



SCOTTISH POLICE
AUTHORITY
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Complaints Handling Procedures

Version 8.00
August 2021

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Introduction

These Complaints Handling Procedures have been written for a number of audiences:

- Complainers; will act as a guide on how to make a complaint, and what can and cannot be considered
- Individuals being complained about; will allow individuals to understand what process is being undertaken and what outcomes are possible
- SPA Complaints Team; will allow for consistent treatment of all complaints received, and give templates for all stages of work
- SPA Complaints and Conduct Committee (CCC); will ensure consistent information and knowledge of different disposal routes available for complaints
- Police Investigations and Review Commissioner (PIRC); will allow for a clear audit trail of process and decision making
- Wider public and stakeholders; will ensure common and transparent understanding of the SPA Complaints Process

The purpose of having one set of procedures and making them available to all interested parties is to ensure transparency, equality of treatment, common understanding and public accountability.

As this document constitutes actual working procedures, they do cover a significant amount of detail. However it is hoped that by sharing the 'how' and the 'what' of its complaint handling, this will allow the SPA to focus its efforts on dealing effectively with all complaints. It also highlights what the SPA will do if there are complaints which do not fall within our remit, or if people abuse the process.

These complaints handling procedures refer to legislation, regulations, statutory guidance, and agreed internal SPA/ Police Scotland Standard Operating Procedures (SOPs). It does not introduce anything new, but instead shows greater clarity on how each element is used.

Further explanations of Relevant Complaints, Misconduct Allegations, Grievances and Whistleblowing allegations are given in later sections. Grievances and whistleblowing allegations are subject to their own procedures and are not covered in any detail in these procedures.

The PIRC statutory guidance provides a six-stage complaints process which the PIRC expects all police bodies in Scotland to follow when handling relevant complaints. These procedures provide detail on how the SPA handles relevant complaints, having regard to the PIRC statutory guidance.

It is important to highlight that where there is wrongdoing or omissions, then the SPA will seek to address all concerns as quickly as possible. However, given the findings of the Independent Review of Complaints Handling, Investigations

and Misconduct Issues in relation to Policing (referred to in these procedures as “the Independent Review”), complaints about senior officers of Police Scotland will be prioritised.

If not satisfied with the way in which their relevant complaint has been handled by the SPA, a complainer may request a review by the PIRC into the handling of the complaint. A request for a [Complaint Handling Review](#) (CHR) may be made on the PIRC website.

