

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

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Commissioner's foreword

At PIRC, our mission is to promote and support public confidence in policing in Scotland through independent, evidence-based oversight. Public confidence in the police, and in the police complaints system, can only be achieved if allegations of discrimination are handled appropriately.

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

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

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

These guidelines are part of PIRC's broader work to ensure that human rights and equality issues are embedded in our approach to scrutinising and supporting improvement in policing.

I would like to thank the PIRC staff who contributed to the development of these guidelines. I would also like to thank the Independent Office for Police Conduct for their kind permission to use extracts and case studies from their own guidelines for handling allegations of discrimination.

PIRC's guidelines will be kept under review. They will be updated to reflect any changes to relevant law and policy and in light of our experience of managing allegations of discrimination. The guidelines will also be updated to reflect evolving public and stakeholder expectations so that we maintain their confidence in the ability of PIRC to respond effectively to complaints of discrimination.

Laura Paton
Commissioner



1 Professional standards and ethics

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

The framework that sets out standards of police officers and staff behaviour includes the Convention Rights incorporated in the Human Rights Act 1998, Police Scotland's Code of Ethics and its Standards of Professional Behaviour¹. The Code of Ethics is based on the values of integrity, fairness, respect and human rights. It specifically provides that constables act with fairness and impartiality and do not discriminate unlawfully or unfairly.

Police Scotland and the Scottish Police Authority (SPA) also provide guidance to all officers and staff in their Equality, Diversity and Dignity standard operating procedure².

PIRC investigators and review officers

The role of PIRC is to provide independent oversight of policing, investigating incidents involving the police and reviewing the way the police handle complaints from the public. Our mission is to promote and support public confidence in policing in Scotland through independent, evidence-based oversight³.

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

The police and PIRC staff are likely to come into contact with people who are affected by trauma or who are otherwise vulnerable, such as those who experience poor mental health, who misuse alcohol or drugs, who lead chaotic lifestyles, or who experience a combination of these factors in their lives. In doing so, it is important to engage effectively and appropriately and not to discriminate or demonstrate bias.

Equality evidence

A proper understanding of issues related to discrimination depends to some degree on having data that allows analysis, research and learning. To understand patterns and underlying issues, it is vital that organisations have sufficient evidence of the impact

¹ Throughout these guidelines, we refer to Police Scotland's [Code of Ethics](#), [Standards of Professional Behaviour](#) and other policies and procedures. However, PIRC's remit also includes scrutinising other policing bodies operating in Scotland. The equivalent codes, standards and policies of those bodies should be taken into account by PIRC investigators and review officers where relevant.

² SPA & Police Scotland, [Equality, Diversity and Dignity Standard Operating Procedure](#).

³ The role of PIRC is set out in the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended by the Police and Fire Reform (Scotland) Act 2012 and the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025.

their policies and practices are having, or are likely to have, on people with different protected characteristics.

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 require public authorities, including Police Scotland, to collect equality evidence, assess policy impacts and publish progress to eliminate discrimination and advance equal opportunity across policing. The Equality and Human Rights Commission has published an *Essential guide to the Public Sector Equality Duty* for public authorities in Scotland.⁴

Complainers

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

2 What is discrimination?

The Equality Act 2010

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

Age – A person belonging to a particular age or age group, such as 25-year-olds or 'over 50s'. Those under the age of 18, as a group, do not have the same level of protection from age discrimination as those over 18.⁵

Disability – A person has a disability if they have any physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.⁶

Gender reassignment – Where a person is proposing to undergo, is undergoing or has undergone a process for the purpose of reassigning their sex. To be protected from gender reassignment discrimination, a person can be at any stage in the transition process: they do not need to have undergone medical treatment or surgery, and they do not need to have a Gender Recognition Certificate.

Marriage and civil partnership – Where a person is married or in a civil partnership.

Pregnancy and maternity – Where a person is pregnant or has given birth in the past 26 weeks. This includes protection for women who are breastfeeding.

⁴ Equality and Human Rights Commission, [Essential guide to the Public Sector Equality Duty: A guide for public authorities in Scotland](#) (2016).

⁵ Those under 18 years are only protected against age discrimination in the workplace. The 2010 Act still protects those under 18-year-old from discrimination based on race, sex, disability and sexual orientation.

