

PIRC Guidelines: for dealing with allegations of discrimination when undertaking Investigations and Complaint Handling Reviews



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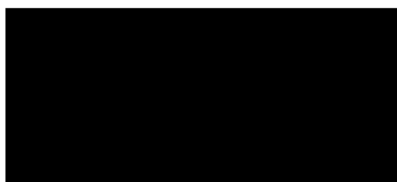
Commissioner's Foreword

It is crucial for public confidence in the independent investigation and review of complaints that allegations of discrimination against the police are handled properly.

Values based policing which reflects and represents our communities is vital to secure the consent from which policing draws its legitimacy. Unfair or unlawful discrimination fundamentally undermines the ability of policing to operate by consent.

Investigating and resolving allegations of discrimination can be challenging. Nonetheless, the police complaints system and those who review the handling of police complaints or undertake investigations into the actions or omissions of the police, including criminal allegations, must be able to meet this challenge to retain the confidence of all communities and groups.

The guidelines, supported by practical examples, set the standards that complainers, nearest relatives and other interested parties should expect from the PIRC when allegations of discrimination are made against the police. They are also the standards that we will apply when conducting our investigations and complaint handling reviews.



Michelle Macleod

Commissioner

1 Professional Standards and Ethics

Police Standards of Professional Behaviour

The framework that sets out standards of police officers and staff behaviour includes the Convention Rights incorporated in the Human Rights Act 1988, Police Scotland's Code of Ethics¹ and Police Scotland's Standards of Professional Behaviour.² The Code of Ethics is based on the values of integrity, fairness, respect and Human Rights. It specifically provides that Constables act with fairness and impartiality and do not discriminate unlawfully or unfairly.

Policing is based on the principle of consent. To retain the confidence of diverse communities and individuals, police officers need to respect their traditions, beliefs and lifestyles that are compatible with the rule of law. Police officers should pay due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups. Those in a position of seniority have a particular responsibility to support the promotion of equality and by their actions to set a positive example.

Police Scotland and the SPA guidance for all officers and staff is contained primarily within their Equality, Diversity and Dignity standard operating procedure.³

PIRC Investigators and Review Officers

The role of the PIRC is to provide independent oversight, investigating incidents involving the police⁴ and reviewing the way the police handle complaints from the public, known as a complaint handling review (CHR). Our aim is to secure public confidence in policing in Scotland.

PIRC Investigators and review officers require to consider discrimination issues as an integral part of their work. They are required to adopt the same levels of professionalism when dealing with any member of the public, police officer or member of police staff.

The police and PIRC staff are likely to come into contact with people who lead chaotic lifestyles, often blighted by mental ill health, have alcohol or drug problems or

¹ See Appendix A

² See Appendix B

³ <https://www.scotland.police.uk/spa-media/3lka0za4/equality-diversity-and-dignity-sop.pdf>

⁴ The Police Public Order and Criminal Justice (Scotland) Act 2006, as amended by the Police and Fire Reform (Scotland) Act 2012 sets out the circumstances where the PIRC can investigate the police.



a combination of these factors, and, in doing so, it is important to communicate effectively and not to discriminate or show bias due to lifestyle factors.

Equality Evidence

A proper understanding of issues related to discrimination depends to some degree on having data that allows analysis, research and learning. To understand patterns and underlying issues it is vital that organisations have sufficient evidence of the impact its policies and practices are having, or are likely to have, on people with different protected characteristics.

For that reason all policing bodies should implement systems to collect diversity evidence and publish such information to enhance their understanding, and public understanding of attitudes and concerns in different communities.

Complainer

The term 'complainer' is used throughout these guidelines. However, the same principles apply to nearest relatives or other interested persons in relation to investigations into death or serious injury or other serious incidents or any matters raised in respect of reviewing the handling of complaints.

2 What is Discrimination?

The Equality Act

The Equality Act 2010 defines unlawful discrimination and specifically prohibits discrimination relating to the 'protected characteristics'. The protected characteristics are:

Age – includes age defined groups such as elderly people or 'over 50s' (but not those under 18).

Disability – any physical or mental impairment which has substantial and long term adverse effects on a person's ability to carry out normal day-to-day activities⁵.

Gender reassignment – applies to people who express their gender in a way that differs from or is inconsistent with the physical sex they were born with.

Marriage and civil partnership – people who are married or in civil partnership.

Pregnancy and maternity – covers pregnancy and a period of 26 weeks after giving birth.

Race – includes colour, nationality and ethnic or national origins.

Religion or belief – any religion or religious or philosophical belief (including no such religion or belief).

Sex – i.e. male or female.

Sexual orientation – heterosexual, bisexual, gay or lesbian.

Under the public sector equality duty, police forces are required to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Equality Act.
- Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.
- Foster good relations between people who share a relevant protected characteristic and those who do not share it.

Effective handling of discrimination complaints is central to meeting this duty.

The Standards of Professional Behaviour also say that *police officers must not discriminate unfairly*. This covers discrimination of other identifiable groups that are not protected under the Equality Act. This could include, for example, homeless

⁵ This could be physical or learning disabilities as well as ongoing mental illness. People suffering from multiple sclerosis, HIV and cancer are also included within the definition.

people or sex workers, minority language speakers, such as Scots Gaidhlig language speakers, and young people and children, as under 18s are not covered by the protection from age discrimination under the Equality Act.

Discrimination and human rights

Article 14 of the European Convention on Human Rights also provides protection from discrimination. This protection only applies where it is alleged that discrimination has affected a person's ability to enjoy one or more of the other human rights set out in the Convention. For example, Article 14 would apply if an allegation was made that discriminatory actions led to a death in custody, as a death in custody would engage Article 2 (the right to life), and also if there was an allegation that discrimination played a part in an allegation of inhuman or degrading treatment (Article 3). For the purpose of Article 14, discrimination is when a person is treated less favourably than another person in a similar situation and the treatment cannot be objectively and reasonably justified. The application of Article 14 extends beyond the protected characteristics in the Equality Act, and so it may apply to complaints or conduct matters that involve allegations of unfair discrimination as well those that involve allegations of unlawful discrimination.

While the protected characteristics are referred to throughout this guidance, the guidelines should be used as a tool to help the assessment of any allegations of unfair discriminatory behaviour – regardless of whether the allegation refers to a protected characteristic.

Tests for Discrimination

Direct discrimination

Direct Discrimination is when someone is treated *less favourably* than another person because of a protected characteristic or characteristics.

The key elements of this test are:

Less favourable treatment

This means being treated *differently or worse*. It is not necessary to show actual harm – it only needs to be shown that it is *reasonable* that the person would *prefer not to have been treated differently in that way*.



'Less favourable treatment' suggests a comparison – i.e. 'less favourable than who?' The 'who' is a person in the same situation who does not have the same protected characteristic (for example, you might compare the treatment of a black person to how a white person would have been treated in the same circumstances). Making this comparison is a key part of the investigation or review.

Because of a protected characteristic

This means that the characteristic needs to be a *cause* of the less favourable treatment but *does not need to be the only or even the main cause*.

Discrimination may relate to more than one protected characteristic (e.g. race *and* religion, or gender *and* sexual orientation).

In determining whether there has been direct discrimination, the question to ask is would the person be treated in this way but for their protected characteristic?

Example – Direct Discrimination

Mr A is a 16-year-old boy who is black. He was leaving a railway station and was following his friend who was a few steps in front of him and who is white. Mr A complains that he was stopped and searched under the Misuse of Drugs Act but his friend was not. Mr A alleges that there was no good reason for the stop and search. He believes that he was stopped and searched because he is black. Mr A is complaining that he was treated less favourably (he was stopped and searched and his friend was not) *because* of his race.

