

Report to the Thames Valley Police & Crime Panel

Title: Dealing with Complaints Against the Police & Crime Commissioner

Date: 6 December 2012

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Background

1. Police and Crime Panels have a statutory duty to consider non-criminal complaints against the PCC and his / her deputy.

2. Non-criminal complaints against the PCC received either directly, from the PCC Secretariat or referred by the Independent Police Complaints Commission (IPCC), are the responsibility of the PCP to consider. Other categories of complaint will be handled by:

- The PCC in the case of complaints against the Chief Constable
- Thames Valley Police Professional Standards Department in the case of other complaints against the police
- The Independent Police Complaints Commission (IPCC) in the case of serious complaints or misconduct

Handling Complaints: Statutory Duties

3. Duties in relation to the handling of complaints by the PCP are outlined in Statutory Instrument No. 62, *The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012*.¹ Home Office guidance on the regulations is included at Appendix B. The main provisions include:

- i. The duty to obtain and preserve evidence relating to the conduct in question (Reg. 8, p. 8)
- ii. The duty to record the complaint (Reg. 9, p.8)
- iii. Referral of serious complaints and conduct matters to the IPCC (Reg. 13, p. 10)
- iv. Record keeping: The IPCC determines the way that records relating to the following should be kept (reg. 34, p. 23):
 - Every complaint and purported complaint made to it
 - Every conduct matter recorded by it under regulation 11 or 12
 - Every exercise of a power or performance of a duty under Regulations

¹See: http://www.legislation.gov.uk/uksi/2012/62/pdfs/uksi_20120062_en.pdf

Proposed Arrangements for Handling Complaints

Proposed Delegated Authority to the Chief Executive of the Office of the Police & Crime Commissioner for Thames Valley

3.1. It is recommended that the Panel considers naming the Chief Executive of the Office of the PCC as the first point of contact for all complaints made against the PCC/DPCC and delegating the following powers and duties to the Chief Executive to act on the Panel's behalf:

3.1.1 to provide assistance, information and access to premises to the IPCC/its appointed investigator in relation to any investigation of a Serious Complaint or Conduct Matter by the IPCC;

3.1.2 upon receiving a Complaint, except where the Chief Executive is satisfied that the subject-matter of the Complaint is being/has been dealt with by means of criminal proceedings against the PCC/DPCC or the Complaint has subsequently been withdrawn in accordance with the Regulations, to determine whether the Panel is the appropriate police and crime panel to deal with it and (1) if not, to notify the appropriate panel or (2) if it is, to record the Complaint. Where the Chief Executive decides not to take action to notify the appropriate panel or record the whole or any part of the Complaint, he must notify the complainant of this decision and the grounds on which it was made;

3.1.3 where the Chief Executive becomes aware of a Conduct Matter (whether civil proceedings have been brought, are likely to be brought or otherwise), except where the matter has been recorded as a Complaint or is being/has been dealt with by means of criminal proceedings, to determine whether the Panel is the appropriate police and crime panel to deal with it and (1) if not, to notify the appropriate panel or (2) if it is, to record the Conduct Matter;

3.1.4 as soon as possible (and in any event no later than the end of the day after the day when it first became clear that the matter constitutes a Serious Complaint or Conduct Matter), to refer (in such manner as the IPCC specifies) a Serious Complaint or Conduct Matter to the IPCC. Where the IPCC notifies the Panel that it requires a Complaint or matter to be referred to it, the Chief Executive must comply as soon as possible and in any event no later than the end of the day after the day such notification was made. The Chief Executive must notify the complainant (where applicable), and the person to whose conduct the matter relates (unless a decision has been taken that it might prejudice a possible future investigation) of the referral;

3.1.5 In the case of 3.1.2, 3.1.3 or 3.1.4 above, if the Chief Executive considers that either there is an actual, or there could be a perceived, conflict of interest in respect of him taking the decision required, to refer the matter to the complaints sub-committee for it to take the decision, such referral to be made no later than 2 working days after identifying the actual or perceived conflict of interest;

3.1.6 where the Panel receives from a complainant (or via the IPCC) written notification signed by him (or his solicitor/authorised agent) that he withdraws the Complaint or that he does not wish any further steps to be taken in consequence of the Complaint, to record this and notify the IPCC (after which the Regulations cease to apply to the Complaint). This duty similarly applies in

relation to Complaints that have been referred by the Panel to the IPCC who is still handling the Complaint. Where the complainant fails to provide written notification signed accordingly, the Chief Executive must take the steps set out in Regulation 16(8). The Chief Executive must also notify the person complained about (unless a decision has been taken that it might prejudice a possible future investigation);