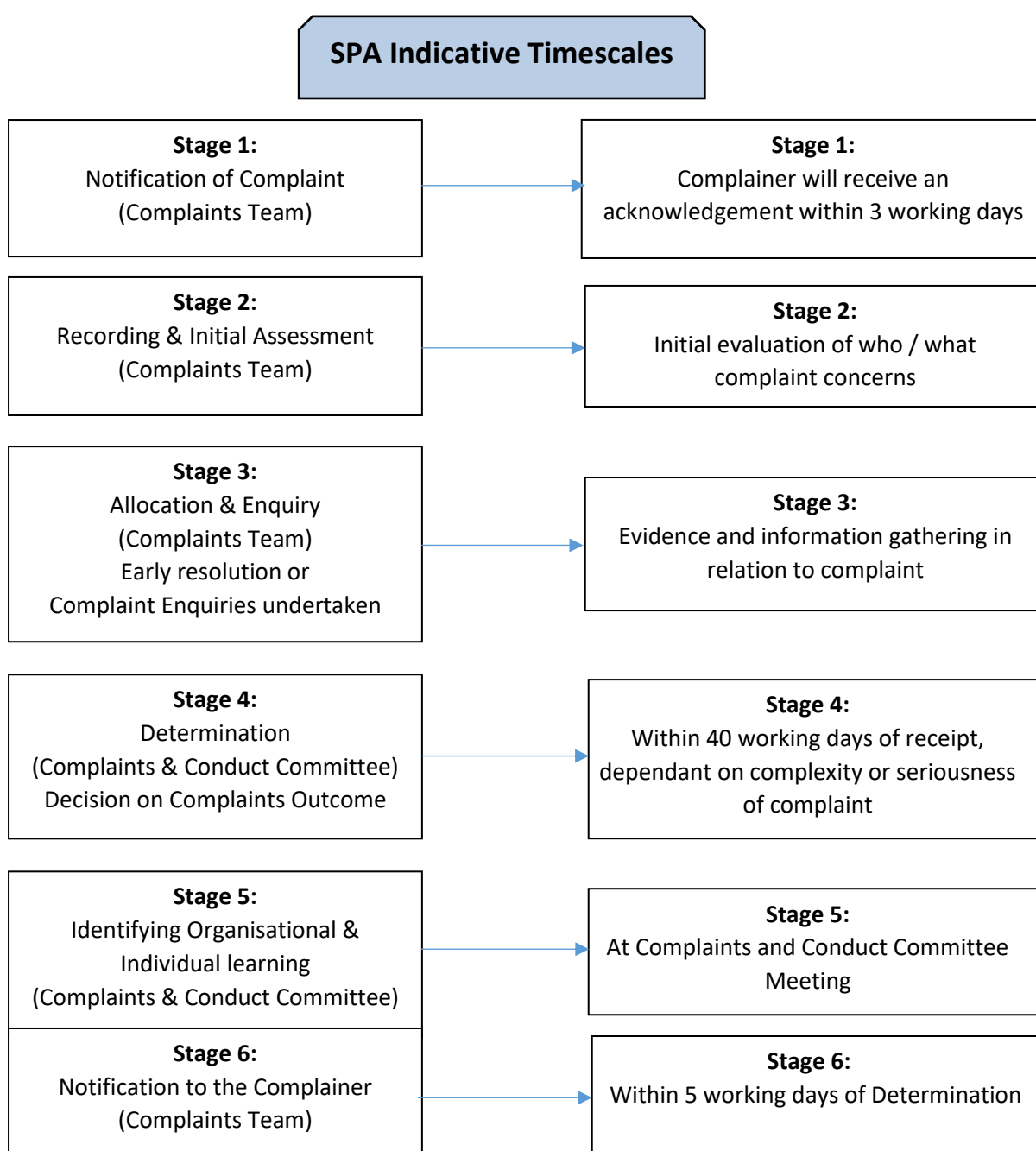
Guiding Principles

All complaints received by the SPA are assessed upon receipt and will be considered in terms of the following Guiding Principles set out in the PIRC’s statutory guidance.

- Visible and accessible; a process that is open, transparent and available to everyone
- Independent; a system that incorporates an appropriate degree of independence
- Objective, impartial and fair; complaints must be dealt with objectively, impartially and fairly, with outcomes firmly based on evidence
- Quick and simple; a process that is efficient and can deliver effective results as quickly as possible
- User-focussed and accountable; a process which takes into account the needs of the individual and is open to scrutiny
- Values complaints and continuous improvement; complaints provide an opportunity to measure performance, improve service delivery and share lessons learned

Overview of the SPA Complaints Handling Process

The following diagram provides an indication of the SPA's Complaints Handling Process with reference to the PIRC's 6-stage process for handling relevant complaints. The SPA has set its own good practice timescales based on those set out in the statutory guidance. We aim to acknowledge complaints within 3 working days of receipt and conclude within 40 working days. This may take longer, however, depending on the complexity and seriousness of the complaint. If a complaint takes longer than 40 working days to conclude, the complainer will be advised and thereafter updated on a monthly basis, or such other period as may be agreed with the complainer, until the complaint is determined.



Background

The following legislation and other sources are relevant to the handling of complaints received by the SPA:

- [The Police, Public Order and Criminal Justice \(Scotland\) Act 2006 as amended](#)
- [Police and Fire Reform \(Scotland\) Act 2012](#)
- [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#)
- [The Police Service of Scotland \(Senior Officers\) \(Conduct\) Regulations 2013](#)
- [The Police \(Conduct\) \(Senior Officers\) \(Scotland\) Regulations 1999](#)
- [The Police Service of Scotland \(Senior Officers\) \(Performance\) Regulations 2016](#)
- [Equality Act 2010](#)
- Statutory Guidance on the handling of complaints about the police in Scotland
- SPA/ Police Scotland Code of Conduct
- Grievance, Police Officers and Authority/ Police Staff, Standard Operating Procedure (SOP)
- SPA Whistleblowing Guidance
- SPA Forensic Services Management of Non-Conforming Work (SOP)
- SPA Forensic Services Complaints and Negative Feedback

What complaints can the SPA deal with

The SPA is responsible for dealing with “relevant complaints” about the following:

- A senior police officer of Police Scotland, of Assistant Chief Constable rank or above
- A staff member of the SPA, including Forensic Services staff
- The SPA itself, including Forensic Services

The SPA also performs functions under the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (“the 2013 Regulations”); and also deals with grievances and whistleblowing allegations for which it is responsible.

The SPA is not responsible for any complaints made about:

Complaint about	Dealt with through
<ul style="list-style-type: none">• A police officer of Police Scotland, of Chief Superintendent rank or below• A Special Constable• Police staff working within Police Scotland• Police Scotland Policies or Procedures	Police Scotland Complaints Handling

Complaint about	Dealt with through
<ul style="list-style-type: none"> • Internal grievances within Police Scotland 	Grievance SOP
<ul style="list-style-type: none"> • British Transport Police • British Transport Police Authority • Civil Nuclear Constabulary • Civil Nuclear Police Authority • Ministry of Defence Police • National Crime Agency • UK Border Agency 	Complaints about these bodies are managed by the respective organisation directly

Making a complaint

Different processes require to be followed depending on the nature of the complaint. It is therefore important that complaints are appropriately categorised following receipt (although it may be possible for complaints to be re-categorised if evidence comes to light which justifies this). Complaints received by the SPA fall into the following broad categories:

- (a) Complaint about an SPA Board Member
- (b) 'Relevant' complaints about senior officers of Police Scotland, the SPA, or a member of the SPA's staff (including complaints about Forensic Services and Forensic Services staff)
- (c) Grievances raised in an employment context
- (d) 'Public interest disclosures' ('whistleblowing' allegations)
- (e) Misconduct allegations against senior officers of Police Scotland

It is important to note that an investigation into a complaint is not a misconduct investigation. Rather, it is an investigation into the circumstances that led to the dissatisfaction being expressed by the complainer. Generally, relevant complaints made about senior officers of Police Scotland will first be dealt with by the SPA in accordance with the PIRC's statutory guidance on complaints handling. Allegations against senior officers which amount to grievances will generally be dealt with first under the SPA/ Police Scotland Grievance SOP. Any conduct implications arising from relevant complaints or grievances will generally be considered by the SPA only after the relevant processes for dealing with those types of complaint are concluded.

In order to progress a complaint, the SPA Complaints Team will contact the complainer by telephone, email or letter and may, in some instances, request a face to face meeting if this is deemed appropriate.

Managing complainers' expectations

The SPA complaints process seeks to ensure that if an individual under the SPA complaints remit has breached the relevant professional codes of conduct, or there is a failure to provide appropriate quality of service, then that act or omission should be addressed.

The SPA complaints process cannot be used by individuals to express dissatisfaction with situations for which there is an existing route for dealing with concerns, e.g. a review of a response to an FOI request or how Police Scotland handles complaints.

The SPA encourages early reporting of complaints. It may be disproportionate to deal with a complaint where such significant time has elapsed between the incident giving rise to the complaint and the lodging of the complaint that an effective assessment and investigation may be difficult and, in some cases, impossible to complete.

PIRC Statutory Guidance

The statutory guidance describes the six-stage complaints process that all policing bodies operating in Scotland should follow. A flowchart outlining the SPA's six-stage complaints process is provided at [Appendix 1](#).

Stage 1 - Notification of Complaint

Complaints may be received by the SPA in writing, verbally, or by any means of electronic communication. Complaints may be received by a complainer or by a third party acting on behalf of a complainer with their consent.

The complainer should be informed of the next steps of the complaint process and directed to the Complaints section of the SPA's website. The individual needs of the complainer must be considered by the person notified of the complaint.

Complaints will be taken at face value and, in the absence of strong evidence to the contrary, must be assumed to have been made in good faith.

Stage 2 - Recording and Initial Assessment

Accurate and consistent recording is a fundamental part of effective complaint handling. It is vital that this information is retained, analysed and used to improve service delivery.

On receipt of a complaint, the SPA will complete an initial evaluation to determine who the complaint is about and if it is within the remit of the SPA to deal. All complaints received at the SPA, regardless of whether they are or are not fit for the SPA to deal, will be recorded in a secure and confidential database.

Where contacts are received by the SPA Complaints Team which do not fall within its remit they will be recorded and acknowledged within 3 working days and the complainer advised where to re-direct their complaint. In such cases, despite the complaint not being managed by the SPA Complaints Team, the contact with the SPA will be logged and the case closed.

Sometimes it is not clear at the outset whether the complaint is about the actions or behaviour of an individual, about the quality of service received, or merely a request for an explanation or information about a particular incident. The primary task at this stage is to consider the content of the complaint ensuring that it is dealt with in the most appropriate manner and in line with relevant legislation. Complaints of a complex or serious nature will go through a 2-stepe decision process by the SPA:

- Stage 1. Initial assessment to agree what complaint route should be applied
- Stage 2. Final assessment to determine the outcome of the complaint

The initial evaluation will determine what complaint route should be applied i.e.

- Misconduct
- Relevant Complaint
- Grievance
- Whistleblowing
- Not to be progressed by the SPA Complaints Process
- Criminal Allegation

As a complaint may contain more than one allegation, each allegation should be recorded as a distinct "head of complaint".

Heads of Complaint

The SPA Complaints Team must establish and come to an agreement with the complainer with regards to their heads of complaint; this avoids ambiguity and disputes further into the process for all parties concerned. Each Heads of Complaint must clearly capture the individual or process subject to the complaint and be framed in such a way that it can either be upheld or not upheld.

Changing a Heads of Complaint may be required depending on how the assessment develops and will always be done in agreement with the complainer.

Any new complaints identified through the course of the assessment, if related to the initial complaint, will be added to the previously agreed Heads of

Complaint. If they are considered to be related to a different complaint they will be treated as such, allocated a new case number and will form part of a different assessment.

Stage 3 - Allocation and Enquiry

Gathering supporting evidence and information relating to a complaint is crucial to establishing the facts upon which a decision will be based.

Evidence is the information on which to base proof or to establish a truth or falsehood. Evidence gathering relates to the identification, capture and recording of data relevant to the complaint being investigated.

Should further information or documentation be required, contact will be made with the complainer to request additional information. In most cases, a request for further information should provide a deadline of 5 working days for receipt.

