



Home Office

# Complaints guidance for UK Visas and Immigration, Immigration Enforcement and Border Force

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# Section 1: introduction

1.1 This guidance sets out how complaints are handled in UK Visas & Immigration (UKVI), Immigration Enforcement and Border Force within the Home Office. In this document, the three directorates will be referred to as the Immigration & Border Directorates (IBDs).

1.2 The main sources of guidance for staff managing complaints in the IBDs are:

- Complaints Guidance: this document sets out a consistent approach across the IBDs.
- Standard Operating Procedures (SOPs): these describe how individual teams should manage complaints workflows. For complaints from immigration detainees this is detailed in Detention Services Order (DSO) 3/2015 – Handling Complaints.
- The Style guide: this details the quality standard requirements for drafting complaints correspondence.

1.3 All these documents can be found on the correspondence homepage of the Home Office intranet.

# Section 2: definition of a complaint

2.1 This guidance sets standards and procedures for managing complaints from, or on behalf of, external customers only.

2.2 The IBDs define a complaint as:

“any expression of dissatisfaction that needs a response about the service we provide, or about the professional conduct of our staff and contractors.”

2.3 Correspondence about legislation or wider government policy should be directed to [public.enquiries@homeoffice.gsi.gov.uk](mailto:public.enquiries@homeoffice.gsi.gov.uk).

2.4 The complaints system is not intended to provide a remedy for those dissatisfied with the actual decision in their individual immigration application. Details of alternative contact routes if the applicant wants to review the decision on their case can be found on the [UKVI complaints webpage](#).

2.5 Likewise, the complaints handling process is not the appropriate avenue to challenge a decision made by Border Force in relation to immigration or customs functions. Details of alternative contact routes to appeal Border Force decisions can be found on the [Border Force complaints webpage](#). However, sometimes a complaint will be submitted alleging misconduct or raising service issues concerning a decision to refuse leave to enter. In these cases the investigation should ensure the appropriate area addresses the decision making process and an independent officer should also be asked to review the decision.

## Service complaints

2.6 Service complaints are complaints about the way that the IBDs and/ or their contractors work. Service complaints can relate to the actual service provided and/ or the day-to-day operational policies behind them. They are usually categorised and recorded on the Complaints Management System (CMS) under a variety of headings such as:

- Delay (for example, in delivery of a service).
- Administrative/ process error (failings in the process, administrative error, poor service or failure to meet service standards).
- Poor communication (failure to keep customers informed; failure to answer correspondence, return calls etc).
- Wrong information (provision of poor, misleading, inadequate or incorrect advice).
- Lost documents (for example, passports or birth certificates submitted by customers that have been mislaid).
- Queues.
- Damage.
- Customer care – physical environment (complaints relating to tangible, physical aspects of the service such as access, up to date equipment and accommodation as well as the ease and convenience with which it can be used).
- Customer care – availability of service (loss of access to services, for example IT or other equipment breakdown).
- Customer care – provision for minors (failure to take the particular needs of children into account).
- Customer care – complaint handling (failure to respond to a complaint or dissatisfaction with the response).

## Minor Misconduct complaints

2.7 Minor misconduct complaints are complaints about the professional conduct of IBD staff and/ or contractors which are not serious enough to warrant a formal investigation. If substantiated they would not normally lead to discipline (misconduct) proceedings. Some examples are:

- Incivility.
- Brusqueness.
- Isolated instances of bad language.
- An officer's refusal to identify themselves when asked.
- Poor attitude, for example, being unhelpful, inattentive or obstructive.

## Serious misconduct complaints

2.8 Serious misconduct complaints are any unprofessional behaviour which, if substantiated, could lead to serious or gross misconduct proceedings.

2.9 Before line managers take action to resolve a misconduct complaint they need to consider whether an allegation is of minor or serious misconduct.

- 2.10 Serious misconduct is any action or behaviour of a Home Office staff member or contractor which, if substantiated, could require formal management action such as written warnings, dismissal or other penalty. All line managers who receive a complaint about a member of staff or a contractor which they consider meets the criteria for serious misconduct must refer the case to Central Point of Receipt (CPR) at [complaints@homeoffice.gsi.gov.uk](mailto:complaints@homeoffice.gsi.gov.uk).
- 2.11 Serious misconduct complaints are based on allegations that fall into one of the following categories and should be recorded as such on CMS:
- Criminal assault.
  - Criminal sexual assault.
  - Criminal theft.
  - Criminal fraud or corruption.
  - Racism or other discrimination (see Annex A for further detail. This category should be used to record all allegations of discrimination related to “protected characteristics” as defined in the Equality Act 2010).
  - Unfair treatment (for example, harassment).
  - Other unprofessional conduct (including any behaviour likely to bring the Home Office into disrepute; or which casts doubt on a person’s honesty, integrity or suitability to work for the Home Office).
- 2.12 All serious misconduct complaints received about IBD staff or contractors must be referred to CPR who will liaise with the Central Referral Team (CRT) in the Professional Standards Unit (PSU) to consider. CRT PSU is notified of complaints via CMS, they forward and close cases on CMS but do not use it as a case handling system due to the sensitive nature of the allegations.
- 2.13 If CRT conclude the case can be handled as a standard complaint, CPR will register and allocate as normal.
- 2.14 If not, CRT will refer the complaint to PSU or Corporate Security Criminal & Financial Investigations (CSCFI). The Command and Control Unit (CCU) or the National Operations Command and Control (NOCC) for Border Force may also refer matters arising from serious incidents to PSU.
- 2.15 If PSU investigate the complaint, they should inform CPR of the investigating team’s details. PSU will update CMS to reflect they are taking the investigation forward. On conclusion of the investigation the accepting team will close the case on CMS. Once closed, PSU will add a copy of the reply to CMS.
- 2.16 Full guidance for handling serious misconduct complaints is set out in Annex A.

## Ex-gratia payments

- 2.17 An ex gratia payment is a sum of money paid when there is no obligation or liability to pay it, as opposed to compensation payments which must be awarded by a court. The IBDs and their contractors make ex gratia payments to complainants, beyond any legal or statutory requirements, as redress for maladministration. These payments are made at the discretion of the Home Office or its contractor and depend on the individual circumstances of the case.

## Complaints about contractors

- 2.18 Complaints about contractors supplying services to IBDs should be referred in the first instance to the contractor's own complaints process.
- 2.19 Complaints about the services provided or the conduct of contractors in the detention estate and during escort are managed in accordance with DSO 03/2015. Complaints about the serious misconduct of a contractor are investigated by PSU rather than the contractor.
- 2.20 Information on how to complain to an overseas visa processing contractor can be found on the [contractor website](#) in the location where the service was delivered. Processes are in place to ensure that allegations of corruption by contracted staff employed in the Visa Application Centres are referred by the contractor to PSU for investigation.
- 2.21 Contractors will keep full records of complaints received and responses issued. They will report these on a regular basis to the UKVI team overseeing the wider contract management.

## Section 3: oversight of the Home Office complaints process

- 3.1 There are a number of organisations which provide additional oversight of the Home Office complaints processes. These organisations are listed from paragraph 3.4 below.
- 3.2 The Home Office has specific teams which lead and co-ordinate contact with each. They are:
- The Parliamentary and Health Service Ombudsman (PHSO) – PHSO team in Customer Service Operations, UKVI.
  - Prison and Probation Ombudsman (PPO) - PSU / Detention Operations.
  - Independent Police Complaints Commission (IPCC) – PSU.
  - Police Investigations & Review Commissioner (PIRC) – PSU.
  - Police Ombudsman Northern Ireland (PONI) – PSU.
  - Crown Servant Monitor – PSU.
- 3.3 Contact should not be made with these organisations except through the teams listed above. In the event of a critical incident requiring immediate out of office hours referral either the Border Force National Command Centre (NCC) or the Immigration Enforcement Command and Control Unit (CCU) may also contact the oversight bodies.

