

**AN AGREEMENT**

**Under section 26F of the Police Reform Act 2002**

**BETWEEN**

**THE INDEPENDENT COMMISSION FOR RECONCILIATION AND  
INFORMATION RECOVERY**

**AND**

**THE DIRECTOR GENERAL OF THE INDEPENDENT OFFICE FOR  
POLICE CONDUCT**

**IN PURSUANCE** of section 26F of the 2002 Act and with the consent of the Secretary of State for the Home Department, the Director General of the IOPC and the ICRIR agree as follows:

**I Citation, commencement and extent**

1. This agreement may be cited as the ICRIR and IOPC Agreement 2024 and shall come into effect on 1 May 2024.
2. In accordance with section 26F(7) of the 2002 Act, this Agreement has no effect in relation to anything done by a designated ICRIR officer outside of England and Wales.

**II Interpretation**

3. For the purposes of this agreement -
  - a. "the 2002 Act" means the Police Reform Act 2002, as amended;
  - b. "the 2023 Act" means the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, as amended;
  - c. "the 2020 Regulations" means the Police (Complaints and Misconduct) Regulations 2020;
  - d. "the ICRIR" means the Independent Commission for Reconciliation and Information Recovery
  - e. "ICRIR officer" means a person employed or seconded to be an officer of the ICRIR
  - f. "designated ICRIR officer" means a person employed or seconded to be an officer of the ICRIR, including the Commissioner for

Investigations, and designated under section 6 of the 2023 Act with the powers and privileges of a constable.

- g. “the IOPC” means the Independent Office for Police Conduct.
- a. “Troubles” has the same meaning as in the 2023 Act, namely the events and conduct that related to Northern Ireland affairs and occurred during the period beginning with 1 January 1966, and ending with 10 April 1998

### **III      Introduction**

- 1. The Director General of the IOPC is appointed under the 2002 Act. The Director General’s statutory functions include to secure suitable, efficient and effective arrangements for the handling of complaints, conduct matters and DSI matters involving persons serving with the police, with an appropriate degree of independence, and in which the public have confidence, in relation to police forces in England and Wales. Part 2 of the 2002 Act provides for the handling of complaints, conduct matters and DSI matters involving persons serving with the police.
- 2. The ICRIR is established by the 2023 Act. It consists of the Chief Commissioner, Chief Executive Officer, the Commissioner for Investigations and other Commissioners who are appointed under the 2023 Act. The statutory functions of the ICRIR include to carry out reviews of deaths that were caused by conduct forming part of the Troubles, having regard to the general interests of persons affected by Troubles-related deaths and serious injuries.
- 3. By virtue of section 6 of the 2023 Act, the Commissioner for Investigations has the powers and privileges of a constable and the power to designate any other ICRIR officer as a person having the powers and privileges of a constable. This agreement confers functions on the IOPC in respect of the exercise by designated ICRIR officers, including the Commissioner for Investigations, of those powers and privileges.

#### **IV Application of Part 2 of the Police Reform Act 2002 and associated regulations**

It is the intention of the parties that, so far as is relevant, and with the modifications set out in section VI below:

4. Part 2 of the 2002 Act, the statutory guidance made thereunder and the 2020 Regulations shall apply to a designated ICRIR officer in respect of any complaint, conduct or DSI matter that comes to the attention of the Appropriate Authority on or after 1 May 2024, as if the ICRIR were a force, the Chief Executive Officer were a local policing body, the Commissioner for Investigations were a chief officer and designated ICRIR officers were persons serving with the police.
5. The modifications set out below in section VI are intended to limit:
  - The scope of this agreement and the IOPC's oversight to:
    - i. designated officers in the exercise of the powers and privileges of a constable.
    - ii. matters that the AA must, or may, refer to the IOPC.
  - The matters that must be referred to the IOPC to only those complaints and conduct matters that the AA assess as involving potential criminal conduct and/or gross misconduct.
6. Provisions in the 2002 Act and 2020 regulations in relation to the taking of accelerated misconduct proceedings, a reflective practice review process, former officers and the options in respect of matters involving chief officers are also omitted.

