



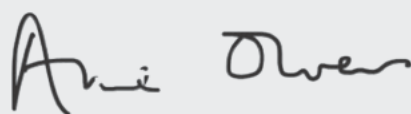
# Foreword

It is crucial for public confidence in the police and the police complaints system that allegations of discrimination are handled properly. Fairness is a core principle underpinning the concept of policing by consent, and unfair or unlawful discrimination fundamentally undermines this principle.

Investigating and resolving allegations of discrimination is undoubtedly challenging. Nonetheless, the police complaints system and those who handle police complaints must be able to rise to this challenge if the police are to retain the confidence of all communities and groups. These guidelines support complaint handlers to do this by providing detailed step-by-step advice supported by practical examples.

I would like to thank everyone who contributed to the development of the guidelines. We heard from a range of organisations with an interest in all forms of discrimination: community groups, complainants and their representatives, and police forces and police representative organisations. We were also assisted by a reference group, which included representatives from the Equality and Human Rights Commission, the Discrimination Law Association, the College of Policing and the National Police Chiefs' Council. The views, experiences and expertise of all those who contributed have shaped and enriched these guidelines.

The guidelines set the standards that complainants, families and other interested parties should expect when allegations of discrimination are made against the police. They are also the standards that we will hold police forces to when we make decisions on appeals and are those that we will apply when we carry out our own investigations into allegations of discrimination.



**Dame Anne Owers**  
Chair

**Please read the full document on applying the IPCC guidance on dealing with allegations of discrimination to IOPC cases after 1 February 2020.**

The police Standards of Professional Behaviour require that:

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

The Police (Conduct) Regulations 2012

The Home Office has issued guidance about how this standard should be applied.

It states:

Police officers carry out their duties with fairness and impartiality and in accordance with current equality legislation. In protecting others' human rights, they act in accordance with Article 14 of the European Convention on Human Rights.

Police officers need to retain the confidence of all communities and therefore respect all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law. In particular police officers do not discriminate unlawfully or unfairly when exercising any of their duties, discretion or authority.

Police officers pay due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups.

Police managers have a particular responsibility to support the promotion of equality and by their actions to set a positive example.

Different treatment of individuals which has an objective justification may not amount to discrimination.

Home Office Guidance: Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures

The Code of Ethics also commits police officers to this standard and gives examples of how it can be met:

According to this standard you must:

- uphold the law regarding human rights and equality
- treat all people fairly and with respect
- treat people impartially

Examples of meeting this standard are when you:

- show compassion and empathy, as appropriate, to people you come into contact with
- treat people according to their needs
- recognise that some individuals who come into contact with the police are vulnerable and may require additional support and assistance
- take a proactive approach to opposing discrimination so as to adequately support victims, encourage reporting and prevent future incidents
- act and make decisions on merit, without prejudice and using the best available information
- consider the needs of the protected characteristic groupings – age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation
- actively seek or use opportunities to promote equality and diversity

Code of Ethics, College of Policing

# IPCC guidelines for handling allegations of discrimination

## Summary guide

“Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.”

Standards of Professional Behaviour

## Defining discrimination

Discrimination means treating someone badly or unfairly because of a characteristic they share with others.

Unlawful discrimination is set out under the Equality Act 2010.

It includes:

- Direct discrimination: when someone is treated *less favourably* than another person because of a protected characteristic
- Indirect discrimination: 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
- Harassment: unwanted conduct relating to a relevant protected characteristic which violates dignity or creates an intimidating, hostile or degrading environment
- Victimisation: where a person is treated badly because they have complained about discrimination

The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

There are additional protections under the Equality Act relating to disability:

- Discrimination arising from disability: when a disabled person is treated unfavourably because of something connected with their disability and the treatment cannot be objectively justified
- Failure to make reasonable adjustments: police forces, as public authorities, have a duty to make reasonable adjustments to make sure that disabled people are not substantially disadvantaged in their interactions with police – failure to do so is a form of discrimination

The Standards of Professional Behaviour also say that *police officers must not discriminate unfairly*. This covers discrimination of other identifiable groups not protected under the Equality Act, such as homeless people or sex workers or alternative sub-culture groups such as goths, emos or punks.

These guidelines apply to all allegations of discrimination arising in police complaints, recordable conduct matters, and death and serious injury investigations.

### Engaging with the complainant

Discrimination complaints will often involve a complainant who already has very low levels of trust in the police. Failure to engage effectively and empathetically with the complainant is likely to reinforce this mistrust and undermine confidence in the complaints process. The investigating officer should:

- Contact the complainant at the beginning of the complaints process to explore why the complainant feels that they have been discriminated against and update the complainant on progress at least every 28 days.
- Respect the complainant's point of view, approaching the allegation with an open mind and recognising the impact on the complainant.
- Be sensitive to individual needs and equality issues – making suitable adjustments and accommodations to make sure the complainant can engage safely and effectively with the complaints system.

### Assessing gravity

An important part of handling all police complaints and conduct matters is the assessment of the seriousness of the alleged misconduct. This informs decisions about how the matter should be dealt with. Factors which could raise the seriousness of the alleged conduct in a discrimination case include:

- **Impact** – particularly foreseeable harmful impact, including failure to take account of a person's known vulnerability or known community tensions.
- **Intent** – any indication that the alleged discrimination was intentional or malicious.
- **Serious negligence or recklessness** – for example, serious failures to follow force policy where the person should have known to do so.
- **Repeat behaviour** – if the alleged behaviour fits with previous patterns of behaviour or previous complaints.
- **Level of responsibility** – senior officers have a particular responsibility to uphold standards and set an example which should be taken into account in this assessment.

Click on the links below for more detailed guidance about how an assessment of the gravity of the alleged discriminatory conduct should inform decisions around:

- [referral to the IPCC](#)
- [recording and referring conduct matters](#)
- [deciding if a matter can be locally resolved](#)
- [severity assessments and deciding the level of investigation](#)

## **Conducting the investigation**

Investigating officers should have a good understanding of equality and diversity issues and have an appropriate level of knowledge, skills and experience to be able to apply these guidelines effectively.

The terms of reference for the investigation should clearly refer to and address any discrimination allegations raised.

## **Understanding the allegation of discrimination**

At the beginning of an investigation, the investigating 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.

To do this the investigating officer should consider:

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

Click on the links below to see examples of this approach applied to allegations of discrimination across a range of protected characteristics:

- [racism](#)
- [discrimination on grounds of religion or belief](#)
- [homophobia and biphobia](#)
- [transphobia](#)
- [disability discrimination](#)
- [ageism](#)
- [sexism](#)

## Lines of enquiry

Standard lines of enquiry should be followed to try to find out what happened and why. It is common in discrimination cases for there to be little or no direct evidence available to support an allegation. The investigation will need to consider whether there is other evidence from which an upheld or case to answer finding can be drawn. This includes:

### Complaint history and patterns of behaviour

- Officer complaint history should be considered in all cases.
- Other patterns of behaviour evidence (such as trends in stop and search) should be considered where available, proportionate and relevant to the allegation.

### Comparator evidence

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

### Language

- An assessment of language used, including language used in any records relating to the incident in question or arising from the complaint investigation.

## 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 unpick and challenge why they acted in the way that they did.

Questions should focus on:

- why they took the actions that they did
- what assumptions or assessments were made
- what were the reasons for these

The officer or staff member should also be asked to reflect on:

- why the complainant might have felt discriminated against and what could have been done differently to change this
- their experience and training and whether they felt adequately equipped to deal with the situation they faced



## Organisational issues

Organisational issues and organisation learning should be considered when they arise from enquiries into the particular incident that the complaint is about. If an investigation finds a case to answer for 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 complaint investigation to answer the broader question of whether the force is institutionally discriminatory. Other organisations such as Her Majesty's Inspectorate of Constabulary (HMIC) or the Equality and Human Rights Commission (EHRC) may be able to undertake this type of inquiry.

## Findings

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 a case to answer or upheld finding. In many cases the investigating 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.
- 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 complainant would have been treated differently if they did not have that protected characteristic, or belong to that group.

## Outcomes and resolution

All complaint handling should try to resolve and rebuild trust.

A resolution focused outcome should:

- Show respect for the complainant's point of view and the value of their complaint – even if there is not enough evidence to uphold the complaint or to find a case to answer for discrimination.
- 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.
- Openly recognise and apologise for any failings found.
- Take appropriate action in relation to any officer or staff member who has acted inappropriately, including disciplinary action where relevant.
- Show how the individual and the organisation will learn from the complaint to stop the same thing from happening again.
- 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 complainant.

It will sometimes be appropriate for a case to answer for discrimination to be dealt with at the more serious end of the spectrum in terms of disciplinary action. However, in cases where the behaviour is clearly unintentional, it may be appropriate for the response to focus on learning and changing behaviour or attitudes.

The IPCC expects that disciplinary panels will have regard for this guidance when considering allegations of discriminatory behaviour.

# IPCC guidelines for handling allegations of discrimination

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# 1. Defining discrimination

## Standards of Professional Behaviour – equality and diversity

- 1.1 The police Standards of Professional Behaviour<sup>1</sup> set out what is and is not acceptable behaviour for the police. The standard relating to equality and diversity states that:

**Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.**

- 1.2 Where an allegation of discrimination is made against the police it will need to be recorded and assessed against this standard.
- 1.3 Where discrimination is alleged, it will often be appropriate to consider other Standards of Professional Behaviour as well as, and together with, this principle. In particular, it is common that the standard relating to authority, respect and courtesy will also be relevant where an allegation of discrimination is made. This standard requires that:
- Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy. Police officers do not abuse their powers or authority and respect the rights of all individuals.*
- 1.4 Complaint and conduct investigations should give proper consideration to all the standards that are engaged. However, if discrimination is alleged, the equality and diversity standard will always be appropriate to consider and is the focus of this guidance.

1. The Standards of Professional Behaviour are set out in Schedule 2 of the Police (Conduct) Regulations 2012.

## Unlawful and unfair discrimination

- 1.5 The Standards of Professional Behaviour say that police officers must not discriminate unlawfully. The Equality Act 2010 defines unlawful discrimination and includes a number of different tests which should form the basis for the assessment of discrimination allegations made against the police<sup>2</sup>.
- 1.6 The Equality Act prohibits discrimination relating to the ‘protected characteristics’. The protected characteristics are:
- **Age** – this includes age defined groups such as elderly people or ‘over 50s’ (but does not include 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 activities<sup>3</sup>.
  - **Gender reassignment** – this 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** – i.e. people who are married or in civil partnership.
  - **Pregnancy and maternity** – covers pregnancy and a period of 26 weeks after giving birth.
  - **Race** – this 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.
- 1.7 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 people or sex workers or groups from a particular town/region or from alternative sub-cultures such as goths, emos or punks. It could also include minority language speakers, such as Welsh language speakers, and it could include young people and children, as under 18s are not covered by the protection from age discrimination under the Equality Act.

2. The Equality and Human Rights Commission has issued a [statutory code of practice for services, public functions and associations](#) that provides further guidance on the tests for discrimination under the Equality Act 2010.

3. This could be physical or learning disabilities as well as serious ongoing mental illness. People with severe disfigurements and people suffering from multiple sclerosis, HIV and cancer are also included within the definition. Further guidance on the definition of disability is available from the [Equality and Human Rights Commission](#).