## The Parliamentary and Health Service Ombudsman

- 3.4 The PHSO deals with complaints from members of the public who claim they have suffered injustice due to maladministration by a government department or agency.
- 3.5 Before referring their complaint to the PHSO, the complainant is expected to have first followed the internal complaints and review procedures set out in this guidance, except in the case of complaints relating to healthcare provision in the detention estate where the review process is direct to the PHSO. If the complainant remains unhappy after their case has been fully reviewed through the complaints process they can ask their MP to refer their case to the PHSO for investigation. Full details can be found on the [Ombudsman website](#).

## Prisons and Probation Ombudsman complaints

- 3.6 The PPO deals with complaints from people held in immigration detention by Immigration Enforcement. Its remit covers complaints from individuals held in Immigration Removal Centres, short-term holding facilities, prison service establishments and those under escort. The PPO produces an annual report detailing anonymised examples of complaints received; recommendations made and responses received; selected summaries of fatal incident investigations and the number and type of investigations mounted.

The PPO will only usually get involved after the complainant has been through the complaints process set out in this document. People in detention can approach the PPO direct. The referral does not need to be made via an MP. The PPO will deal directly with the detention centre identified in the complaint. A copy of their report into the complaint is passed back to the detention centre as well as to Detention Services. Full details can be found on their [PPO website](#).

## Independent Police Complaints Commission referrals

- 3.7 In the case of serious complaints, incidents or misconduct allegations the matter must be referred to the IPCC, if certain criteria are met. Out of hours referrals to the IPCC should be made by CCU or NCC. Referrals to IPCC should be made out of office hours by CCU or NCC, who will then inform the PSU. PSU will then take ownership of liaison with the IPCC and follow up with a written formal referral. During office hours any referral to the IPCC can only be made by PSU.
- 3.8 The IPCC's statutory remit is limited to England and Wales. It is important to note that, unless specified by the IPCC, any complaint made to the Home Office which requires IPCC involvement must be referred by the Home Office onwards to the IPCC within one working day.
- 3.9 The criteria for a mandatory referral to the IPCC are:
- a death or serious injury;
  - serious assault;
  - serious sexual offence;
  - serious corruption;



- criminal offence aggravated by discriminatory behaviour; or any incident which engages Articles 2 (the Right to Life) or 3 (against inhuman or degrading treatment) of the European Convention on Human Rights.
- 3.10 If the matter relates to an IBD officer, official or contractor performing immigration/ asylum functions, a specified enforcement function (such as arrest, detention, search, etc) must also have been exercised. If the matter relates to an IBD official or contractor performing customs functions, the matter can be referred whether or not a specified enforcement function has been exercised.
- 3.11 The specified enforcement functions are listed in section 41 of the Police and Justice Act 2006 and include:
- Powers of entry.
  - Powers to search persons or property.
  - Powers to seize or detain property.
  - Powers to arrest persons.
  - Powers to detain persons.
  - Powers to examine persons or otherwise to obtain information, (including power to take fingerprints or to acquire other personal data), and:
  - Surveillance and associated activity.
- 3.12 The non-exercise of the above powers when it would have been appropriate to do so would also meet the criteria where it concerns the conduct of individual officers but not where a complaint is about Immigration Enforcement, UKVI or Border Force operational policy, for example, where IBDs have issued instructions not to detain in certain cases.
- 3.13 The powers do not include:
- The making of an immigration decision.
  - The making of any decision to grant or refuse asylum.
  - The giving of any direction to remove persons from the UK.
- 3.14 The IPCC also has the power to call in and oversee any complaint or conduct matter due to its gravity or exceptional circumstances. Similarly, IBDs can voluntarily refer any complaint or conduct matter to the IPCC due to its gravity or exceptional circumstances.
- 3.15 You can view full details and criteria for a mandatory referral to the [IPCC](#).

## The Police Investigations and Review Commissioner

- 3.16 The PIRC's remit is limited to Scotland to review complaints which have been investigated fully by the Home Office. They oversee the most serious incidents and misconduct matters arising in Scotland involving IBD officials and contractors carrying out frontline immigration and customs activities. Complainants must be informed of the right for review of their complaint. Full details can be found on the PIRC [website](#).
- 3.17 Deaths may be investigated by the PIRC or Police Scotland. This will be decided by the Crown Office Procurator Fiscal Service after it receives a referral from the PIRC or Police Scotland. The Home Office must refer all instances where an individual has died or sustained serious injuries following contact with frontline officers. The Home Office may also refer allegations of serious assault or following the use of a baton.

## Police Ombudsman for Northern Ireland

3.18 The Police Ombudsman's Office provides a level of independent oversight of serious incidents and complaints in Northern Ireland that is consistent with the powers of the IPCC to oversee complaints and serious incidents involving immigration officers and designated customs officials in England & Wales.

The agreement enables the Ombudsman independently to investigate complaints, misconduct matters and deaths or serious incidents involving immigration officers and customs officials exercising certain enforcement powers, or neglecting to use these powers when appropriate. You can read details of [PONI's](#) oversight of immigration in Northern Ireland.

## Crown Servant Monitor

3.19 Complaints made about the service or conduct of third party contractors employed at juxtaposed controls in France and Belgium are overseen on behalf of the Home Secretary by the Crown Servant.

## NHS England

3.20 Complaints relating to healthcare in the detention estate in England are handled under separate NHS complaints procedures. The appeal process for individuals who are not satisfied with the way in which their complaint has been handled is via the PHSO.

## Independent Chief Inspector of Borders and Immigration

3.21 The Chief Inspector is appointed to assess the efficiency and effectiveness of the UK's border and immigration functions. He reports annually to the Home Secretary and his reports are placed before Parliament. Further information can be found on the [Chief inspector's website](#) and his [March 2016 report](#) on complaints handling.

## Her Majesty's Inspectorate of Prisons (HMCIP)

3.22 HMCIP is an independent inspectorate which reports on the conditions for and the treatment of those in prison, young offender institutions, secure training centres, immigration detention facilities, police and court custody suites, customs custody facilities and military detention. The role of HM Inspectorate of Prisons is to provide independent scrutiny of the conditions for and treatment of prisoners and other detainees, promoting the concept of healthy establishments in which staff work effectively to support prisoners and detainees to reduce reoffending and achieve positive outcomes for those detained and for the public. Further information on their work can be found on the [Justice Inspectorates](#) website with information relating to [immigration](#).

# Section 4: process of making a complaint

## Making a complaint

- 4.1 Customers are encouraged to complain by email at [complaints@homeoffice.gsi.gov.uk](mailto:complaints@homeoffice.gsi.gov.uk). Further details, and other ways of making a complaint, can be found on the three directorates' complaints pages:
- [UK Visas & Immigration complaints page](#)
  - [Immigration Enforcement complaints page](#) and in [Detention services orders - GOV.UK DSO 3/2015](#).
  - [Border Force complaints page](#)
- 4.2 The IBDs accept complaints in English and Welsh only (in accordance with the Welsh Language Act 1993). If complaints are received in any other language, they should be returned with a request to be resubmitted in English or Welsh. Complaints are accepted in languages other than English or Welsh only from those held in Immigration Removal Centres, Short Term Holding Facilities, pre-departure accommodation or under escort. Complaints forms are provided in other languages for this purpose. Detention Services will arrange for translation of the complaint.
- 4.3 Regardless of the language used to make a complaint all replies must be written in English or Welsh.
- 4.4 Reasonable adjustments should be made for accepting complaints and communicating with complainants with protected characteristics as set out in the Equality Act 2010.
- 4.5 IBDs would normally decline to investigate complaints submitted later than three months of when the incident complained about happened or when the customer first became aware of it and inform the complainant of our decision, except when a case meets one of the following criteria:
- Complaints concerning criminal activity, including corruption.
  - Cases where the complainant could not reasonably have been expected to make their complaint within this timescale, for example, they were out of the country or had medical issues.
  - The complaint raises other issues of such a serious nature that it would be detrimental to the business if the matter were not investigated further.
- 4.6 If a customer wishes to submit a formal complaint whilst their application is being considered through the appeal process, they can do so by email or in writing as set out in paragraph 4.1.
- 4.7 Although complaints may be included within the grounds of an appeal, only those lodged through the correct complaint channel are guaranteed to be answered within the 20 working day service standard.
- 4.8 The fact that a complaint has been lodged should not delay the appeal process; nor should it be assumed that the complaint will be dealt with as part of those procedures. Where the resolution of the complaint casts doubt upon the validity of the decision under appeal it will

be for the business area to agree the appropriate action and to relay this action to the complaints team.