#### **VI Modifications**

7. Part 2 of the 2002 Act applies as if:

For section 10 there were substituted –

10(1) The functions of the Director General shall be –

- (a) to secure the maintenance by the Director General and the ICRIR, of suitable arrangements with respect to the matters mentioned in subsection (2);
- (b) to keep under review all arrangements maintained with respect to those matters;
- (c) to secure that arrangements maintained with respect to those matters comply with the requirements of the following provisions of this Part, are efficient and effective and contain and manifest an appropriate degree of independence;
- (d) to secure that public confidence is established and maintained in the existence of suitable arrangements with respect to those matters and with the operation of the arrangements that are in fact maintained with respect to those matters;
- (e) to make such recommendations, and to give such advice, for the modification of the arrangements maintained with respect to those matters, and also of practice in relation to other matters, as appear, from the carrying out by the Director General of the Director General's other functions, to be necessary or desirable;

(2) Those matters are—

- (a) the handling of complaints made about the conduct of a designated ICRIR officer in connection with the exercise by that officer of the powers and privileges of a constable which the appropriate authority –
  - (i) has a duty to refer to the Director General, or
  - (ii) may refer to the Director General;
- (b) the recording of matters from which it appears –
  - (i) that there may have been conduct by a designated ICRIR officer, in connection with the exercise of the powers or privileges of a constable, which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings, and
  - (ii) that conduct or behaviour is conduct or behaviour which the appropriate authority has a duty to refer to the Director General, or may refer to the Director General;

- (c) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a designated ICRIR officer in the course of their exercise of the powers and privileges of a constable;
- d) the manner in which any such complaints or matters as are mentioned in paragraph (b) or (c) are investigated or otherwise handled and dealt with.

(3) It shall be the duty of the Director General –

- (a) to exercise the powers and perform the duties conferred on the Director General by the following provisions of this Part in the manner that the Director General considers best calculated for the purpose of securing the proper carrying out of the Director General's functions under subsection (1); and
- (b) to secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by persons in relation to whose conduct the Director General has functions.

(4) Subject to the other provisions of this Part, the Director General may do anything which appears to it to be calculated to facilitate, or is incidental or conducive to, the carrying out of its functions under this Part.

(5) The Director General may, in connection with the making of any recommendation or the giving of any advice to any person for the purpose of carrying out its functions under paragraph (1)(e) impose any such charge on that person for anything done by the Director General for the purposes of, or in connection with, the carrying out of its function as it thinks fit.

For section 12 there were substituted –

12(1) In this Part references to a complaint are references to any complaint about the conduct of a designated ICRIR officer in connection with the exercise of the powers and privileges of a constable, which is made (whether in writing or otherwise) by or on behalf of a member of the public –

- (a) who claims to be the person in relation to whom the conduct took place;
- (b) who claims to have been adversely affected by the conduct;
- (c) who claims to have witnessed the conduct; or
- (d) a person acting on behalf of a person falling within any of paragraphs (a) to (c).

- In this Part “conduct matter” means (subject to the following provisions of this section and any regulations made by virtue of section 23(2)(d)) any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a designated ICRIR officer, in connection with the exercise of the powers and privileges of a constable, may have –

1. committed a criminal offence; or
2. behaved in a manner which would justify the bringing of disciplinary proceedings.

(3) In this Part (death or serious injury matter” (or “DSI matter” for short) means any circumstances (other than those which are or have been the subject of a complaint or which amount to a conduct matter) –

- (a) in or in consequence of which a person has died or has sustained serious injury; and
- (b) in relation to which the requirements of either subsection (4) or subsection (5) are satisfied.

(4) The requirements of this subsection are that at the time of the death or serious injury the person –

- (a) had been arrested by a designated ICRIR officer and had not been released from that arrest; or
- (b) was otherwise detained in the custody of a designated ICRIR officer.

(5) The requirements of this subsection are that –

- (a) at or before the time of the death or serious injury the person had contact (of whatever kind, and whether direct or indirect) with a designated ICRIR officer in the course of their exercise of the powers or privileges of a constable; and
- (b) there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the death or serious injury.

(6) In subsection (3) the reference to a person includes a designated ICRIR officer, but in relation to such a person “contact” in subsection (5) does not include contact that he has whilst acting in the execution of his duties.

(7) The complaints that are complaints for the purposes of this Part by virtue of subsection (1)(b) do not, except in a case falling with subsection (8), include any where the person in question claims to have been adversely affected as a consequence only of having seen or heard the conduct, or any of the alleged effects of the conduct.

(8) A case falls within this subsection if –

- (a) it was only because the person in question was physically present, or sufficiently nearby, when the conduct took place or the effects occurred that he was able to see or hear the conduct or its effects; or
- (b) the adverse effect is attributable to, or was aggravated by, the fact that the person in relation to whom the conduct took place was already known to the person claiming to have suffered the adverse effect.

(9) In this section, “*the person in question*” means the person making the complaint or the person on whose behalf the complaint is being made.

(10) For the purposes of subsection (1)(c) a person shall be taken to have witnessed conduct if, and only if –

- (a) he acquired his knowledge of that conduct in a manner which would make him a competent witness capable of giving admissible evidence of that conduct in criminal proceedings; or

(b) he has in his possession or under his control anything which would in any such proceedings constitute admissible evidence of that conduct.