1.8 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

1.9 Where an allegation is made that a person was *treated differently* by the police *because of* their race/gender/gender identity/religion/disability etc. – it will be relevant to consider the test for ‘direct discrimination’ under the Equality Act.

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

1.10 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 process and is discussed later in this guidance.

#### 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).

1.11 These principles need to be considered together – the question to ask is:

**Would the person have been treated in this way but for their protected characteristic (i.e. their race/religion/sex/sexual orientation/gender reassignment/age/disability etc)?**

#### Example – a complaint about direct discrimination

Mr A is a 16-year-old boy who is black. He was leaving a 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. This is an allegation of direct discrimination.

1.12 Important 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 also provides for positive action to be taken in certain limited circumstances and this could involve introducing policies and practices which treat members of a group who share a particular protected characteristic more favourably than other groups.<sup>4</sup>

4. Further guidance on positive action is provided in the [Equality and Human Rights Commission codes of practice](#).



### Harassment

1.13 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.**

1.14 This would include 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 themselves.

#### Example – a complaint about 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.

### Indirect discrimination and organisational issues

1.15 Discrimination can occur at an organisational level.

1.16 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<sup>5</sup>.

1.17 Sometimes a policy or practice can be applied equally across all groups but the result is still that a particular protected group are 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*.

1.18 Complaints about organisational issues will often, rightly, be recorded and dealt with as direction and control matters. However, organisational issues may arise in relation to a complaint about conduct. This is discussed in more detail on page 52.

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5. The public sector equality duty is outlined on [page 72](#). See the [Equality and Human Rights Commission website](#) for further information.

### Example – a complaint about 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.

## Victimisation

**1.19** Discrimination can take the form of victimisation. This is where a person is treated badly because they have complained or have taken legal action about discrimination (or if they have supported someone else taking action).

## Disability discrimination

**1.20** The protection against direct and indirect discrimination, as well as harassment and victimisation, applies to disabled people. However, there are 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.

**1.21** It may be discrimination if the police fail to make reasonable adjustments for, or to appropriately take account of, a person's disability.

**1.22** Specific guidance around disability discrimination and making reasonable adjustments is provided in [chapter 7](#).

## Discrimination and human rights

**1.23** 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).

- 1.24 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 protection against discrimination applies to a wide range of characteristics including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or 'other status'. 'Other status' could include sexual orientation, gender identity, disability, marital status, trade union membership, imprisonment, and age (including children or young people) among other things.
- 1.25 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.

### Criminal offences and hate crime guidance

- 1.26 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 such as the offence of incitement to racial hatred.
- 1.27 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 in accordance with the College of Policing Hate Crime Operational Guidance<sup>6</sup>. These guidelines will also continue to apply.
- 1.28 The Hate Crime Operational Guidance sets out the reporting requirements, as well as the relevant legislative framework for considering criminal allegations aggravated by discriminatory prejudice or hostility.
- 1.29 All allegations of criminal offences aggravated by discrimination against a protected characteristic must be referred to the IPCC. More information about referring discrimination matters to the IPCC can be found in [chapter 3](#).

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6. [Hate Crime Operational Guidance 2014](#), College of Policing.

# 2. Engaging with the complainant

- 2.1 Discrimination complaints will often involve a complainant<sup>7</sup> who already has very low levels of trust in the police and who may be expecting further discrimination in the police response to their complaint.
- 2.2 Open, effective and empathetic engagement with the complainant from the start of the complaints process to its end is essential to building and maintaining confidence in the complaints process.

### Contacting the complainant to explore their allegations

- 2.3 It is particularly important in discrimination complaints that the investigating officer has a clear understanding of the allegation made and *why* the complainant feels that they have been discriminated against.
- 2.4 Meaningful contact with the complainant should be made or attempted at the beginning of the complaints process. This should happen in all cases, unless there are good, well documented reasons why it is not possible or appropriate.
- 2.5 The types of questions that should be explored with the complainant 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?

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7. The term 'complainant' is used throughout these guidelines. However, the same principles apply to family members or other interested persons in investigations into death or serious injury or recordable conduct matters.

- 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?

## Keeping the complainant informed

- 2.6 Investigating officers must make sure that the complainant is updated about the progress of the investigation every 28 days throughout the investigation, as required under the Police Reform Act. If there is a delay between when a complaint is received and when an investigation can start (or an investigating officer is allocated to deal with the case) the appropriate authority should update the complainant about this delay and give a timeframe for when the investigation will start.
- 2.7 Any gaps in contact can quickly undermine confidence in the fairness and robustness of the complaint handling process. This confidence, once lost, is difficult to regain even if an effective investigation is then undertaken.

## Showing respect and working towards resolution

- 2.8 The complaints process should seek to resolve and rebuild trust regardless of the outcome of the complaint and regardless of whether the matter is locally resolved or investigated. This resolution focus should inform all contact with the complainant, from early contact to explore the complaint, to the final outcome letter or report.
- 2.9 The complainant should come away from the complaints process feeling that their complaint was valued and it was worthwhile making the effort to complain. To do this, the investigating officer must show respect for the complainant's point of view, including when there is not enough evidence to uphold the complaint. This includes recognising the impact the matter has had on the complainant. It also means that the investigating officer must show that they are approaching the complaint with an open mind.

### Case study – from the IPCC report on police handling of allegations of discrimination

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 complainant and led to a poor investigation that failed to follow basic lines of enquiry.

### **Sensitivity to individual needs and equality issues**

- 2.10 Discrimination complaints, by their very nature, raise equalities issues. Investigating officers should take particular care that their approach to dealing with the complaint and engaging with the complainant represents a best practice approach to equality and diversity and is consistent with the force’s published equality objectives.
- 2.11 Particular care should be taken to make appropriate adjustments and accommodations to make sure the complainant can engage safely and effectively with the complaints system.
- 2.12 This could include:
- Making reasonable adjustments where a complainant has a disability. The police are required by law to make reasonable adjustments for disabled people. Complainants with disabilities should be asked about what adjustments would help them to engage effectively with the complaints process.
  - Providing an interpreter or other assistance where a person does not speak fluent English.
  - Appropriate recognition and accommodation of cultural or religious needs where these are raised by the complainant.

- If a complainant has learning disabilities or other impairments that may impact on their capacity to express their complaint effectively, it may be appropriate to follow the principles of an Achieving Best Evidence interview or otherwise make sure that the complainant is appropriately supported to make their complaint.
- Recognising and valuing the support provided by advocacy services, support workers, and legal advisers where the complainant has used these types of services.
- It may be appropriate to offer contact with an officer of the same gender or with specialist knowledge about the type of discrimination alleged, depending on the complaint, and where it is possible to do so.

2.13 Great care should be taken to respect complainant privacy and confidentiality – particularly where a complaint may reveal information about the complainant that is not widely known (for example, information about a person’s mental health, sexual orientation, gender identity etc). Depending on the circumstances, it can be a criminal offence to reveal protected information about a person’s gender identity history if that person has a gender recognition certificate.

2.14 Complainants with low levels of trust in the police may be unwilling to go to a police station or to have a police officer come to their home to discuss a complaint. While it is important to try to engage with the complainant 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 take down details of her complaint and to 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.

## 3. Assessing complaints and gravity factors

- 3.1 An important part of handling all police complaints and conduct matters is the assessment of the seriousness of the alleged misconduct.
- 3.2 This assessment, which will be ongoing throughout the investigation, informs decisions about whether a case needs to be referred to the IPCC, whether a complaint is suitable for local resolution or formal investigation, and the level of that investigation. It will also inform decisions around the level of sanction or the type of action required as an outcome.
- 3.3 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. However, not all allegations of discrimination are at the most serious end of the spectrum: all allegations must be assessed individually.
- 3.4 Factors to consider that would raise the gravity of the alleged conduct in a discrimination complaint include (but are not limited to):
  - **Impact** – the impact on both the person affected and the wider community should be considered. In particular, a matter should be viewed as more serious where significant harmful impact could reasonably have been foreseen and reasonable steps were not taken to prevent this. This could include failure to take account of a person’s vulnerability or known community tensions. The gravity of the alleged conduct will also be raised if the discrimination can be seen to have impacted on a person’s exercise of their human rights.
  - **Intent** – it is not necessary to show intent to find a case to answer for discrimination. However, an allegation of discrimination will be more serious where there is an indication that the alleged discrimination was intentional or malicious – for example where actions are underpinned by homophobic/racist/sexist attitudes. An indication of intent is not limited to where a person openly holds and expresses discriminatory views.



It could include where there is evidence that the complainant was specifically targeted due to their protected characteristic.

- **Serious negligence or recklessness** – for example, failing to follow policy or provide a duty of care where the officer or staff member should have known to do so. Particularly relevant to the assessment of discrimination allegations will be any serious failure to follow policies or guidance targeted at addressing discrimination or protecting vulnerable groups such as hate crime policies or guidance on responding to people in mental health crisis.
- **Repeat behaviour** – does the alleged behaviour fit with previous patterns of behaviour? Have complaints against the officer or staff member about similar behaviour been made before? The officer or staff member’s complaint record should always be considered.
- **Level of responsibility** – senior officers have a particular responsibility to uphold standards and set an example to those they lead. The position of policing leaders as role models in relation to demonstrating and encouraging ethical behaviour is outlined in the Code of Ethics. This should be taken into account in any assessment of the seriousness of the alleged conduct.

3.5 Allegations of discrimination will often appear as an aggravating factor in relation to other alleged misconduct – for example, an allegation that an officer used excessive force against a person because of their race.

3.6 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).

3.7 Examples are provided below to show how consideration of these gravity factors might apply to the decision to refer a matter to the IPCC, decisions around identifying recordable conduct, the decision about whether a complaint is suitable for local resolution, and the special requirements and severity assessment decisions.

## Referral to the IPCC

3.8 Where a complaint of discrimination is made and recorded under the Police Reform Act, the appropriate authority must assess whether it needs to be referred to the IPCC.

3.9 Any of the grounds for referral may apply. However, there is a specific referral ground that relates to discrimination allegations.

3.10 Under the Police Reform Act, an appropriate authority must refer a matter to the IPCC if it includes an allegation of conduct which constitutes:

- A criminal offence or behaviour which is liable to lead to misconduct proceedings.
- And which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status identified by the IPCC (which includes the other protected characteristics).

3.11 This criterion is met if the alleged behaviour, without the discrimination element, would amount to a criminal offence or behaviour which is liable to lead to a disciplinary sanction *and* it is alleged that discrimination was a reason for this behaviour.

3.12 The referral ground requires an assessment of the gravity of the underlying conduct without the discrimination element (to decide if it is an allegation of a criminal offence or behaviour liable to lead to a disciplinary sanction). It will not be necessary to assess the gravity of the discrimination element (e.g. to consider intent) – only that discrimination is alleged as an aggravating factor.

#### Example – applying the criteria for referral to the IPCC

Ms S, a trans woman, reported to police that she had received verbal abuse from her neighbour about being transgender. She was visited by two neighbourhood police officers. She reported more incidents to these officers and told them that the abuse was getting more frequent and more serious in nature with the neighbour shouting abuse and even death threats at her. Ms S says that she told officers that she feared for her safety but nothing was done. She says that the officers suggested that she 'tone down' her outfits when she was out in the local area.

