
STATUTORY RULES OF NORTHERN IRELAND

2008 No. 242

Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008

PART IV

COMPLAINTS AND OTHER MATTERS

Complaints: making and receipt

8.—(1) Subsections (1) to (3) of section 52 of the 1998 Act (receipt of complaints) shall apply in relation to complaints about designated persons as they apply in relation to complaints about the police, with the following modifications—

- (a) the persons required to refer complaints to the Ombudsman under subsection (1)(b) shall include any contractor or member of the police support staff to whom a complaint is made about the relevant conduct of a designated person; and
- (b) the persons required to take steps to preserve evidence under subsection (2) shall include any contractor or member of the police support staff to whom a complaint is made about the relevant conduct of a designated person.

(2) Subsections (4) to (10) of that section (initial classification of complaints) shall apply in relation to the relevant conduct of a designated person as they apply in relation to the conduct of a police officer who is not a senior officer, with the following modifications—

- (a) in subsection (5) (exclusion of certain complaints) after “Chief Constable” insert “, the direction and control of designated persons by the Chief Constable or the terms or operation of a contract entered into under section 5A of the Police (Northern Ireland) Act 2000”;
- (b) in subsection (9) for the reference to disciplinary proceedings substitute a reference to misconduct proceedings; and
- (c) subsection (10) shall apply in any case where a complaint is made otherwise than to the Chief Constable.

(3) A complainant may have a complaint about the relevant conduct of a designated person registered on his behalf by a third party providing the complainant gives his consent, either in writing or orally, or is incapable of giving consent.

(4) Where the Ombudsman has recorded a complaint against a designated person, the Ombudsman shall, as soon as practicable—

- (a) send a copy of the complaint to the Chief Constable, and the complainant, and
- (b) subject to paragraphs (5) and (6), send a copy of the complaint to—
 - (i) the designated person, and
 - (ii) in the case of a complaint against a designated person employed by a contractor, the contractor concerned.

(5) Paragraph (4) shall not require the Ombudsman to supply a copy of a complaint if he is of the opinion that compliance with the request—

- (a) would impede any investigation of the matter, or
- (b) might prejudice any criminal proceedings pending at the time the request is made, or
- (c) would be contrary to the public interest and the Secretary of State agrees that no copy should be so supplied.

(6) Where a request is made to the Ombudsman for a copy of a complaint to be sent to a person under paragraph (4)(b) and the Ombudsman refuses to supply a copy of the complaint on the ground that he is of the opinion mentioned in paragraph (5)(a), (b) or (c), he shall give written notice of his refusal to the person who made the request.

(7) Where notice is given to a person under paragraph (6), no further request may be made by that person for a copy of the complaint within the period of six months beginning with the date of the notice, without prejudice, however, to further such requests being made subsequently.

(8) The Chief Constable shall supply the Ombudsman with such material as he may require relating to a complaint about the conduct of a designated person made or referred to the Ombudsman under section 52(1) of the 1998 Act, whether or not such complaint is the subject of an investigation by the Ombudsman or supervised by the Ombudsman, for the purpose of enabling the Ombudsman to fulfil his functions under these regulations or the 1998 Act.

(9) The Ombudsman shall cause a register to be kept of complaints about the relevant conduct of designated persons, in which there shall be recorded the steps taken in dealing with a complaint and their outcome.

Conditions to be met for complaints

9.—(1) Subject to regulation 10, section 52(4) of the 1998 Act shall not apply in relation to a complaint about the relevant conduct of a designated person unless the conditions in paragraph (2) are satisfied in relation to the complaint.

(2) The conditions are that—

- (a) the complaint is about conduct which took place not more than 12 months before the date on which the complaint is made or referred to the Ombudsman under section 52(1) of the 1998 Act; and
- (b) a memorandum has not been issued in respect of the conduct under regulation 27(5) or under section 59(2) of the 1998 Act; and
- (c) the complaint has not been—
 - (i) informally resolved in accordance with section 53 of the 1998 Act,
 - (ii) withdrawn under regulation 24,
 - (iii) dispensed with under regulation 26, or
 - (iv) otherwise investigated by the police, and
- (d) the complaint has not been dealt with under any regulations made under section 34 of the 2003 Act—
 - (i) under which any provision of Part 7 of the 1998 Act is not to apply, or
 - (ii) which allow the Ombudsman to dispense with any requirement of that Part.

