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Public Complaints and the Role of the Police Ombudsman



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1. Introduction

This Instruction provides the Police Service of Northern Ireland (PSNI) information on the functions of the Police Ombudsman for Northern Ireland (PONI) and guides the PSNI and designated staff on PONI related issues.

It is the policy of the Police Service to work professionally and productively with PONI in effectively dealing with, and reducing, complaints against the PSNI. By dealing with complaints in a timely and responsive manner we can demonstrate accountability, and inspire confidence in the PSNI.

2. Role and Remit of the Police Ombudsman's Office

PONI has responsibility for the recording and investigation of complaints made against police officers and designated staff members by members of the public.

Complaints about PSNI staff (other than designated staff members) do not come under the remit of PONI.

PONI does not investigate complaints against police / designated staff made by serving police officers / designated staff.

Whilst the majority of matters investigated by PONI relate to on-duty matters, some

off-duty matters can also be investigated if the individual's status as a police officer is relevant (e.g. if an officer identifies themselves as such, makes an arrest, or uses police powers whilst off duty). PONI do not investigate the off-duty conduct of designated staff members, however, these individuals are bound by their employer's terms and conditions of employment, which may specify standards of off-duty behaviour.

Normally, PONI only investigates matters that have occurred within the previous 12 months. In some cases, PONI may investigate matters outside this time where, e.g., PONI considers that it is in the public interest to do so, or where matters are grave or exceptional.

There are occasions where PONI may conduct an investigation when a member of the public has not made a complaint. These are:

- Chief Constable's referrals; ([section 3](#))
- Referrals from the Department Of Justice (DOJ), the Public Prosecution Service (PPS) or the Secretary of State;
- Referrals from the Northern Ireland Policing Board (NIPB);

- Matters that PONI considers are in the public interest to investigate.

Not all complaints made to PONI result in formal investigation. These can include less serious matters which are passed to the PSNI to resolve (Informal Resolution) or matters which are outside PONI's remit: for example: complaints made about incidents occurring more than 12 months ago; the direction and control of the PSNI; or complaints about member of police staff. This is discussed in more detail at [section 7](#).

3. Chief Constable's Referrals and Notification of Matters

The Chief Constable is required by virtue of Section 55(2) of the Police (NI) Act 1998 to refer to PONI for investigation, any matter which appears to indicate that the conduct of the police may have resulted in the death of a person.

In accordance with Section 55(4) of the Police (NI) Act 1998 the Chief Constable may also refer matters that he considers to be in the public interest for PONI to investigate and where it appears that a member of the PSNI may have committed a criminal offence or behaved in a manner

which would justify disciplinary proceedings.

Where the Chief Constable does not believe the criteria for a Chief Constable's referral has been met, he will nonetheless notify PONI of certain matters. This will enable the Police Ombudsman to consider whether he wishes to call himself in under Section 55(6) of the Police (NI) Act 1998. The individual circumstances will dictate whether these are notified through the emergency on-call Senior Investigating Officer (SIO).

Matters to be notified to PONI are as follows:

- (a) Any matter resulting in serious injury to a person as a result of police action. Serious injury is defined as a fracture, damage to an internal organ or impairment of bodily function;
- (b) Cases where police have discharged a firearm, including the humane destruction of an animal (except in training situations or for negligent discharges within the confines of a police station resulting in no injury to another person);
- (c) Use of Attenuated Energy Projectiles (AEP) or TASER stun gun;