Ms S complains that the officers' comments were transphobic and reveal a discriminatory attitude that had led to the police failing to investigate her repeated reports of escalating hate crime. She says that she is now fearful to leave her home.

In this case, the allegation of a failure to investigate repeated reports of hate crimes could lead to disciplinary proceedings. The complainant has alleged that this failure resulted from discrimination, so it meets the criteria for mandatory referral.

## Voluntary referrals

- 3.13 There may be allegations involving discrimination where there are no underlying criminal offences or behaviour liable to lead to a disciplinary sanction – but the seriousness of the discrimination allegation itself means that it would be appropriate to refer the matter to the IPCC. This may also be the case where a serious allegation is made of unfair discrimination relating to a group that is not specifically protected under the Equality Act and is not, therefore, included in the mandatory referral criteria relating to discrimination (such unfair discrimination is discussed on [page 2](#))<sup>8</sup>. In such cases, the appropriate authority should consider referring the matter to the IPCC voluntarily.
- 3.14 The IPCC encourages appropriate authorities to voluntarily refer complaints or recordable conduct matters where the seriousness of the subject matter or exceptional circumstances justify referral. This includes where:
- the complaint or recordable conduct matter could have a significant impact on public confidence or on the confidence of particular communities
  - it is felt there is a need for independent involvement in the investigation
- 3.15 Consideration should be given to the gravity factors on [page 12](#) when making this assessment. For example, it may be appropriate to voluntarily refer a matter if the case involves a very senior officer and the alleged discrimination could undermine confidence in their role or in the police generally; or if there is evidence of a serious systemic issue.
- 3.16 Clear reasons for referring the matter should be explained when a voluntary referral is made. Relevant issues to be covered include not just the nature of the allegations, but any serious concerns or exceptional circumstances having an impact on the complainant and the community, and why independent oversight is needed. This is important information for the IPCC to consider when deciding how the matter should be investigated and the level of IPCC involvement.

## Recording and referring conduct matters

- 3.17 Assessing the seriousness of alleged discriminatory conduct is also relevant to decisions about recording conduct matters under the Police Reform Act and referring conduct matters to the IPCC.
- 3.18 A conduct matter is any matter which:
- is not the subject of a complaint

8. The [IPCC's Statutory Guidance](#) sets out that the mandatory referral criteria relating to discrimination applies to the protected characteristics under the Equality Act.

- where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings

3.19 The Police Reform Act sets out a range of circumstances where conduct matters must be ‘recorded’ and therefore brought within the police complaints system.

3.20 It is important that forces have in place robust processes for identifying and recording conduct matters under the Police Reform Act where required to do so to make sure that there is proper individual accountability and that trends of concern, repeat behaviours, and opportunities for learning are not missed.

3.21 If a conduct matter that includes an allegation of discrimination has been referred to the IPCC and the IPCC decides that the matter should be investigated (either by the local force or by the IPCC), the investigation should be conducted in accordance with these guidelines.

#### Conduct matters arising through civil proceedings

3.22 Allegations of discrimination may be made against a police force through civil proceedings. All conduct matters raised in civil proceedings must be recorded unless:

- the matter is repetitious of a previously recorded complaint or conduct allegation
- the conduct has been, or is currently, the subject of criminal or disciplinary proceedings

3.23 Forces should take steps to identify recordable conduct matters arising from civil proceedings at the time that the force receives notification that civil proceedings have been, or are likely to be, brought. Once a conduct matter is recorded, the appropriate authority must decide whether to refer the matter to the IPCC. The grounds for mandatory referral and voluntary referral are the same as for a complaint. These are discussed on [page 13](#).

#### Conduct matters arising in other circumstances (not in civil proceedings)

3.24 If a conduct matter arises in circumstances other than in civil proceedings (and it is not repetitious or already subject to criminal or disciplinary proceedings) it must be recorded under the Police Reform Act if any of the following criteria apply:

- it meets any of the mandatory referral criteria<sup>9</sup>

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9. The [IPCC's Statutory Guidance](#) provides further explanation of the mandatory referral criteria.

- the alleged conduct has had an adverse effect on a member of public
- it involves conduct whose gravity or other exceptional circumstances make it appropriate to record

3.25 If the conduct matter meets the mandatory referral criteria, it must be both recorded and referred to the IPCC. If the conduct matter does not meet the mandatory referral criteria, but meets one of the other grounds for recording, the appropriate authority should consider whether or not to refer the matter to the IPCC voluntarily.

3.26 Consideration should be given to the gravity factors on [page 12](#) when assessing whether a matter should be recorded and voluntarily referred due to its gravity or other exceptional circumstances. The IPCC expects that conduct matters that involve allegations of discrimination which could have a significant impact on community cohesion or on community confidence in policing should be recorded and referred to the IPCC.

#### Example – recording and referring a discrimination conduct matter

A report is received from an internal whistle-blower about comments made by Chief Inspector C among a group of junior officers at drinks after work. It is alleged that Chief Inspector C made a number of very offensive and sexist comments about women, and particularly about feminists and female advocates that he had dealt with in cases involving domestic violence and rape.

In this case the conduct (making offensive or inappropriate comments while off-duty) without the discriminatory element might be unlikely to justify disciplinary proceedings. As such, the alleged conduct would not appear to meet the mandatory referral criteria relating to conduct aggravated by discrimination.

However, the seriousness of the alleged discriminatory conduct may, in itself, mean that recording and referral is appropriate. The conduct involves a high ranking officer and the alleged comments are made in a context in which they could both influence and intimidate more junior officers. The allegation also raises serious questions about whether the discriminatory opinions allegedly expressed might impact on the Chief Inspector's approach to policing the public in a fair and safe manner. The seriousness of the alleged discriminatory conduct meets the criteria for recording. For the same reasons, it would be appropriate for the appropriate authority to voluntarily refer this matter to the IPCC.

#### Conduct matters arising from internal grievance procedures

- 3.27 The police complaints system, in general, is not the appropriate forum for dealing with internal employment matters within the police force – including those where a police officer alleges that they have been discriminated against by another officer in an employment context.
- 3.28 However, there are circumstances where such matters should be recorded under the Police Reform Act.
- 3.29 Police forces have internal grievance processes in place to deal with employment disputes which may lead to disciplinary proceedings. If an internal grievance leads to disciplinary proceedings, it is not necessary to make a separate recording decision under the Police Reform Act as conduct matters do not need to be recorded where the conduct is already being dealt with through disciplinary or criminal proceedings.
- 3.30 However, if following an internal grievance process, no disciplinary or criminal proceedings are pursued but a successful claim is later brought at an employment tribunal or through civil proceedings, an assessment must then be made about whether there are conduct matters that need to be recorded and referred to the IPCC in light of the findings of the court or tribunal.
- 3.31 The same criteria and considerations outlined on [page 16](#) should then be applied when assessing whether the matter should be recorded and referred to the IPCC. Importantly, issues of discrimination that are seen to limit the career progression of police officers from minority groups can have a significant impact on confidence in policing amongst minority communities. This impact should be taken into account in decisions made about whether to record and refer these types of matters to the IPCC.

### Example – recording and referring a discrimination allegation arising following an employment tribunal decision

PC R, a female, British Chinese officer, made an internal complaint that she was discriminated against by Inspector S on the grounds of sex and race when she was passed over for promotion. Her allegation was dealt with through an internal grievance process which did not uphold her complaint and no disciplinary proceedings were brought.

PC R took her case before an employment tribunal which found in her favour. The tribunal found that the decision not to promote her was based on negative feedback received from supervising officers. It concluded that where supervisors had been asked to appraise her performance, the questions had been framed with the intention of getting a negative response – asking, for example, whether the challenges of balancing work and home life/childcare had impacted on her recent performance. Similar questions were not asked in relation to the other candidates who were white and male.

The allegation of discrimination against Inspector S should be recorded as a conduct matter because:

- no prior public complaint has been made
- there is an indication of conduct that would justify disciplinary proceedings
- Inspector S is not already subject to disciplinary proceedings for the alleged conduct

The alleged conduct also meets the criteria for mandatory referral as, even without the allegation of discrimination, the unfair targeting of a person by seeking specifically negative appraisals in a selection process would be conduct that would justify disciplinary proceedings. In this case, it is suggested that this conduct was aggravated by discrimination on the grounds of race and sex.

This allegation would need to be recorded and referred to the IPCC.

## Local resolution

3.32 A complaint must meet both of the following conditions to be suitable for local resolution:

- the conduct that is being complained about (even if it were proved) would not justify bringing criminal or disciplinary proceedings
- the conduct complained about (even if it were proved) would not involve the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights<sup>10</sup>

10. Article 2 of the European Convention on Human Rights protects the right to life. Article 3 prohibits torture, and inhuman or degrading treatment or punishment.

- 3.33 The local resolution test is based on the complaint made. It is appropriate to make the assessment about whether the complaint is suitable for local resolution *after* speaking to the complainant to better understand their discrimination complaint.
- 3.34 An allegation of discrimination will often, rightly, raise the seriousness of a case and discrimination allegations will often not be suitable for local resolution. Some examples of where discrimination complaints might be suitable for local resolution (having regard for the gravity factors at [page 12](#)) are provided below.

#### Example – complaint suitable for local resolution

Ms J, an Asian woman, was walking to a conference venue to attend a work related conference. Near to the venue, a large pro-Palestinian demonstration was taking place. There was a significant police presence and the police were directing members of the public away from the area. Ms J says that she was approached by a police officer when she tried to make her way to the conference venue and was told that she would need to join the demonstration from another street as the police had blocked off this approach. She explained that she was not looking to join the protest but to access the conference venue. The police officer asked her to contact the venue so that they could send a person out to come to get her. She did this. When she got inside the venue she found that the other conference attendees, who were white, had not had the same problems getting through the police line as she had.

Ms J made a complaint that she was treated differently because of her race and that it was immediately assumed that she was trying to join the demonstration, or worse, that she was likely to cause trouble. She does not know who the officer who spoke to her was, but she wants an apology from the force and asks that the officers involved in policing the demonstration on that day be made aware of the difference in treatment that she received as she feels that acceptance of this type of racism undermines policing.

This complaint is likely to be suitable for local resolution. It does not seem that this allegation would lead to criminal or disciplinary proceedings for the officer. Local resolution could be an effective way of achieving the outcome the complainant is seeking.



### Example – complaint suitable for local resolution

Mrs D suffers from multiple sclerosis which means that she is often in pain. She was a victim of domestic violence. She says that her multiple sclerosis impacted on how she experienced the crime but also made it difficult for her to engage properly with the investigation as the pain causes confusion and distraction. She told the investigating officer that she had multiple sclerosis but she feels that he did not understand the impact of this and did not take proper account of her condition. Mrs D says that she would like someone to explain to the officer the impact of multiple sclerosis on a victim and for the police to put in place a strategy to make sure more appropriate service provision and support for sufferers of multiple sclerosis or other disabilities that cause chronic pain in the future.

This complaint is likely to be suitable for local resolution. The complainant has indicated that the officer's insensitive behaviour is a result of a lack of knowledge or training. It does not appear that the conduct would lead to disciplinary or criminal proceedings. In this case, local resolution could be an appropriate process to explore the complainant's suggestions for how her complaint should be addressed.