Exceptions for certain complaints

10.—(1) Regulation 9(2)(a) shall not apply in relation to a complaint where—

- (a) the complaint is not the same or substantially the same as a previous complaint or matter, and
 - (b) the Ombudsman believes that a designated person may have committed a criminal offence or may have behaved in a manner which would—
 - (i) in the case of a member of the police support staff, justify misconduct proceedings, or
 - (ii) in the case of an employee of a contractor, justify the modification or withdrawal of his designation, and
 - (c) the Ombudsman believes that the complaint should be investigated because of the gravity of the matter or the exceptional circumstances.
- (2) Regulation 9(2) shall not apply in relation to a complaint where—
- (a) new evidence has come to light which is not evidence which was reasonably available at the time of the original complaint, and
 - (b) the Ombudsman believes that a designated person may have committed a criminal offence or behaved in a manner which would—
 - (i) in the case of a member of the police support staff, justify misconduct proceedings, or
 - (ii) in the case of an employee of a contractor, justify the modification or withdrawal of his designation, and
 - (c) the Ombudsman believes that the complaint should be investigated because of the gravity of the matter or the exceptional circumstances.
- (3) Where the Ombudsman decides that a case falls within paragraph (1) or (2), he shall formally investigate it in accordance with section 56 of the 1998 Act.
- (4) Where the Ombudsman—
- (a) decides that a complaint meets the criteria in paragraph (1) or (2) except that the case is not grave or exceptional, and
 - (b) believes that the designated person concerned may have committed a criminal offence,
- then he may formally investigate it in accordance with section 56 of the 1998 Act.
- (5) Where a complaint wholly or partly relates to the conduct of a designated person who is a member of the police support staff, and that conduct is or has been the subject of criminal or misconduct proceedings, the Ombudsman shall have no powers in relation to the complaint in so far as it relates to that conduct (except in a case to which section 56(1A) of the 1998 Act applies).
- (6) Where a complaint wholly or partly relates to the conduct of a designated person employed by a contractor, and that conduct is or has been the subject of criminal proceedings or has resulted in the modification or withdrawal of his designation, the Ombudsman shall have no powers in relation to the complaint in so far as it relates to that conduct (except in a case to which section 56(1A) of the 1998 Act applies).

Complaints — informal resolution

11.—(1) Section 53 of the 1998 Act (complaints — informal resolution) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer, subject to the modification that the prohibition in subsection (7) on statements made for the purpose of the informal resolution of a complaint being admissible in subsequent proceedings shall include a prohibition on such a statement—

- (a) being admissible in misconduct proceedings, or
- (b) being taken into account by the supervising member in considering the question of a recommendation to be made under regulation 32(1).

(2) The Royal Ulster Constabulary (Complaints) (Informal Resolution) Regulations 2000(1) shall apply in relation to the relevant conduct of a designated person as they apply in relation to the conduct of a police officer who is not a senior officer.

(3) A complaint about the relevant conduct of a designated person is not suitable for informal resolution where the Ombudsman is satisfied that the conduct complained of, if proved, would justify a criminal charge.

(4) Where, under section 53(3) of the 1998 Act, the Ombudsman decides to refer a complaint about the relevant conduct of a designated person to the Chief Constable to resolve informally, he shall—

- (a) do so immediately on making that decision, and
- (b) forward all relevant material.

(5) Where the Ombudsman is investigating a complaint about the relevant conduct of a designated person under section 56 of the 1998 Act, and he determines that the evidence uncovered shows that the complaint is suitable for informal resolution, he may refer it to the Chief Constable to resolve informally under section 53 of that Act.

(6) Where the Chief Constable is investigating a complaint about the relevant conduct of a designated person under section 57 of the 1998 Act, and he determines that the evidence uncovered shows that the complaint is suitable for informal resolution, he may—

- (a) seek permission from the Ombudsman to resolve the complaint informally, and
- (b) if he agrees, informally resolve the complaint under section 53 of that Act.