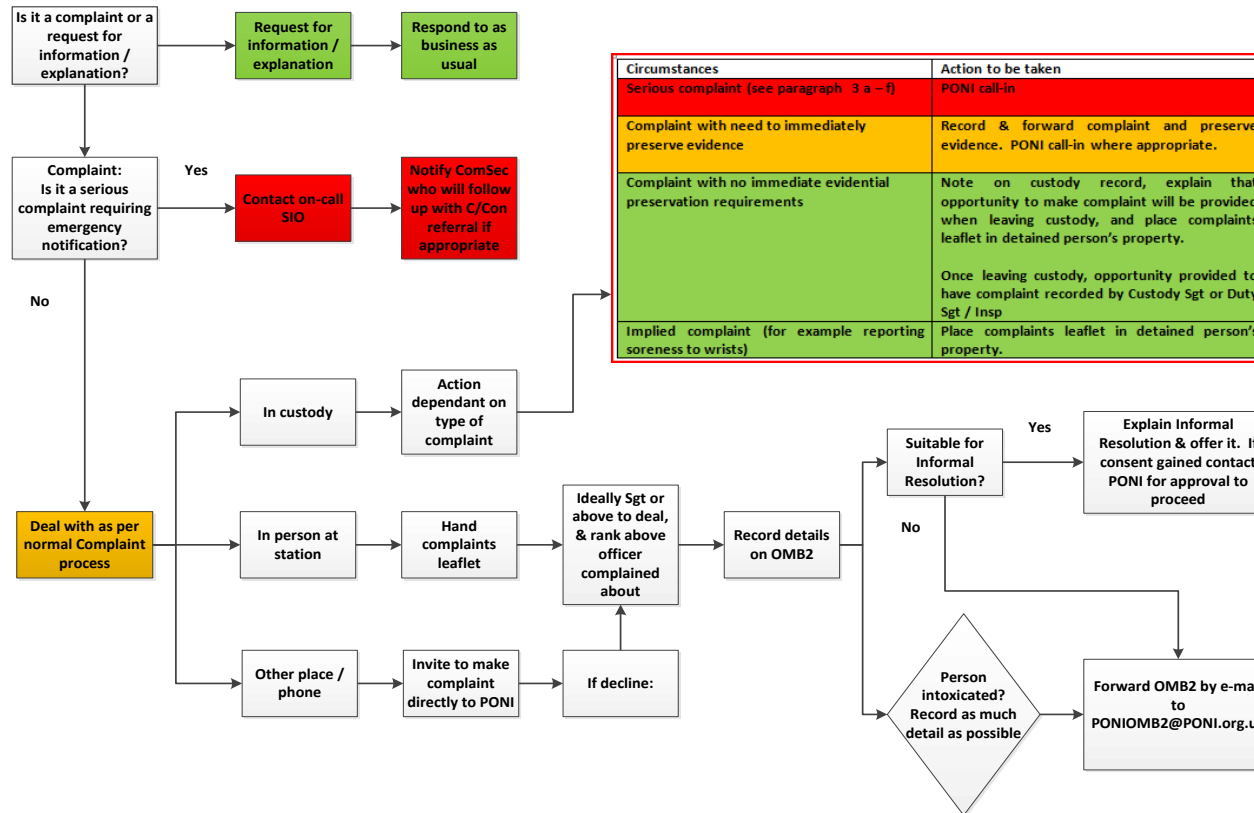
- (d) Use of CS Incapacitant Spray on a person under 18 years old;
- (e) Any sexual offence alleged to have been committed on duty; or
- (f) Any allegation which may cause widespread public concern or attract media attention.

All Chief Constables' referrals must be made via District Commander or Head of Branch by email to [Command Secretariat](#) and copied to [Discipline Branch](#). All notifications to [PONI](#) under (3) (a) to (f) above must be copied to Command Secretariat and Discipline Branch.

Command Secretariat will notify the NIPB of any referral to PONI by the Chief Constable, immediately, or as soon as possible subject to operational constraints. Similarly, DOJ Guidance states that where the Ombudsman calls himself in under section 55(6) of the Police (NI) Act 1998, he shall notify the NIPB.

4. Action on Receipt of Complaints

The chart below details the various avenues for recording, forwarding & dealing with complaints.