- 3.35 Local resolution is unlikely to promote confidence or to achieve real resolution, particularly in discrimination cases, unless the complainant is given a reasonable explanation for what happened and it is clear that the complainant's perspective has been heard and valued in the process.
- 3.36 The principles for engaging with the complainant outlined in [chapter 2](#) and achieving a resolution-focused outcome on [page 60](#) should be applied to the local resolution of complaints.

## Severity assessments

- 3.37 The process for certifying an investigation as one subject to special requirements and undertaking a severity assessment is no different for discrimination cases than any other case. A complaint investigation must be certified as subject to special requirements and a severity assessment done if the investigating officer believes that there is an indication that the person under investigation may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings.

3.38 An allegation of discrimination can raise the seriousness of a case which can impact on the severity assessment. Examples of undertaking a severity assessment in relation to an allegation of discrimination, having regard for the gravity factors, are provided below.

#### Example – severity assessment of gross misconduct

Mr K is a white man who suffers from serious ongoing mental health issues. He was detained by police officers under section 136 of the Mental Health Act, having self-harmed and been found in a public place covered in blood from self-inflicted, non-life threatening wounds on his arms.

He says that the police officers handcuffed him and took him to accident and emergency as a ‘place of safety’, where they waited with him for a number of hours for assessment.

Mr K complains that despite the injuries to his arms he was kept in handcuffs throughout, and police officers refused to let him go to the toilet. He says that he was verbally abused and felt belittled for having a mental health problem, with police officers calling him names such as ‘nut nut’ and ‘mental bastard’.

Mr K says that he felt embarrassed to be kept in handcuffs in sight of everyone else at the hospital when he was not under arrest for a crime. He feels that he was criminalised for having a mental health problem. He complains that the handcuffs were unnecessary and caused him pain and the verbal abuse he received from the police officers present reflected their prejudice around mental health.

The complaint against the two attending officers includes allegations of use of excessive force, by applying and keeping handcuffs on Mr K, aggravated by overt discrimination and harassment relating to his mental health issues (a disability). The alleged treatment in this case could amount to a breach of Article 3 of the European Convention on Human Rights, which prohibits inhuman and degrading treatment. Article 14 would also therefore be engaged, which protects against discrimination in the application of human rights. Depending on the other evidence available, it is arguable that a severity assessment of gross misconduct would be appropriate for the officers in this case.

### Example – severity assessment of misconduct

Mr G is a 25 year old Traveller man. Mr G says that he was stopped by police while driving a commercial vehicle near to his home. Mr G says that he demanded to know the reason for the stop. He says that the officer gave no reason but said ‘right then, I’m going to search your van now’ and conducted a search but found nothing.

Mr G complains that he was stopped because he is a Traveller and was driving a commercial vehicle near to a Traveller site. In his complaint he states 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 but was used by the officer as an excuse to search his vehicle as well.

The investigating officer reviews the officer’s complaint record. There are no previous complaints of discrimination. The investigating officer also reviews the search record for the incident and notes that a poor rationale was recorded for the search.

This is a complaint about abuse of authority (wrongful use of powers to stop and to search), aggravated by discrimination. Based on the complaint and the evidence available, a severity assessment of misconduct would be appropriate for the officer in this case.

## 4. Understanding the allegation of discrimination

- 4.1 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.
- 4.2 An investigation 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 officer will need to have an understanding of what these discriminatory assumptions might be.

**At the beginning of the investigation, the investigating officer should take steps to develop an understanding of the types of assumptions, prejudice or bias that might have informed the police officer or staff member's decisions, actions or behaviours.**

- 4.3 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 officer should consider:

### What does the complainant say?

- It is essential that the investigating officer takes time to understand why the complainant feels that they have been discriminated against. This should include exploring any prejudiced assumptions the complainant feels the police made about them.
- Further guidance on contacting the complainant to explore their allegation is provided on page 8.

### What else 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? This could include national or international events.

### What do you need to find out?

- Depending on the seriousness and nature of the allegation, it might be proportionate for the investigating officer to seek expert advice – to help to get a better understanding of the discrimination alleged and how it might present and be evidenced. Advice could be sought from an appropriately trained or experienced colleague (for example, officers trained to deal with hate crimes or a relevant minority policing association).
- The investigating officer may also be able to usefully draw on findings from relevant inquiries, research or reports about discrimination. Some examples of useful resources are listed at [Annex A](#).
- 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.

4.4 The investigating officer should draw on this information to inform the lines of enquiry for the investigation.

**The investigating officer should continue to return to the key question of whether the same decisions, actions or behaviours would have happened but for the complainant's protected characteristic.**

4.5 Examples of how this might be done are provided below in relation to a range of protected characteristics.

### Racism

4.6 Racism is a much-debated term. 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. Some examples of how allegations of racism might be explored are provided below.

#### Example – allegation of racism made by a black man

Mr A is a 36-year-old black man with mental health issues. Mr A says that he was arrested by the police when he was suffering from a manic episode. He complains that the police used excessive force to restrain him, breaking his arm. He alleges that the police were violent and rude and they failed to appropriately care for him while he was in a state of mental health crisis. He feels that the police only responded in this way because he is a black man.

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

What types of assumptions, prejudices or bias might lead to a black man with mental health issues being treated differently due to his race and resulting in the use of excessive force? Would a white man with mental health issues acting in a similar way be treated by these officers in the same way?

Mr A has made an allegation of race discrimination. He has not complained that he was discriminated against because of his mental health, but this is suggested in his complaint that officers failed to appropriately care for him while he was in a state of mental health crisis. 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 mental illness.

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, mental health and race. Given this, the investigating officer contacts a well respected local race relations advocacy group to seek their views and advice on any recurring issues around race, mental health and policing. He also considers the discussion around these issues in *The Independent Commission on Mental Health and Policing Report*<sup>11</sup>.

11. The [Independent Commission on Mental Health and Policing Report](#), May 2013.

Drawing on this background information and the details of the discrimination allegation provided by the complainant, the investigating 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 was experiencing a mental health crisis?
- What assessments were made to take account of Mr A's mental health condition? How was this reflected in the actions taken? In light of his mental health problems, was it appropriate for Mr A to be arrested and taken to a cell? Would a white man with similar mental health problems 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 mental health crisis 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 black? 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 black 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 black 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?

*This example is revisited on [page 58](#) to show how the evidence collected could be used to reach a case to answer finding.*

### 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 burgled’. 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 complainant 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?

#### Example – allegation of racism made by a Slovakian man

Mr P, a Slovakian man who is resident in the UK, was stopped by police for riding his bicycle on the pavement. The man objected to the stop and shouted and swore at the police officer. He was arrested for a public order offence. The officer asked the man why he was riding so fast and the man explained that he was working as a bike courier. The officer asked him where he was from. When the man said that he was from Slovakia, the officer further arrested him for an immigration offence.

The officer said that he thought at the time that Mr P might be lying about the country he came from. He admits that this arrest was unjustified but says this was just his own stupidity and not discrimination.

The investigating officer discusses the case with a colleague with considerable experience in immigration law enforcement. The colleague advised that a person's nationality may be a relevant consideration when assessing whether there is reasonable grounds to suspect an immigration offence. But basing a decision to arrest a person for any offence purely on the basis of their nationality or assumed nationality would be unreasonable.

Drawing on this advice, the investigating officer identifies the following key considerations:

- Why was Mr P asked about his nationality? What was the purpose of this question? Would a white British man in similar circumstances have been asked for his nationality?
- Did the officer genuinely believe that Mr P “might be lying” about the country he came from? If so, what was the basis for this belief? Would he have formed such a belief about a white British man in similar circumstances?

- Did the officer make a decision to arrest based solely on Mr P's nationality or assumed nationality? Have any other reasons for the arrest been provided? If so, are these reasonable and credible? To what extent have they been influenced by Mr P's nationality?
- Would the officer have arrested a white British man in similar circumstances for an immigration offence? If not, is there any reasonable justification for the difference in treatment?

### Discrimination on grounds of religion or belief

- 4.7 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, was 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*<sup>12</sup>. 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)?

12. Equality and Human Rights Commission, [Research report 72: The impact of counter-terrorism measures on Muslim communities](#).

- Were questions asked about her religious observance, including how often she prays? If so, what was the reason for this? What is the relevance of this type of questioning?
- Was a link made between how devoutly religious she is and the risk of terrorism? I.e. was she considered a greater risk because she wears a burka or because she prays five times a day?
- Would another person in similar circumstances, but from a different religion, be considered a greater threat as a result of being more devoutly religious? If not, is there a non-discriminatory reason for the difference in treatment in this case?

## Homophobia and biphobia

- 4.8 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 active local network of LGBT police officers within the force and she approached the chair person for advice on the issues raised in this complaint. The chair person 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

4.9 Transphobia is discrimination motivated by hostility, prejudice or bias against a person who is trans or perceived to be trans<sup>13</sup>. 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.

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13. 'Trans' is an umbrella term to describe people whose gender identity is different from the gender they were assumed to be at birth.

### 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 LGBT 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 complainant did not want to engage directly with the police and refused the offer to discuss the complaint in more detail. The investigating officer asked the LGBT advocacy organisation to provide some general background information about transphobia and sought their views on why they believe that the officer’s actions were discriminatory in this case.

Drawing from the complaint and the advice provided by the 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

4.10 Disability discrimination is discrimination arising from or relating to a person's disability. The term 'disablism' is also sometimes used. 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. Disability discrimination can also arise from failures to make reasonable adjustments or to make accommodation for impairments and health conditions.

#### Example – allegation of disability discrimination made on behalf of a disabled woman

The complainant, 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 wrote to the Police and Crime Commissioner 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?

## Ageism

4.11 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?

- What did the officers hear and see when they arrived? What was their impression of the two groups involved? How were the two groups described in records made by police officers or call handling staff at the time of the incident?
- Were the assessments made about the incident and the involvement of the two groups reasonable and based on evidence?
- Were different assumptions made about Mr C and his friends compared with the other group? Were these assumptions based on the age and appearance of Mr C and his friends?
- Why were Mr C and his friends arrested? Why were others involved in the incident not arrested? What is the reason for the difference in treatment? If Mr C and his friends were older and dressed differently (e.g. in suits) would they have been treated in the same way?

### Sexism

4.12 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. Conducting the investigation

## Appointing an investigating officer

- 5.1 In all investigations into police complaints it is required that the investigating officer 'must have an appropriate level of knowledge, skills and experience to plan and manage the investigation'.<sup>14</sup>
- 5.2 For discrimination complaints, the investigating officer should be able to show a good understanding of equality and diversity issues and have the knowledge, skills and experience to be able to effectively apply these guidelines.

## Terms of reference

- 5.3 The terms of reference for an investigation into a complaint, conduct matter or death or serious injury matter 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 misconduct allegation or where no specific allegation of discrimination has been made but it is apparent that discrimination may be a relevant consideration.
- 5.4 All allegations of discrimination arising in complaints, conduct matters and death and serious injury investigations should be dealt with according to this guidance.

## Lines of enquiry

- 5.5 Standard lines of enquiry should be followed to try to find out what happened. This will include identifying and speaking with witnesses, looking at CCTV evidence and other relevant records, and assessing the officer or staff member's actions against operational policy and reasonable behaviour.

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14. Regulation 24, Police (Complaints and Misconduct) Regulations 2012.