(7) Where the Chief Constable determines—

- (a) that it is not possible to resolve informally a complaint about the relevant conduct of a designated person, or
- (b) that the evidence uncovered shows that such a complaint is not suitable for informal resolution,

he shall notify the Ombudsman immediately and shall forward all relevant material and the reasons for that decision.

Unsatisfactory performance

12.—(1) Where the Ombudsman in consultation with the Chief Constable considers a complaint against a designated person to be a matter of unsatisfactory performance rather than misconduct, the Ombudsman shall notify the Chief Constable and forward all relevant material to enable the matter to be dealt with in accordance with such procedures as may be appropriate for dealing with instances of unsatisfactory performance by designated persons.

(2) Where the Ombudsman forwards a complaint to the Chief Constable under paragraph (1) —

- (a) the requirements of sections 52 to 59 of the 1998 Act, to the extent that they have not already been satisfied, shall be dispensed with, and
- (b) the Ombudsman shall notify—
 - (i) the designated person concerned,
 - (ii) the complainant, and
 - (iii) in the case of a complaint against a designated person employed by a contractor, the contractor concerned,

accordingly.

Complaints referred by Ombudsman to Chief Constable

13.—(1) Section 54 of the 1998 Act (complaints — formal investigation) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer.

(2) Where, under subsection (3)(b) of that section as it applies by virtue of paragraph (1), the Ombudsman decides to refer a complaint about the relevant conduct of a designated person to the Chief Constable to investigate in accordance with section 57 of that Act, he shall—

- (a) do so immediately on making that decision, and
- (b) forward all relevant material.

Consideration of other matters by the Ombudsman

14.—(1) Section 55 of the 1998 Act (consideration of other matters by the Ombudsman) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer, with the following modifications—

- (a) in subsections (1)(a)(ii), (4)(a)(ii), (4A)(a)(ii) and (6)(a)(ii) (which require matters which would justify disciplinary proceedings to be referred to the Ombudsman) for “justify disciplinary proceedings” (in each place where that phrase appears) substitute “, in the case of a member of the police support staff, justify misconduct proceedings, or in the case of an employee of a contractor, justify the modification or withdrawal of his designation”;
- (b) in subsection (7) (Ombudsman to notify Board, Secretary of State or Chief Constable of the outcome of criminal or disciplinary proceedings) for “disciplinary” substitute “misconduct”; and
- (c) after subsection (7) insert—

“(8) In the case of a matter referred under subsection (1) the Ombudsman shall notify the Board or the Secretary of State of the withdrawal or modification of any designation in connection with the matter so referred.”.

(2) Where the Ombudsman is to investigate a matter concerning a designated person under section 55 of the 1998 Act he shall, as soon as practicable, send written notice of the investigation to the designated person, unless to do so would impede the investigation or any other investigation of the matter.

(3) The Chief Constable shall supply the Ombudsman with such material as he may require relating to the investigation of a matter under section 55 of that Act concerning the relevant conduct of a designated person, whether or not such matter is the subject of an investigation by the Ombudsman or supervised by the Ombudsman, for the purpose of enabling the Ombudsman to fulfil his functions under these regulations or the 1998 Act.

Conditions to be met for investigation of matters referred to Ombudsman

15. Subject to regulation 17, the Ombudsman’s duty to investigate a matter under section 55(3) or (5) of the 1998 Act relating to the relevant conduct of a designated person has effect if—

- (a) the relevant conduct to which the matter relates took place not more than 12 months before the date on which the matter is referred to the Ombudsman under section 55(1), (2), (4) or (4A) of that Act; and
- (b) a memorandum has not been issued in respect of the relevant conduct under regulation 27(5) or under section 59(2) of the 1998 Act; and
- (c) the matter has not been—
 - (i) informally resolved in accordance with section 53 of that Act,

- (ii) withdrawn under regulation 24,
 - (iii) dispensed with under regulation 26, or
 - (iv) otherwise investigated by the police, and
- (d) the matter has not been dealt with under any regulations made under section 34 of the 2003 Act—
- (i) under which any provision of Part 7 of the 1998 Act is not to apply, or
 - (ii) which allow the Ombudsman to dispense with any requirement of that Part.