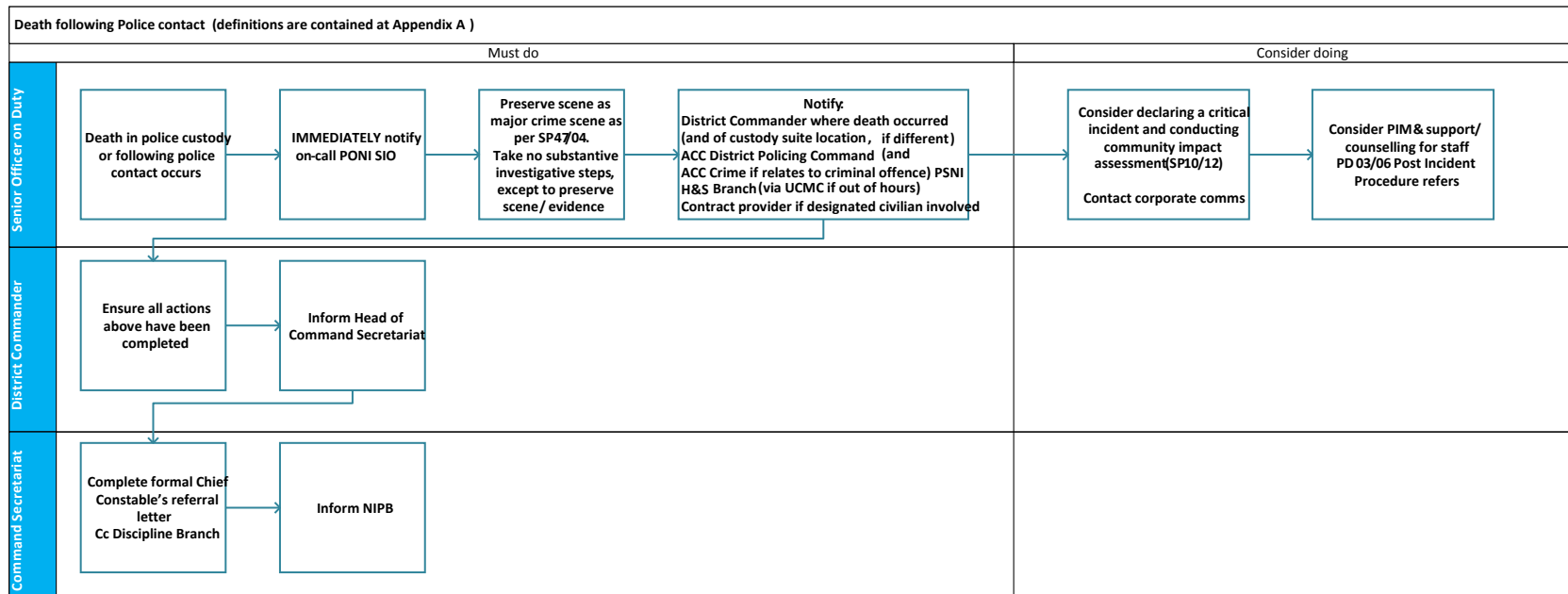


5. Death Following Police Contact

Article 2 of the European Convention of Human Rights provides that everyone’s right to life shall be protected by law. This right imposes a number of procedural obligations, including the need to ensure there is a prompt, independent and effective investigation into deaths which may have resulted from the activities of state agents, which includes police officers and designated staff members.

This means that where police officers or designated staff members are implicated in a death, the PSNI can take no substantive part in the investigation and it MUST be IMMEDIATELY referred to PONI.

[Appendix A](#) outlines the Home Office definitions of death following police contact. The table below outlines roles & responsibilities:



Investigative Primacy and scene sharing

PONI has full responsibility for investigating a death following police contact. However, there may be issues surrounding the deceased that impact on police investigations and may require evidence to be gathered at the post mortem. An example of this would be where a person arrested for a robbery dies in custody. Police investigating the robbery may require evidence such as fingerprints or clothing fibres.

The primacy of an investigation must be decided between the District Commander or Senior Officer and the PONI. Both investigations need to target and preserve evidence and maximise all evidential opportunities. It is imperative that the PONI SIO and the PSNI SIO liaise closely to ensure the police investigation or PONI investigation is not hampered or compromised and that the necessary evidence is gathered.

In order for the investigation to be independent and effective (as required by Article 2 of the ECHR) PONI should have ultimate control over the investigation of a death following police contact.

In cases that do not arise from a death following police contact, the following principles apply to 'joint scenes':

Scene Sharing Principles

- (a) Alleged criminal offences committed by persons other than police officers or designated staff will be investigated by the PSNI.
- (b) PONI will investigate criminal offences and conduct matters allegedly committed by police officers and (with regard to their relevant functions) designated staff.
- (c) When joint crime scenes are involved, PSNI and PONI SIOs will investigate their respective allegation, but the agency with the most serious crime allegation / incident will generally take the lead in respect of forensic support, crime scene management and access to witnesses and suspects. This should be reflected in the respective SIO decision logs.
- (d) When the crimes alleged are largely comparable in seriousness, PONI SIOs will normally take the lead. This should be reflected in the respective SIO decision logs.
- (e) All documents, statements, forensic samples (or scientific results), photographs and any other investigative material must

be made available to the PONI SIO (if appointed).