⁶ This could be physical or learning disabilities as well as ongoing mental illness. People suffering from multiple sclerosis, HIV and cancer are also included within the definition.



Race – A race is a group of people defined by their colour, nationality, ethnicity or national origins.

Religion or belief – Refers to any religion or religious or philosophical belief, including lack of religion or lack of belief.

Sex – Refers to a man or a woman.⁷

Sexual orientation – Refers to a person's sexual attraction to their own sex, the opposite sex or either sex.

It is important to remember that an individual may experience discrimination based on more than one characteristic. This is known as 'intersectionality'. For example, a person may allege that they have been discriminated against on the basis of both their sex and their race.

Under the public sector equality duty, policing bodies and PIRC 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 2010 Act
- advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
- foster good relations between people who share a relevant protected characteristic and those who do not share it.

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

Police Scotland's 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 2010 Act. This could include, for example, homeless or care experienced people, sex workers, minority language speakers (such as Scottish Gaelic language speakers), and children and young people.

Tests for discrimination

Direct discrimination

Under the 2010 Act, direct discrimination is when someone is treated *less favourably* than another person because of a protected characteristic or characteristics.

The key elements of the test for direct discrimination are:

(a) **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*.

⁷ The case of *For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent)* [2025] UKSC 16 ruled that 'sex' in the 2010 Act should be interpreted as 'biological sex' only.

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

(b) **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 sex *and* sexual orientation).

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

Example – Direct discrimination

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

It is 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 2010 Act provides for positive action to be taken in certain limited circumstances. This could involve introducing policies and practices which treat members of a group who share a particular protected characteristic more favourably than other groups.⁸

⁸ See the Equality and Human Rights Commission website for more guidance on positive action.



Indirect discrimination and organisational issues

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

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

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

Example – Indirect discrimination

Mr B 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 B 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 B 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.

Harassment

The 2010 Act prohibits three types of harassment. These are:

- harassment related to a relevant protected characteristic
- sexual harassment
- less favourable treatment of a person because they submit to or reject sexual harassment or harassment related to sex or gender reassignment.

The 'relevant protected characteristics' when considering harassment are:

- age
- disability
- gender reassignment
- race
- religion or belief
- sex
- sexual orientation.

Harassment related to a relevant protected characteristic is unwanted conduct which violates dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

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

Example – Harassment

Ms C 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 C. However, the conduct complained about relates to a relevant protected characteristic and Ms C has said that the officers' actions were both unwanted and created an offensive and even intimidating environment. Ms C's discrimination complaint should be considered in light of the test for harassment.

Victimisation

This is where a person is treated badly because they have complained or taken formal or legal action about discrimination or supported someone else to do so. It also includes a person being treated badly because it is believed that they will take action about discrimination.

Disability discrimination

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

The protections against direct and indirect discrimination, as well as harassment and victimisation, apply to disabled people. There are also additional protections under the 2010 Act relating to disability which mean that, in some circumstances, the police should treat disabled people differently to take account of their disability. The additional protections arising from disability include the duty to make reasonable adjustments.

Further information about disability discrimination can be found in Chapter 4.

European Convention on Human Rights – prohibition of discrimination

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 will apply to any allegation that discriminatory actions led to a death in custody as a death in custody engages Article 2 (the right to

life). Further, Article 14 will apply to any allegation that discrimination played a part in relation to an allegation of inhuman or degrading treatment (Article 3).

For the purpose of Article 14, discrimination is when a person is treated less favourably than another person in a similar situation and the treatment cannot be objectively and reasonably justified. The application of Article 14 extends beyond the protected characteristics in the 2010 Act, and so it may apply to complaints or conduct matters that involve allegations of unfair discrimination as well those that involve allegations of unlawful discrimination.

While these guidelines refer to ‘protected characteristics’ throughout, they 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 under the 2010 Act.

Hate crime

The Hate Crime and Public Order (Scotland) Act 2021 (the 2021 Act) came into force on 1 April 2024. The 2021 Act is not retrospective and therefore offences that were committed before 1 April 2024 should still be reported under the previous legislation.

Irrespective of whether the incident happened pre or post 1 April 2024, the Lord Advocate Guidelines direct that “an incident is aggravated by prejudice if it is perceived to be aggravated by prejudice by the victim or any other person”. Therefore, during any criminal investigation, the perception of the victim or witnesses as to the motive for the crime must be ascertained, clearly recorded, and fully investigated.

