
STATUTORY INSTRUMENTS

2013 No. 2325

**The National Crime Agency (Complaints
and Misconduct) Regulations 2013**

PART 3

Handling of complaints

Duties to preserve evidence relating to complaints

17.—(1) Where a complaint is made about the conduct of the Director General, it shall be the duty of the Permanent Secretary to the Home Office to secure that all such steps as are appropriate for the purposes of these Regulations are taken, both initially and from time to time, for obtaining and preserving evidence relating to the conduct complained of.

(2) Where—

- (a) a complaint is made to the Director General about the conduct of an NCA officer; or
- (b) the Director General becomes aware that a complaint about the conduct of an NCA officer has been made to the Commission or the Permanent Secretary to the Home Office,

the Director General shall take all such steps as appear to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct complained of.

(3) The Director General's duty under paragraph (2) must be performed as soon as practicable after the complaint is made or, as the case may be, the Director General becomes aware of it.

(4) After that, the Director General shall be under a duty, until satisfied that it is no longer necessary to do so, to continue to take the steps which from time to time appear to the Director General to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct complained of.

(5) It shall be the duty of the Permanent Secretary to the Home Office to comply with all such directions as may be given by the Commission in relation to the performance of the Permanent Secretary's duty under paragraph (1).

(6) It shall be the duty of the Director General to take all such specific steps for obtaining or preserving evidence relating to any conduct that is the subject-matter of a complaint as the Director General may be directed to take for the purposes of this regulation by the Permanent Secretary to the Home Office.

Initial handling and recording of complaints

18.—(1) Where a complaint is made to the Commission, it shall give notification of the complaint to the appropriate authority.

(2) But the Commission need not give that notification if the Commission considers that there are exceptional circumstances that justify it not being given.

(3) Where a complaint is made to the Permanent Secretary to the Home Office, the Permanent Secretary shall—

- (a) determine whether or not the Permanent Secretary is the appropriate authority; and
 - (b) if the Permanent Secretary determines that the appropriate authority is another person, give notification of the complaint to that person.
- (4) Where a complaint is made to the Director General, the Director General shall—
- (a) determine whether or not the Director General is the appropriate authority; and
 - (b) if the Director General determines that the appropriate authority is another person, give notification of the complaint to that person.
- (5) Where the Commission, the Permanent Secretary to the Home Office or the Director General gives notification of a complaint under any of paragraphs (1) to (4), the person who gave the notification shall notify the complainant that the notification has been given and of what it contained.
- (6) Where—
- (a) the Permanent Secretary to the Home Office determines, in the case of any complaint made to the Permanent Secretary, that the Permanent Secretary is the appropriate authority;
 - (b) the Director General determines, in the case of any complaint made to the Director General, that the Director General is the appropriate authority; or
 - (c) a complaint is notified to the Permanent Secretary to the Home Office or the Director General under this paragraph,
- the Permanent Secretary or the Director General shall record the complaint.
- (7) Nothing in this regulation shall require the notification or recording by any person of any complaint about any conduct if—
- (a) that person is satisfied that the subject-matter of the complaint has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person whose conduct it was; or
 - (b) the complaint has been withdrawn.
- (8) Nothing in this regulation shall require the recording by any person of any complaint about any conduct if that person considers that the complaint falls within a description of complaints specified in regulation 20 (recording of complaints).

Copies of complaints etc

- 19.**—(1) Where a complaint is recorded under regulation 18(6), the appropriate authority shall—
- (a) supply to the complainant a copy of the record made of that complaint; and
 - (b) subject to paragraphs (2) to (4), supply to the person complained against a copy of the complaint.
- (2) A copy of a complaint supplied under this regulation may be in a form which keeps anonymous the identity of the complainant or of any other person.
- (3) An appropriate authority may decide not to supply such a copy of a complaint if it is of the opinion that to do so—
- (a) might prejudice any criminal investigation or pending proceedings; or
 - (b) would otherwise be contrary to the public interest.
- (4) Where an appropriate authority decides not to supply such a copy, it shall keep that decision under regular review.

Recording of complaints

20.—(1) For the purposes of regulation 18(8) (descriptions of complaint not required to be recorded) the complaints set out in paragraph (2) are hereby specified.

(2) Those complaints are complaints in the case of which the appropriate authority considers that—

- (a) the matter is already the subject of a complaint made by or on behalf of the same complainant;
- (b) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
- (c) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
- (d) the complaint is repetitious; or
- (e) the complaint is fanciful.