(f) PONI will fulfil any duty in respect of the Criminal Procedures Investigations Act 1996 (CPIA) in relation to their material.

(g) Any dispute in relation to scene sharing will be escalated through respective management channels for resolution.

6. Informing an Officer of a Complaint and the Investigative Process

On receipt of complaint	Notification of investigation	Misconduct Interviews	Report & recommendations
<p>Reg 6¹ notice (OMB 52) issued on receipt of a complaint.</p> <p>This does not mean the matter will necessarily be investigated.</p>	<p>OMB3 served on officer, which outlines detail of the allegations and rights of the officer.</p>	<p>PONI liaise with Operational Planning. Operational Planning arrange attendance & detail officer to attend for interview.</p> <p>PONI confirm date & time of interview with officer in writing.</p> <p>Attendance at interview will be on duty. If the officer is unable to attend, PONI should be notified immediately and confirmed in writing.</p> <p>If an officer fails to attend an interview, PONI will contact Operational Planning and verify the officer was detailed to attend. Failure to attend an interview without good cause may be dealt with as a misconduct matter.</p> <p>Officer is entitled to be accompanied by a police friend in misconduct cases. Support can also be provided by a staff association representative or the Discipline (Defence) Co-ordinator (Contact through Police Federation Northern Ireland (PFNI)).</p> <p>Interviews involving designated staff are arranged via the contract provider and as far as possible take place at their usual place of work and during normal working hours.</p>	<p>If it is a criminal matter, PONI submit report to PPS.</p> <p>Following PPS direction PONI will make recommendations to Supt. Discipline Branch.</p> <p>Where there is no report to PPS, PONI will make a recommendation directly to Supt. Discipline Branch following investigation.</p> <p>Supt Discipline Branch makes determination as to whether misconduct action or performance action should be taken.</p> <p>If no recommendations made, PONI close and advise officer & Discipline Branch.</p> <p>Where the circumstances relate to senior officers, PONI submit their recommendations to NIPB.</p>
	<p>Suspension or repositioning</p>	<p>Criminal Interviews</p>	
	<p>If PONI believe suspension or repositioning may be justified they will submit report to Superintendent. Discipline Branch.</p>	<p>Interviews for criminal allegations are usually arranged on a voluntary attender basis and attendance is facilitated through Operational Planning. An officer is entitled to be accompanied by a solicitor in criminal cases.</p>	

¹ Regulation 6 of the Royal Ulster Constabulary (Complaints etc.) Regulations 2000 refers

7. Resolution of Complaints

Not all complaints referred to PONI result in formal investigation, and some less serious matters are passed to the PSNI for Informal Resolution (IR). Matters which are outside PONI's remit may also be forwarded to the PSNI for consideration. These are detailed below:

Informal Resolution – this is intended to provide a flexible and simple procedure for dealing with suitable complaints, avoiding the need for a lengthy investigation. Only less serious complaints are suitable for Informal Resolution. Informal Resolution can take place for complaints involving either police officers or designated staff members. Notes for guidance in relation to Informal Resolution are available on the Discipline Branch intranet

[Appendix B](#) illustrates the process for Informal Resolution

Outside Remit – are matters which are outside the remit of the Office of the Police Ombudsman. These are sent to Discipline Branch for consideration of any action which is necessary. Section 52(7) of the Police (NI) Act 1998 states that outside remit complaints shall be dealt with according to the Chief Constable's discretion.

Matters described as being outside remit include the following:

- **Time barred complaints** i.e. over 12 months old, with the exception of matters described as grave or exceptional ([see below for more detail](#));
- **Direction and Control matters** - These are complaints to do with the delivery of policing services in a police area rather than allegations of misconduct by an officer ([see below for more detail](#));
- Complaints against off duty members of the police service;
- Complaints against members of police staff;
- Complaints made by a serving police officer / designated staff member against another serving officer / designated staff member;
- Anonymous complaints.