Offences that take place after 1 April 2024 – Hate Crime and Public Order (Scotland) Act 2021

The 2021 Act consolidated, updated and extended hate crime law. An offence is aggravated by prejudice if the offender demonstrates malice and ill-will towards the victim based on the victim’s membership or presumed membership of a group defined by reference to any one of the following seven protected characteristics:

- age
- disability
- race, colour, nationality (including citizenship), or ethnic or national origins
- religion or perceived religious affiliation
- sexual orientation
- transgender identity
- variations in sex characteristics.⁹

The victim’s belief alone that the offence was aggravated by prejudice does not justify the charging of a statutory aggravation. There must be further evidence of the accused’s motivation – this may often come from words spoken by the accused.

⁹ Section 1 of the 2021 Act.



The 2021 Act consolidated offences of racially aggravated harassment¹⁰ and racially aggravated conduct.¹¹ It also created new criminal offences of stirring up hatred¹² including racial hatred and hatred towards a group of persons defined by reference to the following characteristics: age; disability, religion or perceived religious affiliation; sexual orientation; transgender identity; and variations in sex characteristics.

Further information can be found in the Lord Advocate's guidelines on offences aggravated or motivated by prejudice.¹³

Offences that take place before 1 April 2024

Prior to the law being consolidated in the 2021 Act, various standalone hate crime offences existed, including racially aggravated harassment under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 and stirring up of racial hatred under sections 18 to 23 of the Public Order Act 1986.

In addition, for offences that took place before 1 April 2024, the following statutory aggravations could be added to the substantive charge:

- Racially motivated crime as legislated for under section 96 of the Crime and Disorder Act 1998
- Religiously motivated crime as legislated for under Section 74 of the Criminal Justice (Scotland) Act 2003
- Sexual orientation, transgender identity and disability as introduced through the Offences (Aggravation by Prejudice) (Scotland) Act 2009.

For each of the statutory aggravations referred to above, evidence from a single source is sufficient to prove that an offence is aggravated by prejudice relating to race, religion, disability, sexual orientation or transgender identity.

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

Further information on offences that took place before 1 April 2024 can be found in an earlier version of the Lord Advocate's guidelines of offences aggravated by prejudice.¹⁴

Hate incidents

A hate incident is any report to the police where the circumstances do not amount to a crime, however it is perceived by the reporter, or any other person, that the incident was partly or wholly motivated by malice or ill will based on actual or perceived protected characteristics.¹⁵

¹⁰ Section 3(1)(a) of the 2021 Act.

¹¹ Section 3(1)(b) of the 2021 Act.

¹² Section 4 of the 2021 Act.

¹³ [Lord Advocate's guidelines: Offences aggravated or motivated by prejudice](#) (April 2024).

¹⁴ [Lord Advocate's guidelines on offences aggravated by prejudice](#) (updated October 2015).

¹⁵ Police Scotland, Responding to hate standard operating procedure (August 2024).



Not all hate incidents perceived as being motivated by malice and ill will meet the threshold for recording. Updated guidance issued by Police Scotland in August 2024 introduced a 'reasonable person' test. Since then, for a report to be recorded as a hate incident, two principles must apply:

- 1) A reasonable person considers the incident to be motivated by malice and ill will towards one or more characteristics protected within legislation
- 2) Recording the incident has a specific policing purpose.

When deciding whether to record a hate incident, consideration should be given to the rights of the person 'accused' of the incident, such as their right to freedom of expression.

It is useful for PIRC staff to understand the distinction between hate crime and non-crime hate incidents, and when hate incidents should be recorded by the police.

3 Engaging with the complainer

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

Contact the complainer

PIRC staff should contact the complainer at the beginning of the investigation to establish a clear understanding of the allegation or complaint.

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

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

- What was it that made you believe the actions or words of the person serving with the police were discriminatory?
- Do you feel that the person serving with the police made assumptions about you because of your protected characteristic? What were these assumptions? How did they impact on the actions of the police?
- Did you note any differences in the way you were treated compared with others?
- Did you note any differences in the way that this person serving with the police behaved compared with other persons serving with the police (either on this or other occasions)?
- Was there anything about the language used by the person serving with the police 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?

