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**Police and Crime Commissioner
for Dyfed Powys**

Dip Sampling – No Further Action

OPCC Findings & Feedback

March 2021

1.0 Overview

From the 2nd to the 4th of March 2021 the Office for the Police and Crime Commissioner (OPCC) reviewed a random selection of No Further Action (NFA) cases closed by the Professional Standards Department (PSD) for the last complete quarter i.e. October – December 2020. The main purpose of this scrutiny work, was to independently review whether it was reasonable and proportionate to take no further action in relation to the recorded complaint and whether the reasons for NFA were clearly explained to the complainant in-line with the Independent Office for Police Conduct (IOPC) Statutory Guidance 2020.

As at 8th February 2021, a total of 42 No Further Action (NFA) cases had been recorded and closed by PSD for the period 1st October 2020 – 31st December 2020.

2.0 Background, Purpose and Methodology

The background and purpose of the scrutiny dip sampling work, alongside how the dip sampling is carried out is detailed within the Complaints Scrutiny Framework and Dip Sampling Protocol, which are available on the PCC website via the following hyperlink: <http://www.dyfedpowys-pcc.org.uk/en/the-office/strategies-and-policies/>.

The Policing and Crime Act 2017 and supporting regulations made significant changes to the police complaints and disciplinary systems. They introduced a number of changes designed to achieve a more customer-focused complaints system in February 2020.

The complaints system was expanded to cover a broader range of matters. Formerly, the way that the term 'complaint' was defined meant that it needed to relate to the conduct of an individual officer. Now a complaint can be made about a much wider range of issues including the service provided by the police as an organisation. This was designed to increase access to the police complaints system. The IOPC expects forces to consider the information they keep about complaints with the intent of the reforms in mind – a positive obligation to increase access and to collect information that enables forces and local policing bodies to learn from complaints and other matters.

The changes allow for certain types of complaints to be resolved outside the requirements of Schedule 3 to the Police Reform Act 2002, while those that have been recorded may be handled reasonably and proportionately otherwise than by investigation, by investigation, or, in some circumstances, no further action may be taken. This allows for the police to quickly learn from, and make improvements based on, the complaints they handle.

3.0 Professional Standards No Further Action (NFA) Scrutiny Findings

The OPCC reviewed a total of 5 complaint cases closed between 1st October 2020 and 31st December 2020 (10% of the total cases closed during the time period). PSD provided the NFA complaint case reference numbers alongside relevant documentation, explaining the reason for the no further action outcome. In order to ensure that the OPCC considered a range of NFA cases, the OPCC requested five NFA closed complaint cases.

3.1 Understanding, recording and response to the complaint

Case 1

This complaint case demonstrated good practice regarding communication between the complainant and PSD. Documents provided to the OPCC from PSD evidenced PSD seeking further clarity from the complainant, to ensure a clear understanding of the complaint. The outcome letter provided a clear rationale outlining why no further action would be taken and the letter also included guidance relating to the most appropriate route for raising their particular complaint (as Dyfed Powys Police was not the correct complaint body).

Case 2

Within the IOPC Statutory Guidance 2020, it states *“There may be circumstances where some enquiries are needed before it can be established that it is reasonable and proportionate to take no further action to handle the complaint after recording it. These circumstances include, for example, where: It is established that the complaint has already been responded to and no new evidence or concerns are apparent. However, if a complainant raises similar issues to ones they have raised before, this is not necessarily a reason in itself to take no further action.”*

Having considered complaint reference Case 2, it was noted that PSD interpreted this complaint to be a complaint that had already been responded to and therefore took the decision that NFA was necessary. However, when the OPCC read the online complaint form completed by the complainant, it was noted that the online complaint form included complaint allegations which were not addressed in the PSD NFA outcome letter. The complainant subsequently requested a review with the IOPC and this was identified by the IOPC during their review – however, the review was not upheld by the IOPC, as the reviewing body are only able to consider the recorded complaint when carrying out a review.

The OPCC noted that an acknowledgement email had been sent to the complainant on 12th October 2020, however the acknowledgment did not include a summary of the recorded complaint either within the body of the email, nor as a separate case register document.

The OPCC have identified that the inclusion of a summary of the complaint at this stage of the complaint process, may have prevented the new allegations being overlooked and would invite PSD to consider this as a recommendation.

