



# Police, Fire and Crime Commissioner for Cumbria

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## OPFCC COMPLAINT REVIEW PROCEDURE

## Document control

This policy applies to all employees of the Office of the Police, Fire and Crime Commissioner for Cumbria.

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# Introduction

From 1 February 2020, the Policing and Crime Act 2017 placed a mandatory requirement upon Local Policing Bodies to carry out reviews of police complaints regarding complaints made after this date.

The Police, Fire and Crime Commissioner for Cumbria (PFCC) has taken the decision to use an independent review officer to carry out reviews of complaints to ensure openness and transparency. The Appropriate Authority function for dealing with complaint reviews within the OPFCC is delegated to the Chief Executive.

In line with the Independent Office of Police Conduct (IOPC) statutory guidance the review will not be a reinvestigation of the complaint, but rather to see that how it was handled was reasonable and proportionate.

The main purpose of this procedure is to ensure that any complaint review requests are dealt with effectively. It applies only to review requests following the outcome of a complaint dealt with by Cumbria Constabulary's Professional Standards Department and does not apply to complaints about the Police, Fire and Crime Commissioner (PFCC) or Office of the Police, Fire and Crime Commissioner (OPFCC) members of staff.

## The Review Process

Detailed below is a breakdown of the steps which will be taken as part of the review process.

### 1. Review Request

- 1.1 Where a complaint has been recorded under Schedule 3 to the Police Reform Act 2002, the complainant has a right to apply for a review of the outcome of the complaint, if they do not think it is reasonable and proportionate.
- 1.2 The complainant will be advised of the relevant review body within the outcome letter of the complaint. A request for a review should be sent to the Relevant Review Body (RRB) within 28 days of receipt of the outcome of their complaint. If it is submitted out of time the complainant should be notified and asked to provide an explanation for the delay.
- 1.3 The OPFCC may extend the time period for making an application for review due to special circumstances. This will be considered on a case-by-case basis.
- 1.4 If the timescales are not extended the complainant should be advised and informed that they have no right of appeal to this decision.

### 2. Relevant Review Body

- 2.1 The Office of the Police, Fire and Crime Commissioner (OPFCC) can only deal with police complaints where they have been identified as the Relevant Review Body (RRB). This will be for those complaints which are Recorded but where No Investigation has taken place.
- 2.2 If a member of the public is unhappy with the outcome or handling of their Recorded – No Investigation complaint, then they can submit a request for a review to the OPFCC. It is important that they request a review to the correct organisation.
- 2.3 If a review request is received and the OPFCC is not the RRB, but the Independent Office of Police Conduct (IOPC) is, the request must be forwarded to them and the complainant notified that the IOPC is the relevant review body and their request has been sent to them to deal with.

### 3. Acknowledge the Request

- 3.1 After receipt, an acknowledgement of the Review Request will be provided as soon as possible and will advise of the next steps in the process.
- 3.2 Chapter 18 of the IOPC Statutory Guidance deals with Reviews and does not place a time limit within which the review should be carried out.

## 4 Independent Review Officer

- 4.1 The Police, Fire and Crime Commissioner has taken the decision to use an independent review officer to carry out reviews of complaints to ensure openness and transparency in the process.
- 4.2 They are independent of both the OPFCC and the Constabulary and are able to provide an impartial viewpoint to the complaint outcome.

## 5 28 Day Update

- 5.1 Where a review takes longer to complete than 28 days, an update should be provided to the complainant.
- 5.2 The update should include a brief explanation of where the review is up to and if known, when an expected outcome is due.

## 6 Review Completion

- 6.1 When the independent review officer has finalised the review, they will provide their findings to the OPFCC Appropriate Authority (Chief Executive) to consider.

## Review Outcomes

The standards of police service that are considered when dealing with complaints include:

- the Standards of Professional Behaviour (or equivalent for police staff)
- any agreed service standards
- any national guidance that applies

The outcomes available to conclude the handling of the original complaint for Professional Standards are:

- The service provided by Cumbria Constabulary was satisfactory.
- The service provided was not satisfactory
- It is not possible to tell if the action was satisfactory or not
- Dismiss the complaint or no further action to be taken

The main purpose of carrying out the review is to determine whether or not the complaint handling was reasonable and proportionate. The OPFCC Appropriate Authority will consider the recommendations from the independent review officer. There are two options available to the reviewing officer:

- Not Uphold the review; or
- Uphold the review

It also allows for any lessons to be learnt or procedures to be reviewed and changed to improve service to the public.