- 5.6 The thinking done at the beginning of the investigation 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.
- 5.7 It is common in discrimination cases for there to be little or no direct evidence available to support an allegation (direct evidence might be CCTV footage that showed use of discriminatory language, for example). This is particularly the case if the allegation is about discriminatory actions arising from prejudiced assumptions or attitudes.
- 5.8 In this case, the investigation will need to consider whether there is other evidence from which a case to answer for discrimination can be established. The sections below discuss how an investigating officer might look for and assess this type of evidence, including:
- complaint history and patterns of behaviour
  - comparator evidence – comparing how the complainant was treated against a person in the same or similar situation who does not have the same protected characteristic
  - an assessment of language used, including language used in any records relating to the incident in question or arising from the complaint investigation

## Considering officer complaint history and other patterns of behaviour evidence

- 5.9 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.
- 5.10 Patterns of behaviour evidence could include:
- an officer's complaint history, including any relevant internal grievances and management records
  - consideration of any trends in how an officer has acted in similar situations – for example, an analysis of stop and search records to identify if there is a pattern of the disproportionate use of stop and search against a particular ethnic group

### Officer or staff member's complaint history

- 5.11 An officer or staff member's complaint history should be considered early in an investigation so that it can inform the scope and lines of enquiry for the investigation.

- 5.12 It will 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 find a case to answer for discrimination – it does not necessarily suggest that the allegation was found to be false or baseless.
- 5.13 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 will impact on whether local resolution is appropriate, and the scope and severity assessment of any investigation.
- 5.14 A pattern of previous upheld 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.
- 5.15 If no concerning trends in the officer's complaint history are found this should not in itself be used as evidence that clears the officer or staff member subject to complaint – though this might reasonably be taken into account when assessing the credibility of the officer or staff member's account or when deciding the appropriate outcome if the allegation is substantiated.

### Other patterns of behaviour evidence

- 5.16 Other patterns of behaviour evidence that might be relevant to consider includes any evidence of how the officer or staff member has behaved in similar situations with people with the same protected characteristic referred to in the complaint or people who do not share the protected characteristic by way of comparison. This will usually involve a review of records to look for trends.
- 5.17 This can be a time consuming and resources intensive process. Consideration of patterns of behaviour evidence should be proportionate to the allegation made. An assessment of proportionality should include consideration of the gravity of the allegation, including the impact on the complainant, the wider community or on confidence in the police (see [page 12](#)). It will also be relevant to consider:
- How easy/difficult is it to identify and analyse relevant records to look for patterns?

- What are you looking to establish through the analysis of patterns of behaviour evidence and how relevant is this to the allegation made?
- Will the evidence help you to make a finding?

5.18 Some records might be easily available and there may already be processes in place that allow the information to be reviewed for trends. For example, stop and search records can often be reviewed to identify disproportionality regarding ethnicity. This type of evidence should be considered if it is easily available.

5.19 In other circumstances, it may still be useful and proportionate to consider a sample of similar cases to look for any evidence of recurrent issues about how the officer or staff member treats individuals from the same protected characteristic group – or different groups by way of comparison. Statistical patterns found by looking at small samples should be used cautiously. Nevertheless, this type of review would still provide useful evidence if there is evidence of repeated concerning behaviours, or complaints, in relation to specific groups or situations.

#### Example – considering patterns of behaviour evidence

Ms F complains that when she reported a rape, the officer who took her account made inappropriate and sexist comments about the dangers of women drinking alone at night.

The investigating officer reviewed a sample of interview transcripts for sexual assault investigations undertaken by the officer. Eight interviews were reviewed, with the following concerning statements found in two other cases:

“We get a lot of girls come down here to the beach and then regret having had intercourse the following day.”

“Some girls like to get back at their boyfriends for splitting up with them by making allegations.”

This pattern of inappropriate comments about female sexual assault victims is relevant evidence that supports the allegation of sex discrimination made by the complainant.

5.20 Where a concerning trend is found this should lead to further and more intensive investigation of the incident and should be put to the officer when getting their account. A pattern showing repeated failures or *a clear propensity* for the described behaviour could be used to help assess the credibility of competing accounts and might, in itself, be enough to find a case to answer for discrimination depending on the other evidence available.

- 5.21 Patterns of behaviour evidence can also be used to help make a comparison between how a police officer or staff member treated one group of people who share the relevant protected characteristic compared with another group who do not. Further advice on making comparisons is provided below.

### Patterns indicating systemic issues

- 5.22 An investigation could also look at patterns or trends across a team or force as evidence of a more systemic issue.

#### Example – where patterns may indicate a systemic issue

Mr D reported a disability hate crime to the police. He states that the police officer who responded and took his criminal complaint refused to record a hate crime saying that the incident seemed more like a public order issue involving ‘normal’ drunken behaviour. Mr D complains that the officer’s disregard for the impact on him as a disabled person and his unwillingness to see the matter as a disability hate crime was discrimination.

The investigating officer questions the officer about the incident. The officer does not appear to have a good understanding of the hate crime reporting policy as it relates to disability hate crime. He states he has not received training or guidance on this. A review of the crime records for the force area in the last 12 months show that no disability hate crimes were recorded across the force area. This pattern could be evidence of a systemic issue and should be explored further as part of the investigation.

*This example is revisited on [page 53](#) to show how the terms of reference for the investigation might be developed.*

### Making comparisons – comparator evidence

- 5.23 The test for direct discrimination under the Equality Act is ‘was the person treated less favourably because of a protected characteristic?’ ‘Less favourably’ implies a comparison. ‘The comparator’ is the other person, who does not have the same protected characteristic, who the complainant is comparing their treatment against.
- 5.24 In most cases, deciding whether there is a case to answer for misconduct relating to direct discrimination will necessarily involve considering a comparison. The exception to this is where it is clear that the alleged behaviour is discriminatory even without making a comparison – for example, the use of discriminatory language.

- 5.25 This does not mean that there needs to be an actual person to compare against to be able to assess the discrimination allegation. However, consideration will need to be given the question of whether the complainant would have been treated in the same way if they were white instead of black, for example.
- 5.26 Where an actual person can be identified who can be used as comparator, this can be useful evidence to help decide whether there is a case to answer for discrimination or grounds to uphold a discrimination complaint.
- 5.27 *An actual comparator* is another person who:
- was in the same or very similar circumstances to the complainant
  - was treated differently to the complainant
  - does not share the protected characteristic that the complaint is about
- 5.28 The investigating officer should ask the complainant about possible comparators when exploring their complaint – i.e. did the complainant note any differences in the way he or she was treated compared with others?

#### 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.

- 5.29 When making a comparison, it is important that the investigating officer takes account of any differences in the circumstances or behaviour of the people being compared.
- 5.30 In the above scenario, if the investigation finds that there was a convincing and legitimate reason why Mrs D was arrested and the neighbour was not – the circumstances of the two women could no longer be considered ‘materially the same’ and a comparison between the two would not support the allegation of discrimination.

- 5.31 Also, in some cases, treating two people in the same way can be discriminatory if the circumstances suggest that they should have been treated differently.

### 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?

- 5.32 It is not always possible to find an actual comparator, where the circumstances and behaviours of the complainant and another person, who does not share the relevant protected characteristic, are materially the same. If there is no actual comparator, a ‘hypothetical comparator’ can be used.
- 5.33 A *hypothetical comparator* is constructed from evidence about how other people have been treated in situations that are still similar but not identical to the complainant. This evidence can be used to help form a view about how another person *would probably have been treated* in the same circumstances as the complainant.



### Example – constructing a hypothetical comparator

Mr R, a Muslim man, makes a complaint that while detained in custody he was subjected to repeated degrading comments and treatment because he is a Muslim. He states that whenever he made a request he was made to feel he was being difficult. For example, when he asked for a halal meal, he says the custody sergeant openly scoffed at him. When he asked for a glass of water, he received a cup of water that was barely one quarter full and when he asked for more he says he was told ‘What do you think this is? A hotel?’ Finally, when he asked for a prayer mat he states that the custody sergeant said ‘anything else for your highness?’

The CCTV footage from the custody suite supports Mr R’s version of events. The custody sergeant admits that he may have grumbled about having to respond to the requests made by Mr R, but says that this was because Mr R was making so many requests and it was a busy night, not because of Mr R’s race or religion.

The CCTV footage for the custody suite shows that Mr R did make considerably more requests than the other detainees. However, it also shows that the requests made by the other detainees, who were all white, were responded to without any negative remarks. There is no actual comparator who made a similar number of requests as Mr R. However, the different treatment of the white detainees can be used to construct a hypothetical comparator to help assess how a white detainee who made a similar number of requests to Mr R would likely have been treated.

- 5.34 Another approach is to construct a hypothetical comparator by drawing on elements of the treatment of several people i.e. by looking at a pattern of behaviour in relation to one group compared with another.

### Example – using patterns of behaviour evidence to support a hypothetical comparator

Mr H, a young Asian man, was stopped by police when he was walking home from morning prayers before dawn, during Ramadan. He says that the police asked him what he was doing out at that time. When he tried to explain, the officers were rude and did not listen and decided to search him for drugs. He believes that he was targeted because of his race.

A review of the stop and search record shows that a poor rationale was recorded for the stop and search. The officer was interviewed but failed to provide a reasonable justification for the stop and search.

The investigating officer reviews the stop and search record which shows that insufficient grounds were recorded for the stop and search.

The investigating officer could review a sample of the officer's stop and search records looking at whether sufficient grounds were recorded where the subjects were Asian and whether sufficient grounds were recorded where the subjects were white.

This would build up a picture of how a person of a different ethnicity was likely to have been treated – this could then be used as a hypothetical comparator.

*This example is revisited on [page 57](#) to show how this type of evidence could be used to reach a case to answer finding.*

### Discriminatory language

- 5.35 Throughout the investigation, while reviewing documents, records and during interviews, investigating officers should look for any signs of discriminatory attitudes in the language used. 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.
- 5.36 There are terms that are commonly recognised as being offensive and officers and police staff members should be expected not to use them. Examples include (but are not limited to) racially offensive terms such as 'nigger', 'pikey' or 'paki', offensive terms for homosexual people such as 'dyke' or 'faggot', or offensive terms relating to disability such as 'spaz' or 'retard'.
- 5.37 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.
- 5.38 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 complainant to believe that their nationality affected the interaction or encounter in a negative way.

### Making generalisations

- 5.39 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.

- 5.40 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, Gypsies, gays 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.
- 5.41 Even if it is unclear whether the language is discriminatory, the use of such generalisations should flag concerns that should 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

- 5.42 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.

#### Example – reviewing language used

Miss G alleges that a police officer failed to investigate her allegation of domestic violence properly. She feels that the officer was unsympathetic to her because she is a practicing Muslim and wears a hijab. The officer’s pocket notebook entry refers to the victim as a ‘young Muslim woman who was wearing a headscarf’.

It could, depending on the circumstance, be appropriate to note a victim’s religion if this is relevant to the alleged crime or to the provision of victim support. It is more difficult to see how the reference to the victim’s headscarf is relevant information to record in this case. The description of the victim is not necessarily discriminatory in itself, but suggests that the officer may be thinking about the victim as different. It is reasonable to question whether this differential thinking has led to differential treatment.