To note:

- A person can discriminate against another person even if they share the same protected characteristic (e.g. a black person could racially discriminate against another black person).
- If someone is treated less favourably because they are *thought* to have a protected characteristic, this is discrimination even if it turns out that they do not have that characteristic (e.g. if a person is homophobic in their actions towards another person, it is discrimination even if the targeted person is not gay).
- It is discrimination if a person is treated less favourably because of the protected characteristic of a person they are associated with (e.g. a parent of a disabled person could be discriminated against because of their child's disability).



- It is not unlawful to treat a disabled person more favourably compared to a non-disabled person.
- The Equality Act provides for positive action to be taken in certain limited circumstances. This could involve introducing policies and practices which treat members of a group who share a particular protected characteristic more favourably than other groups⁶.

Indirect Discrimination and organisational issues

Indirect Discrimination is when a policy or practice which applies to all puts a protected group at a disadvantage and the policy or practice cannot be objectively justified.

Discrimination can occur at an organisational level. This may be direct discrimination if formal or informal policies, practices or organisational culture result in less favourable treatment of a particular protected group. It may also be a breach of the public sector equality duty.

Sometimes a policy or practice can be applied equally across all groups but it results in a particular protected group being put at a disadvantage. If the policy or practice can be justified as a 'proportionate means of achieving a legitimate aim' it will not be discriminatory. However, if the policy or practice cannot be appropriately justified – this would be *indirect discrimination*.

Example – Indirect Discrimination

Mr D is a Jewish man and wears a yarmulke (skull cap). He complains that when he was arrested and detained in custody he was required to remove his yarmulke which he feels was discriminatory. Mr D states that he was told by the custody sergeant that he had to remove the yarmulke because it was policy for all detainees to remove any hats or head gear when entering custody. Mr D complains that, while the same policy applies to all, he is disproportionately affected as removing his yarmulke challenges and undermines his religious observance. This complaint raises issues of indirect discrimination.

⁶ See the Equality and Human Rights Commission Website for more guidance on positive action.

Harassment

The Equality Act also prohibits harassment relating to a relevant protected characteristic.

Harassment is unwanted conduct which violates dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

This includes making offensive comments or jokes or insulting gestures that relate to a relevant protected characteristic – even if these are not specifically directed at the complainant.

Example - Harassment

Ms B complains that while she was detained in police custody she overheard a group of police officers making rude and sexually suggestive comments about another female detainee. She complains that she found this upsetting and that it made her more uneasy and fearful about being held in custody. The comments were not directed at Ms B. However, the conduct complained about relates to a relevant protected characteristic and Ms B has said that the officers' actions were both unwanted and created an offensive and even intimidating environment. Ms B's discrimination complaint should be considered in light of the test for harassment.

Victimisation

This is where a person is treated badly because they have complained or taken action about discrimination.

Disability discrimination

When a disabled person is treated unfavourably because of something connected with their disability and the treatment cannot be objectively justified.

The protection against direct and indirect discrimination, as well as harassment and victimisation, applies to disabled people. There are also additional protections under the Equality Act relating to disability which mean that, in some circumstances, the police should treat disabled people differently to take account of their disability.

Failure to make reasonable adjustments: Police forces and PIRC, as public authorities, have a duty to make reasonable adjustments to make sure that disabled people are not substantially disadvantaged in their interactions with the police or the PIRC – failure to do so is a form of discrimination.⁷

Criminal offences and hate crime guidance

Discrimination by itself is not a criminal offence. However, discrimination can be considered as an aggravating factor for any criminal offence, as well as being a part of certain specific offences.

Where a criminal allegation is made against the police, and it is alleged that the criminal behaviour was motivated by hostility or prejudice against an identifiable group of people, the allegation should be dealt with as an allegation of hate crime.

For example, someone who commits an assault which is motivated by malice towards the victim as a result of their religion might have their offence recorded under “common assault” with an aggravation code of “religious” hatred.

In Scotland, there are a number of statutory aggravations. These include:

- Sexual orientation, transgender identity and disability as introduced through the Offences (Aggravation by Prejudice) (Scotland) Act 2009;
- Racially motivated crime as legislated for under Section 96 of the Crime and Disorder Act 1998;
- Religiously motivated crime as legislated for under Section 74 of the Criminal Justice (Scotland) Act 2003;
- Bail and undertaking aggravations as introduced in Criminal Procedure (Scotland) Act 1995, sections 22 and 27.
- Domestic abuse aggravations, as introduced via the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

⁷ See Chapter 4 for more guidance around disability discrimination and making reasonable adjustments.

3 Engaging with the Complainer

Discrimination complaints will often involve a complainer who already has very low levels of trust in the police. Failure to engage effectively and empathetically is likely to undermine confidence in the PIRC complaints handling review process or investigation. To build and retain confidence, the Investigating or Review officer should follow the principles set out below.

Contact the Complainer

Contact the complainer at the beginning of the investigation or CHR to establish a clear understanding of the allegation or complaint.

In relation to an investigation, it should seek to ascertain why the complainer feels that they have been discriminated against. In particular, it should be explored whether the person felt that assumptions had been made because of any protected characteristic and why the person believes that they were treated differently.

The types of questions that should be explored with the complainer include:

- What was it that made you believe the person serving with the police's words or actions were discriminatory?
- Do you feel that the person serving with the police made assumptions about you because of your protected characteristic? What were these assumptions? How did they impact on the actions of the police?
- Did you note any differences in the way you were treated compared with others?
- Did you note any differences in the way that this person serving with the police behaved compared with other persons serving with the police (either on this or other occasions)?
- Was there anything about the person serving with the police's language that added to your concern?
- Did anyone else witness the incident and were any comments or reactions expressed to you at the time or since?
- What was the impact on you? How did it make you feel?
- What would you see as a good outcome from the complaints process?

Contact and updating complainers

Provide regular updates on the progress of the investigation or CHR in accordance with the complainer's wishes. If there is a delay between when a complaint is received and when an investigation or CHR can start (or an investigating or review officer is allocated to deal with the case) the PIRC should update the complainer about this delay and give a timeframe for when the investigation or CHR will commence. Any gaps in contact can quickly undermine confidence in the fairness and robustness of the investigation or complaint handling process. This confidence, once lost, is difficult to regain even if an effective investigation or CHR is then undertaken.

Value and Respect

Respect and value the complainer's point of view, approaching the allegation with an open mind, recognising the impact on the complainer. The complainer should come away from the investigation or CHR process feeling that their complaint was valued. To do this, the investigating or review officer must show respect for the complainer's point of view, including when there is not enough evidence to uphold the complaint.

Case study⁸

A police force campaign involved visiting members of the public to tell them that they were banned from an event. The local press shadowed the police while they visited people. A complaint was made that one of the officers called a member of the public a "black bastard".

The investigating officer decided that because the media was there and had not separately reported the incident, the alleged incident could not have happened. The officer complained about provided a two-line email account that simply denied the allegation. The investigating officer did not challenge this. There were nine officers there, but the investigating officer did not speak to any of the other eight officers or the journalists present.

The investigating officer's refusal to consider the possibility that the allegation could be true shows a fundamental lack of respect for the complainer and led to a poor investigation that failed to follow basic lines of enquiry.