## Timescales for responding to complaints

- 4.9 IBDs should respond to all complaints within 20 working days and take steps to ensure this is achieved in 95% of cases, in line with the published service standard.
- 4.10 If a complaint is not going to be answered within the 20 day target, the complainant should be informed before the 20 day target is reached and continue to receive appropriate updates until the case is closed.
- 4.11 For serious complaints investigated by PSU the published service standard is 95% of cases completed in 12 weeks.

## Section 5: process for handling complaints

- 5.1 All staff have a responsibility to ensure that any complaint received by the IBDs is dealt with appropriately, in accordance with the handling and processing standards. Complaints should be resolved by the business in one of two ways:
- Local informal resolution – when complaints are made on the spot to front line staff. These may usually, but not always, concern the behaviour of Home Office staff. They are the type of issue that can be dealt with quickly by the member of staff who received the complaint and where the customer is content to have the issue resolved this way.
  - Formal resolution - where complainants raise their concerns in writing and receive a formal response, either by telephone or in writing.

### Verbal and face to face complaints

- 5.2 Where a verbal complaint is made to frontline customer-facing staff, they should attempt where possible to resolve the complaint locally.
- 5.3 Serious misconduct complaints cannot be resolved locally and should in all cases be referred centrally using the process set out in paragraph 5.7 below. The definition of a serious misconduct case can be found in paragraph 2.11.
- 5.4 Local resolution is about dealing with a customer's complaint on the spot without the need for further escalation or correspondence. It would normally involve a willingness to acknowledge that a situation could have been handled differently/ better and a commitment to improving services. The member of staff or manager should normally discuss the complaint/ disagreement with the customer concerned and, where possible, attempt to find a mutually satisfactory resolution.
- 5.5 Local resolution may include:
- providing an explanation and/ or further information;
  - resolving misunderstanding; or

- apologising on behalf of the business or the member of staff against whom the complaint has been made.
- 5.6 When a complaint is resolved locally, a record need only be kept where the staff member believes that the issue may be relevant in the future if there is any further contact with the complainant. The record could consist of a simple reference on an existing file or electronic record (where it exists), as a note in any daily operational log (for example, Border Force port record) or recorded in line with other local procedures.
- 5.7 Where staff are unable to resolve the complaint verbally, they should provide customers with information on how they can submit a written complaint, for example by providing the appropriate 'How to complain' leaflet, by referring them to the relevant complaints page on gov.uk or, for complaints in detention or under escort, by providing them with a complaints form in the most appropriate language. Copies of the 'How to complain' leaflet can be obtained by emailing: [CSOComplaintforms&posters@homeoffice.gsi.gov.uk](mailto:CSOComplaintforms&posters@homeoffice.gsi.gov.uk).
- 5.8 All staff should be aware of their responsibilities towards children as part of their wider training before investigating any complaints from children or from representatives making a complaint on their behalf.

## Written complaints

- 5.9 All written complaints should receive an acknowledgment and be registered on CMS.
- 5.10 The date of receipt on CMS should be the date the complaint is received into the Home Office. CPR should transfer the complaint to the appropriate IBD within two working days of receiving the complaint in the Home Office. CMS must be used by CPR, the Central Correspondence Team (CCT), Border Force, Detention Services Customer Services Unit and PSU where it is available, following any team specific instructions in the SOPs. All complaints, their outcomes and any ex gratia payments claimed and paid must be logged in order to track the progress of individual cases and report on the number and type of complaints received.
- 5.11 CPR is responsible for registering on CMS all the complaints they receive and attaching any relevant electronic copies of documents. CPR will then allocate the complaint to the relevant complaints team on CMS for them to manage the remainder of the process.
- 5.12 Some complainants may have made complaints before and may send their complaints direct to the complaints team. Where this happens, the complaints team should send the complaint to CPR for registration.
- 5.13 Where a complaint is received direct by the business or a contactor (for example, on a casework team) and it cannot be resolved verbally the complainant should be asked to use the central complaints process or follow the [Detention services orders - GOV.UK](#) DSO 3/2015 in the case of Detention Services.
- 5.14 Details about complaints and their resolution should, where possible and where appropriate, also be recorded on case information database (CID) or other relevant local systems by complaints teams and easily accessible for audit purposes.

## Ownership and acknowledgement

- 5.15 Complaints about service should be handled and processed by the relevant IBD with responsibility for the issue being complained about.
- 5.16 Minor misconduct complaints about IBD staff will be referred to CCT and Border Force by CPR. Border Force complaints team will take forward the Border Force cases. Minor misconduct complaints about contractor staff in the detention estate and during escort will be handled in accordance with DSO 3/2015.
- 5.17 For UKVI and Immigration Enforcement minor misconduct cases, CCT will refer to the line manager of the subject of the complaint, or to another relevant manager if the line manager is not available. The line manager will draft a response, referring where necessary to the Home Office discipline policy. The final response will be submitted back to CCT who will ensure that the outcome is recorded on CMS. Due to the sensitive nature of some cases, the full response may not always be recorded on CMS.
- 5.18 Where a complaint contains both misconduct and service elements, the response should usually be led by the relevant IBD complaints team who would seek a contribution from the relevant business area on the minor misconduct element of the response.
- 5.19 Where a complaint contains elements of more than one category all separate elements should be investigated and resolved. It is the responsibility of the IBD complaints team dealing with the primary issue in the complaint to co-ordinate responses on all the separate elements, liaising with other teams where necessary.
- 5.20 Complaints mentioning legal action and county court claims should be sent to the Appeals & Litigation Operations team to decide who should then deal with the complaint. They may return straight forward matters to the business area for consideration. In other cases they will instruct Treasury Solicitors to handle the issue. When CPR receives letters from solicitors referring to “pre action protocol” or “letter before action” these should be emailed as soon as possible to Litigation Operations for their consideration. Any IBDs receiving complaints directly mentioning “pre action protocol” or “letter before action” should forward to CPR immediately to action.

## Transferring Complaints

- 5.21 Occasionally, CPR may allocate complaints to the wrong complaints team. When this occurs the complaints team should refer it back to the CPR within 48 hours for reallocation along with an explanation as to why the complaint is not for them and, if possible, a recommendation of which business area should respond.
- 5.22 CPR will then ensure it is re-allocated on CMS to the correct complaints team within 48 hours. Where there is disagreement between IBDs as to which one should own the complaint, it will be for the Grade 7 head of CPR to make a final and binding decision.



