

# **WHY CPIA TAKES PRIORITY OVER HOME OFFICE RECORDING RULES (HOCR) EVERY TIME**

## **A judicial, statutory and constitutional briefing**

### **Note on scope**

This document is authored as a legally framed public briefing. It is designed to be readable, but anchored in the statutory hierarchy. It does not offer legal advice.

### **1. The issue in one sentence**

When police receive allegations and evidential material, statutory duties govern the response; administrative guidance cannot suspend or re-label those duties out of existence.

### **2. The legal hierarchy (what outranks what)**

2.1 Parliament makes law. Public bodies must act within it.

2.2 In any conflict, the order of authority is:

- Primary legislation (Acts of Parliament)
- Secondary legislation (Regulations made under an Act)
- Statutory Codes of Practice (where made under an Act)
- Common law duties (judge-made duties binding on public authorities)
- Guidance, policy, circulars, internal instructions (administrative material)

2.3 The Home Office Crime Recording Rules (HOCR) sit at the bottom of that hierarchy. The Criminal Procedure and Investigations Act 1996 (CPIA) sits at the top.

### **3. What CPIA is for (in plain judicial terms)**

3.1 CPIA is a statutory safeguard. It exists to prevent miscarriages of justice by imposing mandatory duties around the handling of investigative material - creation, retention, review and disclosure.

3.2 CPIA is not optional. It is not a ‘best practice’ standard. It is a legal framework designed to ensure that criminal justice is not distorted by selective recording, selective retention, or selective disclosure.

3.3 CPIA duties attach to the factual reality of investigative activity. They do not depend upon whether a police force chooses to label activity as a ‘review’, ‘assessment’, ‘screening’, ‘triage’ or ‘incident’.

#### **4. What HOCR is (and what it is not)**

4.1 HOCR is guidance about crime recording for statistical and governance purposes. It provides definitions and thresholds for what should be recorded on crime systems.

4.2 HOCR does not repeal, amend or dilute CPIA. HOCR cannot convert a statutory duty into a discretionary choice.

4.3 If HOCR is applied in a manner which produces a practical outcome inconsistent with CPIA (e.g., ‘do not record’, ‘reject’, ‘treat as non-crime’, ‘no investigation’), then HOCR must yield to CPIA.

## **5. The decisive point: statute attaches to facts, not labels**

5.1 A public authority cannot avoid statutory obligations by re-categorisation. The courts must look to substance.

5.2 If officers receive allegations, receive evidential material, task personnel to review it, reach evaluative conclusions and manage the matter within a command structure, that is, in substance, investigative activity.

5.3 Once investigative activity exists, CPIA duties arise by operation of law. The lawful response is to comply, not to invent a category that purports to sit outside of the statutory scheme.

## **6. Practical consequences if HOCR is misused against CPIA**

6.1 A ‘do not record’ posture can produce predictable outcomes:

- No auditable crime record (or a distorted one)
- No clear investigative decision log
- No stable retention/disclosure trail

- Evidential degradation and loss
- Impaired accountability and public confidence

6.2 The constitutional harm is not rhetorical. A system which can ‘reject’ allegations of serious wrongdoing at the gate without recording, auditing and lawful decision-making is a system capable of self-protection.

## **7. CPIA integration: the minimum lawful approach**

7.1 Where allegations and evidential material are received, the minimum lawful approach is:

- Ensure the matter is properly recorded in an auditable manner.
- Preserve all received material and metadata.
- Identify and pursue reasonable lines of enquiry (including those which point away from criminality).
- Maintain an evidential schedule and disclosure discipline commensurate with CPIA duties.
- Ensure decisions to close or take no further action are reasoned, timed and capable of scrutiny.

7.2 A public body cannot lawfully take the benefits of investigative activity (collecting/receiving material;

forming conclusions; coordinating communications) whilst simultaneously rejecting the burdens (auditability; retention; disclosure safeguards).

## **ANNEX**

### **CRN 6029679/21: substance versus portrayal**

#### **A1. Purpose**

This annex compares

- how the Metropolitan Police Service portrayal of its handling of CRN 6029679/21 has been framed, and
- what statutory handling would ordinarily require, assessed at the level of principle.

#### **A2. Observable features (substance)**

The following features, when present, are strong indicators of investigative activity in substance:

- A formal allegation of criminality is received.
- A crime reference number is issued.
- Large volumes of evidential material are received.
- Officers are tasked to review/assess the material.
- Evaluative conclusions are reached (e.g., ‘nothing indicates offences’; ‘no grounds’).
- Senior command is engaged and communications lines are agreed.

In combination, these features are difficult to reconcile with a proposition that ‘nothing investigative’ occurred.

### **A3. Common administrative portrayals (labels)**

Portrayals such as ‘review’, ‘assessment’, ‘screening’, or ‘no investigation’ are labels.

Labels may describe internal workflow, but they do not determine legal consequences.

### **A4. Statutory expectations (what ought to have occurred)**

Where allegations and material are received and assessed, statutory expectations typically include:

- A clear auditable record of the allegation, receipts and material provenance.
- A reasoned investigative decision trail (including who decided what and when).
- Preservation and retention sufficient to support disclosure and later scrutiny.
- A closure decision which is timely, procedurally coherent and factually accurate.
- If new material is received, lawful reconsideration mechanisms ought to follow.

A force may lawfully conclude that no offences are disclosed. But it must reach that conclusion through a lawful process capable of later explanation and audit.

## **A5. The legal risk in ‘no investigation’ framing**

If (i) officers receive evidence, (ii) carry out an evaluative process, and (iii) coordinate national messaging about that evaluative process, then a later assert that ‘no investigation existed’ an inherent tension is created: the

system has performed investigative functions whilst at the same time, denying that it did so.

That tension matters because it affects: (a) the existence of statutory duties, (b) the integrity of disclosure, (c) candour in litigation and (d) public accountability.

## **8. Conclusion**

8.1 Statute is not optional and guidance is not law.

CPIA duties arise from the facts on the ground.

8.2 Where a policing posture produces ‘no record, no answer, no scrutiny’, the legal question is not whether the posture is administratively convenient, but whether it is lawful.

8.3 In any contest between CPIA and HOGR, CPIA takes priority every time - no exception.

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