⁸ From an IPCC report on the handling of allegations of discrimination

Communicate Clearly and Sensitive

Be sensitive to individual needs and equality issues. Investigating or review officers should take particular care that their approach to dealing with the complaint and engaging with the complainer is consistent with the PIRC's equality objectives. Particular care should be taken to make appropriate adjustments and accommodations to make sure the complainer can engage safely and effectively with the investigation or complaints system, including, where appropriate, providing an interpreter and recognising cultural or religious needs. It is important to recognise and value the support provided by advocacy services, support workers, and legal advisers where the complainer has used these types of services. If possible, it may be appropriate to offer contact with a staff member of the same gender or with specialist knowledge about the type of discrimination alleged.

Case Study - Sensitive engagement

Following the death in Glasgow of a man from Africa, PIRC investigators contacted a local African community leader in Glasgow who agreed to act as an interpreter and point of contact with the family of the deceased, who lived in a very rural area with limited means of communication.

It is best practice when dealing with overseas countries to seek guidance from the Home Office or Foreign Commonwealth & Development Office around potential risks.

By establishing a communication protocol and communicating clearly and sensitively with the family of the deceased via the interpreter, PIRC Family Liaison Officers (FLOs) were able to explain the circumstances of the death to the family, who accepted the findings of the post mortem examination, did not request independent legal advice or support in Scotland or an independent post mortem examination.

PIRC FLOs clarified the families' wishes in the respect of the burial, in accordance with their religious and cultural requirements. The FLOs contacted the funeral director of Glasgow Central Mosque who arranged the burial which was attended by members of the African Community in Glasgow. PIRC FLOs also facilitated contact between the family and officials from Crown Office to ensure they were informed of and understood Scottish legal processes and requirements under Article 2 of ECHR.

Great care should be taken to respect complainer's privacy and confidentiality – particularly where a complaint may reveal information about the complainer that is not widely known (for example, information about a person's mental health, sexual orientation, gender identity etc).

Complainers with low levels of trust may be unwilling to go to PIRC offices or to have a member of PIRC staff come to their home to discuss a complaint. While it is important to try to engage with the complainer to get a good understanding of their complaint, their preferences should be respected – for example if they wish to be contacted through a solicitor or advocate, or only by phone or email.

Example - Insensitive engagement

Mrs F, an Asian woman, made a complaint of discrimination against the police. Two uniformed police officers went to Mrs F's home to note details of her complaint and discuss how she would like to progress the matter. Mrs F lives on a housing estate which has a tight knit community with a history of poor relations with the police. Mrs F found the police visiting her home intimidating. She does not want to deal directly with the police and is fearful that other residents who saw the police come to her flat will think she is in trouble with the police or informing on others.

4 Understanding the allegation of discrimination

Discrimination can be overt and expressed as open hostility or use of offensive, degrading language. However, it is more than just these things. Direct discrimination includes actions that are informed by biased assumptions or prejudice in respect of a protected characteristic – even if this is done unconsciously.

An investigation or CHR into this type of allegation will need to test whether discriminatory assumptions, prejudice or bias impacted on police actions or behaviours. To do this the investigating or review officer will need to have an understanding of what these discriminatory assumptions might be.

It is impossible to provide a full list of how discrimination might present in any given situation and what types of bias or prejudice might inform decision making. This needs to be considered on a case-by-case basis. To do this, the investigating or review officer should consider:

What does the complainer say?

It is essential that the investigating or review officer takes time to understand why the complainer feels that they have been discriminated against. This should include exploring any prejudiced assumptions the complainer feels the police made about them.

What do you know?

Are there any stereotypes or common assumptions made about the protected characteristic group that you are aware of, which might be relevant to consider? Does this complaint fit with a pattern of previous complaints about similar issues? Is there anything about the policing context in the area or beyond (e.g. relations between police and relevant local communities, any high levels of particular types of crime or recent tensions or significant events) which may impact on or inform these types of assumptions?

What do you need to find out?

In more serious cases or critical incidents, it may be appropriate to seek external expertise, for example from an independent advisory group, a relevant community or advocacy organisation, or from a legal or academic expert. The investigating or



review officer may also be able to usefully draw on findings from relevant inquiries, research or reports about discrimination

Examples of the type of investigation that may be required in relation to some of the protected characteristics are provided below.

Racism

In the context of complaints of race discrimination it includes any discrimination relating to race, ethnicity, or nationality. The types of racist assumptions or prejudices that should be considered in a discrimination investigation will vary greatly depending on the particular race, ethnicity, or nationality and the context of the incident.

Example - Allegation of racism made by a black man

Mr A is a 19 year old Asian man who suffers from Asperger's Syndrome and Autism. Mr A says that when he was arrested by the police they questioned him about why he had come to the United Kingdom (UK) from Pakistan. He also complained that he was assaulted by the police when he was arrested. He considers that the police questioning him about his reasons for coming to the UK was motivated by racism and that his Asperger's and Autism meant he was unable to effectively engage with the police, which contributed to the reason for his arrest.

To address the allegation of race discrimination the investigating officer or review officer should ask themselves:

What types of assumptions, prejudices or bias might lead to an Asian man with Asperger's Syndrome and Autism being treated differently due to his race and resulting in the use of excessive force? Would a white man with similar issues acting in the same way be treated by these officers in the same way?

Mr A has made an allegation of race discrimination. He has also complained that he was discriminated against because of his Asperger's Syndrome and Autism. This should be recorded and considered as part of the investigation with attention given to whether Mr A was treated less favourably because of both his race and Asperger's Syndrome and Autism.

This is a serious allegation and the investigating officer is aware that the case has similarities with a number of high profile cases involving issues of restraint, health and race. Given this, the investigating officer puts in place support measures, including involving the family of Mr A, to ensure that he can effectively

communicate his complaints. Drawing on background information and the details of the discrimination allegation provided by the complainer, the investigating or review officer identifies a number of questions to be addressed through the investigation. These include:

- Were officers aware, or could they have been reasonably expected to be aware, that Mr A had difficulty engaging at times of stress due to his Asperger's Syndrome and Autism?
- What assessments were made to take account of Mr A's Asperger's Syndrome and Autism? How was this reflected in the actions taken? In light of Mr A's challenges, was it appropriate for Mr A to be arrested and taken to a cell? Would a white man with similar challenges have also been arrested in these circumstances?
- Were assumptions made that Mr A's behaviour was a result of drug taking, aggression or criminality rather than symptoms of Asperger's Syndrome and Autism and a reflection of vulnerability? Would similar assumptions have been made if he was a white man?
- Were assumptions made that Mr A posed a greater threat/risk because he was Asian and did not effectively communicate? Were assumptions made that he was particularly strong or more likely to resist or to be violent? Would the same assumptions and risk assessment have been made if he was white?
- Is there any indication that the officers involved hold negative views of Asian people or that Mr A was targeted because of his race?
- Is there anything about the policing context in the area (e.g. relations between police and local Asian communities, any high levels of particular types of crime, or recent tensions or significant events) which may impact on or inform these types of assumptions?

Example - Allegation of racism made by a Traveller woman

Mrs C, a 45-year-old Traveller woman, complained that the police searched her caravan in connection with a man who did not live there. The contents of the caravan were completely turned over and some of her things were damaged. She says that one of the officers involved in the search said 'now you know what it's like to have your house broken into'. Mrs C alleges that the police actions were racist against her because she is a Traveller. She says that the officers were aggressive and threatening and that her children who were present were terrified and are still frightened from the experience.

The investigating officer met with Mrs C to explore the reasons why she feels she was discriminated against. She says that because she is a Traveller, the officers assumed she was a thief and treated her and her children like criminals even though they were looking for someone else. She says that they have no respect for Traveller property, there were no grounds for the search, and that if she lived in a house they probably would not have even stepped through the door.