# Section 6: responding to the complaint

- 6.1 Complainants must be informed of the outcome of their complaint, whether it is substantiated or not, as well as any steps the IBDs are taking as a result of it. An exception may be where PSU make recommendations specific to an individual; we may then explain that a recommendation has been made to a manager to review the conduct of the officer in question but stop short of confirming disciplinary action has been taken or the outcome of a disciplinary case. The response can be in writing or through a verbal response by telephone.
- 6.2 Any written response containing personal information (as defined by the Home Office's Information Management policy) must be protected accordingly.
- 6.3 Complainants' bank account details should not be recorded on CMS. If IBDs have bank account details for a complainant in hard copy these should be redacted from the document or the whole document shredded, once a payment has been made.

## Responding fully to complaints

- 6.4 The IBDs should endeavour fully to investigate and respond to all the issues raised in a complaint. There will be some circumstances when IBDs are not able fully to investigate and/ or respond substantively. When this is the case, the response should set out the reasons why.
- 6.5 Each response should state whether the complaint has been upheld/ partially upheld or not upheld.
- 6.6 Where further information is needed from the complainant, responders should try to obtain this by phone, where a number is available. Otherwise, the responder should write to the complainant and give a deadline for a response of three working days, if contact has been made via email and ten working days, if by letter. If the complainant does not reply within the deadline set, a reply should still be issued and should be as helpful as possible. If at a subsequent date the complainant provides sufficient information to investigate, a new complaint should be recorded on CMS.
- 6.7 If a responder feels that there is a situation where a response (including a standard line) cannot be issued, this decision must be signed off by a Grade 7 or above. Full details of the reasons why must be fully captured on CMS.
- 6.8 Responders should ensure that written replies provide a professional, complete and accurate response.

## Complaints from children

- 6.9 It is particularly important that complaints from children are accepted, managed and resolved properly.
- 6.10 The IBD complaints handling arrangements are intended to ensure that children are not disadvantaged in using the complaints system and are treated fairly. Reasonable, age-

appropriate adjustments should be made to processes where necessary. In particular, any child making a complaint should feel confident in doing so, feel safe from repercussions and understand that the making of a complaint will not affect the consideration of any claim made by the child or their family.

- 6.11 Whilst it is intended that the complaints handling process should be made accessible to (and usable by) children directly, it will almost always be in the best interests of child to be supported and helped by a responsible adult.
- 6.12 When a child makes a complaint that raises complex issues or matters that could have serious implications, the responder or PSU investigator should contact the child to clarify whether they want or need adult support. If the child does want help, the responder or PSU investigator should, where possible, suggest and offer to facilitate contact with appropriate parties including parents, teachers, voluntary organisations, etc.
- 6.13 Where you identify a child in need or a child who has suffered harm or is likely to do so you must immediately make a referral to the local authority children's services. If in doubt, always err on the side of caution and refer without delay. This includes historical abuse allegations. In the first instance speak with your manager or safeguarding co-ordinator and ensure you refer to local SOPs.
- 6.14 All staff should be aware of their responsibilities towards children as part of their wider training before investigating any complaints from children or from representatives making a complaint on their behalf. Additional information can be found on the intranet page about safeguarding children, including details of how to make a safeguarding referral to local authority children's services.

## Anonymous complaints

- 6.15 Whether or not a complainant chooses to disclose their identity does not affect the need for the complaint handler to consider the issues raised and deal with them appropriately. Anonymous complaints should be dealt with under normal procedures insofar as possible. The detail contained in the anonymous complaint will determine the proportionality of any planned investigation. Anonymous complaints should be recorded on CMS using ANON.

## Third party complaints

- 6.16 Legal representatives, sponsors or others (for example, family members or even casual observers) may complain on behalf of someone else. Disclosure of any personal or case information to third parties should follow the appropriate Home Office guidelines. If the person who made the complaint is not an authorised representative of the original customer/ applicant in question or legally responsible for them, it may not be appropriate to disclose the outcome of a complaint investigation (for example, if the response would update on the progress of an application), or even to conduct an investigation at all (for example, a misconduct case which involves seeking further information from the third party).
- 6.17 In these cases staff should send an acknowledgement and explain that the complaint cannot be investigated without a written authorisation from the original customer/ applicant. However where a serious misconduct complaint about IBD staff has been made, the case should always be passed to CPR to refer to CRT or, in the case of complaints about



contractors from immigration detainees in places of detention or under escort, to PSU for possible investigation.

## Withdrawn complaints

6.18 If a complainant decides to withdraw their complaint, efforts should be made to establish the reason for withdrawal. The fact that a complaint is withdrawn does not necessarily mean that there is no issue to address. If the complaint raises serious issues, particularly about the misconduct of staff, consideration should be given to continuing an investigation into the complaint in the usual way.

## Action while a complaint is under investigation

6.19 The fact that a complaint has been made and is under investigation should not interfere with the consideration of the immigration or customs aspects of a case. Removal or excise seizure action, for example, should not be postponed pending the outcome of the complaint unless it is likely that criminal charges may be brought and the complainant required as a witness. Where there is any doubt, the complaints team should consult with PSU.

## File management and complaint storage

6.20 All complaints handled by IBD staff must be recorded on CMS, except where there are exceptional circumstances for a record being kept on an alternative system that has more restricted access (for example, where the security classification of the case requires that only certain staff can view the file). Paper records should be scanned onto CMS by CPR. When this has been done, the paper file should be securely stored until the moratorium on the destruction of correspondence has concluded. Records of complaints investigations conducted by contractors operating in places of immigration detention or providing escort services will be retained by the relevant contractor but may be viewed by the Home Office at any time.

6.21 Complaints handled by third parties (for example, commercial partners) must be recorded as set out in the contract, with details of how the complaint was assessed and the outcome fully accessible for audit and assurance purposes.

6.22 If the complaint becomes subject to litigation or a compensation claim, as awarded by the courts, the file should be retained for ten years to ensure relevant information is available to the court or relevant oversight body.

# Section 7: escalation process and quality control

## Escalation

- 7.1 When any verbal or written response to the complaint is provided, the complainant must be informed about how they can take forward their complaint if they are not satisfied with the reply. SOPs include templates and standard paragraphs containing the prescribed wording.
- 7.2 If a complainant is not satisfied by the initial response, the complaint will be recorded as a Stage Two Complaint and reviewed by a member of staff at Grade 6 or above. For immigration detainees who are not satisfied with the initial response the avenue for escalation is direct to the PPO or, for complaints about the provision of healthcare in detention, to the PHSO.
- 7.3 If a complainant is not satisfied with the second response, they must be provided with information on how they can ask for the case to be referred to the PHSO. Complaints about matters in Scotland involving certain staff will also have a right of appeal to the PIRC and serious complaints involving certain staff in England and Wales will have a right of appeal to the IPCC.

## Assurance and quality control

- 7.4 A thorough quality assurance process must be in place in all complaints teams. Cases must be routinely checked to ensure that are managed in accordance with SOPs, the Style Guide and other operational instructions. The outcome of any assurance must be recorded. The minimum frequency and grade at which assurance checks must be made are set out in the local SOPs.
- 7.5 A copy of the response, confirmation of who quality assured the reply (where this took place) and a summary of any other steps that need to be taken, including who is responsible for taking them, must be recorded on CMS by the responder. Failing to attach a response on CMS means the case is not recorded as closed and will therefore show as not having met the service standard target.
- 7.6 Complaints responses and record-keeping are subject to further central retrospective quality assurance to drive continuous improvement.

## Unreasonably persistent complainants and/ or unacceptable behaviour

- 7.7 IBDs are committed to dealing with all complaints made by or on behalf of customers/ applicants fully, impartially and within the service standards set out. The escalation process set out above allows complainants to ask for a review if they are not satisfied with the original response.

7.8 If a complainant is abusive, vexatious, frivolous, threatening or continues to correspond directly with IBDs despite being advised of the external escalation routes, IBDs reserve the right to not communicate further or restrict communication to certain channels.

## Section 8: learning from complaints

8.1 Complaints are an important way for the business better to understand issues from a customer perspective, learn lessons and make improvements.