Conditions to be met for investigation of other matters

16. Subject to regulation 17, the Ombudsman has power to investigate a matter under section 55(6) of the 1998 Act relating to the relevant conduct of a designated person at any time if—

- (a) the relevant conduct to which the matter relates took place not more than 12 months before that time, and
- (b) a memorandum has not been issued in respect of the relevant conduct under regulation 27(5) or under section 59(2) of the 1998 Act; and
- (c) the matter has not been—
 - (i) informally resolved in accordance with section 53 of that Act,
 - (ii) withdrawn under regulation 24,
 - (iii) dispensed with under regulation 26, or
 - (iv) otherwise investigated by the police, and
- (d) the matter has not been dealt with under any regulations made under section 34 of the 2003 Act—
 - (i) under which any provision of Part 7 of the 1998 Act is not to apply, or
 - (ii) which allow the Ombudsman to dispense with any requirement of that Part.

Exceptions for certain matters

17.—(1) The time limits in regulations 15(a) and 16(a) shall not apply in relation to a matter where—

- (a) the matter is not the same or substantially the same as a previous complaint or matter, and
 - (b) the Ombudsman believes that a designated person may have committed a criminal offence or behaved in a manner which would—
 - (i) in the case of a member of the police support staff, justify misconduct proceedings, or
 - (ii) in the case of an employee of a contractor, justify the modification or withdrawal of his designation, and
 - (c) the Ombudsman believes that the matter should be investigated because of the gravity of the matter or the exceptional circumstances.
- (2) Regulations 15 and 16 shall not apply where—
- (a) new evidence has come to light which is not evidence which was reasonably available at the time the matter originally occurred, and
 - (b) the Ombudsman believes that a designated person may have committed a criminal offence or behaved in a manner which would—
 - (i) in the case of a member of the police support staff, justify misconduct proceedings, or

- (ii) in the case of an employee of a contractor, justify the modification or withdrawal of his designation, and
- (c) the Ombudsman believes that the matter should be investigated because of the gravity of the matter or the exceptional circumstances.
- (3) Where the Ombudsman decides that a matter falls within paragraph (1) or (2), he shall formally investigate it in accordance with section 56 of the 1998 Act.
- (4) Where the Ombudsman—
 - (a) decides that a matter meets the criteria in paragraph (1) or (2) except that the case is not grave or exceptional, and
 - (b) believes that the designated person may have committed a criminal offence,then he may formally investigate it in accordance with section 56 of the 1998 Act.
- (5) Where a matter wholly or partly relates to the conduct of a designated person who is a member of the police support staff, and that conduct is or has been the subject of criminal or misconduct proceedings, the Ombudsman shall have no powers in relation to the matter in so far as it relates to that conduct (except in a case to which section 56(1A) of the 1998 Act applies).
- (6) Where a matter wholly or partly relates to the conduct of a designated person employed by a contractor, and that conduct is or has been the subject of criminal proceedings or has resulted in the modification or withdrawal of his designation, the Ombudsman shall have no powers in relation to the matter in so far as it relates to that conduct (except in a case to which section 56(1A) of the 1998 Act applies).

Investigation under Part 7 of the 1998 Act

- 18.**—(1) Sections 56 and 57 of the 1998 Act (formal investigation by the Ombudsman or by a police officer) shall apply in relation to the relevant conduct of a designated person as they apply in relation to the conduct of a police officer who is not a senior officer.
- (2) Investigations under section 56 or 57 of the 1998 Act concerning the relevant conduct of a designated person shall be conducted without undue delay.
 - (3) Where the Ombudsman is conducting an investigation into the relevant conduct of a designated person under section 56 of the 1998 Act and he decides to refer the complaint to the Chief Constable to investigate under section 57 of that Act, the Ombudsman shall—
 - (a) notify the Chief Constable immediately of his decision, and
 - (b) furnish him immediately with all relevant material.
 - (4) Where, under section 57(4) of the 1998 Act, the Ombudsman decides to supervise an investigation of a complaint against a designated person, he shall notify the Chief Constable to that effect when he forwards the complaint for investigation.
 - (5) If during the course of the investigation the Ombudsman decides to relinquish supervision of the investigation, he shall notify the Chief Constable immediately of that decision.
 - (6) Where the Chief Constable is conducting an investigation of a complaint against a designated person under section 57 of the 1998 Act, he shall notify the Ombudsman of any information revealed during the investigation which may suggest that it is in the public interest for the Ombudsman to continue the investigation in accordance with section 56 of that Act.
 - (7) Where the Chief Constable is conducting an investigation of a complaint against a designated person under section 57 of the 1998 Act, and the Ombudsman determines to assume the investigation—
 - (a) the Ombudsman shall notify the Chief Constable of his decision immediately; and