Where the OPFCC Appropriate Authority disagrees with the recommended outcome provided by the independent review officer they will speak with them to understand their rationale. For example, if the proposed outcome makes a recommendation which would cause any harm or distress to a victim or witness involved in the complaint.

If after this they remain in disagreement, they have the option to have an independent person review the case and provide their outcome. As part of this review a form of harm test should be carried out to assess whether the original decision would cause any harm to the individual's involved.

Where their outcome differs to that of the independent review officer, the OPFCC Appropriate Authority shall prepare a new determination outcome with the findings. This will then be provided to the complainant advising them of the outcome of the review request. Where the outcome agrees with the original review then the OPFCC must accept this and cannot continue to seek alternative reviews as it may be seen as an abuse of process.

If a review is not upheld, it means that the service the police provided was of a standard that a reasonable person could expect. If a review is upheld, it means that the service the police provided did not reach the standard a reasonable person could expect. Where this is the case recommendations will be made to Cumbria Constabulary with a view to remedying the dissatisfaction expressed in the complaint. They will provide a reasoned explanation for their decision and any recommendations made.

## Outcome Notification

The OPFCC Appropriate Authority will advise the complainant of the outcome of the review. A copy of the determination will be provided which will explain the information considered and the rationale for the final decision.

The same information will also be communicated to the officer/member of staff subject of the complaint. This will include any recommendations which involve them. Notification will be given to their line manager to ensure that the recommendations are actioned. Outcome recommendations are explained in more detail later within this procedure.

Within the legislation and statutory guidance, the Constabulary's Appropriate Authority must advise the OPCC and the complainant within 28 days of whether or not they will carry out the recommendations. The Commissioner, nor the OPCC, have any authority to direct or instruct the Constabulary to carry these out. However, as the ethos of the new process is to learn and improve, the recommendations are generally accepted and implemented. A copy of this correspondence will be provided to the complainant to keep them updated on what the Constabulary have said.

## Dissatisfaction with Outcome Notification

There is no further right of review following the outcome of the complaint review. Should a complainant remain unhappy with the outcome of the review they do have the ability to undertake a Judicial Review of the decision. There are of course potential cost implications to this and are advised to seek independent legal advice prior to commencing any action.

Where a complainant remains dissatisfied with the outcome, they may continue to correspond with the OPFCC. The OPFCC will need to manage an individual's expectations on what the complaint and review process can deal with. If following a further explanation or assurance they continue to correspond the OPFCC will, where appropriate, the [Managing Contact Service User Policy](#) can be utilised to manage the contact.

The outcome of a review is the finalisation of the process.

Should a complainant make a complaint about a member of OPFCC staff regarding their review, the OPFCC will utilise its Complaints Policy to deal with the matter.

The Police, Fire and Crime Commissioner plays no part in the review process to ensure its openness and transparency. Therefore, to make a complaint about them because of the outcome could be viewed as an abuse of the complaints process. Similarly, to make a complaint regarding a member of OPFCC staff simply because they have done their role would also be viewed as an abuse of the complaints process.



## Outcome Recommendations

Where any recommendations are made with the outcome of the complaint these will be provided to the Constabulary's Appropriate Authority in PSD.

The Constabulary's Appropriate Authority must consider the recommendations and respond to the outcome of the review in writing within 28 days to both the OPCC and the complainant. They must advise whether or not they will implement the recommendations; and if not provide a detailed explanation.

Detailed below are two recommendations which can be made in relation to an officer's performance.

### 1. Reflective Practice Review Process

The RPRP was introduced to the police service nationally by a change in legislation on the 1<sup>st</sup> February 2020. It is to be used to deal positively with any identified low-level conduct or poor performance issues, in identifying learning for not only the individuals concerned but also the organisation. The purpose of the process is to improve the service provided to the public and prevent re-occurrence of any failings. It cannot change what has happened, but it can make it less likely for it to happen again. It is a proper way of holding officers to account, by addressing failings and taking action to improve performance and ensuring the same failings are not repeated.

Only very serious matters that would attract a written warning or above are now taken to formal misconduct proceedings. RPRP and other Unsatisfactory Performance Procedures should not be seen as a 'soft' option. They can ultimately lead to dismissal, just as with misconduct proceedings, if poor performance is not addressed.

### 2. Performance Requiring Improvement

Practice requiring improvement means underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the 'Code of Ethics issued by the College of Policing.

Where this is identified, the PSD caseworker will initially speak with the officer's line manager with regards to the identified issues. Following this when the case is finalised the caseworker will launch a form to record the process within the Constabulary's Learning Hub. The form will then be completed by the officer and their line manager and then the outcome provided to PSD to ensure completion.

## Appendix – Complaint Review Process