8.2 Responders in central complaints teams and in the Detention Services Customer Service Unit must complete an MI form for each complaint response (whether responded to in writing or by telephone). Information about completing the surveys can be found in the SOPs / DSO 3/2015. The collated information and trends identified will be reviewed regularly by senior management and be used to drive improvements in conjunction with operational business areas.

# Annex A: serious misconduct complaints

## 1. General background for all staff

- a. The Professional Standards Unit (PSU) is responsible for investigating serious misconduct issues raised by customer complaints in the Home Office.
- b. Allegations of serious misconduct made by members of the public may be made at any time to frontline staff or as part of complaints which might otherwise be resolved locally through the local resolution process (paragraphs 5.2 – 5.8 of this guidance). Serious misconduct complaints can also arrive via Central Point Of Receipt (CPR) by email or by post.
- c. When a serious misconduct complaint is received, CPR will follow the process set out in paragraphs 2.12 – 2.16.
- d. Within PSU, external complaints, i.e. complaints from members of the public, have a completion timescale of 12 weeks.
- e. These investigations are not to be confused with discipline investigations. PSU investigating officers will adhere to the principles within the discipline guidance in investigating misconduct complaints, for instance staff members can be accompanied by a trade union representative. However, the purpose of the investigation is to establish the facts of the complaint, determine if the complaint is substantiated, part substantiated or unsubstantiated and to provide a reply to the complainant.
- f. At the end of the investigation, the investigating officer produces a report which is supplied to the relevant business area involved in the investigation of the complaint. Where managers identify the need for a discipline investigation as a result of a report produced by the PSU, there is no need for a second investigation. The discipline investigation process must be followed but the report can be used as evidence and the process can move directly to the hearing stage.
- g. If further evidence is required, or the report does not cover the appropriate areas as additional allegations are made, then an investigating officer should be appointed and further evidence obtained as appropriate. Please refer to the conduct and behaviour guidance intranet page.

## 2. Definition of serious misconduct complaints

- a) The definition of a serious misconduct complaint is set out in paragraph 2.11 of this guidance. All serious misconduct complaints are handled by PSU.
- b) In their response PSU will provide details about who the complainant should contact in order to submit an appeal, regardless of the outcome of the complaint. The appeal avenue will differ by case:
  - Detention complaints – Prison and Probation Ombudsman (PPO).
  - Short Term Facility complaints – PPO.

- Escorting complaints – PPO.
- Non-detention complaints – Head of Unit (HOU) Review then Parliamentary and Health Services Ombudsman (PHSO).
- Complaints re incidents in Scotland involving the Police or Home Office staff – Police Investigation Review Commission (PIRC) (HOU Review must be conducted first).
- Complaints involving the use of police like powers – Independent Police Complaints Commission (IPCC).

### 3. Allegations of discrimination

- Not every complaint that alleges discrimination or racism will be for PSU to investigate.
- If there is strong initial evidence available that the customer's treatment can be explained by factors other than race, the PSU may choose to refer the complaint for local action. This type of case would likely include complaints where no specific racist behaviour is referred to but the complainant states, for example, an immigration decision against them such as refusal of Leave to Enter at a Primary Check Point, or a provision of service in itself, implicitly indicates a racist attitude.
- If there is any doubt whether an allegation is about discrimination, the line manager must refer the matter to CPR for referral to PSU. PSU will then determine whether it requires formal PSU investigation. Where an allegation specifically states that an explicitly racist statement was made, CPR will always refer this to the PSU for assessment.
- Investigating allegations of discrimination can be very challenging for even the most experienced Investigating Officer. In some circumstances referral to the IPCC, PIRC or PONI will need to be considered.
- A serious misconduct complaint investigation into allegations of discrimination will consider a range of factors. Although there is no definitive or prescriptive guidance it is vital to assess the seriousness of the complaint to inform the way the matter is handled.
- A serious misconduct complaint investigation will
  - Engage with the complainant.
  - Assess the gravity of the complaint.
  - Conduct an appropriate investigation.
  - Understand the allegation of discrimination.
  - Explore appropriate lines of enquiry.
  - Consider comparator evidence. For example, compare how the complainant was treated against how a person who does not have the same protected characteristic would have been treated in the same situation. Investigating officers should look for evidence that supports this type of comparison.
  - Assess the language used.
  - Probe the officer or staff member's account
  - Assess all of the evidence.

- Identify organisational issues.
- Report findings.

## 4. Investigation into allegations of criminal behaviour

- When a complaint alleges potentially criminal behaviour the complaint should be referred to PSU. Once the complaint has been referred to PSU it will be assessed and decision made whether to refer to the police or other appropriate authority such as the IPCC, PONI, PIRC or CSCFI.
- The assessment may differ in length and complexity depending on the individual allegations and facts, but will be carried out in all instances of criminal allegations.
- In complaints including both criminal behaviour and inappropriate conduct, the investigation of the non-criminal aspect of the complaint may not always proceed where there is an outstanding criminal enquiry. This is to ensure the criminal enquiry is not prejudiced. It is important the appropriate authority is notified of criminal allegations at the earliest opportunity to ensure that neither investigation is prejudiced by the other.
- A current live criminal investigation is not necessarily a barrier to a PSU investigation proceeding or even concluding, however, close liaison is required. Single points of contact will be appointed in PSU to liaise with a single point of contact in the police investigation. This will ensure that both parties are fully aware of all relevant information and protect the integrity of each investigation.
- Where specifically requested by the appropriate authority, the PSU will suspend its enquiries until they advise it is possible for the PSU investigation to proceed. Due to the nature of criminal investigations, no timescale for the suspension of PSU investigations can be given.
- The appropriate authority may be approached for information for inclusion in the PSU investigation. This ranges from sharing of evidence, in particular witness statements or CCTV. A PSU investigating officer may also request police custody and property sheets, or any other information that may assist in their investigation.
- The PSU investigation is a civil investigation and is not entitled to seize evidence. The Data Protection Act allows PSU to request it from the appropriate authority, if it has been obtained in the course of an investigation. It will be down to the individual appropriate authority in charge as to whether they will release this information, as its release may jeopardise their investigation or the safety of a witness or other involved person.
- If the appropriate authority holds evidence that cannot be released to the PSU investigation, a PSU Senior Investigating Officer will decide if the investigation should be pursued without the evidence. This may happen, for example, if the evidence will not become available at all or for such a prolonged time as would place undue hardship on the complainant or staff. Alternatively, the investigation should be suspended until the evidence becomes available, for instance on the imminent completion of a trial.

## 5. Who will investigate the complaint?

- a. All decisions about who investigates serious misconduct complaints are taken by PSU. All investigating officers within PSU are trained and have the appropriate level of knowledge, skill and experience to plan and conduct investigations, including those into allegations made against officers who exercise specified enforcement functions.
  - Investigating officers are at least HEO grade or equivalent.
  - The investigating officers are overseen by senior investigating officers of at least SEO grade or equivalent.
  - The investigating officer will have had no prior social acquaintance with the officer under investigation.
  - They will not have had any operational involvement in the circumstances surrounding the complaint.
- b. The role of investigating officers is:
  - to establish the facts of the complaint and reach a conclusion, on the balance of probability, whether the evidence available substantiates the complaint.
  - to highlight any procedural shortcomings that may become apparent during the course of the investigation.
  - To make recommendations for line management to consider the conduct of any officer subject to investigation under the disciplinary procedures.
- c. Investigating officers do not decide what disciplinary action should be taken as a result of their investigation.

