a proper outcome.

38. However, a complainant does not have a right of appeal if the outcome of a complaint relates to a direction and control matter not relating to individual conduct i.e. policing policies, operational decisions, general policing standards and operational management decisions.

39. A complainant may appeal on any of the following grounds:

- that they had not been adequately informed about the findings of the investigation or determination as to the action to be taken about the matters dealt with in the report
- against the findings of the investigation
- against the determination as to whether anyone to whom the investigation related has a case to answer; whether it is a case to answer for misconduct, gross misconduct or whether the person's performance is unsatisfactory
- against the appropriate authorities determinations for action, or lack of them, in light of the report
- against the determination not to refer the report the Crown Prosecution Service.

40. Appeals against the local investigation of a complaint should be made within 28 days of the complainant receiving notification of the outcome.

41. In most circumstances the relevant appeal body will be the Head of the Professional Standards Department.

42. However, the IOPC is the relevant appeal body for local investigation complaints which relate to the following:

- Conduct of a Senior Officer (Deputy or Assistant Chief Constable)
- Where the complaint had been referred to the IOPC and either the IOPC have returned the matter to Cheshire Police to investigate locally or are involved in some way with the investigation i.e. the investigation is managed or supervised by the IOPC
- Any complaint which is contravention of Article 2 (The Right to Life) and 3 (Torture) of the Human Rights Act
- Special Requirements apply i.e. the complaint met the threshold for misconduct
- Any complaint or part of a complaint arising from the same incident as any of the above

43. In considering any appeal consideration must be given to whether the investigation had been conducted in a proportionate manner, whether sufficient evidence had been gathered, whether the findings of the investigation and the conclusions reached were reasonable in light of the evidence, whether the decision to uphold or not uphold a complaint is right, whether there is a case to answer or a person's performance is unsatisfactory and whether the proposed action is appropriate.

Concluding Appeals

44. Where the IOPC is the relevant appeal body and an appeal is upheld, the IOPC shall:

- Give directions to Cheshire Police to ensure the complainant is properly informed
- Review the findings, without further investigation
- Direct a reinvestigation of the complaint
- Make recommendations concerning disciplinary proceedings
- Direct Cheshire Police to refer the complaint to the CPS

45. Cheshire Police must comply with any directions given to it by the IOPC.

46. Where the Head of the Professional Standards Department is the relevant appeal body and an appeal is upheld, then the same options to resolve the appeal are available.

47. Appeal determinations are final and can only be overruled by a Court of Law.