3.1.7 to comply with the various duties set out in Part 5 of the Regulations regarding the provision of copies of the Complaint to the parties involved (subject to any decision made otherwise than by the Chief Executive not to supply a copy of the complaint to the PCC/DPCC or to provide a copy in a form which keeps anonymous the identity of the complainant or of any other person in accordance with Regulation 31(2) – (3)) and record keeping;

3.1.8 to provide update reports to the Panel (frequency to be agreed) about all Complaints and other matters concerning the conduct of the PCC/DPCC covered by the Regulations, anything which is done under, or for the purposes of, any provision of the Regulations and any obligations to act, or refrain from acting, that have arisen under the Regulations, but have not yet been complied with or have been contravened; and

3.1.9 where a complaint is received and recorded and where action is required to be taken that falls within the delegated powers and duties of the complaints sub-committee (or other authorised individual), to refer the matter no later than 2 working days after the complaint has been recorded to the complaints sub-committee (via the Panel's scrutiny officer).

Proposed Delegated Authority to a complaints sub-committee

3.2 Some of the actions required to be taken to fulfil the Panel's duties outlined in Appendix 1 may not be delegated to the Chief Executive or are matters that may be so delegated but, to do so, might not manifest an appropriate degree of independence. It is therefore recommended that the Panel consider delegating authority to the Panel's scrutiny officer in consultation with the Chair of the Panel to convene a meeting of a complaints sub-committee of five Panel Members who shall have the following powers and duties to act on the Panel's behalf:

3.2.1 where a Complaint or Conduct Matter comes to the sub-committee's attention, to secure that all appropriate steps are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to the conduct in question and to comply with any directions given to the Panel by the IPCC in this regard. Such steps may include requesting other relevant parties to obtain or preserve evidence and issuing any appropriate directions to the PCC/DPCC to take specified steps for obtaining or preserving evidence;

3.2.2 where the Chief Executive considers that either there is an actual, or there could be a perceived, conflict of interest in respect of her taking the decision whether to record a Complaint or Conduct Matter, or in respect of her identifying a Serious Complaint for subsequent referral to the IPCC, and refers the matter to the complaints sub-committee for decision, to take that decision in accordance with the Regulations;

3.2.3 to provide assistance, information and access to premises to the IPCC/its appointed investigator in relation to any investigation of a Serious Complaint or Conduct Matter by the IPCC;

3.2.4 to consider whether not to supply a copy of the complaint to the PCC/DPCC (on the grounds that, to do so, might prejudice any criminal investigation or pending proceedings or would otherwise be contrary to the public interest) or to provide a copy in a form which keeps anonymous the identity of the complainant or of any other person in accordance with Regulation 31(2) – (3). Where a decision is made not to supply a copy of the complaint, to keep that decision under regular review;

3.2.5 where a complainant gives written notification (direct to the Panel or via the IPCC) that he withdraws the Complaint or that he does not wish any further steps to be taken in consequence of the Complaint, and the IPCC is not handling the Complaint (including situations where the IPCC has referred a Serious Complaint back to the Panel to deal with), the determination whether the complaint is one made about conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence and should therefore be treated as a Conduct Matter, in which case it shall be recorded and handled as such by the complaints sub-committee (i.e. the duty to refer the matter to the IPCC must be complied with, unless the IPCC takes the view that the Conduct Matter has, for the purposes of the Regulations, been referred back to the Panel);

3.2.6 the power to decide to disapply Part 4 (informal resolution of complaints) i.e. where a complaint falls within the specified description of complaints, a decision can be made to handle a matter otherwise than in accordance with Part 4 or should take no action in relation to it. Where a decision is made to handle a matter otherwise than in accordance with Part 4, to take the necessary steps to handle the matter accordingly. Where the complaints sub-committee considers it appropriate to do so, it may authorise the Chief Executive to take any action on behalf of the Panel in relation to the matter; and

3.2.7 to provide update reports to the Panel about all actions taken under the Regulations (including any obligations to act, or refrain from acting, that have arisen under the regulations, but have not yet been complied with or have been contravened) by the complaints subcommittee.