## 6. File management of serious misconduct cases

- a. Where the complaint was received by CPR, the complaint will have been recorded on CMS. PSU will ensure that cases allocated to the PSU are updated on CMS to show ownership. On closure the PSU will ensure that the closure date is shown on CMS and a copy of the reply letter is attached to CMS.
- b. A paper file must also be created for each serious misconduct complaint. Investigators of serious misconduct complaints must:
  - Classify files as 'Official sensitive' and store them securely at all times.
  - Request additional files with a new IMG reference if files become outsized.
  - Hold all files relating to the same case together and, in case they become separated, all files should be marked with the IMG references of the files they are linked with.
  - Keep all paperwork related to the complaint on the file, including the original complaint, the investigation report and a copy of the reply letter to the customer.
- c. PSU has the responsibility for creating these files by raising a request with General Registry.
- d. Completed files will be sent to General Registry, but will be retrieved where necessary for review by the Head of Unit, PPO, IPCC, PIRC or PHSO. Copies of final investigation reports may also be held on the management files of the person(s) whose conduct was in question by their line manager(s).



- e. Hard copy files for serious complaints should be retained for ten years. The date of intended destruction of the file should be written in the top right hand cover of the file cover.
- f. A serious misconduct complaint file cannot be destroyed within that ten year period without the authorisation of head of PSU. If a decision is made to go ahead with the destruction of the file the requestor must complete a pro-forma to send to General Registry authorised by the Head of PSU.

## 7. The investigation – preparation

- a. PSU will draw up the Terms of Reference for investigating the complaint. In cases where it is appropriate this will be done in consultation with the relevant oversight body. PSU will appoint a senior investigating officer and an investigating officer to undertake the investigation. In IPCC supervised or managed investigations the IPCC must approve the proposed investigation officer.
- b. The investigation should be proportionate to the matter under investigation. There will be some cases where the facts are not in dispute and others where it is an issue of inference. The amount of investigation, including questioning of all parties, will be greater in these inference cases to establish, on the balance of probability, what has occurred.
- c. The investigating officer should:
  - Undertake a pre-investigation review to determine a proportionate level of investigation.
  - If the investigation exceeds, or is expected to exceed, 12 weeks PSU will provide the relevant parties (the complainant as a minimum and CPR) updates on the progress. Once the 12 week timescale has been reached, the complainant will receive an update letter every 28 days informing them of the reason for delay, progress and anticipated completion date.
- d. It is essential that, wherever possible, the investigation is undertaken within this timeframe, or sooner, while events are still fresh in the minds of those interviewed and to avoid any subsequent complaint about delay in the process.
- e. The investigating officer will need to consider the information contained in the complaint to decide who to interview in order to establish the full facts. The subject of the complaint and the customer should always be interviewed. There may be reasons why this is not practical (for example the customer is abroad) but in these situations alternatives, such as telephone interviews, should be considered. If the investigating officer decides not to interview certain individuals pertinent to the complaint, they should provide reasons for this in their report.
- f. The investigating officer should obtain files, electronic records or papers relevant to the investigation as required. These may include, but are not limited to, completed forms (for example, reasons for refusal or notice of seizure), notebook entries or witness statements; electronic evidence for example, CID records, e-mails from POISE and Indigo, text messages and voicemail on Home Office issued mobile phones; and, CCTV, including from third parties. The investigator will obtain and preserve all relevant evidence, if it is available. All information obtained will be stored and/or shared or



disclosed in a manner consistent with internal guidelines and with relevant Data Protection legislation.

- g. When deciding which people to interview or obtain evidence from, due consideration will be given to any witnesses put forward by either party.

## The investigation – Notification

- h. It is essential that all parties involved with the conduct investigation process are kept informed about how matters are proceeding.
- i. PSU will send an acknowledgement letter to the customer within two days of receipt of the complaint at PSU. The acknowledgement letter also informs the customer that they have seven days in which to provide any further relevant information for consideration.
- j. Once the full details of the complaint have been established, the issues being investigated should be put in writing to the subject of the complaint. The notification letter should also state that the officer may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings. Details about the complaint, usually a copy of the complaint letter an excerpt from it or a summary of its contents, will be included with the letter.
- k. Some complaints/allegations are made against a specific team and it will not be clear which member of the team is the actual subject of the complaint. In these cases the notification letter will be amended to reflect this. Where a specific individual has not been identified as the person at whom the complaint is made, all issues mentioned in the complaint will be put to all the staff members being interviewed to allow those involved to have the opportunity to respond to all the allegations.
- l. In investigations under IPCC arrangements the subject of the complaint has a right to make a submission to the investigator once they have received the notification letter. The investigator has a duty to consider that submission. Any submission does not remove the ability of the investigating officer to interview the staff member(s) concerned.
- m. Where the complaint is about a contractor within Detention Services PSU sends a copy of the complaint letter to the relevant contractor's complaints co-ordinator to be forwarded to the contracted staff.
- n. Contractors without accreditation cannot work as a detention custody officer with detainees.
- o. In all cases, apart from Detention Services complaints, PSU will write to the relevant Grade 7 to inform them of the complaint received and the staff members it concerns (if identified at that stage).

## Suspension from duty

- p. It is the Grade 7's responsibility to inform the relevant line managers within their command of the complaint and, in liaison with CSHR Casework, decide whether to suspend any member of staff pending further enquiries. It is the responsibility of

Detention Operations to consider whether any contracted staff accredited to work with detainees should have their accreditation suspended pending the outcome of the investigation

## Invitations to interview

- q. Once the allegation has been set out in the notification letter, the investigator will arrange any interviews required with the customer(s), the subject(s) of the complaint and any witnesses within an agreed timescale. If the subject(s) of the complaint wishes, they can provide a written response to the allegations that can serve as a basis for, not an alternative to, the interview. However, the investigator will inevitably ask additional questions during the interview until they are satisfied that all relevant information has been obtained.
- r. The investigating officer will determine who the relevant people are to interview. If the complainant or staff member have any names of people they wish to be interviewed, these should be identified by the investigating officer at an early stage of the investigation. Where alternative strong evidence exists or there are large numbers of witnesses, it may not be necessary to interview everyone identified, so long as the evidence gathered is proportionate and unbiased.
- s. An invitation letter to a member of staff, as the person being complained about, will normally give at least five days notice of an interview. This may not always be possible where significant allegations have been made and an immediate response is required by the business. However investigating officers will try to assist with this wherever possible. Staff subject of the complaint have a right to be accompanied by a trade union representative or workplace colleague. If, due to the urgency it is not possible for the employee to arrange to be accompanied, advice should be sought from CSHR about any subsequent disciplinary action that may arise. There is no right for a staff member being interviewed as a witness to be accompanied by a trade union representative. However, the investigating officer will consider any requests to be accompanied.
- t. Wherever possible the notification letter sent out to staff members will make it clear in what capacity they are to be interviewed, either as the subject of the complaint or a person who may be able to assist with the investigation (witness).
- u. Details of the rights to be accompanied in certain circumstances are set out in section 12 of the Discipline How to guidance on the Intranet.

## Update letters

- v. The intention is to complete all investigations within 12 weeks but this will not always be possible. If a case is delayed beyond 12 weeks everyone involved should be informed in writing of progress and, if possible, a revised timescale for completion, at least every 4 weeks. In IPCC investigations, all parties will also be updated in writing at least every 4 weeks from the outset of the investigation.