Updating complainers

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

Value and respect

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

Example

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 Mr D a "black bastard".

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

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

Communicate clearly and sensitively

PIRC staff should be sensitive to the individual needs of complainers and have an understanding and awareness of the equality issues that could arise during their enquiries. PIRC staff should take a person-centred and trauma-informed approach to engaging with complainers.

Particular care should be taken to make appropriate adjustments and accommodations to ensure the complainer can engage safely and effectively with the investigation or complaints process including, where appropriate, providing an interpreter and recognising cultural or religious needs. It is important to recognise and value the support



provided by advocacy services, support workers, and legal advisers where the complainant has used or requires these types of services.¹⁶ If possible, it may be appropriate to offer contact with a staff member of the same sex or with specialist knowledge about the type of discrimination alleged.

Example – Sensitive engagement

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

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

By establishing a communication protocol and communicating clearly and sensitively with the family of the deceased via the interpreter, PIRC Family Liaison Officers (FLOs) were able to explain the circumstances of Mr E's death to the family. The family indicated they accepted the findings of the post-mortem examination and did not require independent legal advice or support in Scotland.

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

Great care should be taken to respect the complainant's 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).

Complainants with low levels of trust may be unwilling to go to PIRC offices or to have a member of PIRC staff come to their home to discuss a complaint. While it is important to try to engage with the complainant to get a good understanding of their concerns, 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 made a complaint of discrimination against the police. Two uniformed police officers went to Mrs F's home to note details of her complaint and discuss how she would like to progress the matter. Mrs F lives on a housing estate which has a tight knit community with a history of poor relations with the police. Mrs F found the police visiting her home intimidating. She does not want to deal directly with the police and is

¹⁶ The PIRC website provides a range of links to support and advocacy organisations – <https://www.pirc.scot/help/support-contacts-and-advocacy>.

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.

The officers should have considered speaking to the complainer to establish the best way to engage with her – particularly before attending her home. For example, they could have offered to attend in plain clothing, or to meet at another location.

4 Understanding the allegation of discrimination

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

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

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

What does the complainer say?

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

What do you know?

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

What do you need to find out?

In more serious cases or critical incidents, it may be appropriate to seek external expertise, for example from an independent advisory group, a relevant community or advocacy organisation, or from a legal or academic expert. The investigating or review officer may also be able to usefully draw on findings from relevant inquiries, research or reports about discrimination.

Listed below are examples of the types of investigation that may be required in relation to some of the protected characteristics.

Racism

Complaints of race discrimination may include any discrimination relating to race, colour, nationality or ethnic or national origins. The types of racist assumptions or prejudices that should be considered in a discrimination investigation will vary greatly depending on the particular race, colour, ethnicity, or nationality of those involved and the context of the incident.

Example – Allegation of racism made by a Black man

Mr G is a 19-year-old Black man who has autism. Mr G says that when he was arrested by the police, they questioned him about his nationality and how long he had lived in the UK. He complains that he was assaulted by the police while being restrained. He considers that the police questioning him about his background was motivated by racism.

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

- What types of assumptions, prejudices or bias might lead to a Black man being treated differently due to his race and resulting in the use of excessive force?
- Would a White man acting in similar manner be treated by these officers in the same way?

Mr G also feels he was treated differently by the police because of having autism. He believes his autism meant he was unable to effectively engage with the police, which contributed to him being arrested.

Mr G's allegations of race discrimination and discrimination linked to his autism should be recorded and explored as part of the investigation. Attention should be given to whether Mr G was treated less favourably because of having autism.

The investigating/review officer is aware that Mr G's case has similarities with several other high profile cases involving issues of restraint, race and disability. The officer puts in place support measures, including involving the family of Mr G, to ensure that he can effectively communicate his complaints. Drawing on background information and the details of the discrimination allegations provided by the complainer, the investigating/review officer identifies a number of questions to be addressed. These include:

- Were officers aware, or could they have been reasonably expected to be aware, that Mr G had difficulty engaging at times of stress due to his autism?
- What assessments were made to take account of Mr G's autism? How was this reflected in the actions taken? In light of Mr G's circumstances, was it appropriate for Mr G to be arrested and taken to a cell?
- Were assumptions made that Mr G's behaviour was a result of drug taking, aggression or criminality rather than symptoms of autism and a reflection of vulnerability? Would similar assumptions have been made if he was a White man?