Proposed Delegated Authority to a complaints sub-committee to conduct the informal resolution process

3.3 With regard to the informal resolution procedure, the Regulations provide that the procedure must make provision for, as soon as practicable, giving the complainant and the person complained against an opportunity to comment on the complaint (if the latter chooses not to comment, the procedure must provide that this must be recorded in writing). The procedure should prohibit investigation of the complaint, however the Panel's exercise of its powers to require the person complained against to provide information or documents or attend before it to answer questions or give evidence will not be regarded as an investigation. The informal resolution procedure must provide for, as soon as practicable, the making of a record of the outcome of the procedure which must be sent to the complainant and the person complained about. The procedure should prohibit the tendering on behalf of the person complained against an

apology for his conduct unless that person has admitted the conduct in question and has agreed to the apology. No part of the record may be published by the Panel unless, having given the parties an opportunity to make representations about the proposed publication and having considered any such representations, the Panel considers that publication is in the public interest.

3.4 In accordance with the Regulations, as already indicated, in relation to Part 4 and the informal resolution procedure, the Panel may deal with the matter itself or by appointing a sub-committee, a single member of the Panel, or a person who is not a member of the Panel (but not a PCC or DPCC nor the Chief Executive) to secure the informal resolution of the complaint.

3.5 Although a single person may be authorised to act on the Panel's behalf in relation to the informal resolution of a complaint, it is proposed that, in its first year of operation, the Panel delegate authority to the Panel's scrutiny officer in consultation with the Chair of the Panel to convene a meeting of a complaints sub-committee of five Panel Members who shall have the following powers and duties to act on the Panel's behalf:

3.5.1 where a Complaint has been recorded (including a Serious Complaint that has been referred to the IPCC and then referred back to the Panel), to handle the matter in accordance with Part 4 of the Regulations (unless Part 4 has been disapplied and handled separately or in respect of which no further action is to be taken) and the Procedure attached at Appendix A. Where it appears that the matter has already been satisfactorily dealt with at the time it was brought to its notice, subject to any representations by the Complainant, the sub-committee may treat the matter as having been resolved;

3.5.2 the powers to require the person complained against to provide information or documents or attend before it to answer questions or give evidence (under sections 13(1) and 29(1) of the Police Reform and Social Responsibility Act 2011 respectively);

3.5.3 the power to determine whether, having given the parties an opportunity to make representations about the proposed publication of the record of the outcome of the informal resolution procedure and having considered any such representations, publication is in the public interest and the power to publish accordingly;

3.5.4 the power to decide that a complaint being handled in accordance with the informal resolution procedure should be referred to the IPCC. The complaints sub-committee should only make this decision where matters come to light during the informal resolution process which indicate the commission of a criminal offence, thus leading to the earlier decision as to whether or not the complaint was a serious complaint being reversed;

3.5.5 the power to authorise a single Panel Member or a person who is not a Panel Member (but who is not a PCC, a DPCC nor the Chief Executive) to take any action identified by the complaints sub-committee as part of the informal resolution process;

3.5.6 the IPCC may choose to refer a Serious Complaint (or a Complaint that it required to be referred to it) back to the Panel, in which case the subcommittee must handle it in accordance with Part 4 of the Regulations unless Part 4 has been disapplied and the matter has been handled

separately or in respect of which no further action is to be taken. A Conduct Matter referred back to the Panel may be dealt with by the subcommittee in whatever manner it thinks fit; and

3.6 In accordance with the Regulations, the Panel may provide in its informal resolution procedure for the matter to be remitted at any time to the Panel as a whole (whether at the request of the appointed sub-committee or person, the complainant or the person complained against, or otherwise) if the Panel is of the opinion that this will lead to a more satisfactory resolution of the complaint.

3.7 It is recommended that the Panel's scrutiny officer be authorised to notify the PCC of the name and address of the person to whom complaints should be directed (which will then be published by the PCC). In addition, in view of the likely frequency of Panel meetings, exceptional circumstances may occasionally arise under which it is necessary, and in the best interests of the Panel, for urgent action to be authorised and taken on its behalf, when such action does not fall within the scope of the delegations set out above. It is therefore recommended that the Panel's scrutiny officer be authorised, in consultation with the Chair of the Panel, to take any necessary urgent action in the best interests of the Panel.

3.8 As part of the complaints handling process, there is potential for additional meetings to be convened and the need for these as well as the costs arising from them will have to be kept under review in the context of the Panel's budget. The proposed delegations to the Chief Executive should assist in this regard.