(3) For the purposes of paragraph (2)(d) a complaint is repetitious if, and only if—

- (a) it concerns substantially the same conduct as a previous conduct matter or it is substantially the same as a previous complaint made by or on behalf of the same complainant;
- (b) it contains no fresh allegations which significantly affect the account of the conduct complained of;
- (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it; and
- (d) as respects the previous complaint or conduct matter, either—
 - (i) the complaint was locally resolved in accordance the provisions in regulation 26;
 - (ii) the complaint was handled otherwise than in accordance with these Regulations or no action was taken in relation to it, in accordance with regulation 23(2) or (3) (disapplication of requirements of these Regulations);
 - (iii) the Commission gave the appropriate authority a direction under regulation 38 (power to discontinue an investigation);
 - (iv) the appropriate authority disapplied the requirements of these Regulations in accordance with regulation 38(13)(b);
 - (v) the complainant gave such notification as is mentioned in regulation 39(1); or
 - (vi) the requirements of regulation 58(9) or 59(11) (determination by the appropriate authority of what action to take) were complied with.

(4) For the purposes of paragraph (2)(e) a complaint is fanciful if, and only if, no reasonable person could lend any credence to it.

Failures to notify or record a complaint

21.—(1) This regulation applies where anything which is or purports to be a complaint in relation to which regulation 18 has effect is received by the Permanent Secretary to the Home Office or the Director General (whether in consequence of having been made directly or of a notification under that regulation).

(2) If the Permanent Secretary to the Home Office or the Director General decides not to take action under regulation 18 for notifying or recording the whole or any part of what has been received, the Permanent Secretary to the Home Office or the Director General shall notify the complainant of the following matters—

- (a) the decision to take no action and, if that decision relates to only part of what was received, the part in question;
- (b) the grounds on which the decision was made; and
- (c) that complainant's right to appeal against that decision under this regulation.

(3) Subject to paragraph 4, the complainant shall have a right of appeal to the Commission against any failure by the Permanent Secretary to the Home Office or the Director General to make a determination under regulation 18 or to notify or record anything under that regulation.

(4) The complainant has no right of appeal under paragraph (3) if—

- (a) by virtue of regulation 18(7), there is no requirement to record the complaint; or
- (b) the appeal relates to a failure by the Permanent Secretary to the Home Office.

(5) On an appeal under this regulation, the Commission shall—

- (a) determine whether any action under regulation 18 should have been taken in the case in question; and
- (b) if the Commission finds in the complainant's favour, give such directions as the Commission considers appropriate to the Permanent Secretary to the Home Office or the Director General as to the action to be taken for making a determination, or for notifying or recording what was received,

and it shall be the duty of the Permanent Secretary to the Home Office or the Director General to comply with any directions given under sub-paragraph (b).

(6) Directions under paragraph (5)(b) may require action taken in pursuance of the directions to be treated as taken in accordance with any such provision of regulation 18 as may be specified in the direction.

(7) The Commission—

- (a) shall give notification to the Permanent Secretary to the Home Office or the Director General and the complainant of any determination made by it under this regulation; and
- (b) shall give notification to the complainant of any direction given by it under this regulation to the Permanent Secretary to the Home Office or the Director General.

Reference of complaints to the Commission

22.—(1) It shall be the duty of the appropriate authority to refer a complaint to the Commission if—

- (a) the complaint is one alleging that the conduct complained of has resulted in death or serious injury;
- (b) the complaint does not fall within sub-paragraph (a) but is one alleging conduct which constitutes—
 - (i) a serious assault, as defined in guidance issued by the Commission⁽¹⁾;
 - (ii) a serious sexual offence, as defined in guidance issued by the Commission;
 - (iii) serious corruption, as defined in guidance issued by the Commission;
 - (iv) a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the Commission;
 - (v) a relevant offence;

(1) Guidance issued by the Commission under section 22 of the 2002 Act in January 2013.