Consideration should be given in all cases to the most effective method of gathering information including through written requests, telephone interviews or face to face interviews and any preference or requirements indicated by the complainer should be taken into account. In deciding the most effective method, consideration should be given to the type of evidence sought and the requirement to meet any specific accessibility needs of the complainer.

Where a complainer has not responded by the required date, the SPA Complaints Team will make contact with the complainer to advise of an extension of 5 working days in which to respond. Thereafter, if the complainer has not responded, an additional reminder will be sent to the complainer to advise of an extension of a further 5 working days and advised that if a response has not been received by that date, a decision will be taken to progress the complaint for determination and potential closure based on the evidence available.

Extensions on the period of time provided for response will be considered on a case-by-case basis.

The SPA will undertake relevant internal checks to see if they hold any relevant information regarding the complaint, as well as request further information from third parties, including Police Scotland, to ascertain if any pertinent information is available regarding the complaint allegation(s)

The SPA Complaints Team will carry out investigations into Relevant Complaints.

Stage 4 - Determination

In order to determine the outcome of a complaint, an objective analysis of all evidence must be completed, taking into account the following:

- What prompted the complaint
- What facts have been established
- Whether the actions of the person or department being complained about was unsatisfactory and should be avoided in the future
- What can be done to prevent it happening again
- Whether an apology is appropriate
- What can be learned from the complaint

The SPA Complaints Team will prepare an allegation final assessment and recommendation report based on all information received and against relevant standards which will be taken to the SPA Complaints & Conduct Committee for a determination on whether the complaint allegations are going to be upheld or not upheld and the appropriate test applied (balance of probability).

Each complaint has to be either upheld or not upheld and the appropriate test applied (balance of probability) in order to come to a determination.

Notwithstanding that a senior officer subject to the complaint may no longer be a serving officer, each complaint will be considered by the SPA as there may be organisational learning that can be gleaned from the complaint.

The SPA Complaints database will be updated with decisions for audit and statistical reporting purposes.

Stage 5 - Identifying Organisational and Individual Learning

Continuous improvement is an important outcome of the complaints process. Complaints provide an opportunity to improve service delivery by identifying organisational and individual learning.

If relevant, opportunities may present during complaints investigations to improve service delivery and prevent repetition of complaints. Learning can include changes to current practices and policies or can involve direct development input for an individual or a group of individuals. It is equally important that good practice is identified in order that all parts of the organisation may benefit from lessons learned.

Significant issues identified during the investigation of a complaint should be addressed without waiting on the conclusion of the complaint to prevent any recurrence. Any organisational or individual learning points should be shared

with the appropriate department or personnel both within and outwith the organisation (as appropriate) to ensure lessons learned are taken forward and considered for future action.

The SPA Complaints Team will ensure that the appropriate line managers are aware of the outcome of the SPA Complaints and Conduct Committee decisions, and the expectations that they will oversee any follow up action. Line managers will be required to confirm to the SPA Complaints Team what action was undertaken, and on what date this was completed. This will be recorded on the Complaints database.

Stage 6 - Notification to the Complainer

The SPA Complaints Team will send the final response letter to the complainer. The final response should be clear, impartial and communicate whether each allegation is upheld or not. It should address the complainer's allegations and concerns, and the reasoning behind any decision should be apparent. The explanation should also include any action to be taken as a result of the complaint and any learning identified.

The final letter of response should:

- Be clear and easy to understand, and be free of technical language or jargon
- Address all of the complaints which were agreed
- Be firmly based on the facts and evidence established during the enquiry and avoid the use of unfounded judgements
- Be adequately reasoned and explain how the facts and evidence support the conclusions reached
- Contain details of any relevant policy, procedure or legal provision which supports the conclusions
- State clearly whether or not each complaint is upheld
- Communicate any service or conduct failings identified
- Contain details of any action taken to avoid a recurrence of the situation which gave rise to the complaint, including any learning or improvement action
- Contain, where a misconduct hearing has taken place as a result of the complaint, the determination made at that hearing (i.e. whether the conduct of the senior officer was found to amount to misconduct or gross misconduct)
- Include an apology, where appropriate
- Include a standard passage advising the complainer of their right to seek a review by the PIRC if they remain dissatisfied

The letter must reassure the complainer that the complaints have been dealt with fairly and, where necessary, that action will be taken to ensure there is no recurrence of the issue in question.

An apology should be given where things have gone wrong, either verbally or in writing. Any apology should be unambiguous and sincere.

There will be times when everything has been done to deal with the complaint but the complainer does not accept the outcome. It should be explained clearly to the complainer what can or cannot be achieved from the complaint.

If the complainer remains dissatisfied with the way in which a relevant complaint has been handled, then the complainer must be directed to the PIRC. Accordingly, the following information must be included in each final letter of response:

If you are not satisfied with the way in which your complaint has been handled, you may request a review by the Police Investigations and Review Commissioner (PIRC). If you decide to contact the PIRC, you must submit an application form to them within 3 months of the date of this letter (or e-mail), otherwise they may not be able to deal with your complaint. The contact details for the PIRC are outlined below.