RECOMMENDATIONS

It is recommended that the Panel:

- 1. Make the delegations to the Chief Executive set out in section 3.1**
- 2. Make the delegations to the Panel's scrutiny officer and a complaints sub-committee set out in section 3.2**
- 3. Make the delegations to the Panel's scrutiny officer and a complaints sub-committee set out in section 3.5 and approve the complaint handling process detailed at Appendix A**
- 4. Make the delegations to the Panel's scrutiny officer as set out in section 3.7**

APPENDIX A

Thames Valley Police & Crime Panel Procedure for Handling Non-Criminal Complaints against the PCC

- When the decision has been made to record a complaint that will not subsequently be referred to the Independent Police Complaints Commission (the IPCC), the Chief Executive of the Office of the PCC will:
 - refer the record, and copies of all the associated paperwork, to the Panel's scrutiny officer. This will be no later than two working days after the complaint has been recorded.
- On receipt of the complaint, the Panel's scrutiny officer will:
 - convene a meeting of the Complaints Sub-Committee, normally to be held within three weeks of the referral of the complaint,
 - write to the complainant, setting out timescales and providing details about the informal resolution procedure; and giving the complainant an opportunity to make further comments in support of his/her complaint (allowing him/her two weeks to respond). Where the Panel's scrutiny officer believes that the circumstances of the case are such that the Complaints Sub-Committee may decide to treat the complaint as having been resolved, he/she will ask the complainant to provide his/her representations in this regard for the Complaints Sub-Committee to take into account; and
 - write to the person complained about, setting out timescales and providing details about the informal resolution procedure; and giving him/her an opportunity to make comments in response to the complaint (allowing him/her two weeks to respond).
- The Panel's scrutiny officer will compile a brief report for the Complaints Sub-Committee, setting out the pertinent details of complaint, recording any failure by the person complained about to comment on the complaint and making suggestions for the next steps.
- The Complaints Sub-Committee will first consider whether the complaint has been satisfactorily dealt with and, subject to any representations by the complainant, may decide to treat the complaint as having been resolved. In such a case, the Complaints Sub-Committee's reasons will be recorded and notified to the parties.
- If, on considering the report, the Complaints Sub-Committee feels that the matter needs to be formally resolved, it will decide its course of action. In accordance with regulations, the Complaints Sub-Committee may not conduct an investigation. The Complaints Sub-Committee may exercise its delegated powers to require the person complained against to provide information or documents or attend before it to answer questions or give evidence, as this will not be regarded as an investigation. However, any other step intended to gather information about the complaint, other than inviting the comments of the complainant and the person complained against, will be likely to amount to investigation.
- The Complaints Sub-Committee will consider whether to devise an action plan (to be drawn up by the Panel's scrutiny officer) and in so doing will take into account any applicable guidance issued by the Secretary of State and may also consider any guidance issued by the IPCC

pursuant to section 22 of the Police Reform Act 2002 on local resolution. Any such action plan will include an indicative timeframe.

- Any such action plan may include (for example):
 - An explanatory letter being written by an officer of the Panel (or on behalf of the Complaints Sub-Committee),
 - An explanatory letter being written by an officer of the OPCC,
 - A suggested change to OPCC policy; or
 - A request that an apology is tendered (no apology may be tendered on behalf of the person complained against unless that person has admitted the alleged conduct and agreed to the apology).
- The Complaints Sub-Committee will also decide whether it wishes to:
 - reconvene to take any steps identified in the action plan,
 - authorise any named individual (who may not be a PCC, a DPCC or the Chief Executive of the Office of the PCC) to take any steps in accordance with the action plan;or
 - refer the matter to the Panel recommending that the identified action be taken.
- Once the actions from the plan have been completed, the matter may be referred back to the Complaints Sub-Committee or an authorised individual may determine that the matter has been resolved. The Panel's scrutiny officer must make a record of the outcome of the informal resolution as soon as practicable, normally within three working days, after the process is completed and provide copies to the complainant and the person complained against. The matter will then be closed.
- No part of the record may be published by the Complaints Sub-Committee unless, having given the parties an opportunity to make representations about the proposed publication and having considered any such representations, the Complaints Sub-Committee considers that publication is in the public interest.
- The Panel's scrutiny officer will prepare update reports to the Panel about all complaints considered in the preceding quarter by the Complaints Sub-Committee, the action taken (including any obligations to act, or refrain from acting, that have arisen under the regulations, but have not yet been complied with or have been contravened) and the outcome of the process.
- If, at any stage, the IPCC informs the Panel that they require the complaint to be referred to them, or if the Complaints Sub-Committee decides that the complaint should be referred to the IPCC, the informal resolution process must be discontinued. The Complaints Sub-Committee should only decide that the complaint should be so referred if matters come to light during the informal resolution process which indicate the commission of a criminal offence, thus leading to the earlier decision as to whether or not the complaint was a serious complaint being reversed.
- At any stage, the Panel's scrutiny officer may seek legal advice from the Panel's legal adviser.