The investigating officer has experience of working with Traveller communities in the local area. She draws on this knowledge and the detailed information provided by the complainer to identify the key considerations in this case. These include:

- What was the rationale for the search and was it reasonable? Was the search lawful and conducted in accordance with procedure? Were there alternatives available to searching the caravan?
- Did the officers believe that there was a connection between Mrs C and the criminal suspect the search related to? Was the suspect also a Traveller and if so, were assumptions made that he was likely to be known to Mrs C on this basis? Would the same assumptions have been made if Mrs C and/or the suspect were not Travellers?
- Would officers have searched a house (i.e. not a caravan) in the same circumstances? If 'yes', are there examples of this? If 'no', why not?
- Did the officers make any comment similar to the alleged 'now you know what it's like to have your house burgled'? If so, why was the statement made and what was meant by it?
- Were assumptions made that Mrs C was a thief or involved in criminal behaviour? If so, what was the basis for these assumptions? Would similar assumptions have been made if Mrs C was not a Traveller?
- Was any property damaged? If so, was this recorded and addressed in line with relevant policies? If not, why not?
- What consideration was given to the impact of the search on children present in the planning and execution of the search? What actions, if any, were taken to limit any negative impact on them?
- Is there any indication that the officers involved hold negative views of Travellers?
- Is there anything about the policing context in the area (e.g. relations between police and local Traveller communities, any high levels of particular types of crime or recent tensions or significant events) which may impact on or inform these types of assumptions? Does this complaint fit with concerns or complaints previously raised around searches of Traveller caravans?

Discrimination on grounds of religion or belief

Religious discrimination is discrimination relating to a person's philosophical or religious belief. You can also be discriminated against for holding no such belief. Religious discrimination often intersects with racism. For example, Islamophobia or anti-Semitism could be either an expression of racism or religious discrimination or both.

Example - Allegation of Islamophobia made by a Muslim woman

Mrs A, a Muslim woman, was stopped and questioned at the airport under Schedule 7 of the Anti-Terrorism Act. She says that she feels she was targeted because she wears a burka, as the other woman she was travelling with, who was wearing western clothes, were not stopped. She states that the officers asked her questions about where she was going and the reasons for her travel, but she was also asked inappropriate questions about her faith and religious practices – such as 'do you pray five times a day?'

Mrs A feels she was targeted because she is a Muslim and wears a burka. She feels that the police wrongly associated her expression of faith (including the way she dresses and how often she prays) with terrorism.

The investigating officer is referred by his supervisor to an Equality and Human Rights Commission research report: *The impact of counter-terrorism measures on Muslim communities*. The investigating officer draws on the evidence included in the report about how Schedule 7 stops are experienced by Muslim communities, as well as the information provided by Mrs A to identify the key considerations in this case. These include:

- Why was Mrs A stopped, while the woman she was travelling with was not? Was there any objective reason for wanting to question Mrs A and not the other woman (such as known association with those convicted of or reasonably suspected of terrorism offences)?

Homophobia and biphobia

Homophobia and biphobia are discrimination on grounds of sexual orientation. This may be expressed as intolerance, fear, or hatred; through stereotyping and prejudiced assumptions; failure to acknowledge or give equal weight to same sex relationships; or an inappropriate interest in a person's sexual preference or sexual activities.

Example - Allegation of homophobia made by a gay man

Mr C, a gay man, was arrested and held in custody for questioning. While in custody, the police searched his house. He was released on bail and his parents collected him to take him home. He arrived home to find a number of his possessions had been left strewn around his home following the search – mostly gay pornography and some sexually explicit personal photographs. He complains that he felt shocked and violated by the conduct of the search and was embarrassed in front of his parents. He feels that this would not have happened if he was heterosexual.

The investigating officer could see that the incident was embarrassing for the complainant and that the actions of the officers, if proved, were clearly inappropriate. However, she was unclear how to approach the discrimination allegation and had little experience in dealing with allegations of homophobia.

The investigating officer was aware of an equalities advisory group and she approached the chair person for advice on the issues raised in this complaint. The chairperson advised that it was not uncommon for homophobia to be expressed through unreasonable or even voyeuristic interest in a person's sexual activities, as appeared to be the case in the allegation made.

Bearing these issues in mind, the investigating officer should consider whether a heterosexual man would have been treated in a similar way in these circumstances – such as having personal photographs or pornography removed and left lying around.

Key considerations would include:

Were sexually explicit photographs and gay pornography left out after the search as described? If so, in what circumstances were these items found, moved, and not replaced during the search?

- How was the search different or similar to other searches undertaken by the officers involved?

- Have any similar issues been raised in the past in relation to these officers?
- If so, have these all arisen in relation to searches of a gay person's home, or have similar issues arisen in searches of straight people?
- Were the actions of the officers suggestive of an unreasonable or voyeuristic interest in the complainant's sexual activities?
- Is there any evidence that the officers involved hold negative views about homosexuality or homosexual people?

Transphobia

Transphobia is discrimination motivated by hostility, prejudice or bias against a person who is trans or perceived to be trans. 'Trans' is an umbrella term to describe people whose gender identity is different from the gender they were assumed to be at birth.

It includes any discrimination against those who express their gender in a way that differs from or is inconsistent with the physical sex they were born with. This can take many forms including denial of a person's acquired gender (including by refusing or failing to use the correct pronoun e.g. he/she); inappropriate interest in surgery status or sexual preferences; stereotyping and making prejudiced assumptions; as well as expressions of intolerance, fear and hatred

Example - Allegation of transphobia made by a trans woman

Miss K, a trans woman, reported a sexual assault to the police. When doing the videoed interview she was asked to explain her gender history as the first question in the interview. She was then called 'Mr K' instead of 'Miss K' throughout the interview and the interview was cut short by the interviewing officer without explanation. She was left feeling that she was not trusted or listened to, which made the trauma of the assault worse.

Miss K made a complaint, with the support of an LGBTQ advocacy organisation. She complains that the interviewing officer was transphobic in how he dealt with her.

The investigating officer had little knowledge of transgender issues. The complainer did not want to engage directly with the police and refused the offer to discuss the complaint in more detail.

Drawing from the complaint and the advice provided by an advocacy organisation, the investigating officer identifies the following key points to consider:

- Why was Miss K asked about her gender history as part of the victim interview? Was this relevant to the investigation? Was the relevance explained? Why was this asked first? Was any thought given to the impact this line of questioning might have on the victim?
- Why was the title 'Mr' instead of 'Miss' (or another female title) used during the interview? Would this have happened to a non-trans woman?
- Did Miss K express any concerns about her treatment at the time? What was the response to these?
- Was victim support provided in line with force policy? If not, why not? Would a different level of support have been provided to a non-trans woman reporting a sexual assault?
- What training or previous experience did the officers have in dealing with allegations of sexual assault? Did this training include any reflection or guidance on dealing appropriately with trans victims? Do they have previous experience in dealing with trans victims of crime?

Disability discrimination

Disability discrimination is discrimination arising from or relating to a person's disability. Direct disability discrimination is where a person is treated less favourably because of their disability and there is no objective justification for treating them in this way. The test for direct discrimination is likely to apply if the complaint includes allegations that the disabled person was stereotyped because of their disability or that fear, disdain or prejudiced assumptions relating to their disability influenced the actions or behaviours of the police.

It may present as offensive remarks, behaviours which belittle or undermine the disabled person's dignity, or wrongful and prejudicial assumptions about impairments and health conditions.

Example - Allegation of disability discrimination made on behalf of a disabled woman

The complainer, Mrs M, is a carer for her adult daughter, Miss M, who has autism. Miss M can communicate, but not easily, and is often non-verbal following periods of stress.