- (b) the Chief Constable shall immediately furnish the Ombudsman with all relevant material relating to the investigation.

Report on investigation under Part 7 of the 1998 Act

19.—(1) Any report submitted to the Ombudsman under section 56(6) or 57(8) of the 1998 Act concerning the relevant conduct of a designated person shall be in writing.

(2) Where the Ombudsman considers any such report concerning the relevant conduct of a designated person, he shall—

- (a) deal with the report without undue delay, and
- (b) as soon as practicable, take such decisions as appear to him appropriate.

(3) At the end of an investigation of a matter investigated under section 55 of the 1998 Act concerning the relevant conduct of a designated person the Ombudsman shall send a copy of the report on the investigation to—

- (a) the Board,
- (b) the Secretary of State, and
- (c) unless he has already received a copy of the report under regulation 20(2), the Chief Constable.

(4) Where the Chief Constable receives a copy of a report under paragraph (3)(c) concerning the conduct of a designated person employed by a contractor, he may send a copy of it to the contractor, if he is of the opinion that to do so—

- (a) would not prejudice any criminal investigation or proceedings pending at the time he receives the copy of the report, and
- (b) would not be contrary to the public interest.

Criminal proceedings

20.—(1) Section 58 of the 1998 Act (steps to be taken after investigation — criminal proceedings) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer.

(2) Where the Ombudsman determines that a report submitted to him under section 56(6) or 57(8) of the 1998 Act concerning the relevant conduct of a designated person indicates that a criminal offence may have been committed by a designated person he shall, without undue delay—

- (a) forward the report to the Director, and
- (b) notify the Chief Constable, and
- (c) in the case of a report indicating that a criminal offence may have been committed by a designated person employed by a contractor, notify the contractor concerned, unless to do so would impede any investigation of the matter or any criminal proceedings.

Mediation

21. Section 58A of the 1998 Act (steps to be taken after investigation — mediation) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer, subject to the following modifications—

- (a) the prohibition in subsection (4) on anything communicated to the Ombudsman as mediator being admissible in subsequent proceedings shall include a prohibition on such communications—
 - (i) being admissible in misconduct proceedings, or

- (ii) being taken into account by the supervising member in considering the question of a recommendation to be made under regulation 32(1); and
- (b) in subsection (6) for “no further proceedings under this Act” substitute “no further steps under the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008”.

Compensation for complainants

22.—(1) Where the Ombudsman is satisfied that a complaint about the relevant conduct of a designated person has been substantiated, and that, as a result of the conduct complained of, the complainant has suffered physical injury, considerable distress or inconvenience, or measurable financial loss, he may recommend to the Chief Constable that he should pay compensation to the complainant.

(2) The sum recommended for compensation shall not exceed that payable in the small claims court.

(3) It shall not be disclosed in any criminal or misconduct proceedings or under regulation 32 that compensation has been recommended or paid.

Expenses of complainants and witnesses

23. The Ombudsman may, if he thinks fit, pay to the person by whom a complaint is made—

- (a) sums in respect of expenses properly incurred by him, excluding legal expenses, and
- (b) allowances by way of compensation for the loss of his time,

in accordance with such scales and subject to such conditions as the Secretary of State may determine.