## 8. The investigation process – interviews and evidence gathering

- a. The purpose of the interview is to establish the facts of the case. All aspects of the complaint and any corroborative evidence must be put to the subject(s) of the complaint during the course of the interview and they should be given every opportunity to respond to each individual allegation. If there are allegations against more than one officer, they should be interviewed separately. The PSU Investigating Officer may choose to disclose other evidence available to them at interview. This will be done in line with the Disclosure guidance.
- b. Ideally witnesses should then be interviewed either face to face or by telephone, depending on the extent of the information sought, with due consideration given to any witnesses put forward by either party. If it is not practicable to interview the witness, the investigating officer may require a written statement instead.
- c. All interviewees should be asked if they are fit and well enough to be interviewed before the interview is begun. Interviews themselves should not last longer than an hour and a half without a break. After an agreed interval the interview can then recommence. The investigator should also allow other reasonable requests for breaks, for example, to allow private consultation between the interviewee and their representative.
- d. It is important that an accurate record of the information provided at interview by customers, subject(s) of complaint and witnesses is produced. How the information is recorded will be decided by the investigating officer in advance. The investigating officer's decision is final and must be co-operated with. In the majority of cases interviews will be digitally recorded so that a full objective record is available for reference and audit. The recording will be used to prepare either a full verbatim transcript, interview summary or a statement. The interviewee will be provided with a copy of the transcript or statement which they will be asked to agree with amendments, if necessary. A copy of the recording will be provided on request.
- e. If it is not possible for the interview to be recorded, the investigating officer or an independent person appointed by the investigating officer will take a written note of the interview. The notes will then be used to draft a statement which will be provided to the interviewee to sign off as an accurate summary.
- f. The investigating officer must remain objective and act in the interests of natural justice and fairness and should bear in mind that those interviewed are likely to be apprehensive.
- g. Equal consideration should be given to all accounts. Assumptions and conjecture should be avoided and an officer's previous conduct or a customer's immigration history should not be taken into account unless it is fully justified in having an important bearing on the case.
- h. All staff members interviewed in connection with the complaint will be expected to give the investigating officer their full co-operation and be open and honest in providing their account of events.
- i. Any attempt to obstruct the investigation process by any member of staff could lead to the consideration of misconduct action by line management. Refusal to attend interviews

for example by the subject of the complaint or by witnesses could be interpreted as an attempt to obstruct the investigation.

- j. Any attempt to obstruct the investigation process by a trade union representative should be reported to the HRD – Employee Relations Team who will take the matter forward under agreed procedures.
- k. This also applies if, at any time during the investigation, it becomes apparent to, or is reported to, the investigating officer that there has been an attempt to intimidate or interfere with witnesses. If this occurs it should be reported to the individual's line manager.
- l. The investigating officer should also ensure there has been no breach of confidentiality or collusion between the subject(s) of the complaint and witnesses. If any breach of confidentiality or collusion is suspected this should be referred to in the investigating officer's report.
- m. Grievances raised during the course of a complaint investigation cannot be raised in relation to matters and proceedings covered by the discipline procedure. If the employee wishes to raise issues of concern they may do so at the disciplinary hearing. Grievances which are raised with the intention of evading or detracting from legitimate investigation of the complaints may be considered malicious.
- n. The investigating officer should explain to the subject(s) of the complaint that they can be accompanied by one recognised trade union representative or one workplace colleague. The role of the representative is to provide support, ensure the officer is aware of procedures and is treated fairly. They should not answer questions on the officer's behalf or behave in a way that prevents the investigating officer from establishing the information required.

## 9. The investigating officer's report

- a. The investigating officer should submit a full report to the business area responsible for the staff member subject to the complaint. The report must set out the following:
  - The terms of reference for the investigation.
  - Details of evidence obtained and witnesses interviewed (with the reasons listed if it was not appropriate) and observations where appropriate on the relative credibility of the evidence.
  - A summary consideration and balancing of the evidence addressing each point of the complaint objectively and an assessment of the extent to which they are justified.
  - If the issue turns solely on the credibility of the parties involved this should be made clear with comment made as to why the account of one party is given greater credence than the other.
  - Whether there is any suspected breach of confidentiality or collusion.
  - A conclusion based on the balance of probability of whether the complaint has been substantiated or not.
  - Whether any local procedures or instructions might need to be changed or modified as a result of the conclusions reached.
  - Details of any recommendations made.

- b. The investigating officer will not make conclusions as to whether misconduct has been committed, only whether, on the basis of the evidence and the balance of probability, the complaint is substantiated or not. In cases that are substantiated the line manager will consider whether a disciplinary investigation or hearing is required.
- c. In IPCC cases where complainants have a right of appeal, the line manager will inform the investigating officer whether, on the basis of the investigation report, they intend to hold a misconduct hearing. This is required so that the investigating officer can inform the complainant and enable them to consider whether they wish to exercise their right of appeal.

## 10. The investigation process – Disclosure of evidence

- a. More evidence often becomes available to the investigating officer during the course of an investigation than is available at the beginning when only a complaint letter or form has been received. If this arises the terms of reference may require revision.
- b. Before an interview, the subject of the complaint should have been provided with sufficient information to allow them to make representations to the investigating officer. This means the investigator will provide the subject of the complaint(s) with full details, for example, time, date, location, persons involved; and the actions, misconduct or behaviour which has been alleged.
- c. The investigating officer determines at what stage any further evidence should be provided to relevant parties. The investigating officer will consider, for example, whether disclosure of certain information before an interview may lead to the contamination of the evidence of the interviewee or have other adverse effects on the investigation.
- d. The investigating officer must in all cases put all allegations and corroborative evidence to the subject of the complaint at some point during the investigation process in the spirit of natural justice. The subject of the complaint must have the opportunity to respond fully.
- e. The investigation report and annexes must include all the evidence available to the investigating officer. It will also include how the consideration of this evidence led to the conclusion about the alleged misconduct. Detailed findings of the report will be provided to the subject of the complaint by their line management as soon as possible.
- f. Any disclosure made by a child which indicates safeguarding concerns should be reported to the police or the local authority children's social services / social care.

## 11. The outcome of the investigation

- a. Once the investigation has been completed, PSU will send a response to the complainant unless the relevant Director has indicated that they wish to send the reply. This will include detailed findings of the investigation on each aspect of the complaint. Where PSU make recommendations specific to an individual, the reply may explain that a recommendation has been made to a manager to review the conduct of the officer in question but stop short of confirming disciplinary action has been taken or the outcome of a disciplinary case (except in an IPCC case see paras i&j below). It will also set out

any relevant review and appeal procedures for example, to the Head of PSU, IPCC, PPO or PIRC.

- b. The line management of the employee being investigated will be provided with a copy of the investigation report, via their Grade 7 or above, to enable them to decide what action to take i.e. whether or not they intend to hold a disciplinary hearing.
- c. In Detention Services cases, the completed report and a copy of the letter to the complainant should be sent to the Detention Services Complaints Section who will be responsible for sending copies out within Detention Services, including to the relevant contractors and, where appropriate, to the Independent Monitoring Board. All findings should also be shared by the Investigating Officers with the line management of the subject of the complaint, ordinarily the Grade 7 for the operational office or Immigration Removal Centre (IRC) manager concerned.

## IPCC cases

- d. In IPCC cases the complainant has a right of appeal against a local or supervised IPCC investigation. This additional guidance applies.
- e. The appeal must be made within 28 days of receipt of the Home Office letter which informed the complainant of the investigation outcome. There is also a right of appeal if The Home Office fails to notify the IPCC of a relevant complaint or if the Home Office fails to record such a complaint. The appeal must be made within 28 days of the date on which notification of that failure is made or sent to the complainant.
- f. There is no right of appeal against an IPCC independent investigation or an IPCC managed investigation. The complainant has the right to appeal to the IPCC on the following grounds:
  - Failure to notify or record a complaint.
  - Appeal with respect to an investigation:
    - Not being provided with adequate information (either about the findings of the investigation or about the taking or non-taking of action; including disciplinary action).
    - The findings of the investigation.
    - The determination as to whether the subject of the complaint has a case to answer.
    - Any determination as to whether or not actions recommended in the report should be taken or not taken.
    - Any determination not to refer the investigation report to the Director of Public Prosecutions (CPS).
- g. If the IPCC upholds part, or all, of the appeal it may ask for:
  - the complaint to be re-investigated;
  - it may request that further information be provided to the complainant;
  - or it may direct the Home Office to undertake certain actions, which could include requiring that a disciplinary hearing be held.
- h. The IPCC cannot direct the outcome of such a hearing, only that it be held.
- i. In order to implement the arrangements, investigation reports must state clearly whether the fact that a complaint has been substantiated results in a case to answer concerning serious



misconduct. The PSU should send the investigation report to the relevant line manager(s) and then ask the line manager(s) of the subject(s) of complaint to confirm what disciplinary action they intend to take having read and understood the investigation report.