- Were assumptions made that Mr G posed a greater threat/risk because he was Black and did not effectively communicate? Were assumptions made that he was particularly strong or more likely to resist or to be violent? Would the same assumptions and risk assessment have been made if he was White? Would a White man in similar circumstances have been arrested?
- Is there any indication that the police officers involved hold negative views of Black people or that Mr G was targeted because of his race?
- Is there any indication that the police officers involved hold negative views of people with autism or disabilities generally?
- Is there anything about the policing context in the area (e.g. relations between police and local Black or disabled communities, any high levels of particular types of crime, or recent tensions or significant events) which may impact on or inform these types of assumptions?

Example – Allegation of racism made by a Traveller woman

Mrs H, a 45-year-old Traveller woman, complained that the police searched her caravan in connection with a man who did not live there. The contents of the caravan were completely turned over and some of her things were damaged. She says that one of the officers involved in the search said, 'now you know what it's like to have your house broken into'. Mrs H 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 H to explore the reasons why she feels she was discriminated against. She says that because she is a Traveller, the officers assumed she was a thief and treated her and her children like criminals even though they were looking for someone else. She says that they have no respect for Traveller property, there were no grounds for the search, and that if she lived in a house they probably would not have even stepped through the door.

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

- What was the rationale for the search and was it reasonable? Was the search lawful and conducted in accordance with procedure? Were there alternatives available to searching the caravan?
- Did the officers believe that there was a connection between Mrs H 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 H on this basis? Would the same assumptions have been made if Mrs H 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 broken into'? If so, why was the statement made and what was meant by it?

- Were assumptions made that Mrs H 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 H 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 recent tensions or significant events) which may impact on or inform these types of assumptions? Does this complaint fit with concerns or complaints previously raised around searches of Traveller caravans?

Discrimination on grounds of religion or belief

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

Example – Allegation of Islamophobia made by a Muslim woman

Mrs J, a Muslim woman, was stopped and questioned at the airport under Schedule 7 of the Terrorism Act 2000. She says that she feels she was targeted because she wears a burka, but 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 J feels she was targeted because she is a Muslim and wears a burka. She feels that the police wrongly associated her expression of faith (including the way she dresses and how often she prays) with terrorism.

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

- Why was Mrs J stopped, while the woman she was travelling with was not? Was there any objective reason for wanting to question Mrs J and not the other woman (such as known association with those convicted of or reasonably suspected of terrorism offences)?
- Were questions asked about her religious observance, including how often she prays? If so, what was the reason for this? Why was the questioning relevant?

- 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 and 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 no, is there a non-discriminatory reason for the different in treatment in Mrs J's case?

Discrimination on grounds of sexual orientation

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

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

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

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

Key considerations would include:

- Were sexually explicit photographs and gay pornography left out after the search as described? If so, in what circumstances were these items found, moved, and not replaced during the search?
- How was the search different or similar to other searches undertaken by the officers involved?
- Have any similar issues been raised in the past in relation to these officers?
- If so, have these all arisen in relation to searches of a gay person's home, or have similar issues arisen in searches of straight people?
- Were the actions of the officers suggestive of an unreasonable or voyeuristic interest in the complainant's sexual activities?

- Is there any evidence that the officers involved hold negative views about homosexuality or homosexual people?

Discrimination on grounds of gender reassignment

Discrimination on the grounds of gender reassignment may take the form of hostility, prejudice or bias against a person who is trans or perceived to be trans (sometimes described as transphobia). 'Trans' is an umbrella term to describe people whose gender identity is different from their biological sex.

Discrimination on the grounds of gender reassignment includes any discrimination against those who express their identity in a way that differs from or is inconsistent with their biological sex. This can take many forms including stereotyping and making prejudiced assumptions, inappropriate interest in surgery status or sexual preferences, and expressions of intolerance, fear and hatred. Each instance will be case specific.

Example – Allegation of transphobia made by a trans woman

Miss L, a trans woman, reported a sexual assault to the police. When being interviewed, she was asked to explain her gender history as the first question. She was then called 'Mr L' instead of 'Miss L' 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 L made a complaint, with the support of an LGBTQ advocacy organisation. She complains that the interviewing officer was transphobic in how he dealt with her.