Mrs M believes that her daughter was physically assaulted by a professional carer. Mrs M reported this to the police but they took no action. The officer who attended told her that this was because her daughter could not speak for herself and would not be able to stand up in court. Mrs M complained which led to a review of the case and the carer being arrested, but no action was taken against the original investigating officer.

Mrs M feels that her criminal allegation was not considered to be serious because the victim is a disabled person. She feels that her daughter's vulnerability means that the assault allegation should have been seen as more serious, not less. She is also concerned that her daughter was not listened to because of her communication difficulties, but neither was she able to represent her daughter's interests.

The different response to the allegation of assault on review provides a useful comparison. Focusing on this, the investigating officer identifies the following key considerations:

- What was the reason for the decision not to pursue the investigation in the first instance? Was the reason in any way related to Miss M's disability? What options were considered to overcome any issues she might face in giving evidence?
- How were the same issues overcome or discounted in the revised investigation?
- Was Miss M treated in accordance with victims of crime policy? Would she have been treated differently and better if she had reported a similar crime but was not disabled?
- What consideration was given to Miss M's disability and her vulnerability in assessing the severity of the alleged crime and the response to her and her mother?

Duty to make reasonable adjustments

Under the Equality Act, the police and public organisations have a duty to make reasonable adjustments for disabled people. This means that they are required to take positive steps to make sure that disabled people are not substantially disadvantaged compared to non-disabled people when accessing police services or interacting with the police. Making reasonable adjustments can be a way to prevent a person being treated unfavourably because of their disability.

To be unfavourable, the treatment must put the disabled person at a disadvantage, including being denied a service or receiving a poor service. There must be a connection between whatever led to the unfavourable service and the disability. Unfavourable treatment will not be discrimination if it was justified as a “proportionate means of achieving a legitimate aim.”

Type of questions that the investigating officer will need to make:

- Was the person treated unfavourably?
- Was the unfavourable treatment because of something arising from the person’s disability?
- Did the police officer or staff member know or could reasonably have been expected to know that the person had a disability?
- Can the unfavourable treatment be objectively justified?

A complaint about a failure to make a reasonable adjustment could raise issues about the conduct of an individual police officer or staff member. For example, a complaint that a police officer or staff member did not make a reasonable adjustment where it was within their power and discretion to do so. This could include a complaint that an officer or staff member failed or refused to follow a policy or agreed practice that provides for a reasonable adjustment to be made (for example, if a force has a policy to provide British Sign Language translation and an officer does not follow this policy). The duty to make reasonable adjustments arises where:

- a provision or policy
- a physical practice, or
- the lack of an aid or service
- puts disabled people at a substantial disadvantage compared with a non-disabled person.

Examples include but are not limited to:

- Translation services for persons whose first language is not English or who suffer auditory, visual or other communications difficulties.
- Necessary adjustments to obtain testimony from disabled people or those with learning difficulties;
- Engagement with specialists, support groups, translators, etc. in order to obtain witness testimony or to support victims or complainer to provide their evidence.

When undertaking investigations or CHRs PIRC staff should, where necessary, make any reasonable adjustments when engaging with the complainer. To measure whether a disabled person was substantially disadvantaged, a comparison needs to be made between the persons' actual experience and what the situation would be if the disabled person did not have the relevant disability.

Example - A complaint relating to making reasonable adjustments

Mr C has multiple sclerosis (MS). He experiences pain and has mobility difficulties, usually requiring a stick or crutches to walk. Mr C was arrested at his home. He complains that he was not allowed to bring his walking aids when he was taken into custody. He says that during his arrest one officer 'joked' that they would not handcuff him as he was not likely to be able to get away. Mr C complains that he had no help to stand up despite requesting assistance from the officers who were watching him.

This is a complaint about a failure to make reasonable adjustments and about the conduct of the officers. Given the impact on Mr C, the complaints should also be considered in light of the test for disability related harassment with consideration as to whether Article 3 of the ECHR, which prohibits torture and inhuman and degrading contact, is engaged.

Ageism

Ageism is discrimination on the basis of age, or age defined groups such as 'the elderly' or 'young people'. The prohibition of discrimination on the grounds of age under the Equality Act does not apply to children (under 18s). However, discrimination against children because of their age could still be 'unfair discrimination' for the purposes of the Standards of Professional Behaviour if the difference in treatment was unjustified. Ageism could present as prejudiced

assumptions made about an age related group or older or younger people being marginalised or patronised.

Example - Allegation of age discrimination made by a young man

Mr C, an 18-year-old man, was out drinking at a pub with a group of four friends. They got into an argument with another group of four or five men who were older, perhaps mid-30s, and wearing suits. The fight got physical and both groups were pushed out onto the street where the fight continued until the police turned up.

Mr C states that when the police arrived, they only spoke to the other group of men and did not listen to anything he or his friends had to say. Mr C and two of his friends were arrested but none of the other group were, even though he told the police that they had started the fight.

Mr C complains that he was treated unfairly by the police and was not listened to. He feels that the police automatically saw him and his friends as the trouble-makers because of their age and the way they dressed.

Mr C does not use the term 'discrimination' in his complaint – however, it is clear that the allegation includes the claim that he was treated differently and less favourably than the other group of men, in part, due to his age (a protected characteristic). The investigating officer should record and deal with this as an allegation of direct discrimination.

Mr C has drawn a comparison in his complaint between how he and his friends were treated compared with the other group of men. The investigating officer should ask themselves whether Mr C and his friends would have been treated differently if they were older and dressed differently. This comparison should provide the focus for the key considerations in this case:

- What led to the police attending the incident? What information or intelligence did officers receive before they arrived about the fight? Did this include any information about either of the two groups?

Sexism

Sexism or gender discrimination is discrimination based on a person's sex. Sexism is typically thought of as being against women – but it can affect both men and women. It might present as stereotyped views about gender roles or male and female attributes, or as a favouring of one gender over another.

Example - Allegation of sex discrimination made by a woman

Ms F made an allegation to the police that she was raped by a man she met in a bar. She had been drinking and agreed to go back to the man's house to 'sleep it off' as she had drunk too much to drive. She went to sleep on a couch and was woken by the man raping her.

Ms F complains that her allegation of rape was not properly investigated. She also states that when she reported the incident to police, the officer who took her initial account told her that it was dangerous for women to drink alone at night and that she should have caught a cab home. She feels that the officer's comments were sexist and suggested that she was to blame for the assault.

The investigating officer arranges to meet with Ms F to explore in more detail why she feels that she was discriminated against. Ms F states that she felt that the officer's comments showed a dismissive and judgemental attitude. From that moment on, she felt that the officer seemed reluctant to deal with her case as if it was not worth pursuing or investigating properly.

The investigating officer is aware of some guidance around avoiding 'rape myths' circulated to the force by a local women's support charity. The investigating officer uses this information to help reflect on the issues in this case.

Key considerations in this case include:

- Did the officer make any comments about the dangers of drinking alone or that Ms F should have taken a cab home? What was the purpose and reason for these comments? Would similar comments have been made about a male victim of crime who had been drinking?
- Is there any evidence available of the officer making this type of comment, or any inappropriate comments associated with 'rape myths' or 'victim blame', in previous sexual assault cases?

- Was the rape allegation investigated in line with force policy and best practice? Was Ms F provided with victim support in accordance with force policy? If not, why not?
- Does the officer have an awareness about the concept of 'rape myths' or 'victim blame'? Has the officer received any training or guidance on these issues?

5 Assessing Allegations and Complaints

Allegations of discrimination must be treated seriously. Fairness is a core principle which underpins the concept of policing by consent, and unfair or unlawful discrimination fundamentally undermines this principle.