Case 3

Having considered Case 3, the OPCC noted that initially a dissatisfaction was handled efficiently and resolved in a timely manner by the relevant Inspector out on Division; however the complainant subsequently contacted the Force Contact Centre to report that they remained dissatisfied with the outcome of the Inspector’s actions and the Contact Centre contacted PSD to request a call back to this complainant.

However, the OPCC noted that there was no documentation to evidence the complaint raised with PSD i.e. evidence of the complainants initial contact with PSD, which was due to the complaint being made over the phone. It was noted that PSD had contacted the complainant by phone and sent an email to confirm the phone call; however the OPCC would suggest that at this stage, PSD could consider including a summary of the complaint to the complainant, as the complaint was taken over the phone, to confirm understanding.

Case 4

This complaint case demonstrated a good level of communication between PSD and the Force. The documentation provided by PSD to the OPCC evidenced that PSD had taken into consideration all of the information available to them, including Force information, to ensure that any response provided by PSD considered the safety of all individual(s) involved.

Case 5

Having considered the documentation provided to the OPCC, it is evidenced that PSD made clear attempts to contact the complainant, in order to gain a further understanding of the complaint. Documentation evidences that due to no response received by PSD from the complainant, no further action could be taken. An outcome letter with a clear rationale was provided to the complainant, informing the individual of the reason for no further action.

3.2 PSD Outcome Letter & Rationale for NFA

No Further Action

In terms of deciding whether it is reasonable and proportionate to take no further action, the Independent Office for Police Conduct (IOPC) Statutory Guidance 2020 states:

“12.13 Where it is decided that no further action can be taken as part of the reasonable and proportionate handling of a complaint, a detailed rationale for this should be provided to the complainant (in line with the duties around communicating the outcome of a complaint, and the right to apply for a review set out in paragraphs 17.67 – 17.74).”

Having considered all 5 cases, the OPCC are satisfied that a clear rationale was provided by PSD within their outcome letter to the complainant. It was noted that for one of the five cases considered, no further action could be taken as PSD were unable to contact the individual for further information. PSD still provided an outcome letter to the complainant to explain this rationale, which demonstrates clear communication from PSD with complainants.

Within the IOPC Statutory Guidance 2020, it states:

“17.70 In addition to providing the information in writing, it may also be appropriate to communicate this by other channels that may better meet any additional individual needs, i.e. to ensure that the complainant or interested person fully understands the decisions that have been made.”

In all 5 cases, the OPCC observed that PSD demonstrated evidence of why no further action would be taken in relation to the recorded complaint and the reasons identified fell within one of the below categories, as outlined in the IOPC Statutory Guidance 2020:

“12.10 Complaint handlers should seek to resolve a complainant’s concerns wherever possible and reasonable and proportionate to do so – even if it is only reasonable and proportionate to take limited steps (see paragraph 10.13). However, in some circumstances, it may not be reasonable and proportionate to take further action with a complaint after recording it. Circumstances where it may not be reasonable to take action with a complaint include (but are not limited to):

- *A complaint that is about the off-duty behaviour of a person serving with the police, which has no relevance to their role as a person serving with the police and, even if proved, would not discredit the police service or undermine public confidence in it.*
- *If the complaint is fanciful – this means that it is patently of a nature that no reasonable person could lend any credence to it. It is important to consider the complaint itself, rather than the alleged incident giving rise to the complaint.*
- *If the complaint would be better handled by another process, for example, a complaint to the Information Commissioner's Office.*
- *If the complaint contains too little information to be able to progress any enquiries, and attempts to clarify it with the complainant have been unsuccessful.”*

4.0 Conclusions and Recommendations

Conclusions

- Having reviewed all 5 closed complaint cases, the OPCC are satisfied that 4 out of 5 complaint cases were clearly understood by PSD.
- The OPCC are satisfied that for all 5 closed complaint cases, a detailed rationale was included within the outcome letter provided by PSD, to explain their decision to take No Further Action (NFA) to the complainant. All of the outcome letters were clear in the communication to the complainant.
- All 5 closed complaint cases provided update(s)/responses in a timely manner and within the timeframe recommended.
- For the one closed complaint case which required further information from the complainant, PSD clearly evidenced their attempts to contact the complainant.
- The OPCC observed that PSD demonstrated good practice, in relation to their communication with the Force, taking into consideration all of the information available to them, in order to ensure the safety of all individual(s) involved. This demonstrates that PSD have an awareness of how their handling of complaints can impact on the work undertaken by the Force and the individuals that contact the Force.