Time Barred

Outside remit complaints are considered by the Appropriate Authority² within Discipline Branch to assess whether the matter may constitute gross misconduct, and preliminary enquiries may be conducted for this purpose. If, following enquiries it appears there is evidence of gross misconduct, the matter will be returned to PONI for investigation under Regulation 15(2) of the RUC (Complaints etc.) Regulations 2000. Where there is no

² Superintendent Discipline Branch or Deputy

evidence of gross misconduct, the matter will be forwarded to the local Appropriate Authority³ for any action they deem appropriate.

If there is evidence of misconduct, this should be dealt with locally according to the relevant misconduct procedures. Any subsequent evidence of Gross Misconduct should be notified to the Appropriate Authority in Discipline Branch. The local Appropriate Authority will be responsible for providing any relevant update to the complainant.

Other Outside Remit complaints, including **Direction and Control** complaints are forwarded by Discipline Branch to the relevant District or Department for their consideration. The person appointed by the District or Department to consider the complaint is responsible for liaising with the complainant and attempting to, as far as possible, address their concerns.

Appropriate action will depend on the nature of the issue complained about, and could range, for example, from correspondence with the complainant explaining PSNI policy or action, to investigating a matter in more detail. Once appropriate action has been taken, the person dealing with the matter will be

responsible for providing any relevant update to the complainant.

District / Department will advise Discipline Branch with details of action taken, who will then perfect records to close the matter. The NIPB monitor the PSNI response to all direction and control complaints.

8. Complaints Reduction and Officers with Multiple Complaints (OMC)

Discipline Branch has developed a Complaints Reduction Strategy and works closely with Commanders and Heads of Branches in reducing Complaints.

PONI provides complaint information to Discipline Branch, who in turn provides this to Districts and Departments as management information. As part of this management information, details are provided on a quarterly basis in relation to officers who have attracted 3 or more 'trigger' complaints in a rolling 12 month period.

'Trigger' complaints are complaints which are either being formally investigated or are being dealt with by IR. Where an officer has a high overall number of complaints but fewer than 3 'trigger' complaints, Discipline Branch may also forward this

³ Local District Superintendent

information to Commanders / Heads of Branches for their information.

There may be occasions, having identified an officer who has attracted multiple complaints, or where concern exists about an officer's performance or conduct, it may be appropriate to supplement this information with a full complaints history.

Districts will arrange for a discussion to take place with the officer to explore reasons why they have attracted complaints. The discussion is not a disciplinary discussion, nor an investigation into the complaints themselves, but a supportive opportunity for learning and to see if there are ways to reduce the number of complaints that an officer attracts in the future. Even if a complaint is subsequently closed as not substantiated, there may still be opportunities to consider how to reduce complaints in the future, for example, considering an individual's communication style.

Subject to the officer's rank and management structure, if an officer has attracted 3 or more 'trigger' complaints, the discussion will take place at Inspector level. If they have attracted 5 or more complaints, a discussion will take place at Chief Inspector level. If an officer has attracted 7 or more complaints, a meeting examining the officer's complaints history may be

convened between Discipline Branch and the District Commander.

In conducting meetings, the following may be relevant factors to consider:

- The policing environment and the nature of duties engaged in;
- The officer's performance and attendance;
- Any misconduct sanctions;
- Any welfare issues;
- Views of line management.

As a result of the meeting, it may be appropriate to recommend ongoing monitoring, welfare referral, or training. Districts and Departments are asked to notify Operational Support Unit, Discipline Branch of any action plans formulated in respect of officers who have attracted multiple complaints.

9. Complaints against Police Staff

Complaints against members of Police Staff do not come within the remit of the Police Ombudsman's Office, with the exception of those who have designated powers such as Civilian Detention officers or Assistant Investigators. Should a member of the public wish to make a complaint against a member of Police Staff they should write telephone or call in to a

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PSNI station to discuss the matter.

Appropriate action will depend on the nature of the issue complained about.