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

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

- Why was Miss L 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 person without the protected characteristic of gender reassignment?
- Did Miss L 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 person who did not have the protected characteristic of gender reassignment reporting a sexual assault?
- What training or previous experience did the officers have in dealing with allegations of sexual assault? Did this training include any reflection or guidance on dealing appropriately with trans victims? Do they have previous experience in dealing with trans victims of crime?

Disability discrimination

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

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

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

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

Mrs M believes that her daughter was physically assaulted by a professional carer.

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

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

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

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

Duty to make reasonable adjustments

Under the Equality Act 2010, the police and other public bodies have a duty to make reasonable adjustments for disabled people. This means that they are required to take positive steps to make sure that disabled people are not substantially disadvantaged compared to non-disabled people when accessing police services or interacting with the police. Making reasonable adjustments can be a way to prevent a person being treated unfavourably because of their disability.

To be unfavourable, the treatment must put the disabled person at a substantial disadvantage, including being denied a service or receiving a poor service. There must be a connection between whatever led to the unfavourable service and the disability.

Unfavourable treatment will not be discrimination if it was justified as a 'proportionate means of achieving a legitimate aim'.

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

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

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

The duty to make reasonable adjustments arises where a provision or policy, a physical practice, or the lack of an aid or service puts disabled people at a substantial disadvantage compared with a non-disabled person.

To measure whether a disabled person was substantially disadvantaged, a comparison needs to be made between the person's actual experience and what the situation would be if the disabled person did not have the relevant disability

Examples include but are not limited to:

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

When undertaking investigations or CHRs, PIRC staff should, where necessary, make any reasonable adjustments when engaging with the complainant.

Example – A complaint relating to making reasonable adjustments

Mr N has multiple sclerosis (MS). He experiences pain and has mobility difficulties, usually requiring a stick or crutches to walk. Mr N 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 N complains that he had no help to stand up despite requesting assistance from the officers who were watching him.

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

Ageism

Ageism is discrimination on the basis of age, or age defined groups such as 'the elderly' or 'young people'. The prohibition of discrimination on the grounds of age under the 2010 Act does not apply to those under the age of 18 because, as a group, they do not have the same level of protection from age discrimination as those over 18 in the provision of public functions. 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 O, 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 O 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 O 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 O 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 O 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 O 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 O 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 see and hear 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 O and his friends compared with the other group? Were these assumptions based on the age and appearance of Mr O and his friends?
- Why did officers arrest Mr O and his friends? Why were others involved in the incident not arrested? What is the reason for the difference in treatment? If Mr O and his friends were older and dressed differently (i.e. in suits) would they have been treated in the same way?

Sexism

Sexism or sex 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 sex roles or male and female attributes, or as a favouring of one sex over another.

Example – Allegation of sex discrimination made by a woman

Ms P 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 P 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 P to explore in more detail why she feels that she was discriminated against. Ms P 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 P 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 P provided with victim support in accordance with force policy? If not, why not?
- Does the officer have an awareness about the concept of 'rape myths' or 'victim blame'? Has the officer received any training or guidance on these issues?

5 Assessing allegations and complaints

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

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

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

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

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

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

Vulnerability – allegations involving a vulnerable person should be seen as particularly serious.

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

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

Organisational and individual culpability – issues of discrimination involving the conduct of officers often do not occur in a vacuum. Organisational and systemic issues can influence individual conduct and increase the risk of recurrence.

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

6 Conducting an investigation or CHR

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

Terms of reference

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

Similarly, a CHR should clearly address any discrimination allegations raised.

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

Understanding the allegation of discrimination

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

To do this the investigating or review officer should consider:

- What does the complainer say about why they think they were discriminated against?
- What do you know about the type of discrimination alleged? – through other complaints, training, local knowledge etc.
- What else do you need to find out? – drawing on expertise, research and reports

Conducting the investigation or CHR

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

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

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

Complaint history and patterns of behaviour

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

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

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

A pattern of previous complaints that showed *a clear propensity* for the described behaviour could be used to help assess the credibility of



competing accounts and might tip the balance of probabilities in a case depending on the other evidence available.

- **Statistical evidence**

Where available, proportionate and relevant to the allegation, other patterns of behaviour evidence may be explored. This could include, for example, whether there is disproportionality that cannot be explained in stop and search or use of force data in relation to specific groups or by specific officers or policing divisions.