Telephone: 01698 542900

E-mail: enquiries@pirc.gov.scot

Online: pirc.scot

Post: PIRC, 2nd Floor, Hamilton House, Caird Park, Hamilton, ML3 0QA

Breach of SPA Code of Conduct for Members

Complaints received about an individual SPA Board Member will be reviewed by the SPA Complaints Team to establish the nature of the complaint and a report submitted to the SPA Chair, via the SPA Chief Executive. The SPA Chair will forward the complaint to the Commissioner for Ethical Standards in Public Life in Scotland ('the Commissioner') where it appears that a Board member may have contravened the SPA Code of Conduct for Members.

The Commissioner considers complaints about members of devolved public bodies who are alleged to have contravened the Code of Conduct.

On finding a contravention of the Code, the Commissioner reports to the Standards Commission for adjudication. Where a hearing is held by the Standards Commission and a contravention of the Code is established, the Standards Commission determines the level of sanction to be applied.

Relevant Complaints

The Police Public Order and Criminal Justice (Scotland) Act 2006 (as amended by the Police and Fire Reform (Scotland) Act 2012) defines a "complaint", "relevant complaint" and "person serving with the police".

A "relevant complaint" means a complaint which is made, given or sent by any of the persons mentioned in paragraphs (a) to (d) below to the appropriate authority in relation to the complaint-

- (a) a member of the public who claims to be the person in relation to whom the act or omission took place;
- (b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;
- (c) a member of the public who claims to have witnessed the act or omission;
- (d) a person acting on behalf of a person falling within any of paragraphs (a) to (c) above.

A "complaint" means a statement (whether oral, written or electronic) expressing dissatisfaction about an act or omission-

- (a) by the SPA;
- (b) by Police Scotland;
- (c) by a person who, at the time of the act or omission, was a person serving with the police.

A "person serving with the police" means-

- (a) a constable of Police Scotland
- (b) a member of police staff
- (c) a member of the SPA's staff

A "complaint" may relate to-

- (a) any action taken, or failed to be taken, by or on behalf of the subject of the complaint;
- (b) the standard of any service which the subject of the complaint has provided or failed to provide.

But "complaint" does not include-

- (a) any statement made by a person serving with, or who has served with, the police, about the terms and conditions of that person's service with the police; or
- (b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.

An act or omission need not be one occurring in the course of a person's duty, employment or appointment (as the case may be) in order to fall within the definition of a "complaint". A complaint need not identify a person serving with the police who is the subject of the complaint in order to fall within the definition of a "complaint".

The SPA is the "appropriate authority" for relevant complaints about the SPA, members of the SPA's staff, and senior officers of Police Scotland.

The handling of "relevant complaints" is subject to the oversight of the PIRC, and the SPA must have regard to guidance issued to it by the PIRC, in particular the PIRC's statutory guidance on complaints handling.

Misconduct allegations against Senior Officers

Regulations set out procedures for determining allegations of misconduct by senior police officers.

- For conduct of a senior officer of Police Scotland occurring on or after 1 April 2013, the 2013 Regulations¹ apply.
- For conduct of a "transferred senior officer" (i.e. an officer who was a senior officer in any of the former Scottish police forces who transferred to Police Scotland on 1 April 2013 to serve as a constable) occurring prior to 1 April 2013, the 1999 Regulations² apply

"Misconduct allegation" is defined in the 2013 Regulations as "any report, allegation or complaint from which it can reasonably be inferred that the conduct of the senior officer may amount to misconduct or gross misconduct".

Where such an allegation comes to the attention of the SPA, it must conduct a preliminary assessment of the allegation under regulation 8. Where a relevant complaint or grievance also amounts to a misconduct allegation, the preliminary assessment under regulation 8 will generally be undertaken only after the relevant complaint or grievance processes have concluded. A flowchart outlining the Senior Officer Misconduct Handling process is provided at [Appendix 2](#).

A misconduct allegation may come to the attention of the SPA regarding the conduct of a senior officer occurring on or after 1 April 2013 but before he/ she was appointed to senior officer rank. Consideration will be given to the appropriate regulatory framework to be applied in such circumstances.

¹ The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013

² The Police (Conduct) (Senior Officers) (Scotland) Regulations 1999 (as amended by the 2013 Regulations)

Other types of complaint

Grievance

The SPA/ Police Scotland Grievance Standard Operating Procedure (“the SOP”) provides that grievances may relate to terms and conditions of employment; health and safety; staff relationships within the workplace; bullying and harassment; working practices and environment; discrimination; and incorrect interpretation or application of policies and procedures.

Where a grievance-type complaint is made about a senior officer of Police Scotland, this will generally be dealt with initially under the SOP. Any preliminary assessment of the allegation under the Regulations will generally take place only after the grievance has been dealt with.