- (c) the complaint arises from the same incident as one in which any conduct falling within sub-paragraph (a) or (b) is alleged; or
 - (d) the complaint is one in respect of which the Commission notifies the appropriate authority that it requires the complaint in question to be referred to the Commission for its consideration.
- (2) In a case where there is no obligation under paragraph (1) to make a reference, the appropriate authority may refer a complaint to the Commission if that authority considers that it would be appropriate to do so by reason of—
- (a) the gravity of the subject-matter of the complaint; or
 - (b) any exceptional circumstances.
- (3) In a case in which a reference under paragraph (1) or (2) is neither made nor required to be made, the Permanent Secretary to the Home Office may refer a complaint to the Commission if—
- (a) it is one in relation to which the Director General is the appropriate authority; and
 - (b) the Permanent Secretary considers that it would be appropriate to do so by reason of—
 - (i) the gravity of the subject-matter of the complaint; or
 - (ii) any exceptional circumstances.
- (4) Where a complaint is required to be referred to the Commission under paragraph (1)(a), (b) or (c), notification of the complaint shall be given to the Commission—
- (a) without delay and in any event not later than the end of the day following the day on which it first becomes clear to the appropriate authority that the complaint is one to which that sub-paragraph applies; and
 - (b) in such manner as the Commission specifies.
- (5) Where a complaint is required to be referred to the Commission under paragraph (1)(d), notification of the complaint shall be given to the Commission—
- (a) without delay and in any event not later than the end of the day following the day on which the Commission notifies the appropriate authority that the complaint is to be referred; and
 - (b) in such manner as the Commission specifies.
- (6) Subject to paragraph (8), the following powers—
- (a) the power of the Commission by virtue of paragraph (1)(d) to require a complaint to be referred to it; and
 - (b) the power of the Permanent Secretary to the Home Office or the Director General to refer a complaint to the Commission under paragraph (2) or (3),
- shall each be exercisable at any time irrespective of whether the complaint is already being investigated by any person or has already been considered by the Commission.
- (7) The Permanent Secretary to the Home Office or the Director General who refers a complaint to the Commission under this regulation shall give a notification of the making of the reference—
- (a) to the complainant; and
 - (b) except in a case where it appears to the Permanent Secretary to the Home Office or the Director General that to do so might prejudice a possible future investigation of the complaint, to the person complained against.
- (8) A complaint that has already been referred to the Commission under this regulation on a previous occasion—
- (a) shall not be required to be referred again under this regulation unless the Commission so directs; and

- (b) shall not be referred in exercise of any power conferred by this regulation unless the Commission consents.

Duties of the Commission on references under regulation 22

23.—(1) It shall be the duty of the Commission in the case of every complaint referred to it by the Permanent Secretary to the Home Office or the Director General, to determine whether or not it is necessary for the complaint to be investigated.

(2) Where the Commission determines under this regulation that it is not necessary for a complaint to be investigated, it may, if it thinks fit, refer the complaint back to the appropriate authority to be dealt with by that authority in accordance with regulation 24.

(3) Where the Commission refers a complaint back under paragraph (2), it shall give a notification of the making of the reference back—

- (a) to the complainant; and
- (b) except in a case where it appears to the Commission that to do so might prejudice a possible future investigation of the complaint, to the person complained against.

Handling of complaints by the appropriate authority

24.—(1) This regulation applies where a complaint has been recorded by the appropriate authority.

(2) But this regulation does not apply to a complaint if it is one that has been, or must be, referred to the Commission under regulation 22, unless the complaint is for the time being—

- (a) referred back to the authority under regulation 23; or
- (b) the subject of a determination under regulation 38.

(3) Subject to regulation 25, the appropriate authority shall determine whether or not the complaint is suitable for being subjected to local resolution.

(4) If the appropriate authority determines that the complaint is suitable for being subjected to local resolution, it shall make arrangements for it to be so subjected.

(5) If the appropriate authority determines that the complaint is not so suitable, it shall make arrangements for the complaint to be investigated by the authority on its own behalf.

(6) A determination that a complaint is suitable for being subjected to local resolution may not be made unless—

- (a) the appropriate authority is satisfied that the conduct complained of (even if it were proved) would not justify the bringing of any criminal or disciplinary proceedings against the person whose conduct is complained of; and
- (b) the appropriate authority is satisfied that the conduct complained of (even if it were proved) would not involve the infringement of a person's rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998(2)).

(7) In a case where this regulation applies to a complaint by virtue of paragraph (2)(b), a determination that the complaint is suitable for being subjected to local resolution may not be made unless the Commission approves the determination.

(8) No more than one application may be made to the Commission for the purposes of paragraph (9) in respect of the same complaint.

(9) Paragraph (9) (where applicable) is in addition to paragraphs (6) to (8).