Comparator evidence

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

Example – Considering comparator evidence (difference in treatment)

Mrs Q, 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 Q had assaulted her. Mrs Q made a counter allegation of assault. The police arrested Mrs Q but not the other neighbour. Mrs Q 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 Q was treated less favourably because of her race.

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

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

Example – Considering comparator evidence (difference in circumstance)

Mr R, 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 R 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 R 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 R and his friend as victims and the White group as suspects and to not record a race hate crime.

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

Discriminatory language

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

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

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

Making generalisations

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

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

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

Reference to a characteristic which is irrelevant to the policing purpose

In some circumstances, describing a person's race, religion, sex, 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 distinguishes them as 'different' may suggest a discriminatory approach.

Probing the officer or staff member's account

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

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. Investigating officers should refer back to the thinking done at the beginning of the investigation to consider what stereotypes or prejudicial assumptions might have informed the officer or staff member's actions. Questions should be asked to test whether these sorts of assumptions informed their decision making.

Questions should focus on:

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

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

Probing rationales

As part of an investigation into an allegation of discrimination and use of excessive force, the investigating officer is looking to test whether a police officer made prejudiced assumptions that the complainant, Mr S, 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 S?
- 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 S? 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 S, 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 or aggressive, the investigating officer will need to weigh up the likelihood that the reason for this relates to Mr S's race as opposed to any non-discriminatory reason offered for the officers' actions.

Organisational issues

Organisational issues and learning can and should be considered where they arise from enquiries into the particular incident which forms the basis of the allegation or complaint. If an investigation or CHR finds that there has been discrimination or individual learning is identified, proportionate consideration should be given to whether the issues found show a broader team-wide or organisation-wide issue.

Whilst it will not usually be within the scope of an individual investigation or CHR to address the broader question of whether the police force is institutionally discriminatory, other organisations such as Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) or the Equality and Human Rights Commission (EHRC) may be able to undertake this type of inquiry.

In the event team-wide or organisation-wide issues are being considered, this could include the following factors:

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

Organisational policies – are the policies of policing bodies adequate? Do they protect against the failing found?

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

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

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

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

The scope of these considerations should be proportionate and will depend on the seriousness of the failing found, any intelligence or evidence collected through the investigation or otherwise known which might suggest a broader issue and whether

other similar issues have been raised – i.e. through other complaints or investigations.

Learning

Reflecting on the complainer's experience of the incident, the investigating officer should also ask questions that lead the officer or staff member to reflect on:

- How the complainer might have experienced the situation
- Why the complainer might have come away with the impression that the treatment of them was unfair or discriminatory
- What else could have been done that might have prevented the complainer forming this view?

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

Reflecting on the complainer's experience of the incident

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

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

- When you stopped Mr T, 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 T feels he was discriminated against?
- Is there anything that you could have done differently that might have left him with a different impression?

7 Findings and outcomes

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

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

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

The assessment should consider:

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

Complaint handling – outcomes and resolution

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

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

Investigations – outcomes and resolution

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

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

- in cases where the behaviour is clearly unintentional, it may be appropriate for the response to focus on learning and changing behaviour or attitudes.

Identifying opportunities for learning

In the case above involving Mr T, 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 who carried out the stop and search admits he did not provide a clear explanation for the stop to Mr T at the time. In these circumstances, it was not unreasonable or unforeseeable that Mr C would form the view that he was discriminated against, and this should be acknowledged.

Police officers should act and make decisions on merit and should use opportunities to promote equality and diversity. Having evidence-based reasons for a stop and search and explaining this to the person who has been stopped and

searched would be part of meeting this expectation. It would be appropriate for the findings and outcome in this case to reflect this failure and the missed opportunity to help Mr C to understand why he was stopped and searched and that there were legitimate reasons for taking this action.

8. Conclusion

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

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

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

The Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 required Police Scotland to introduce a statutory Code of Ethics. 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 a criminal or misconduct offence. The Code of Ethics is relevant to complaints of discrimination and should be considered by investigating or review officers when considering such complaints.

Similarly, PIRC investigating and review officers should have regard to PIRC's own Code of Conduct when undertaking investigations or CHRs.



Acknowledgement

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

Review of policy

This Policy is a formal PIRC policy and will be reviewed by the PIRC Senior Leadership Team (SLT) on at least a biannual basis.

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