- j. Once the line manager has confirmed what action, if any, they are taking, it is the responsibility of the PSU to inform the complainant as to whether or not a disciplinary hearing is being undertaken.
- k. The complainant then has 28 days in which to appeal against that intended action, in practice this is most likely to be an appeal against a decision not to hold a disciplinary hearing after PSU has indicated that there is a case of serious misconduct to answer.
- l. The line manager should be advised not to arrange a disciplinary hearing until PSU confirms to them that either:
  - no appeal has been made;
  - an appeal has been made but IPCC has not upheld the appeal; or
  - an appeal has been made which has been upheld by IPCC but the outcome does not pertain to proposed disciplinary action.
- m. In IPCC cases the Investigating officer should ensure their investigation includes:
  - Information to show that relevant parties were updated on the progress of the investigation at least every four weeks from receipt of the complaint.
  - All relevant information to address the complaint is included in the investigation report.
  - A reply letter that contains sufficient information from the investigation report to address the complaint whilst maintaining the appropriate security on Intelligence matters and personal data.
  - A reference in the final reply letter to show that matters outside the remit of PSU are being addressed and who is addressing them. Failure to do so may result in PSU being asked to respond on them.
  - Evidence to show that all relevant enquiries have been made. For example, if there are witnesses to an incident that the investigator is informed of, or could reasonably be expected to have known of, and decides not to obtain information from them, the investigator would need to explain the reason for their decision in the report.
  - Unbiased gathering and assessment of evidence. Ensure that all evidence both for and against subjects of the complaint are fully considered. When the credibility of sources of information are important to the findings, the investigator should explain why more credence was given to one party rather than another.
  - An outcome that is based on a fair assessment of evidence.
  - The final decision on whether a complaint is substantiated or not must be consistent with and flow from the evidence referred to in the report.
  - An outcome, including whether disciplinary action is being recommended. The report must be clear and transparent to show why the complaint is substantiated or not. This will allow the complainant to understand how the investigator came to their decision.

## **Data Protection Act and Freedom of Information Act requests**

- n. The investigating officer's report, witness statements and any other documents gathered during the course of the investigation are management documents. These documents contain personal information about individuals that would be considered for disclosure under the Data Protection Act (DPA) or under Freedom of Information (FOI). Requests for this

information would need to be considered on a case by case basis in discussion with the Data Protection Unit, FOI team or the Information Access Policy Team.

- o. Staff members who are the subject of a complaint are entitled to see all relevant evidence gathered in the course of the investigation, subject to redaction in specific sensitive cases. PSU are not required to disclose witness statements to other witnesses unless strictly necessary to assist with the investigation
- p. Additional papers (for example, copies from casework files) should not normally accompany an investigation report unless the investigating officer considers it essential. The issues within these papers should be fully addressed within the body of the report.

## 12. Possible action following an investigation

### Discipline action

- a. When an allegation is substantiated the line manager is responsible for considering whether action under the discipline policy is appropriate (see the Discipline: How to guidance). With regard to Detention Custody Officers (DCOs) employed by contractors, any disciplinary action is one for the contractor, however, the decision to suspend a DCOs accreditation is made by the local manager, with a final decision taken by Detention Services Accreditation Team.
- b. The HRD Employee Relations Team must be consulted immediately if discipline action is being considered in relation to a trade union representative and a senior official in the relevant union will be notified by them. Discipline action against a trade union representative can lead to a serious dispute if it is perceived to be linked to legitimate trade union activities.
- c. Where a complaint concerning harm, or the risk of harm, to a child or vulnerable adult is substantiated, and the subject of the complaint is removed from their post, information must be referred to the Independent Safeguarding Authority (ISA). Further guidance on referrals to the ISA can be found on the Home Office intranet.
- d. Under IPCC regulations where a complaint has been referred to and overseen by the IPCC, the IPCC has the power to direct the Home Office to hold a discipline hearing if it feels it to be appropriate. It cannot, however, direct the outcome of that hearing.
- e. Similarly, the PIRC has the power to give a direction to Home Office to reconsider a complaint or any part of it. Under the voluntary arrangements with PIRC, the investigator should address any issues brought to their attention by PIRC.
- f. Any complaint alleging a criminal act is referred to the appropriate authority by PSU, for their action. If PSU establishes during the course of an investigation that a criminal act may have occurred, an investigation will be suspended and a referral made to the appropriate authority, prior to any recommencement of PSU enquiries.
- g. The appropriate authority may inform the PSU that they intend to take no further action but ask to be informed of the PSU's investigation outcome. If during the course of the investigation it becomes apparent that further evidence is now available that may influence the appropriate authority's decision to conduct a criminal investigation, then the PSU will re-refer the case back to the appropriate authority for consideration of the new evidence available.



- h. Where the appropriate authority has decided to take no further action and asked to be informed of the outcome of the PSU investigation, the PSU will advise of the outcome of the investigation. The PSU may also supply a copy of the report and evidence at the request of the appropriate authority.

## Other action

- i. Investigators will consider whether there are lessons to be learnt by anyone who was the subject of the complaint or by the organisation more widely and make recommendations, whether or not the complaint was found to be substantiated. Local line management will also consider those recommendations and decide how to take these forward and whether advice, guidance or further training is appropriate.

## 13. Risk management

- a. Serious misconduct complaints can be anything from low to high risk with potential for serious reputational damage to the Home Office as well as potential legal action taken against us. An assessment of each case will be conducted by the PSU to assess for potential risk and if there is a risk of adverse publicity.

## 14. Learning lessons

- a. The Grade 7 responsible for the business area which generated the complaint should review the report into the serious misconduct investigation. The report should be reviewed as soon as possible after it is available to ensure the lessons identified and the recommendations made by the investigating officer are considered and actioned.
- b. The lessons learned from serious misconduct investigations will range from looking at individual line management through to the operational processes used by Immigration Enforcement, UK Visas & Immigration and Border Force. It is important for each unit to keep a detailed record of the lessons learnt from each investigation and what action they have taken to prevent its re-occurrence.
- c. The PSU's Lessons Learned Team tracks the progress made on implementing recommendations. In addition, the team prepares quarterly Lessons Learned reports, which cover the Home Office [and individual DG commands] which raise issues of national impact and key statistical information. The team supplements these reports with quarterly Lessons Learned meetings with representatives from each DG command, in order to discuss cases and progress made on the implementation of recommendations.

## 15. Review process

- a. A customer has up to one month from the date of the substantive reply to their complaint to challenge the findings. It is important that a customer responds within this timeframe due to the storage and archiving of such cases. Unless the customer provides evidence as to why an investigation was flawed, or the conclusion unsound, a review will not be undertaken. Where the customer does provide sufficient grounds for reviewing a serious misconduct investigation these must be raised with the Head of PSU.
- b. The customer retains the right to take their complaint to the PHSO or, in the case of detainees, to the PPO or where the complaint involved an Immigration Enforcement, or Border Force officer exercising specified enforcement functions the IPCC or the PIRC. See sections [3.8](#), [3.9](#) and [3.10](#). All replies to requests to reviews by complainants should include contact information for the PHSO, PPO, IPCC or PIRC.