10. Requests for Police Material

In the course of their investigations, PONI may need to obtain information held by the PSNI. Procedures have been established so that requests for information and material are dealt with in a manner which is auditable and compliant with Data Protection principles and other legislation. The following apply:

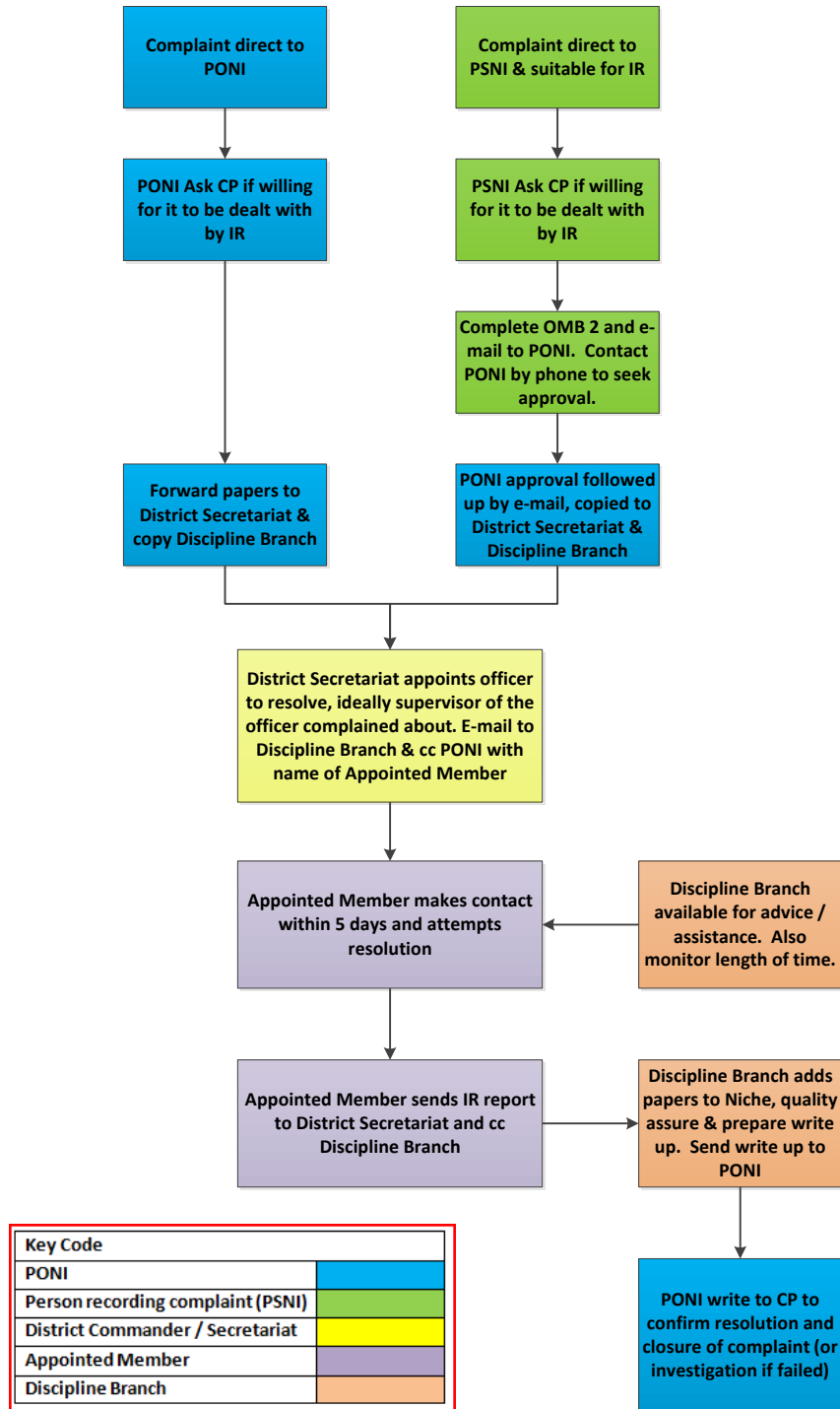
General Principles	Special procedures for receipt of Sensitive/Protectively Marked Material	Receipt of Material from the Contract Provider of Designated Staff
<p>All requests for material will be submitted in writing using a Form PONI 1 (except for audit requests), preferably by e-mail. A number of dedicated e-mail addresses have been established for use by PONI to request material. There are a number of points of contact, dependant on the nature of material:</p> <ul style="list-style-type: none"> • District PONI Liaison Officers: for police material such as notebooks, statements, CCTV footage, copies of local crime files etc.; • Business Engagement Team: for all computer / telephony requests; • Records Management Unit: for historical material held in archived storage; • C3 PONI liaison: for all sensitive or protectively marked material; • Staff Officer to ACC Crime for other requests from Crime Department. <p>There may be occasions when a PONI investigator requires material during the course of responding to an emergency incident, for example, a copy of a C&C serial. If this is the case, the PONI investigator will identify themselves to a supervisor and request the material. A Form PONI 1 will be completed at the time, and forwarded to the District PONI liaison officer for retention. Nothing in these procedures prevent a PONI investigator from seizing items or material under PACE.</p>	<p>It has been agreed that all requests for all sensitive material will be made in accordance with the Memorandum of Understanding between PONI and the Chief Constable regarding the sharing of sensitive information.</p>	<p>All requests made by PONI for information, documentation and records from the contract provider for designated staff, which may be of relevance to the PONI investigation, will be complied with by them so far as is legally possible.</p> <p>All requests for such information will be made between the PONI SIO and the contract provider's Operational Planning. In cases of difficulty or in the event of a dispute, the Single Point of Contact for each organisation shall be consulted and where necessary intervene to resolve the matter.</p> <p>Where resolution is not achieved, then the Ombudsman and the Managing Director of the Contract Provider shall be consulted and may be asked to intervene as appropriate.</p>