An important part of the investigation or review process is the assessment of the seriousness of the alleged discrimination or potential discrimination. All allegations must be assessed individually. This will inform decisions about how the matter should be progressed.

Factors which could increase the seriousness of the alleged conduct include:

Impact – This includes the complainer and wider community. It is more serious where significant harmful impact, could reasonably have been foreseen including failure to take account of a person’s known vulnerability or known community tensions. The gravity will be higher if the discrimination impacts on a person’s human rights.

Intent – It is not necessary to show intent to find that the actions or conduct is discriminatory. It will, however, be more serious where there is an indication that the alleged discrimination was intentional or malicious.

Serious negligence or recklessness – for example, failing to follow policies where the person should have known to do so, particularly if they were aimed at addressing discrimination or protecting vulnerable groups.

Repeat behaviour – if the alleged behaviour fits with previous patterns of behaviour or previous complaints. The subject officer’s complaint record should be considered in this regard.

Level of responsibility – senior police officers and senior investigators, review officers and managers in PIRC have a particular responsibility to uphold standards and set an example to those they lead.

Allegations of discrimination will often appear as an aggravating factor in relation to other allegations– for example, an allegation that an officer used excessive force against a person because of their race. In this case, an assessment of gravity will need to consider the seriousness of the allegations together (i.e. both the seriousness of the alleged use of excessive force and the seriousness of the discriminatory conduct).



6 Conducting an Investigation or CHR

Investigating and Review officers should have a detailed understanding of equality and diversity issues and an appropriate level of knowledge, skills and experience to be able to apply these guidelines and undertake effective investigations and CHRs⁹.

Terms of Reference

The terms of reference for an investigation into a death or serious injury that raises issues of discrimination should explicitly refer to and address any discrimination allegations raised. This includes where discrimination is alleged as an aggravating factor in relation to a separate criminal or complaint allegation or where no specific allegation of discrimination has been made but it is apparent that discrimination may be a relevant consideration.

Similarly a CHR should clearly address any discrimination allegations raised or identify where discrimination may have played a part in how the complaint was handled.

All allegations of discrimination arising in complaints, death and serious injury investigations or criminal investigations should be dealt with according to this guidance.

Understanding the allegation of discrimination

At the beginning of an investigation or complaint handling review, the investigating or review officer should take steps to build their understanding of the discrimination alleged, including the types of assumptions, prejudice or bias that might have informed the police officer's or staff member's decisions, actions or behaviour. This should inform the lines of enquiry for the investigation or matters to be examined in the CHR.

To do this the investigating or review officer should consider:

- What does the complainer say about why they think they were discriminated against?

⁹ The Police Public Order and Criminal Justice (Scotland) Act 2006 provides authority for the PIRC to undertake such investigations and complaint handling reviews

- What do you know about the type of discrimination alleged? – through other complaints, training, local knowledge etc.
- What else do you need to find out? – drawing on expertise, research and reports

Conducting the investigation or CHR

The understanding acquired at the beginning of the investigation or review to consider how the alleged discrimination might present and what stereotypes or prejudicial assumptions might have informed the officer or staff member's actions should inform the key lines of enquiry.

For investigations standard lines of enquiry should be followed to try to find out what happened and why. This includes taking witness statements, obtaining CCTV evidence and other relevant documentation and productions. It is common in discrimination cases for there to be little or no direct evidence available to support an allegation. This is particularly the case if the allegation is about discriminatory actions arising from prejudiced assumptions or attitudes.

An investigation will need to consider whether there is other evidence which supports the allegation of discrimination. This includes:

Complaint history and patterns of behaviour

Patterns of behaviour are important to consider in discrimination cases as an instance of discrimination may reflect an attitude or underlying prejudice that may arise in the person's behaviour across a range of situations. Patterns of behaviour could include:

An officer's complaint history, and

Where available, proportionate and relevant to the allegation, other patterns of behaviour evidence (such as trends in stop and search to identify if there is a pattern of disproportionate use of stop and search relating to a particular group).

It may be relevant to consider any other discrimination allegations that have been made against the officer. This includes discrimination allegations that have not been substantiated. An unsubstantiated allegation might reflect that there was not enough evidence to support an allegation of discrimination – it does not necessarily suggest that the allegation was found to be false or baseless.

A previous complaint of discrimination against a police officer or staff member would be unlikely to provide strong evidence that they have discriminated in a separate, unrelated incident. However, if repeated allegations or other concerning trends are found, this should be taken into account in the assessment of the seriousness of the allegation, and the scope and severity assessment of any investigation.

A pattern of previous complaints that showed a *clear propensity* for the described behaviour could be used to help assess the credibility of competing accounts and might tip the balance of probabilities in a case depending on the other evidence available.

Comparator evidence

In most cases, deciding if there has been discrimination will involve comparing how the complainant was treated against a person in the same situation who does not have the same protected characteristic. Investigating and review officers should look for evidence that supports this type of comparison.

Example - Considering comparator evidence (difference in treatment)

Mrs D, a British Pakistani woman, was involved in a dispute with her neighbour who is white. During a heated exchange the police were called. The neighbour made an allegation that Mrs D had assaulted her. Mrs D made a counter allegation of assault. The police arrested Mrs D but not the other neighbour. Mrs D alleges that the police were racist. She says that she felt the police identified with the neighbour because she is white and that is why they only arrested her.

In this case the comparator is the neighbour who is of a different race and who was not arrested. The two women both made allegations of assault relating to the same incident. If the investigation finds that there were similar grounds for arresting both women, the comparison of their treatment will provide evidence that supports the allegation that Mrs D was treated less favourably because of her race.

If the investigation finds a legitimate reason why Mrs D was arrested and the neighbour was not, the circumstances are no longer materially the same and a comparison between the two would not support the allegation of discrimination.

In some cases treating people in the same way can be discriminatory.

Example - Considering comparator evidence (difference in circumstance)

Mr S, a young black man, alleges that he and his friend were subjected to racist abuse on a bus and then beaten in a racist attack by a group of eight young white men. The police arrive on the scene. Mr S told them that he had been the victim of a racist attack. He was the only injured party and had received a serious head injury. The police treated the incident as a fight where both groups were seen as equally responsible and told them all to go their separate ways. No crime was recorded. Mr S complains that the failure of the police to treat him as a victim of hate crime was racist and that his attackers should have been arrested.

In this case both parties were treated in the same way (i.e. no one was arrested). However, this does not disprove discrimination. The complaint is that they should have been treated differently but were not. An investigation would need to assess whether it was reasonable for the officers to decide not to treat Mr S and his friend as victims and the white group as suspects and to not record a race hate crime.

The comparison the investigating officer should consider is: If police encountered two white men, one with a serious head injury, surrounded by a large group of black men who had caused the injury, would the police treat them as equally responsible and not see the white men as victims?

Discriminatory Language

As part of the consideration, the investigator and reviewer should assess the language used, including language used in any records relating to the incident in question or arising from the complaint investigation. This includes any use of obviously discriminatory language but also more subtle indicators that a person may have acted or made a decision based on prejudicial assumptions.

There are terms that are commonly recognised as being offensive and officers and police staff members should be expected not to use them. However, there are other words and phrases which are inoffensive in themselves but, when heard in context, can reasonably be thought of as being discriminatory.

For example, reference to a person's nationality may ordinarily be inoffensive, but the context in which it is used – for example, during an arrest – may reasonably lead a complainer to believe that their nationality affected the interaction or encounter in a negative way.