### Probing the officer or staff member's account

- 5.43 In discrimination cases, it is important to get an account from the officer or staff member and to unpick and challenge *why* they acted in the way that they did. In most cases the most effective way to do this will be to speak directly with the officer or staff member. Sometimes it will be appropriate to conduct a formal interview, in other cases a less formal conversation may be appropriate, if properly documented. In other cases, it might be enough to accept statements, as long as they can be probed further and a suitable record is kept.
- 5.44 Direct, closed questions such as 'did you discriminate against the complainant?' or 'did you treat the complainant differently because they were black?' are unlikely to be very helpful. It is extremely unlikely that this type of questioning will lead to anything other than a denial.

### Probing rationales

- 5.45 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
- 5.46 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.
- 5.47 It is not enough that an officer provides a reason for their actions. The investigating officer needs to be satisfied that their reasoning is sound, convincing and fair – and not informed by prejudiced assumptions.

#### Example – 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 complainant, 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 complainant? 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.

### Probing patterns of behaviour and comparator evidence

- 5.48 As with other investigations, questioning should refer to evidence that supports the allegation that has been made – this should include reference to any relevant patterns of behaviour evidence or comparator evidence found throughout the investigation.
- 5.49 For example: We have looked at your stop and search records for the last three months and the data suggests that you stop and searched a disproportionate number of people from black or minority ethnic backgrounds – can you explain why this would be?
- 5.50 Where a comparator is available, it will be relevant to ask direct questions about the reasons for any difference in treatment. For example: Why did you arrest this person and not that person?
- 5.51 Where there is no comparator, it may be appropriate to ask about a hypothetical comparator or to ask the officer or staff member to suggest any comparable situations themselves.

### Example – questioning drawing on comparator evidence

Mr R, a 29-year-old gay man, made a report of domestic violence to police. He reported that his partner had punched him repeatedly in the face and had broken his nose. Mr R complains that when the police arrived they seemed unclear who the victim was, even though he had reported the assault and there was a recorded history of domestic violence against him by his partner. Mr R believes that the response was sexist and homophobic and if he had been a female victim in a heterosexual couple he would not have been treated in the same way.

It is likely that the officer in this case will have responded to many domestic violence incidents involving heterosexual couples – with cases involving a female victim and male perpetrator being more frequent. Questioning should explore any differences in approach in this instance compared with the approach taken in those more ‘usual’ cases. This might include questions such as:

- What is your experience of dealing with domestic violence incidents? What is your experience of responding to domestic violence incidents involving same sex couples? Or male victims?
- What was your first impression when you arrived at the scene? Was it clear to you who had reported the incident? If not, how did you find out who the victim was?
- Was this incident unusual? What was different about it? Did you take a different approach to your usual response? If so, why?
- Are there different things (e.g. different risks or needs) to take into account when the victim is male? Or where both the victim and perpetrator are male?

### Reflecting on the complainant’s experience of the incident

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

- how the complainant might have experienced the situation
- why the complainant 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 complainant forming this view

5.53 This line of questioning is partly about getting the officer or staff member to reflect on how they can improve their practice. It also has evidential value. Failure to properly think about how an incident might impact differently on different groups of people can lead to discrimination.

### Example – reflecting on the complainant’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 complainant. 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?

*This example is revisited on [page 62](#) in the section on outcomes and resolution.*

### Asking about training and experience, and reflecting on what could have been done differently and better

- 5.54 Investigating officers should also ask questions about the officer or staff member’s experience and training and about whether they felt adequately equipped to deal with the situation they faced.
- 5.55 This could include asking about any relevant procedural training they have received and whether this included reflection on equality and diversity issues, as well asking about general training in equality and diversity issues.
- 5.56 This questioning may help to reveal any training needs which might underlie the actions of the officer or staff member. However, a lack of training should not be used to excuse discriminatory behaviour where the officer or staff member could reasonably have been expected to know the appropriate course of action. Officer experience will also be relevant to this assessment and should be probed as part of this line of questioning.

The officer or staff member should also be asked to reflect on how the complainant came to the view that the police actions were discriminatory and whether there is anything, in hindsight, that they could have done differently or better that would have changed this view.

### Example – asking about training and experience and what could have been done differently

Mr R (case on [page 50](#)) complains that the police response to his report of domestic violence against his male partner was sexist and homophobic.

Relevant questions to ask about training in this case could include:

- Have you received equality and diversity training? If so, when? Did the training include any discussion of homophobia or LGB issues?
- Have you received any specific training around handling incidents of domestic violence? Did this training include any discussion of responding to domestic violence involving same sex couples? Or responding to male victims of domestic violence?
- What is your experience of responding to incidents of domestic violence? Have you responded to incidents involving same sex couples or male victims previously? If so, what action did you take on that occasion?
- What do you think you could have done differently in this case that would have given Mr R confidence that he would be treated appropriately as the victim?

## Institutional discrimination and organisational issues

5.57 Complainants may raise allegations of institutional discrimination in their complaints against police. It will not be within the scope of an individual complaint, conduct or death or serious injury investigation to systematically audit the practices of a police force to broadly answer whether the force is institutionally racist/ageist/homophobic etc. Other organisations such as Her Majesty's Inspectorate of Constabulary (HMIC) or the Equality and Human Rights Commission (EHRC) may be able to undertake this type of inquiry.

5.58 However, organisational issues and organisational learning can and should be considered where these arise from enquiries relating to the particular incident or series of incidents that the complaint relates to.



5.59 Where a complaint includes an allegation of institutional discrimination, the terms of reference for the investigation should clearly indicate what will be looked at and how the organisational issues under consideration link to the individual incident(s) being investigated.

#### Example – terms of reference that cover organisational issues

Mr D complains that the police have failed to deal with his repeated allegations of disability hate crime. He alleges that the failings were signs of institutional discrimination by police against disabled people whereby disabled people are denied access to justice for hate crimes. Terms of reference for the investigation into this complaint might include:

The investigation will include consideration of the following:

- whether Mr D's allegations of disability hate crime were appropriately recorded and dealt with
- whether police officers or police staff discriminated against Mr D because of his disability in their handling of his allegation of hate crime
- whether any failure to deal appropriately with Mr D's allegations of disability hate crimes is a reflection of discriminatory policies, practices or culture within the organisation

5.60 In all cases where an investigation finds a case to answer for 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.

5.61 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?

5.62 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
- whether other similar issues have been raised with the force/team – i.e. through other complaints or investigations

## 6. Findings and outcomes

- 6.1 As with all police complaints, investigating officers must use the ‘balance of probabilities’ test when drawing conclusions or making findings about allegations of discrimination.
- 6.2 This is a simple test where an investigating officer decides whether the conduct is more likely than not to have happened.
- 6.3 If an investigation may lead to disciplinary proceedings and is therefore ‘subject to special requirements’, the investigating officer will need to decide if there is a case to answer for misconduct or gross misconduct (see [page 21](#) for further advice on special requirements and severity tests). To find a case to answer the investigating officer needs to think that there is sufficient evidence that a reasonable misconduct hearing/meeting, *could find*, on the balance of probabilities, gross misconduct or misconduct.
- 6.4 If the investigation is not ‘subject to special requirements’ the investigating officer will need to assess whether, on the balance of probabilities, the discrimination allegation should or should not be upheld.
- 6.5 The decision about whether there is a case to answer or whether an allegation of discrimination should be upheld, should refer to the relevant test for discrimination under the Equality Act. However, it is not for an investigation under the police complaints system to ultimately determine that the police have unlawfully discriminated against a person. A determination of unlawful discrimination can only be made by the courts under the Equality Act or the Human Rights Act or by the EHRC using its enforcement powers.
- 6.6 The investigating officer should be careful to express their findings in terms that make it clear that they are giving an *opinion* about whether or not the officer or staff member discriminated. This opinion will inform the decision about whether or not to uphold the complaint or find a case to answer.

**Example – an upheld finding in an investigation not subject to special requirements**

I have considered your allegation in light of the test for discrimination arising from disability under the Equality Act 2010. Having considered all of the evidence gathered during the investigation it is my opinion that PC A did not take appropriate account of your needs arising from your disability even though you told him about your disability. I am therefore upholding your complaint that you were discriminated against.

**Example – a case to answer finding in an investigation subject to special requirements**

I have considered your allegation in light of the test for direct race discrimination under the Equality Act 2010. Having reviewed all the evidence available, I am satisfied that there is credible evidence to support your allegation that your race was a factor in the decision made by PS R to arrest you such that a disciplinary tribunal could, on the balance of probabilities, make a finding of gross misconduct. I am satisfied that PS R has a case to answer for gross misconduct.

**Assessing the evidence**

- 6.7 In some cases there will be strong evidence of discrimination which will lead to an upheld complaint or a case to answer finding. This could include:
- Direct evidence of discrimination, e.g. CCTV evidence, audio or video recording, or independent witness evidence showing overt discriminatory language, or a clear disregard for a person's needs arising from a disability, for example.
  - Strong circumstantial evidence – e.g. strong comparator evidence, such as a person who does not share the protected characteristic, whose relevant circumstances and behaviour were the same but who was clearly treated differently.
- 6.8 In many cases there will not be any one piece of evidence which is enough to uphold an allegation of discrimination or to find a case to answer for discrimination. However, it may still be possible to build a convincing picture of circumstantial evidence upon which an upheld or case to answer finding can reasonably be based.
- 6.9 The investigating officer must look at all the circumstances of the particular case in order to see if discrimination can rightly be inferred from the surrounding facts. This could include patterns of behaviour, comparator evidence, any concerning language or evidence that the officer/staff member acted in a way that fits with discriminatory stereotyping.

- 6.10 The evidence supporting the allegation of discrimination should be weighed against any alternative, non-discriminatory explanation provided by the officer or staff member or otherwise suggested and supported by the evidence. The relative credibility and plausibility of competing accounts and explanations should be assessed in light of all the evidence available.

### Example – making a finding based on patterns of behaviour and comparator evidence

Mr H, a young Asian man, was stopped by police when he was walking home from morning prayers before dawn, during Ramadan. He says that the police asked him what he was doing out at that time. When he tried to explain, the officers were rude and did not listen and decided to search him for drugs. He believes that he was targeted because of his race.

A review of the stop and search record shows that a poor rationale was recorded for the stop and search. The officer was interviewed but failed to provide a reasonable justification for the stop and search.

The investigating officer looked at the racial breakdown of the officer's stop and searches over the previous six months and compared this to overall stop and search figures for the force area where he works. This showed that the officer had stopped a higher proportion of people identified as Asian or black compared to the proportion recorded for the force area. The officer suggested when interviewed that the decision to target gang activity in the area would account for the higher stop rate of black and minority ethnic (BME) groups.

The investigating officer also looked at the rationales recorded on a sample of the officer's stop and search records to look for any patterns. Half of the records reviewed where the person stopped was Asian did not have a sufficient rationale recorded compared with 20% of the records reviewed where the person stopped was white. The analysis also showed that the percentage of searches that led to arrest for Asian suspects was significantly lower than for white suspects. This evidence suggests that the officer was less likely to have reasonable suspicion for these searches.

To draw a conclusion in this case, it is essential that the investigating officer looks at the whole picture built up by the different pieces of evidence. Each on their own may not be sufficient to find a case to answer. However, together they may provide enough points of concern to satisfy the investigating officer that disciplinary proceedings could find that it is more likely than not that race was a factor in the stop and search of Mr H.