Whistleblowing

The SPA Whistleblowing Policy sets out key principles supported by procedures outlining how concerns can be raised and how they should be handled. The Policy applies to all SPA Corporate and Forensic Services employees as well as secondees, contractors and agency staff working within SPA Corporate and Forensic Services.

Alleged criminal activity

In the course of assessing any complaints, where the SPA considers that it can reasonably be inferred that the person subject of the complaint may have committed a criminal offence it must refer the matter to the COPFS for consideration.

Where an allegation has been referred to the police or the appropriate prosecutor, guidance will be sought on how to proceed with any non-criminal aspects of the complaint. It may be that the SPA is required to suspend its complaints process until criminal investigations have been completed. In such circumstances, the SPA must inform the individual being complained about that misconduct/ disciplinary proceedings may be taken against them whether or not criminal proceedings are brought.

While accepting there may be delays, the SPA Complaints Team should attempt to address the non-criminal allegations as early as possible. It may be necessary/ prudent to consult the prosecutors regarding the status of the criminal complaint and determine if there is any reason why the non-criminal complaint cannot be concluded before the criminal complaint.

Where a complaint is significant, complex or where there is doubt as to the course that should be followed, the Complaints & Conduct Committee will be notified at the outset.

Withdrawn or abandoned complaints

Where a complainer intimates that they wish to withdraw a complaint, written confirmation should be obtained from the complainer if possible. However, even if a complaint is withdrawn, the complaint may still be progressed if:

- Evidence exists that supports the complainers allegations
- The complaint arises from a matter that is particularly sensitive or high profile
- The subject, department or person complained about is part of multiple complaints
- The complaint contains criminal allegations. In such cases, the matter should still be referred to the police/ appropriate prosecutor

When an explanation has been offered to a complainer, the allegation should not be considered to have been withdrawn, nor should the complainer be prompted to withdraw the allegation.

In some cases complainers fail to co-operate with the complaints process e.g. persistent failure or refusal to communicate with the SPA Complaints Team without good reason; persistent abusive and offensive behaviour towards staff in the SPA Complaints Team. In such circumstances all contact with, and attempts to contact, the complainer should be documented. The SPA Complaints Team should make all reasonable efforts to secure the complainer's co-operation.

If it is reasonable to assess that the complaints process cannot proceed without the complainer's further co-operation, then consideration may be given to closing the complaint. However, the process should not be abandoned without first notifying the complainer in writing that they are required to provide additional information to allow their complaint to be progressed. If they fail to respond to the request the complainer will be sent final correspondence advising them their complaint will be abandoned if they do not co-operate with the information request within 14 days from the date the correspondence is sent.

Anonymous complaints

Anonymous complaints may come in through written correspondence to the SPA, or may be identified through the 'Integrity Matters' system or through a report from an agency such as 'Crimestoppers'.

- 'Integrity Matters' is an internal, confidential reporting mechanism for all Police Scotland and SPA employees. Police officers and members of

police staff/ SPA staff can report, both anonymously and confidentially, any criminal or conduct or integrity concern using this service

- 'Crimestoppers' is an independent agency that allows people to anonymously report information about crime.

Anonymous complaints should be treated with caution. Complaints may be made anonymously for a variety of reasons. Anonymity may be sought by a complainer in order to make malicious allegations. On the other hand, anonymous complaints may be entirely legitimate and the complainer may seek anonymity due to e.g. fear of reprisal. Anonymous complaints therefore require to be approached with an open mind.

In deciding how to deal with an anonymous complaint, the SPA will take the following into account:

- the nature, circumstances and seriousness of the alleged act or omission, including the apparent credibility or reliability of the allegation
- Based on the level of detail contained in the complaint (e.g. date, time, location of any incident, potential witnesses etc.) whether it is likely that evidence could be gathered during an investigation i.e. whether there are obvious, reasonable and proportionate lines of enquiry that could be undertaken

Where the SPA is unable to obtain additional information to assist with the initial assessment of the complaint or the complaint enquiry and it is not possible to issue the final response to the complainer, the SPA will consider whether the anonymous complaint is a relevant complaint capable of being made by a member of the public. If so, the complaint will be progressed through the complaint handling process. Alternatively, the SPA will consider whether other routes, such as whistleblowing, are more appropriate to deal with anonymous allegations.

Unacceptable actions

There are relatively few complainers whose actions the SPA consider unacceptable. How we aim to manage these actions depends on their nature and extent. If it adversely affects the SPA's ability to do our work and provide a service to others, we may need to restrict complainer contact in order to manage the unacceptable action.

A copy of our SPA [Unacceptable, Persistent or Unreasonable Actions by Complainers Policy](#) is available on the SPA website.

Complaints outwith SPA remit

Where contacts are received by the SPA Complaints Team which do not fall within its remit they will be recorded and acknowledged within 3 working days and the complainer advised where to re-direct their complaint. In such cases, despite the complaint not being managed by the SPA Complaints Team, the contact with the SPA will be logged and the case closed.