Recommendations

- As outlined in Cases 2 & 3, it is recommended that as part of initial contact with the complainant, a summary of the complaint is provided within the acknowledgement email/letter, to ensure that both PSD and the complainant have a clear audit trail of the understanding/summary of the recorded complaint. The introduction of this recommendation into the initial process would potentially remove any further complaints being raised by the complainant, as a result of part of their allegations being overlooked in the initial recording stage.

5.0 Professional Standards Department Comments

The Professional Standards Department is committed to continuous improvement and is always looking for opportunities to improve its working practices,

Therefore, the Department welcomes the scrutiny work of the OPCC in respect of complaint handling and, in line with the above, it is pleasing to see that the feedback from this dip sampling exercise is largely positive with only very minor issues being highlighted in two of the cases and reflected in the aforementioned recommendation.

It should be noted that this recommendation has previously been discussed in detail at the regular PSD / OPCC liaison meeting with the IOPC where it was agreed in that forum that this was not a requirement of the IOPC Statutory Guidance. Therefore, in accordance with this previous discussion, whilst the recommendation is acknowledged it will not be implemented for the reasons previously given.

For completeness, specific responses are provided below in respect of the 2 cases in question:

- Case 2

The OPCC noted that an acknowledgement email had been sent to the complainant on 12th October 2020, however the acknowledgment did not include a summary of the recorded complaint either within the body of the email, nor as a separate case register document.

The OPCC have identified that the inclusion of a summary of the complaint at this stage of the complaint process, may have prevented the new allegations being overlooked and would invite PSD to consider this as a recommendation.

PSD response:

It should be clarified that the email sent on the 12th October 2020 was a one line acknowledgement from the PSD administration function, the purpose of which was simply to let the complainant know that we had received their complaint. It was just a courtesy email as opposed to a formal recording / decision letter. The complaint had not even been read at this stage.

Once the complaint had been properly considered/recorded by the Appropriate Authority, a summary of the complaint (case register) was provided to the complainant along with the NFA outcome letter.

- Case 3

The OPCC noted that there was no documentation to evidence the complaint raised with PSD i.e. evidence of the complainant's initial contact with PSD, which was due to the complaint being made over the phone. It was noted that PSD had contacted the complainant by phone and sent an email to confirm the phone call; however the OPCC would suggest that at this stage, PSD could consider including a summary of the complaint to the complainant, as the complaint was taken over the phone, to confirm understanding.

PSD response:

There may be some confusion in respect of the process taken in respect of this particular case.

The complaint was handled entirely by a local inspector outside of schedule 3. The complainant made direct contact with the local inspector who (positively and in the spirit of a customer focussed approach) assumed immediate ownership and resolved the complaint in a reasonable and proportionate manner before PSD were aware of it.

PSD became sighted on the complaint on **26th October 2020** when the inspector contacted the Department to make us aware of the complaint and to let us know what

he had done to resolve it. The inspector maintained communication with the complainant throughout his handling of the matter.

Ordinarily, we would have just logged this as an Outside Schedule 3 complaint with no need to write to the complainant (as the inspector had already updated them). However, as this complaint contained a perceived discrimination allegation (albeit fatuous and meritless), in order to comply with legislation we decided at that point to record it as a Schedule 3 complaint and send a formal letter to the complainant in the interests of procedural correctness and to afford them their statutory appeal right.

On **Friday 30th October 2020**, the complainant contacted the FCC asking for a return call from PSD. It is pleasing to see that the PSD Complaint and Dissatisfaction Resolution Officer duly returned the complainant's call the next working day on **Monday 2nd November 2020** and followed this up with an e-mail on **3rd November 2020**. The complainant was sent the NFA outcome letter on the same day.

It is our position that sending any additional communication would have been unnecessarily bureaucratic, particularly as it was clear from the inspector's engagement with the complainant that the complaint had been fully understood (*it is positive to note that the inspector separated the complainant's concerns into 4 specific allegations and addressed them individually in order for the complainant to understand the outcome*). This position is re-affirmed by the by the return phone call and follow up e-mail from the PSD Complaint and Dissatisfaction Resolution Officer who confirmed with the complainant that their concerns had been recorded.

Finally, it is worth noting that there was no request for a review submitted by the complainant which would indicate that they were satisfied with what had been recorded and the outcome once it was presented formally and in writing by PSD, or at least they accepted the position and saw no merit in challenging it.

Gavin Lemon (PSD Senior Manager)
30.3.21