Withdrawn complaints

24.—(1) Part 7 of the 1998 Act, the preceding provisions of this Part, and subsequent Parts of these regulations, shall not apply in respect of a complaint about the relevant conduct of a designated person if the Ombudsman receives from the complainant notification in writing signed by him or by his solicitor or other authorised agent on his behalf to the effect that he—

- (a) withdraws the complaint, or
- (b) does not wish any further steps to be taken in consequence thereof.

(2) Where such notification is given to the Chief Constable, it shall be forwarded immediately to the Ombudsman.

(3) Where a complainant gives such notification as is mentioned in paragraph (1), the Ombudsman shall notify—

- (a) the designated person concerned,
- (b) the complainant,
- (c) the Chief Constable, and
- (d) in the case of a designated person employed by a contractor, the contractor concerned.

(4) Where the complaint is withdrawn the Ombudsman shall record the complaint as withdrawn.

Failure to indicate whether further steps to be taken

25.—(1) Where, in response to a written request from the Ombudsman sent by recorded delivery, a complainant fails to indicate to the appointed officer within 21 days whether he wishes further

steps to be taken in respect of a complaint about the relevant conduct of a designated person, the provisions of Part 7 of the 1998 Act, the preceding provisions of this Part, and subsequent Parts of these regulations, shall not apply in respect of the complaint.

(2) Where a complaint about the relevant conduct of a designated person has been referred to the Chief Constable to investigate, and the complainant fails to assist the investigation, the Chief Constable shall request the Ombudsman to write to the complainant inviting him to indicate whether he wishes any further steps to be taken.

(3) Where the complainant fails to indicate whether he wishes any further steps to be taken, the Ombudsman shall notify—

- (a) the designated person concerned,
 - (b) the complainant,
 - (c) the Chief Constable, and
 - (d) in the case of a designated person employed by a contractor, the contractor concerned,
- accordingly.

Dealing with complaints which are repetitious, vexatious etc.

26.—(1) Where the Ombudsman is of the opinion—

- (a) that—
 - (i) a complaint about the relevant conduct of a designated person is an anonymous or a repetitious one within the meaning of paragraph 2 or 3 of Schedule 1, or
 - (ii) that a complaint about such conduct is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, or
 - (iii) that it is not reasonably practicable to complete the investigation of a complaint about such conduct, within the meaning of paragraph 4 of Schedule 1, and
- (b) that, in all the circumstances, the requirements of the provisions of Part 7 of the 1998 Act, the preceding provisions of this Part, and subsequent Parts of these regulations, to the extent that they have not already been satisfied, should be dispensed with,

the Ombudsman may dispense with the said requirements as respects the complaint.

(2) Where a complaint about the relevant conduct of a designated person has been referred to the Chief Constable under section 54(3)(b) of the 1998 Act, the Chief Constable may, in accordance with paragraph (3), request the Ombudsman to exercise his power under paragraph (1).

(3) The request, which shall be made in writing, shall be accompanied by—

- (a) a copy of the complaint;
- (b) a memorandum from the Chief Constable explaining the reasons why he is of the opinion that the conditions in paragraph (1)(a) and (b) are satisfied in relation to the complaint;
- (c) where the complaint is a repetitious complaint and the previous complaint has been informally resolved in accordance with regulation 11, a copy of the record of the outcome of the informal resolution procedure, and
- (d) where the Chief Constable is of the opinion that the complaint is a repetitious complaint and the previous complaint has been withdrawn in accordance with regulation 24, a copy of the notification given under that regulation.

(4) If, after considering a request under this regulation, the Ombudsman shares the opinion of the Chief Constable, he may dispense with the requirements mentioned in paragraph (1), but he shall not reject such a request except after consultation with the Chief Constable.

(5) The Ombudsman shall, as soon as possible, notify the Chief Constable in writing of his decision on such a request and, where he dispenses with the requirements mentioned in paragraph (1), shall inform the complainant of his action unless—

- (a) the complaint is an anonymous one, or
- (b) it otherwise appears to him to be not reasonably practicable so to inform him within a period which is reasonable in all the circumstances of the case.

(6) The Ombudsman—

- (a) shall inform the designated person concerned, where known, in writing of his decision to dispense with the requirements mentioned in paragraph (1), and
- (b) in the case of a designated person employed by a contractor, shall so inform the contractor concerned.