(11) For the purposes of this Part a person is not to be taken to have authorised another person to make a complaint on his behalf unless –

(a) that other person is for the time being designated for the purposes of this Part by the Director general as a person through whom complaints may be made, or he is of a description of persons so designated; or

(b) the person so acting has been given, and is able to produce, the written consent of the person on whose behalf the person is acting.

In section 29 of the 2002 Act there were the following substituted definitions –

*“the appropriate authority”* – in relation to a designated ICRIR officer or in relation to any complaint, conduct matter or investigation relating to the conduct of such a person, means -

- (i) If that person is the Commissioner for Investigations, the Chief Executive Officer; and
- (ii) If he is not, the Commissioner for Investigations.

*“chief officer”* means the Commissioner for Investigations

*“disciplinary proceedings”* means - any proceedings or management process in accordance with which the conduct of the designated ICRIR officer is considered in order to determine whether it is misconduct or gross misconduct and if so whether, as a result, any action is to be taken in relation to it;

*“gross misconduct”* means a breach of the ICRIR’s Code of Conduct so serious that it warrants dismissal.

*“misconduct”* means a breach of the ICRIR’s Code of Conduct.

“unsatisfactory performance proceedings” in relation to a designated ICRIR officer, means any proceedings or management process in accordance with which the performance of the ICRIR is considered in order to determine whether it is unsatisfactory or whether, as a result, any action is to be taken in relation to it.

8. Schedule 3 of the 2002 Act applies as if:

After paragraph 4(1) there were inserted –

4(1A) The obligation on the appropriate authority under sub-paragraph (1)(a) or (b) to refer a complaint about the conduct of a designated ICRIR officer arises only if the appropriate authority is satisfied that the complaint contains an indication that the person may have –

- (a) committed a criminal offence, or
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings and that such behaviour (if it had taken place) would be likely to lead to the termination of that person’s office.

For paragraph 4A(1) there were substituted –

(1) Where a complaint of a description specified at paragraph 4(1), (2) or (3), or regulation 4(1) of the Police (Complaints and Misconduct) Regulations 2020, comes to the attention of the Director General otherwise than by having been referred under paragraph 4, the Director General may treat that complaint as having been referred to the Director General.

Paragraph 5(1A) to (1C), 14(1A) to (1C) and 14D(1A) to (1C) in relation to the investigation of Chief Officers were omitted.

For paragraph 6 there were substituted –

6(1) This paragraph applies where a complaint has been recorded by the appropriate authority unless the complaint –

- (a) is one which has been, or must be, referred to the Director General, and
- (b) is not for the time being either referred back to the authority under paragraph 5 (duties of the Director General on reference under paragraph 4) or the subject of a determination under paragraph 15 (power of the Director General to determine the form of an investigation).

(2) The appropriate authority shall not be required by virtue of any provisions under this Part to take any action in relation to the complaint but may handle the complaint in whatever reasonable and proportionate manner it thinks fit, which may include taking no action in relation to the complaint.

Paragraph 6A in relation to reviews of complaints dealt with other than by investigation were omitted.

After paragraph 13(1) there were inserted –

13(1A) The obligation on the appropriate authority to refer a conduct matter under sub-paragraph 1(a) or (b) in respect of a designated ICRIR officer arises only if the appropriate authority is satisfied that the matter is one in respect of which there is an indication that the person may have –

- (a) committed a criminal offence, or
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings and that such behaviour (if it had taken place) would be likely to lead to the termination of that person's office.

For paragraph 13A(1) there were substituted –

(1) Where a conduct matter of a description specified at paragraph 13(1), (2) or (3), or regulation 7(1) and (3) of the Police (Complaints and Misconduct) Regulations 2020 comes to the attention of the Director General otherwise than by having been referred under paragraph 13, the Director General may treat that matter as having been referred to the Director General.

For paragraph 16(3), (4) and (5) there were substituted –

- It shall be the duty of the appropriate authority to appoint an ICRIR officer to investigate the complaint or matter.
- It shall be the duty of the appropriate authority to appoint a Commissioner or an ICRIR officer not under the direction and control of the chief officer, to investigate a complaint or conduct matter relating to the conduct of the chief officer, or a DSI in relation to which the relevant officer is the chief officer.

Paragraph 20A were omitted.

For paragraph 24C(3) there were substituted –

24 The Director General may notify the appropriate authority that it must determine whether or not the performance of an ICRIR officer is unsatisfactory, and what action (if any) the authority will take.