Making generalisations

Speaking in generalisations may be an indication that a person is making judgements based on assumptions rather than individual circumstances and the evidence and intelligence available to them.

Examples include making generalisations about non-descript groups such as ‘those people’ or ‘people round here’ or ‘people like you/him/her’, as well as in relation to specific groups such as black people, travellers, gay people, etc. It is important to consider the context in which the language is used and the nature of the generalisation. Particular attention should be paid to generalisations that have negative connotations or that indicate an ‘us and them’ divide.

Even if it is unclear whether the language is discriminatory, the use of such generalisations should flag concerns that may be explored further. For example, questions put to the officers or staff members involved might include ‘who were you referring to when you mentioned ‘those people’?’, ‘what did you mean?’, ‘how did this impact on the approach you took?’

Reference to a characteristic which is irrelevant to the policing purpose

In some circumstances, describing a person’s race, religion, gender, age, disability, etc. will be relevant to a legitimate policing purpose – i.e. to help identify a suspect or victim, or to provide a service that takes account of a person’s individual needs. However, reference to clearly irrelevant details about a person that distinguish them as ‘different’ may suggest a discriminatory approach.

Probing the officer or staff member’s account

In discrimination cases, it is important to get an account from the officer or staff member and to test and probe their account. While, the officer is not obliged to provide a response, if they do not give their version of events the complaint may be upheld in absence of any other material.

Direct, closed questions such as ‘did you discriminate against the complainer?’ or ‘did you treat the complainer differently because they were black, etc.?’ are unlikely to be very helpful. Investigating officers should refer back to the thinking done at the beginning of the investigation to consider what stereotypes or prejudicial assumptions might have informed the officer or staff member’s actions. Questions should be asked to test whether these sorts of assumptions informed their decision making.



Questions should focus on:

- why the police officer or staff member undertook the actions that they did
- what assumptions were made
- what were the reasons for these

It is not enough that an officer provides a reason for their actions. The investigating or review officer needs to be satisfied that their reasoning is sound, convincing and fair – and not informed by prejudiced assumptions.

Probing rationales

As part of an investigation into an allegation of discrimination and use of excessive force, the investigating officer is looking to test whether a police officer made prejudiced assumptions that the complainer, Mr C, posed a greater threat or risk because he was black.

Questioning should look to probe what the basis of the risk assessment was, whether this was reasonable in the circumstances, and whether the actions taken appropriately matched the level of risk identified. This might include questions such as:

- What was your first impression when you arrived at the scene and saw Mr C?
- How did you assess the risk of harm to you and your colleagues/to members of the public/to the complainer? What things did you consider?
- How did you take into account the level of risk in the way that you approached Mr C? What were your options and how did your thoughts about likely risk impact on what you decided to do?
- When you decided to restrain Mr C, what did you think this would involve? Were you surprised by his response?
- Did anything happen to change your risk assessment at any stage?

If the risk assessment is found to be unreasonable in a way which is consistent with the stereotype view of black men as being more violent/unpredictable/aggressive – the investigating officer will need to weigh up the likelihood that the reason for this relates to Mr C's race as opposed to any non-discriminatory reason offered for the officers' actions.

Organisational issues

Organisational issues and learning can and should be considered where they arise from enquiries into the particular incident which forms the basis of the allegation or complaint. If an investigation or CHR finds that there has been discrimination or individual learning is identified, proportionate consideration should be given to whether the issues found show a broader team-wide or organisation-wide issue. However, it will not usually be within the scope of an individual investigation or CHR to address the broader question of whether the police force is institutionally discriminatory. Other organisations such as Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) or the Equality and Human Rights Commission (EHRC) may be able to undertake this type of inquiry.

In all cases where an investigation finds that there has been discrimination or learning/improvements are identified, proportionate consideration should be given to whether the issues found show a broader team-wide or organisation-wide issue.

For example, consideration should be given to:

Supervision – was sufficient guidance or supervision provided by supervisors/senior managers? Were inappropriate behaviours challenged?

Force policies – are force policies adequate? Do they protect against the failing found?

Force/team practices and adherence to policies – are any individual failures to adhere to policy suggestive of a team or organisational culture or approach?

Team or organisational culture – is there anything concerning about the collective approach or language used by the team or organisation?

Training provision across team/force – if a training need is identified for a particular officer, does this suggest a broader training need across the team or force?

The equality objectives published by the force under the public sector equality duty – have these been engaged? Do these need to be revised?

The scope of these considerations should be proportionate and will depend on the seriousness of the failing found, any intelligence/evidence collected through the investigation or otherwise known which might suggest a broader issue and whether other similar issues have been raised with the force/team – i.e. through other complaints or investigations.



Learning

Reflecting on the complainer's experience of the incident

The investigating officer should also ask questions that lead the officer or staff member to reflect on:

- how the complainer might have experienced the situation
- why the complainer might have come away with the impression that the treatment of them was unfair or discriminatory
- what else could have been done that might have prevented the complainer forming this view.

This line of questioning is partly about getting the officer or staff member to reflect on how they can improve their practice.

Reflecting on the complainer's experience of the incident

Mr C, a young black man, alleges that he was stopped and searched because of his race. He states that he asked the officer repeatedly why he was being searched but the officer gave him no good reason and just told him that he 'looked suspicious'. Mr C says that this infuriated him and that he started to shout and swear at the officer and was arrested for a public order offence.

Mr C says that he has been stopped many times before and is never given a good reason. He says that on this occasion the officer did not give any reason for the stop and the frustration he expressed in response to this was reasonable and his arrest was unjustified.

The officer subject to investigation should be asked questions about his reasons for the stop, the search, and for the arrest, and whether he explained these reasons to the complainer. Some useful additional questions to ask might be:

- When you stopped Mr C, how did you think he was going to feel about being stopped by a police officer?
- If he had been stopped many times before, do you think that this might affect how he responded? Did you take account of this possibility?
- Why do you think that Mr C feels he was discriminated against?
- Is there anything that you could have done differently that might have left him with a different impression?

7 Findings and Outcomes

Discrimination complaints, like all other complaints, are assessed on the balance of probabilities. In some cases there will be clear evidence of discrimination which will lead to an adverse finding.

Criminal investigations are based on a different standard, where allegations of criminality need to be proved 'beyond reasonable doubt'.

In many cases the investigating or review officer will need to assess the cumulative picture of circumstantial evidence which could include patterns of behaviour, comparator evidence, any language of concern or evidence that the officer/staff member acted in a way that fits with discriminatory stereotyping.

The assessment should consider:

The cumulative weight of all the evidence and the credibility of competing accounts, including any non-discriminatory reasons given by the officer or staff member to explain the behaviour, and whether these reasons are plausible and credible. Whether the complainer would have been treated differently if they did not have that protected characteristic, or belong to that group.

Complaint Handling - Outcomes and Resolution

All CHRs must ensure that the police handling of discrimination complaints:

- shows respect for the complainer's point of view and for their complaint
- gives a clear explanation of what the complaint enquiry established about what happened and why
- provides a clear, evidence – based response for decisions to uphold or not uphold any complaint of discrimination
- reflects on best practice and whether there is anything the officer or staff member could have done differently that would have improved the experience for the complainer
- in cases where the behaviour is deemed to be unintentional, it may be appropriate for the response to focus on learning and changing behaviour or attitudes

Investigations- Outcomes and Resolution

All investigations where there is an allegation of discrimination or where potential discrimination is identified should:

- show respect for the complainer's point of view and the value of their complaint
- understand why the complainer considers they were discriminated against – even if there is not enough evidence to find that discrimination occurred
- examine all the evidence to ascertain if discrimination may have played a part in how the complainer was treated
- give a clear, evidence-based response to the discrimination allegation (as well as other allegations made)
- give a clear explanation of what the investigation found about what happened and why
- reflect on best practice and whether there is anything the officer or staff member could have done differently that would have improved the experience for the complainer
- in cases where the behaviour is clearly unintentional, it may be appropriate for the response to focus on learning and changing behaviour or attitudes.