Disapplication of requirements of these Regulations

- 25.**—(1) If, in a case in which regulation 24 applies, the appropriate authority considers—
- (a) that it should handle the complaint otherwise than in accordance with these Regulations or should take no action in relation to it; and
 - (b) that the complaint falls within a description of complaints specified in paragraph (7),
- the appropriate authority may handle the complaint in whatever manner (if any) that authority thinks fit.
- (2) But, in a case where regulation 24 applies by virtue of regulation 24(2)(a) or (b), the appropriate authority may not handle the complaint in whatever manner (if any) the authority thinks fit unless—
- (a) the authority applies to the Commission, in accordance with these Regulations, for permission to so handle the complaint; and
 - (b) the Commission gives permission.
- (3) An application under paragraph (2) for permission to handle a complaint in whatever manner (if any) an appropriate authority thinks fit shall be in writing and shall be accompanied by—
- (a) a copy of the complaint;
 - (b) an explanation of the appropriate authority’s reasons for making the application; and
 - (c) copies of any other documents or material in the possession of the appropriate authority which are relevant to the complaint.
- (4) The appropriate authority shall supply any further information requested by the Commission for the purpose of considering an application by that authority made under paragraph (1).
- (5) Where such an application is made to the Commission, it shall—
- (a) consider the application and determine whether to grant the permission applied for; and
 - (b) notify its decision to the appropriate authority and the complainant.
- (6) Where an application is made under this paragraph in respect of any complaint, the appropriate authority shall not, while the application is being considered by the Commission, take any action in accordance with the provisions of these Regulations (other than under regulation 17) in relation to that complaint.
- (7) For the purposes of paragraph (1)(b), the description of complaints are any one in relation to which the appropriate authority considers that—
- (a) more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay;
 - (b) the matter is already the subject of a complaint made by or on behalf of the same complainant;
 - (c) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
 - (d) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
 - (e) the complaint is repetitious, as defined in regulation 20(3); or
 - (f) it is not reasonably practicable to complete the investigation of the complaint or any other procedures under these Regulations.
- (8) For the purposes of paragraph (7)(f) it is not reasonably practicable to complete the investigation of a complaint or any other procedures under these Regulations if, and only if—

- (a) it is not reasonably practicable to communicate with the complainant or a person acting on his behalf; or
 - (b) it is not reasonably practicable to complete a satisfactory investigation in consequence of—
 - (i) a refusal or failure, on the part of the complainant, to make a statement or afford other reasonable assistance for the purposes of the investigation; or
 - (ii) the lapse of time since the event or events forming the subject-matter of the complaint.
- (9) In this regulation any reference to action not being reasonably practicable shall include a reference to action which it does not appear reasonably practicable to take within a period which is reasonable in all the circumstances of the case.
- (10) Before deciding to handle a complaint in whatever manner (if any) it thinks fit in accordance with paragraph (1), the appropriate authority shall—
- (a) write to the complainant at the complainant’s last known address—
 - (i) inviting the complainant to make representations in relation to the matter; and
 - (ii) allowing the complainant a period of 28 days, commencing on the day after the date of the letter, to do so; and
 - (b) have regard to any representations made by the complainant.
- (11) The appropriate authority shall notify the complainant—
- (a) that the appropriate authority has decided to handle the complaint as permitted by paragraph (1) (in a case where the appropriate authority is not required to apply for permission under paragraph (2) to so handle the complaint); or
 - (b) about the making of the application under paragraph (2) (in a case where the appropriate authority makes such an application).
- (12) Where the complaint is to be handled in whatever manner (if any) the appropriate authority thinks fit (whether or not the Commission’s permission is needed), the authority—
- (a) shall not be required by virtue of any of the provisions of these Regulations (other than regulation 17) to take any action in relation to the complaint; and
 - (b) may handle the complaint in whatever manner it thinks fit, or take no action in relation to the complaint, and for the purposes of handling the complaint may take any step that it could have taken, or would have been required to take, if it were not proceeding in accordance with this regulation.
- (13) Where the appropriate authority applies to the Commission under paragraph (2) and the Commission determines that no permission should be granted—
- (a) it shall refer the matter back to the appropriate authority for the making of a determination under regulation 24(3); and
 - (b) the authority shall then make that determination.
- (14) No more than one application may be made to the Commission under this regulation in respect of the same complaint.
- (15) The complainant shall have a right of appeal to the relevant appeal body against any decision by the appropriate authority under this regulation to handle the complaint otherwise than in accordance with these Regulations or to take no action in relation to it.
- (16) But the complainant has no right of appeal in a case in which the appeal relates to a decision for which the Commission has given permission under this regulation.