For paragraph 25 there were substituted –

25 Reviews with respect to an investigation

- (1) Where a complaint has been subjected to an investigation by the appropriate authority on its own behalf the complainant has the right to apply to the Director General for a review of the outcome of the complaint.
- (2) The Director General shall notify the following of an application for a review under this paragraph –
  - (a) the appropriate authority
  - (b) every person entitled to be kept properly informed in relation to the complaint, and
  - (c) the person complained against (if any), unless it appears to the Director General that to do so might prejudice any proposed review or re-investigation of the complaint.
- (3) Where a review has been applied for under this paragraph and the Director General so requires, the appropriate authority shall provide the Director General with –

- (a) a copy of the report of the investigation, and
- (b) such information concerning the authority's determinations under paragraph 24 as is described in a notification given by the Director General to the authority.

(4) Where a review has been applied for under this paragraph, the Director General must determine whether the outcome of the complaint is a reasonable and proportionate outcome.

(5) In making a determination under paragraph (4), the Director General may review the findings of the investigation.

(6) Where, following a review under this paragraph, the Director General determines that the outcome of the investigation is not a reasonable and proportionate outcome, the Director General may-

- (a) make the Director General's own findings (in place of, or in addition to, findings of the investigation);
- (b) direct that the complaint be re-investigated, or
- (c) make a recommendation to the appropriate authority in respect of any person whose conduct is in question, that –
  - (i) the person has a case to answer in respect of their conduct or has no case to answer;
  - (ii) disciplinary proceedings of the form specified in the recommendation are brought against that person;
  - (iii) any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct as may be so specified;
- (d) make a recommendation under paragraph 28ZA.

(7) Where the Director General makes a recommendation under paragraph (6)(c)

- (a) the appropriate authority must notify the Director General whether it accepts the recommendation and, if it does, set out in the notification the steps that it is proposing to take to give effect to it, and
- (b) sub-paragraphs (4) to (8), (9)(b) of paragraph 27 apply in relation to the recommendation as if it had been made under that paragraph.

(8) Where, following a review under this regulation, the Director General determines that the report of the investigation indicates that a criminal

offence may have been committed by a person (if any) to whose conduct the investigation related and that –

- (a) The circumstances are such that, in the opinion of the Director General, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions, the Director General shall direct the appropriate authority to —
  - (i) notify the Director of Public Prosecutions, of the Director General's determination; and
  - (ii) send the Director a copy of the report.
- (9) The Director General shall give notification of the outcome of a review under this paragraph and of its reasons for the determination under subparagraph (4) to —
  - (a) the appropriate authority;
  - (b) the complainant;
  - (c) every person entitled to be kept properly informed in relation to the complaint section 21; and
  - (d) except in a case where it appears to the Director General that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against.
- (10) It shall be the duty of the appropriate authority to comply with any directions given to it under this paragraph.

In paragraph 29 there were the following substituted definitions:

*“gross misconduct”* means a breach of the ICRIR’s Code of Conduct so serious that it warrants dismissal.

*“misconduct”* means a breach of the ICRIR’s Code of Conduct.

*“the Standards of Professional Behaviour”* means the standards so described in the ICRIR’s Code of Conduct.

Paragraph 30, 31 and 32 in relation to reviews and the relevant review body were omitted

9. The 2020 Regulations apply as if:

In regulation 1 there were the following substituted definitions:

“the Conduct Regulations” means the ICRIR Code of Conduct, Conduct and Discipline policy, associated procedures and guidance.

“disciplinary action” means any action that can be taken on conclusion of disciplinary proceedings.

“disciplinary proceedings” in relation to an ICRIR officer, means any proceedings or management process in accordance with which the conduct of the ICRIR officer is considered in order to determine whether it is misconduct or gross misconduct and if so whether, as a result, any action is to be taken in relation to it;

“performance proceedings” in relation to an ICRIR officer, means any proceedings or management process in accordance with which the performance of the ICRIR is considered in order to determine whether it is unsatisfactory or whether, as a result, any action is to be taken in relation to it.

“senior officer” means an officer of the grade of Assistant Commissioner for Investigations.

“Standards of Professional Behaviour” means the standards so described in the ICRIR’s Code of Conduct.

The definition of and all references to “*police staff member*”, “*reflective practice review process*”, and “*special conditions*” were omitted.

Regulation 5, 8 and 10 in relation to the investigation of a Chief Officer were omitted.

For regulation 12(c) there were substituted –

- (c) in the case where the conduct of a senior ICRIR officer is being investigated, if the person is an ICRIR officer of at least the same grade.