Communication with individuals complained about

Where a relevant complaint is made about a senior officer or member of the SPA's staff, the subject of the complaint will be made aware of a complaint against them at the earliest practicable point, provided that such early disclosure would not prejudice any investigation of a complaint. In addition, the individual will be asked to make any comments or evidence they wish to provide on the complaint.

The subject officer or member of SPA staff is not obliged to provide any response, however they should be made aware that, if their version of events is not available, the complaint may be upheld based on the information available particularly where there is no other evidence to the contrary and that the complainer has provided an apparently credible and reliable account. Complaint determinations are made on balance of probability using available evidence.

Throughout the handling of the complaint, it is necessary to communicate regularly with the officer or staff member subject of the complaint in order that they are aware that matters are still ongoing and when they may expect to be notified of the findings.

How complaints are determined

The ability to resolve complaints promptly and simply is a key element of an efficient and effective police complaints system. To this end, Early Stage Resolution (ESR) allows complaints to be resolved at an early stage by way of explanation, assurance or apology. ESR is intended to be a pragmatic and proportionate approach that benefits all parties involved in a complaint.

Notwithstanding, ESR must only be used where the complaints are non-criminal, straightforward, relatively minor in nature and can be resolved quickly with minimal enquiry. Complaints involving allegations of a criminal, complex or serious nature are not suitable for ESR.

This means that non-serious, non-complex “relevant complaint” allegations may be dealt with through early stage resolution by the SPA Complaints Team without the requirement to bring the matter before the Complaints & Conduct Committee.

The Committee should be advised of all serious and complex complaints and may require to make Stage 1 decisions in relation to at least some of these. However, there may be cases where that decision can be made by the SPA Complaints Team, e.g. deciding that a complaint should be dealt with as a relevant complaint. This will also have the added benefit of reducing the time it takes to deal with complaints.

- Stage 1. Initial assessment to agree what complaint route should be applied
- Stage 2. Final assessment to determine the outcome of the complaint

The Committee must carry out an objective analysis of the evidence obtained. The following should be considered:

- The act or omission that prompted the complaint
- Whether or not the facts established support or contradict the complainer’s position
- If the evidence is supportive of the complainer’s position, what action should be taken and what can be done to prevent a recurrence
- Whether an apology is appropriate
- What can be learned from the complaint

Following the SPA Complaints and Conduct Committee’s majority decision on each complaint allegation, there are a number of options available.

1. The Committee will decide whether to Uphold or Not Uphold each allegation based on the balance of probabilities.
2. For complaints which are Upheld, the Committee will then consider what action is appropriate. This may mean:
 - (a) Provision of an explanation
 - (b) Provision of an apology
 - (c) Provision of assurances that this will not happen again
 - (d) Identification of lessons learned or improvement action taken
 - (e) Identification of management advice or training need identified
 - (f) Potential for performance management or disciplinary or misconduct process to be instigated
 - (g) In the most serious cases relating to misconduct allegations about senior officers, consideration will be given to conduct regulations, and if appropriate, preliminary misconduct assessment will be carried out, and if deemed appropriate, referred to PIRC for investigation

Complainers will be issued a final written response advising them on what enquiries have been undertaken by the SPA into their complaint, what evidence has been gathered and the rationale on how the committee assessed and reached their determination. The minutes of the meeting will reflect the reason for the committee's determination and details of the members who made the decision.

All "relevant complaints" will be determined using the balance of probabilities test. Complainers will also be advised of the appropriate next steps should they be dissatisfied with how the SPA has handled their complaint.

When responding to "relevant complaints", the SPA will include a paragraph in line with the PIRC's statutory guidance as detailed above at Stage 6 – Notification to Complainer.

No other correspondence will be required with the complainer unless a misconduct hearing has arisen out of a complaint made by a member of the public. As required in the legislation, in those circumstances the Authority must notify that member of the public in writing of the determination of the proceedings.

Individuals being complained about will be issued a final response advising of the determination of the complaint, what follow up action is being taken, and in what timescales. They will also be advised that should the complainer be dissatisfied with the manner in which the SPA has dealt with their complaint, then they have recourse to apply to the PIRC for a Complaint Handling Review (CHR).

Complaint Handling Reviews

The PIRC may, at the request of the complainer, examine the manner in which a relevant complaint has been dealt with, known as a Complaint Handling Review. After completing the CHR, the PIRC may make recommendations requesting that further action is taken. The PIRC may also give a Reconsideration Direction (RD), instructing the SPA to reconsider the complaint. The process for the handling of RDs by the SPA is summarised below:

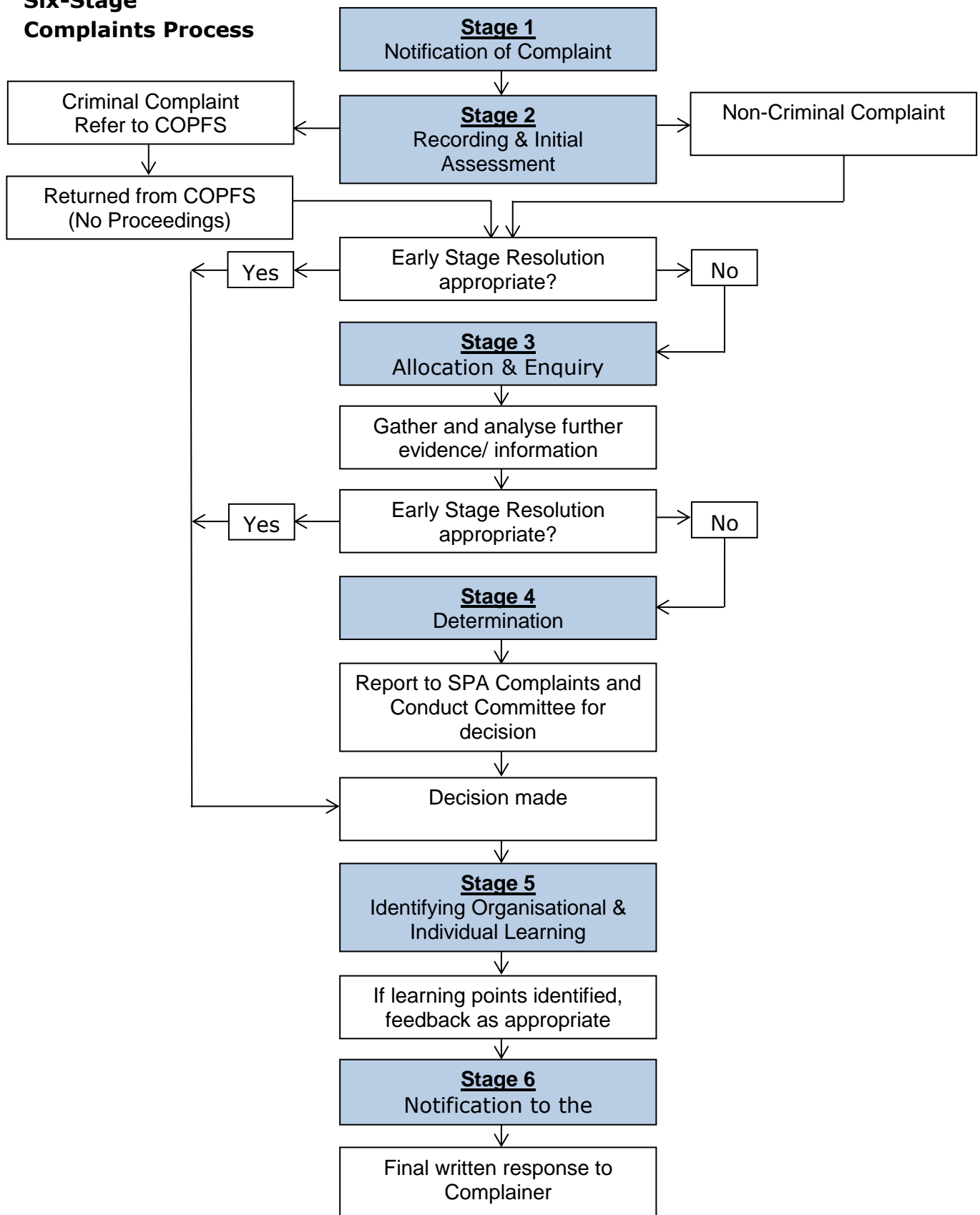
- The PIRC issues a CHR which contains an RD
- Complaints Team to advise CCC Chair via email as soon as practicable that an RD has been received
- The Chair of the CCC will request that a CCC Member, or Board Member who is not a member of the CCC, is appointed to reconsider the complaint as soon as practicable. The person appointed must be one who was not previously involved in the consideration of the complaint³

³ Police, Public Order and Criminal Justice (Scotland) Act 2006 (Section 37)

- A named member of the Complaints Team will be appointed to assist the person appointed to reconsider the complaint
- The Complaints Team member appointed to assist with the RD will have early-stage contact with the PIRC to establish the detail of the work required to see the RD completed and maintain regular contact with the PIRC throughout the reconsideration
- The Complaints Team member will also issue the complainer with regular updates throughout the reconsideration (unless the reconsideration direction is supervised by the PIRC, in which case the PIRC will be responsible for updating the complainer)
- The person appointed to reconsider the complaint will, once the PIRC are content that the RD has been considered appropriately, submit a report, known as a "Section 40 Report", on the reconsideration to the PIRC⁴
- A revised final letter to the complainant will also be shared with the PIRC for comment before being sent to the complainant
- The Complaints Team will advise the CCC at its next meeting that the RD has been completed

⁴ Police, Public Order and Criminal Justice (Scotland) Act 2006 (Section 40)

Appendix 1
Six-Stage
Complaints Process



Appendix 2 Senior Officer Misconduct Handling Process