This needs to be weighed against any non-discriminatory reasons for the stop given by the officer. The officer has offered a reason why he may have stopped a disproportionate number of people identified as BME. However, he has not provided an adequate non-discriminatory reason for this particular stop and search encounter.

- 6.11 At the beginning of the investigation, the investigating officer should map out the types of assumptions, prejudice or bias that might have informed the police officer or staff member's actions.
- 6.12 If the investigation finds that officers or staff members acted in a way that closely aligns to these discriminatory assumptions or stereotyping, and discrimination is a more plausible reason for the officer or staff member's actions than any non-discriminatory reasons considered, this would be grounds to find a case to answer for discrimination. Again, a careful assessment will need to be made as to the cumulative weight of such evidence.
- 6.13 Considerations will include:
- How far from expected and reasonable behaviour were the actions of the officer or staff member?
  - How closely does the behaviour align with what might be expected if the officer or staff member did make prejudiced assumptions based on the relevant protected characteristic?
  - What reasons, other than discrimination, might account for the behaviour? How plausible and credible are these reasons? Do they wholly account for the behaviour or could discrimination still be a contributing factor?

#### Example – making a finding drawing on a range of evidence

Mr A is a 36-year-old black man with mental health issues. Mr A states that he was arrested by the police when he was suffering from a manic episode. He complains that the police used excessive force to restrain him, breaking his arm. He alleges that the police were violent and rude and they failed to appropriately care for him while he was in a state of mental health crisis. He feels that the police only responded in this way because he is a black man.

Following the investigation, the investigating officer is satisfied that there is a case to answer for use of excessive force as there is credible evidence that:

- officers inappropriately and unreasonably assessed the risk to themselves and to the public as higher than it was and did not take sufficient account of Mr A's mental state

- officers did not attempt to contain or de-escalate the situation before using restraint

The investigating officer also concludes that there is credible evidence, based on comments recorded at the time of the incident, that officers made assumptions that the complainant had taken drugs and that he might be associated with local gangs involved in illegal drug dealing which were unfounded.

The investigating officer notes that there are a number of predominantly black gangs known to be involved in drug dealing in the area. This context adds credibility to the argument that Mr A was assumed to be involved in this type of criminal activity because of his race.

The evidence that the investigating officer has relied on to find a case to answer for use of excessive force is also relevant to the assessment of the allegation of racial discrimination. In this case, the investigating officer draws on the [Independent Commission on Mental Health and Policing report](#) to support an opinion that the behaviour of the officers closely aligns with the behaviours that have been associated with discriminatory assumptions or stereotyping in police responses to black men in mental health crisis.

Considering the combination of evidence, and in the absence of plausible non-discriminatory reasons for the officers' behaviour, it could be reasonable for the investigating officer to conclude that there is a case to answer for gross misconduct in respect of discrimination and as well as use of force.

### Important points to note

#### Intent

- It is not necessary to show intent to find that there is a case to answer for discrimination or to uphold a discrimination complaint. Discrimination can be unconscious or institutional and, in some cases, can even arise from well meaning actions. However, evidence that the discrimination was intentional and targeted would significantly increase the severity of the misconduct and could, depending on the circumstances, give grounds for criminal offences to be considered.

## Impact/detriment

- It is not necessary to demonstrate that the complainant has suffered material detriment to find possible discrimination. It is only necessary that the complainant has been treated less favourably (in the case of direct discrimination) and would reasonably have preferred not to have been treated in that way. Nevertheless, the impact of the alleged discrimination on the complainant should always be a central consideration when dealing with a complaint and should inform both the scope of the investigation and potential outcomes for the case.

## Outcomes and resolution

- 6.14 The complaints process should try to resolve and rebuild trust regardless of the outcome of the complaint and regardless of whether the matter is locally resolved or investigated.
- 6.15 A resolution focussed approach should be evident in the way in which the findings and outcome of the investigation are reported back to the complainant. The complainant's view of the incident must be recognised and valued even if there is insufficient evidence to uphold the complaint or to find a case to answer for discrimination.
- 6.16 A resolution-focused outcome should also:
- recognise the impact of the incident on the complainant
  - provide a clear evidence-based response to the discrimination allegation (as well as other allegations made)
  - give a clear explanation of what the investigation found in terms of what happened and why
  - give a clear explanation for the decisions made in relation to the complaint
  - openly recognise and apologise for any failings found and for the impact on the complainant
  - take appropriate action in relation to any officer or staff member who has acted inappropriately, including disciplinary action where relevant
  - show how the individual and the organisation will learn from the complaint to stop the same thing from happening again
  - give appropriate consideration to any proposals for resolution suggested by the complainant (there may be things that can be done to resolve the complaint, even if no case to answer for misconduct is found)



- reflect on what could have been done differently or better to make sure that the complainant did not feel discriminated against – even where no case to answer for discrimination is found
- 6.17 Consideration should be given to the gravity factors on [page 12](#) when considering the appropriate outcome for the case, as well as any views expressed by the complainant about how they would like the matter to be resolved.
- 6.18 Proven discriminatory words or acts should be dealt with at the more serious end of the spectrum in terms of disciplinary action, and in some cases it will be entirely appropriate that a person serving with the police should face disciplinary proceedings for complaints of discriminatory behaviour. However, in cases where the behaviour is clearly unintentional and not motivated by lack of respect for specific groups of people, the response should focus on changing the behaviour or attitudes. There may also be circumstances where a person serving with the police has acted in good faith, but the outcome was still unfair to the complainant. It may then be appropriate to find no case to answer for misconduct for the individual officer or staff member but still identify individual or organisational learning. In any case, the outcome should be based on the evidence, take account of the attitude of the person who is the subject of an investigation and the effect on the person discriminated against.
- 6.19 The IPCC expects that disciplinary panels will have regard for this guidance when considering allegations of discriminatory behaviour.

### Learning and best practice

- 6.20 Whether or not a case to answer has been found, the question should still be asked about how the complainant 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?
- 6.21 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 misconduct. The Code of Ethics relating to equality and diversity suggest the following behaviours are expected of a police officer:
- show compassion and empathy, as appropriate, to people you come into contact with

- treat people according to their needs
- recognise that some individuals who come into contact with the police are vulnerable and may require additional support and assistance
- take a proactive approach to opposing discrimination so as to adequately support victims, encourage reporting and prevent future incidents
- act and make decisions on merit, without prejudice and using the best available information
- consider the needs of the protected characteristic groupings
- actively seek or use opportunities to promote equality and diversity

6.22 Investigating officers should reflect on whether the officer or staff member can learn from the complaint by thinking about what a best practice approach would have been to the incident in question.

#### Example – 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.

The principles in the Code of Ethics relating to equality and diversity state that 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.

# 7. Handling allegations of disability discrimination

- 7.1 The protections against direct and indirect discrimination, as well as harassment and victimisation, apply to disabled people. However, there are 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 impairment.
- 7.2 This chapter outlines a framework for approaching allegations of:
- discrimination arising from disability
  - failure to make reasonable adjustments in respect of a disability

### Which test to apply?

- 7.3 If a complaint, conduct matter or death and serious injury investigation includes issues of disability discrimination, it is important for the investigating officer to carefully consider which test for discrimination will be relevant to use.
- 7.4 Deciding the appropriate test is important because the elements of the different disability discrimination tests are quite different.
- 7.5 If the investigating officer is unsure about what test to apply they should seek advice.

### When will the test for direct disability discrimination apply?

- 7.6 Direct disability discrimination is where a person is treated less favourably because of their disability.
- 7.7 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.

**Example – direct disability discrimination**

Ms A is a long-term sufferer of schizophrenia and is known to police. She made an allegation to police that she was sexually assaulted. The police did not investigate and closed the case. Ms A complained that the police took no action because of her mental illness. She claims that the police assumed that she was making the allegation up and that she could not be believed because she is schizophrenic.

Ms A is alleging that she was treated less favourably than she would have been if she did not have a disability – i.e. she was not believed, when she would have been if not for her mental illness. This is an allegation of direct disability discrimination.

- 7.8 The test for direct disability discrimination (and/or the test for harassment) will also apply if it is alleged that the officer or staff member spoke or acted in an offensive or derogative way in relation to a person's disability.
- 7.9 If the complaint relates to direct disability discrimination (or harassment, indirect discrimination or victimisation), the processes for considering and investigating the complaint set out in the previous chapters should be followed.

### When will the tests for discrimination arising from disability and making reasonable adjustments apply?

- 7.10 Discrimination arising from disability is where a disabled person is treated unfavourably because of something arising from their disability, and there is no objective justification for treating them in this way.
- 7.11 This test will apply where the unfavourable treatment is because of the person's particular abilities or needs, as affected by their disability. There is some cross over between discrimination arising from disability and the duty to make reasonable adjustments. Making reasonable adjustments can be a way to prevent a person being treated unfavourably because of their disability.

### Example – discrimination arising from disability

Mr R is deaf and non-verbal. He has reported to police a number of instances of disability hate crime from his neighbours. Mr R is able to use British Sign Language (BSL) to communicate, but he finds it difficult to get access to an interpreter in order to report crimes to the police.

Mr R prefers to communicate in writing where possible. He has repeatedly sent written evidence of the disability hate crimes that he has been victim to, but he is unhappy about the limited action taken. He complains that officers have failed to properly consider this written evidence because it is not accompanied by oral explanations.

This is a complaint about discrimination arising from disability. Mr R alleges that he has been treated unfavourably (his reports of crimes have not been properly investigated) because he is non-verbal and submits evidence in writing (which is a result of his disability). It is also a complaint about a failure to make reasonable adjustments in respect of the difficulties Mr R has faced in getting access to a BSL interpreter to report crimes.

7.12 The tests for discrimination arising from disability and making reasonable adjustments are explained in more detail below.

### Discrimination arising from disability

7.13 Discrimination arising from disability is where a disabled person is treated unfavourably because of something arising from their disability, and the treatment cannot be objectively justified.

7.14 The general principles for handling allegations of discrimination set out in the other chapters of this guidance will apply to the handling of an allegation of discrimination arising from disability, including:

- principles for engaging with the complainant
- assessing gravity and considering local resolution where appropriate
- making decisions using the balance of probabilities test
- resolution-focused outcomes

7.15 However, the focus of the investigation will not be on assessing whether the complainant was treated differently compared to another person. There is no requirement to make this kind of comparison when assessing an allegation of discrimination arising from disability and it will not be relevant to look for comparator evidence.

7.16 Instead, the investigating officer will need to make the following assessments:

- 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?

7.17 Each of these elements is discussed in more detail below.

### Was the person treated unfavourably?

7.18 The first point to consider is whether, on the balance of probabilities, the alleged treatment took place. As with any other type of complaint this question will be easier to answer in some case than others. For example, it would be relatively easy to establish whether or not someone was arrested, but harder to establish whether the arresting officer made a particular comment during the arrest.

7.19 The investigating officer will then need to assess whether the treatment of the disabled person was unfavourable.

7.20 To be unfavourable, the treatment must put the disabled person at a disadvantage. Examples of unfavourable treatment include being denied a service or given a poor service. Unfavourable treatment could also be a policing action which has negative consequences for the person, such as an arrest or stop and search. Unfavourable treatment can happen even where actions are carried out with the best of intentions but still result in a disadvantage to the disabled person.