After regulation 12 there were inserted –

12A. If the appropriate authority is of the opinion that it is not possible to appoint an ICRIR officer or designated ICRIR officer to investigate a complaint or matter, they must make arrangements with a chief officer of police or the Director General of the National Crime Agency to have a person serving with the police or a National Crime Agency officer appointed to investigate the complaint or matter.

For regulation 18(2) there were substituted –

- (2) the person concerned may choose –
  - (a) an ICRIR officer
  - (b) a designated ICRIR officer; or
  - (b) an official of a trade union,  
who is not otherwise involved in the matter to act as that person's ICRIR officer's friend.

In regulation 18(3) for “police friend”, insert “ICRIR officer's friend”.

For regulation 18(4) there were substituted –

- (4) If the ICRIR officer's friend is an ICRIR officer or a designated ICRIR officer the ICRIR must permit them to use a reasonable amount of work time for the purposes mentioned in sub-section (3)

Regulation 18(5) were omitted.

Regulation 23 in relation the provision of a police friend to staff members etc. were omitted.

Regulation 24, 25, 26 in relation to accelerated proceedings were omitted.

Regulation 29(1)(a), (3), (4) and “paragraph 6A(4) or” in sub-paragraph (9) were omitted

In regulation 29 for “relevant review body”, insert “Director General”.

Regulation 32 in relation to the relevant review body were omitted.

For regulation 33(2) there were substituted:

33(2) The matters are –

- (a) in the case of the complainant, in relation to any right to apply for a review conferred on the complainant by paragraph 25 of Schedule 3 (review) –
- (b) (i) the time limit for applying for a review, and
- (c) The effect of regulation 29(5) (applications for a review: requirements)

Regulation 33(b)(iv) referring to the reflective practice review process were omitted.

For regulation 42 there were substituted:

42 Where a complaint or conduct matter relates to the conduct of a person who has ceased to be a person serving with the police since the time of the conduct, the provisions of Part 2 of the 2002 Act apply in relation to such a person as if they did not include any requirement to determine whether disciplinary proceedings or performance proceedings should be brought against a person whose conduct is the subject-matter of a report.

For regulation 46 there were substituted:

46(1) Subject to the following provisions of this regulation, the Commissioner for Investigations may delegate the exercise or performance of all or any of the powers and duties conferred or imposed on them to a senior ICRIR officer or member of ICRIR staff who, in the

opinion of the Commissioner for Investigations, is of at least a similar level of seniority.

(2) Subject to paragraph (3), where a complaint is being handled by the Commissioner for Investigations otherwise than by making arrangements for the complaint to be investigated, they may delegate the exercise or performance of all or any of the powers and duties conferred or imposed on them to any ICRIR officer or designated ICRIR officer.

(3) The Commissioner for Investigations must not delegate the exercise or performance of any power or duty under this provision to a person if to do so could reasonably give rise to a concern as to whether the person could act impartially.

Regulation 47 in relation to disciplinary proceedings for police staff members etc. were omitted.

For regulation 50 there were substituted –

50 The Chief Executive Officer may delegate the exercise or performance of all or any of the powers and duties conferred or imposed on them by virtue of being conferred or imposed on the local policing body by or under Part 2 of the 2002 Act to any person, other than a designated ICRIR officer.

Schedule 2 setting out the modifications to the legislation in relation to former officers were omitted.

## **VII      Funding**

10. All work carried out by the IOPC in connection with a referral of a complaint, conduct matter or DSI matter in accordance with the arrangements set out in this Agreement, including any investigation, will be reasonably reimbursed by the ICRIR.
11. The IOPC will determine and advise the ICRIR of the actual costs incurred and to be reimbursed on a case-by-case basis and in accordance with any

agreement reached between the parties. In the event of disagreement, the matter may be referred to the Home Office.

## **VIII Responsibilities of the Parties**

12. The ICRIR will ensure that the Chief Executive Officer and Commissioner for Investigations exercise all of the duties and obligations imposed on, and the rights and powers granted to the local policing body and appropriate authority under Part 2 of the 2002 Act and the regulations and statutory guidance made thereunder.
13. The Director General will exercise the functions, duties and rights either imposed on, or granted to, the Director General under the 2002 Act as if the ICRIR is a force to which the 2002 Act applies.

Signed by



Date: 1<sup>st</sup> May 2024

On behalf of the Independent Office for Police Conduct

Signed by



Date: 3.v.2024

On behalf of the Independent Commission for Reconciliation and Information Recovery

Approved by .....



Date..14th May 2024.....

The Rt Hon Chris Philp MP, Minister for Crime, Policing and Fire, on behalf of the Secretary of State for the Home Department  
In accordance with Section 26F(3) of the 2002 Act