Identifying opportunities for learning

Mr C, a young black man, alleges that he was stopped and searched because of his race. He states that he asked the officer repeatedly why he was being searched but the officer gave him no good reason and just told him that he 'looked suspicious'. Mr C says that this infuriated him and that he started to shout and swear at the officer and was arrested for a public order offence.

Following an investigation, the investigating officer is satisfied that the officer had a legitimate and evidenced based reason for the stop and search and for the arrest. However, the officer admits that he did not provide a clear explanation for the stop to Mr C at the time. In these circumstances, it was not unreasonable or unforeseeable that the Mr C would form the view that he was discriminated against and this should be acknowledged.

Police officers should act and make decisions on merit and that they should use opportunities to promote equality and diversity. Having evidence-based reasons for a stop and search and explaining this to the person who has been stopped and searched would be part of meeting this expectation. It would be appropriate for the

findings and outcome in this case to reflect this failure and the missed opportunity to help Mr C to understand why he was stopped and searched and that there were legitimate reasons for taking this action.

8. Conclusion

Investigating or reviewing allegations of discrimination is complex and involves consideration of a number of factors, including the opinion of the victim or complainer. Any findings in respect of an investigation or review should, where possible, be evidence and not opinion based.

In criminal investigations, the criminal standard of proof is applied, i.e. beyond reasonable doubt. In CHRs or police referred investigations, the standard of proof is on the balance of probability.

Irrespective of whether or not an allegation of discrimination is upheld, the question should still be asked about how the complainer came to the view that the police actions were discriminatory and whether there is anything that the officer or staff member could have done that would have changed this. For example, could the officer or staff member have shown greater care, consideration or politeness or could they have provided a better explanation for their actions at the time?

The Code of Ethics provides a best practice framework against which an officer or staff member's actions can be assessed to identify any areas for improvement – even where their actions may not have amounted to criminal or misconduct offence. Of relevance to complaints of discrimination, the Code of Ethics highlights the following behaviours that are expected of a police officer:

- promote a positive wellbeing within the community and service and ensure that all people have fair and equal access to police services according to their needs.
- maintain an open attitude and continue to improve understanding and awareness of cultural, social and community issues.
- carry out duties in a fair manner, guided by the principles of impartiality and non-discrimination.
- show respect for all people and their beliefs, values, cultures and individual needs.
- have respect for all human dignity and understand that my attitude and the way I behave contributes to the consent communities have for policing.
- respect and uphold the law in order to maintain public confidence and, by enhancing my personal knowledge and experience, contributing to the professional development of policing.
- treat all people, including detained people, in a humane and dignified manner.

The same considerations equally apply to PIRC investigators and review officers when undertaking investigations or CHRs.



9 Appendix A

Code of Ethics for Policing in Scotland

This Code of Ethics for Policing in Scotland sets out the standards expected of all of those who contribute to policing in Scotland. This is neither a discipline code nor an unattainable aspirational tool.

Rather this Code is a practical set of measures, which reflect the values of the Police Service of Scotland. We are all responsible for delivering a professional policing service to all people across the country. This Code sets out both what the public can expect from us and what we should expect from one another.

Integrity

I recognise my role in policing as being a symbol of public faith and trust and the obligation this places upon me to act with integrity, fairness and respect.

I shall behave in a way which reflects the values of policing in Scotland.

I understand I am personally responsible for my own actions and will appropriately exercise my discretion.

I shall act as a positive role model in delivering a professional, impartial service, placing service to communities before my personal aims.

I will not accept any gift or gratuity that could, or could be perceived to, compromise my impartiality.

I shall avoid all behaviour, which is or may be reasonably considered as abusive, bullying, harassing or victimising.

I will demonstrate and promote good conduct and I will challenge the conduct of colleagues where I reasonably believe they have fallen below the standards set out in this Code.

Fairness

I will act with courage and composure and shall face all challenges with self-control, tolerance and impartiality.



I will promote a positive wellbeing within the community and service and ensure that all people have fair and equal access to police services according to their needs.

I shall maintain an open attitude and continue to improve my understanding and awareness of cultural, social and community issues.

I will carry out my duties in a fair manner, guided by the principles of impartiality and non-discrimination.

Respect

I take pride in working as part of a team dedicated to protecting people.

I will show respect for all people and their beliefs, values, cultures and individual needs.

I will have respect for all human dignity as I understand that my attitude and the way

I behave contributes to the consent communities have for policing.

I will respect and uphold the law in order to maintain public confidence and, by enhancing my personal knowledge and experience, contributing to the professional development of policing.

I shall treat all people, including detained people, in a humane and dignified manner.

I shall ensure that my relationships with colleagues is based on mutual respect and understanding and shall, therefore, conduct all communications on that basis.

Human Rights

I shall ensure my actions and policing operations respect the human rights of all people and officers whilst understanding that I will also enjoy these same human rights.

I will not undertake high-risk activities or use force other than where strictly necessary in order to attain a legitimate objective and only after I have balanced all the competing priorities I am aware of. (Article 2)

I will not encourage, instigate or tolerate any act of torture or inhuman or degrading treatment under any circumstance nor will I stand by and allow others to do the



same. I understand that the humane treatment of prisoners is an essential element of policing and that the dignity of all those I am trusted to care for remains my responsibility. (Article 3)

I understand that people have an equal right to liberty and security. Accordingly, I will not deprive any person of that liberty, except in accordance with the law. (Article 5)

I will investigate crimes objectively and be sensitive to the particular needs of affected individuals whilst following the principle that everyone who is the subject of criminal investigation is innocent until found guilty by a court. (Article 6)

In carrying out my duties I shall respect everyone's fundamental rights. I will only interfere with privacy or family life when I am legally authorized to do so. (Article 8)

I will respect individual freedoms of thought, conscience or religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions. (Articles 9, 10, 11)



Appendix B

Standards of Professional Behaviour¹⁰

- **Honesty and integrity**

Constables are honest, act with integrity and do not compromise or abuse their position.

- **Authority, respect and courtesy**

Constables act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Constables do not abuse their powers or authority and respect the rights of all individuals.

- **Equality and diversity**

Constables act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

- **Use of force**

Constables use force only to the extent that it is necessary, proportionate and reasonable in all the circumstances.

- **Orders and instructions**

Constables give and carry out only lawful orders and instructions.

- **Duties and responsibilities**

Constables are diligent in the exercise of their duties and responsibilities.

¹⁰ Replicated from Schedule 1 to The Police Service of Scotland (Conduct) Regulations 2014



- **Confidentiality**

Constables treat information with respect and access or disclose it only in the proper course of their duties.

- **Fitness for duty**

Constables when on duty or presenting themselves for duty are fit to carry out their responsibilities.

- **Discreditable conduct**

Constables behave in a manner which does not discredit the Police Service or undermine public confidence in it, whether on or off duty.

Constables report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

- **Challenging and reporting improper conduct**

Constables report, challenge or take action against the conduct of other constables which has fallen below the Standards of Professional Behaviour.

Acknowledgement

The PIRC would like to thank the IOPC for their kind permission to use extracts from their guidelines for handling allegations of discrimination

Review of policy

This Policy is a formal PIRC policy and will be reviewed by the PIRC Head of Department Group on an annual basis.

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