### Was the unfavourable treatment because of something arising from the person's disability?

7.21 Something arising from a disability is anything that is the result, effect or outcome of the disability. This could be something that the disabled person is not able to do easily, for example, an inability to walk. It could also be a difficulty to understand complex information or instructions where a person has a learning disability for example, or erratic behaviour arising from a psychotic episode where a person has a mental illness.

- 7.22 The person's needs or abilities arising from their disability need to be a reason for the unfavourable treatment they received but not the only reason. There must be a connection between whatever led to the unfavourable treatment and the disability.
- 7.23 The investigating officer should look for evidence to help assess what the reasons were for the treatment of the disabled person. This will include probing the accounts from the officer or staff member involved to establish why they took the actions that they did.

### Did the police officer or staff member know or could reasonably have been expected to know that the person had a disability?

- 7.24 Even if a person is treated unfavourably because of something arising from their disability, this will not be discrimination if the officer or staff member did not know and could not have been expected to have known about the disability.
- 7.25 In making this assessment the investigating officer should give consideration to:
- Whether the person's disability would have been apparent even if it was not brought to the attention of the officer or staff member. For example, if the person is visibly disabled and the complaint relates to a face-to-face interaction.
  - Whether the person's disability was brought to the officer or staff member's attention – for example, if the person told them about the disability. This could be a disputed fact in the complaint, in which case an assessment on the balance of probabilities should be made.
  - Whether any note of the person's disability was made in relation to this or previous interactions and whether the officer or staff member could reasonably have been expected to look for and consider this information.
  - Whether the police officer or staff member could reasonably have been expected to try find out if the person had a disability (for example, by asking appropriate questions when admitting a person into custody).

### Can the unfavourable treatment be objectively justified?

- 7.26 Unfavourable treatment will not be discrimination if it can be established that treatment was justified as a 'proportionate means of achieving a legitimate aim'. This is a two-part test:

- 1) The aim of the treatment must be legitimate. The aim must not be discriminatory in itself and it must be a *genuine and lawful* reason.
- 2) The treatment must be a *proportionate* way of achieving this aim. This means it must be *appropriate and necessary in the circumstances*. If there are better and less discriminatory ways of doing things, it will more difficult to justify.

## Duty to make reasonable adjustments

- 7.27 Under the Equality Act, the police have a duty to make reasonable adjustments for disabled people. This means 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.
- 7.28 The duty to make reasonable adjustments is anticipatory. This means that the police must consider possible adjustments for different kinds of disability before an individual disabled person engages with police services as well as responding appropriately to individual requests for adjustments.

### Direction and control or conduct?

- 7.29 In some cases the duty to make reasonable adjustments will impact on policing policies, the physical layout of police premises, or organisational decisions involving costs and priorities. Complaints about a failure to make reasonable adjustments on an organisational level are likely to be direction and control complaints. They should be recorded and dealt with under the force's procedures for handling direction and control matters.
- 7.30 This guidance relates to allegations about police conduct. 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 should be recorded and dealt with as a police conduct complaint. 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).



7.31 A complaint that an officer or staff member failed to give reasonable consideration to a request for an adjustment to be made would also be a conduct complaint. This could include failure to refer a request for a reasonable adjustment to a person who has the authority to make or approve the adjustment.

### Example – a conduct 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 was made to stand without support in the custody area and when taken to be searched, he fell trying to remove his shoes and 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. It is clearly a complaint about the conduct of the officers involved – as the adjustments in question were actions that would have been within the officers’ power and discretion to undertake. In this case, and given the impact on Mr C, the complaint should also be considered in light of the test for disability related harassment with consideration given to whether Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman and degrading treatment, is engaged.

7.32 The general principles for handling allegations of discrimination set out in the other chapters of this guidance will apply to the handling of an allegation of discrimination about an alleged failure to make reasonable adjustments.

7.33 However, the investigation should focus on:

- whether due consideration was given to making an adjustment
- whether the decision not to make an adjustment was reasonable and appropriate in the circumstances

7.34 In making these assessments, the investigating officer will need to form an *opinion* about whether there has been a failure to make reasonable adjustments as required under the Equality Act. The investigating officer must be clear that this is only an opinion, which will inform the decisions about the officer or staff member’s conduct. A determination that a police force has failed in its duty to make reasonable adjustments can only be made by the courts or the EHRC using its enforcement powers.

7.35 In reaching an opinion about whether there was a failure to make reasonable adjustments the investigating officer should consider:

- Was there a duty to make a reasonable adjustment?
- Was the adjustment (referred to in the complaint) reasonable to make in the circumstances?

7.36 Each of these elements is discussed in more detail below.

### Was there a duty to make reasonable adjustments?

7.37 The duty to make reasonable adjustments arises where:

- a provision, criterion or practice
- a physical feature, or
- the lack of an auxiliary aid or service

puts disabled people at a substantial disadvantage compared with non-disabled people.

7.38 For a disadvantage to be substantial it must be more than minor or trivial. To measure whether a disabled person was substantially disadvantaged compared with non-disabled people, a comparison needs to be made between the person's actual experience and what the situation would have been if the disabled person did not have the relevant disability.

#### Example – assessing whether a disabled person is put at a substantial disadvantage

Ms J is a blind woman. She was arrested and detained in custody. She is unhappy about her treatment in custody and asks to see a copy of the Codes of Practice in a format that she can read or listen to. The custody suite does not have the Codes of Practice available in a format accessible for Ms J.

The disadvantage faced by Ms J in this situation should be measured by comparing her actual experience with what her experience would likely have been if she had no visual impairment and was able to use the Codes of Practice in the format they were available.

### Was the adjustment reasonable to make in the circumstances?

7.39 Where the duty to make reasonable adjustments arises, the police must take *reasonable steps* to make an adjustment to address the disadvantage – the aim being that the service provided to disabled people is as close as it is reasonably possible to get to the standard normally offered to the public at large.

- 7.40 Factors that might be taken into account when considering what is reasonable include:
- whether taking any particular steps would be effective in overcoming the substantial disadvantage that disabled people face in accessing the services in question
  - the extent to which it is practicable to take the steps (which could include consideration of costs and the impact on other services)

### Outcomes and the ongoing obligation to make reasonable adjustments

- 7.41 If the investigating officer is of the opinion that there was a failure to make reasonable adjustments, consideration should be given to how this can be put right and whether reasonable adjustments can now be made.
- 7.42 This is part of the resolution of the complaint and also should be viewed in the context of the continuing obligation on the force to make reasonable adjustments. However, whether and what adjustments are made is a decision for the police force that falls outside the police complaints framework. If the complainant remains of the view that reasonable adjustments have not been made, there is no process within the police complaints system to ultimately determine what adjustments should be made or to direct that any adjustments are undertaken. For example, if the IPCC were to review the case on appeal, it could not direct the force to make an adjustment, though it could make a recommendation about action to take.
- 7.43 Any determination on what reasonable adjustments should be made is ultimately a matter for the courts or the EHRC using its enforcement powers under the Equality Act.

## 8. Embedding the guidelines

- 8.1 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.
- 8.2 The effective handling of discrimination complaints is central to meeting this duty. Police forces should take active steps to embed this guidance in their complaint handling practices and should make sure that complaint handling forms part of the larger process of policy review and organisational improvement. In doing so, police forces should consider the following:

### Training

- 8.3 All investigating officers appointed to investigate allegations of discrimination should be appropriately trained so that they are familiar with and able to effectively apply these guidelines.
- 8.4 It is also important that complaint handlers are confident to ask for or to seek out help and assistance, particularly where dealing with areas of discrimination that they may be unfamiliar with. Forces should consider drawing together a list of useful local contacts both internally (e.g. specialist staff or minority policing associations) and externally (community/voluntary groups or experts) that can give advice or provide relevant contextual information about particular protected groups and areas of discrimination.

## Quality assurance

- 8.5 Recognising the particular challenges around investigating allegations of discrimination, it is important that forces have quality assurance processes in place to provide appropriate oversight of discrimination cases. This is particularly the case where allegations of discrimination are dealt with outside professional standards departments – on local division – where complaint handlers are likely to have less experience in handling police complaints and may also have received less specialist training in dealing with allegations of discrimination.

## Complaint handling monitoring

- 8.6 Reviewing closed cases is an effective way of monitoring quality and identifying trends and issues. It is recommended that forces work with Police and Crime Commissioners to develop schemes to review closed cases to assess whether complaints are appropriately handled. Reviewing the handling of discrimination cases should be a key feature of any such scheme. It is best practice to involve members of the local community in this process to provide external scrutiny, challenge and to support public confidence.

## Collecting equalities information

- 8.7 In line with the public sector equality duty, police forces should have processes in place to collect equalities information about people making complaints. This is an important part of complaints monitoring – and can give an indication of whether policing or complaint handling policies or practices may be having an adverse affect on particular protected groups. Equalities data will also help to identify if there are particular groups who appear unwilling or unable to access the complaints system so that action can be taken to address this.
- 8.8 Forces should have processes in place to ask complainants to provide equalities information, explaining the reason why this information is being collected and how it will be used. For example, equalities surveys could be included with initial letters sent to complainants and/or complainants could be asked to provide this information when they are contacted to explore their complaint.

### Promoting access to the complaints system

8.9 The IPCC's public confidence survey has consistently shown that young people and black and minority ethnic groups have lower confidence in the police complaints system and are less likely to complain. These are also groups who may face discrimination. Forces, together with Police and Crime Commissioners, should consider ways of making the complaints system more readily accessible, particularly to groups which might face discrimination, engaging with their local communities to explore alternative ways for making complaints. As a minimum, forces should make sure that they meet the IPCC's access principles<sup>15</sup>.

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15. See *Access to the police complaints system: key principles for police forces* available on the IPCC website.

## Annex A – other resources

Chapter 4 in these guidelines outlines how investigating officers should build an understanding of the allegation of discrimination made and that this should inform the lines of enquiry for the investigation. In some cases it will be appropriate for investigating officers to draw on findings from relevant inquiries, research or reports about discrimination.

This could include inquiries that have reported on issues of discrimination in policing, such as the inquiry by Sir William Macpherson into the police response to the murder of Stephen Lawrence and the follow up report ten years on or, more recently, Lord Victor Adebowale's report on mental health and policing.

- [The Stephen Lawrence Enquiry, Sir William Macpherson](#)
- [The Macpherson Report – Ten Years On, House of Commons Home Affairs Committee](#)
- [Independent Commission on Mental Health and Policing Report, Lord Victor Adebowale](#)

The Equality and Human Rights Commission (EHRC) commissions thematic research into issues of equality and human rights, including in areas relating to policing and criminal justice. Recent research reports cover areas including the use of stop and search powers, LGB&T hate crime reporting, the impact of counter-terrorism measures on Muslim communities, and disabled people's experiences of targeted violence and hostility.

EHRC research reports are available on their [website](#).

Her Majesty's Inspectorate of Constabulary (HMIC) has also undertaken thematic inspections of policing practices that have commented on issues that are relevant to investigating allegations of discrimination, including reports on police responses to domestic abuse, disability hate crime, and the use of stop and search powers.

HMIC thematic inspection reports are available on their [website](#).

This is not an exhaustive list, and other research and reports undertaken or commissioned by voluntary and community sector groups or academic institutions may also provide useful information for investigating officers.



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