Appendix A Home Office definitions of Death following Police Contact

Type	Definition
Fatal road traffic incidents involving the police	This category covers all deaths of members of the public resulting from road traffic incidents involving the police, both where the person who dies is in a vehicle and where they are on foot.
Fatal shooting incidents involving the police	This category covers circumstances where police fire the fatal shots
Deaths in or following custody	<p>This category covers the deaths of persons who have been arrested or otherwise detained by the police. Whilst the Home Office Guidance does not specify a time-frame for such deaths, a general guide would be if the death occurs within 48 hours of police contact and there is suspected causal link.</p> <p>Deaths in the following circumstances are amongst those covered by the category; however, this list is not exhaustive:</p> <ul style="list-style-type: none"> (i) Where the person dies in or on the way to hospital (or some other medical premises) following or during transfer from police detention; (ii) Where the person dies after leaving police detention and there is a suspected causal link between that detention and death; (iii) Where the person is being detained for the purposes of exercising a power to stop and search; and death occurs; (iv) Where the death is of a child or young person detained for their own protection; (v) Where the person is in the care of the police having been detained under the Mental Health (NI) Order 1986; (vi) Any apparent suicide, which occurs within 48 hours following release from police custody.
Deaths during or following other types of contact with the police	<p>This definition covers circumstances where the person dies during or after some form of contact with the police, which did not amount to detention and there is a link between that contact and the death. Examples of death which would be covered by this definition are as follows:</p> <ul style="list-style-type: none"> (i) Where the person is actively attempting to evade arrest and the death occurs; (ii) Where there is a siege situation including where a person shoots themselves or another, whilst police are in attendance.

Categories of Death following police contact, based on Home Office guidance, are outlined as follows:

Appendix B Informal Resolution Flow Chart



Key Code	
PONI	
Person recording complaint (PSNI)	
District Commander / Secretariat	
Appointed Member	
Discipline Branch	

Appendix C Summary of Forms used by Ombudsman

Form Number	Description
OMB2	Initial notification to PONI of a complaint.
OMB50	The notification to the appropriate authority that a complaint has been received or that a referred matter is under consideration.
OMB50A	The notification to the appropriate authority of an additional allegation.
OMB52	The notification to a police officer/designated staff member that they are a “member concerned” in relation to a complaint received by PONI. The form will be issued unless to do so would impede the investigation. It will provide details, if available, of how and when the complaint was made, the police station to which the officer/designated staff member is attached and the allegation classification as initially received.
OMB52A	The notification to a police officer/designated staff member that an additional allegation has been received.
OMB53	The notification to a police officer/designated staff member of the closure classification of any complaints received. This will be served should the complaint be closed prior to the appointment of an IO.
OMB3	The notification to a police officer that the complaint is to be formally investigated by PONI. This is the equivalent of the PSNI Regulation 9 notice. It will be served unless to do so would prejudice the investigation. For designated civilians Form DC3 is used

Appendix D Contact Details

Service Instruction Author

Inspector Ursula Merrick

Branch Email

zDisciplineBranchOCMT@psni.pnn.police.uk

Other Contact Points

PONI PONIOMB2@poni.org.uk

Command Secretariat ZComsec1@psni.pnn.police.uk