(17) On an appeal under this paragraph, subject to paragraphs (18) and (19), the relevant appeal body shall—

- (a) determine whether any decision taken by the appropriate authority under this regulation should have been taken in the case in question; and
- (b) if the relevant appeal body finds in the complainant’s favour, give such directions as the relevant appeal body thinks appropriate to the Permanent Secretary to the Home Office or the Director General as to the action to be taken for handling the complaint in accordance with these Regulations or handling it otherwise than in accordance with these Regulations;

and it shall be the duty of the Permanent Secretary to the Home Office or the Director General to comply with any directions given under sub-paragraph (b).

(18) Paragraph (17) does not apply in a case where the Director General is—

- (a) the person in respect of whose decision the appeal is made under this regulation, and
- (b) the relevant appeal body in relation to the appeal.

(19) In such a case—

- (a) the appeal shall determine whether any decision taken by the appropriate authority under this paragraph should have been taken in the case in question; and
- (b) if the appeal finds in the complainant’s favour, the Director General must take such action as the Director General thinks appropriate for handling the complaint in accordance with these Regulations or handling it otherwise than in accordance with these Regulations.

Local resolution of complaints

26.—(1) The arrangements made by the appropriate authority for subjecting any complaint to local resolution may include the appointment of a person who is an NCA officer to secure the local resolution of the complaint.

(2) The procedures that are to be available for dealing with a complaint which is to be subjected to local resolution are, subject to the provisions of this regulation, any procedures which are approved by the Commission.

(3) Where it appears to the appointed person that the complaint had in fact already been satisfactorily dealt with at the time it was brought to his notice, the appointed person may, subject to any representation by the complainant, treat it as having been locally resolved.

(4) The appointed person shall as soon as practicable give the complainant and the person complained against an opportunity to comment on the complaint.

(5) The appointed person shall not, for the purpose of locally resolving a complaint, tender on behalf of the person complained against an apology for that person’s conduct unless the person complained against has agreed to the apology.

(6) Where a complaint has been dealt with by way of local resolution, a record shall be made as soon as practicable of the outcome of the procedure and a copy of the record sent to the complainant and the person complained against.

(7) At the time of sending a copy of the record of outcome to the complainant under paragraph (6), the appropriate authority shall notify the complainant in writing of the complainant’s right of appeal against that outcome under regulation 27 (appeals relating to complaints dealt with other than by investigation), unless paragraph (2) of that regulation applies.

(8) In this regulation, “the appointed person” means a person appointed under paragraph (1) to secure the local resolution of a complaint.

(9) A statement made by any person for the purposes of the local resolution of any complaint shall not be admissible in any subsequent criminal, civil or disciplinary proceedings except to the extent that it consists of an admission relating to a matter that has not been subjected to local resolution.

(10) If, after attempts have been made to resolve a complaint using local resolution, it appears to the appropriate authority—

- (a) that the resolution of the complaint in that manner is impossible; or
- (b) that the complaint is, for any other reason, not suitable for such resolution,

it shall make arrangements for the complaint to be investigated by that authority on its own behalf.

(11) The local resolution of any complaint shall be discontinued if—

- (a) any arrangements are made under paragraph (9);
- (b) the Commission notifies the appropriate authority that it requires the complaint to be referred to the Commission under regulation 22; or
- (c) the complaint is so referred otherwise than in pursuance of such a notification.

(12) A person who has participated in any attempt to resolve a complaint using local resolution shall be disqualified for appointment under any provision of these Regulations to investigate that complaint, or to assist with the carrying out of the investigation of that complaint.

Appeals relating to complaints dealt with other than by investigation

27.—(1) The complainant shall have a right of appeal to the relevant appeal body against the outcome of any complaint that is—

- (a) subjected to local resolution; or
- (b) handled otherwise than in accordance with these Regulations.

(2) On an appeal under this regulation, subject to paragraphs (3) and (4), the relevant appeal body shall—

- (a) determine whether the outcome of the complaint is a proper outcome; and
- (b) if the relevant appeal body finds in the complainant's favour, give such directions as the relevant appeal body thinks appropriate to the appropriate authority as to the action to be taken in relation to the complaint'

and it shall be the duty of the appropriate authority to comply with any directions given under paragraph (b).

(3) Paragraph (2) does not apply in a case where the Director General is the relevant appeal body in relation to the appeal.

(4) In such a case—

- (a) the appeal shall determine whether the outcome of the complaint is a proper outcome; and
- (b) if the appeal finds in the complainant's favour, the Director General must take such action as the Director General thinks appropriate in relation to the complaint.