

Policing and Crime Act 2017: Changes to the complaints regime

Summary for Complaints Integrity and Ethics Panel

The Policing and Crime Act 2017 received Royal Assent on 31 January 2017. It contains wide-ranging provisions that will affect police forces, PCCs, fire and rescue services, health services, and the criminal justice process.

Below is a summary of significant provisions of the Act that relate to handling of police complaints. Expected implementation dates are provided accordingly.

PCC complaint handling – Summer 2018

The PCC will have the option to take over, from the Chief Constable of the relevant force, responsibility for:

- Initial contact with the complainant on receipt of a complaint
- Resolving complaints informally outside of the statutory scheme
- The decision as to whether or not to record a complaint
- Being the single point of contact with the complainant throughout the life of the complaint

Currently, the PCC has responsibility for all of these elements of complaint handling in relation to complaints against the Chief Constable only and not in respect of any other officer.

The PCC will be obliged to assume responsibility for receiving and responding to appeals that are currently handled by the Head of PSD (see below under Appeals).

The Home Secretary will make regulations governing the delegation of complaints functions by the PCC to his staff and/or third parties.

The PCC will also have added to his general list of statutory duties and functions an explicit duty to hold the Chief Constable to account for handling of complaints. Currently this duty is implied in the relevant legislation.

Changes to the complaints procedure – Summer 2018

Definition

Currently, the definition of a complaint is *an expression of dissatisfaction by a member of the public about the conduct of a person serving with the police.*

The definition of a police complaint will be changed to *any expression of dissatisfaction with a police force.* This change is intended to clarify the definition. It is anticipated the widening of what can be deemed 'a complaint' will result in an increase in volume. All expressions of dissatisfaction will be dealt with in the same way, regardless of whether they are about an individual or a Force policy or procedure.

Contact with complainant

The duty to keep the complainant and interested parties periodically informed of progress in handling a particular class of complaint will be extended to cover all complaints, whether or not they are being investigated.

Recording

All complaints will have to be recorded unless (1) withdrawn, or (2) the complainant consents to informal resolution. The current criteria that allows forces not to record complaints (e.g. abuse of process, vexatiousness) will no longer apply.

Informal resolution

The informal resolution of complaints prior to them being subjected to the legislative procedure already occurs to a greater or lesser extent in police forces. The Act will put this discretion onto a statutory footing.

Formal resolution

Under the current system, once a complaint has been recorded and the IPCC is not directing the investigation, a police force can deal with the complaint in one of three ways; by local resolution, investigation or disapplication.

These three options are to be replaced with one overarching duty to handle the complaint in such a manner as is *reasonable and proportionate*. What amounts to reasonable and proportionate is determined by the complaint handler, though this is likely to be strongly governed by IPCC guidance. Some stipulations as to circumstances in which an investigation must be undertaken will remain, but the statutory concept of local resolution and disapplication will no longer exist.

IPCC investigations

A number of very technical changes will be made to the level of control the IPCC take of investigations into complaints and the relationship between the IPCC and police forces during that process.

The current reasons for making referrals to the IPCC, e.g. death and serious injury cases (DSI), appear to remain unchanged.

There will no longer be “supervised” investigations, and “managed” investigations will be replaced with “directed” investigations. If the IPCC determine that they should be involved, the expectation is that the investigation will be independent.

A “directed” investigation will have similar features to the current “managed” investigation, but will allow the IPCC to exert greater control over the investigation.

All complaints against Chief Officers will have to be referred to the IPCC (removing the current discretion to do so), and if an investigation against the officer is required it will, in all cases, be undertaken independently by the IPCC.

Following an “independent” investigation, the IPCC will determine whether there is a case to answer for misconduct or gross misconduct, although the IPCC will have to seek the AA’s view before issuing the final determination.

Where a complaint comes to the attention of the IPCC, it may treat that complaint as referred, and consider the form of investigation, and commence an investigation without the need for a referral from the Force.

The IPCC will be allowed to re-investigate any complaint, conduct matter, or DSI that was subject to an independent or directed investigation. However, the IPCC will not be able to re-investigate where the original investigation was conducted by an AA.

Appeals

Currently, there are five appeal points in the police complaints system:

1. Against a recording decision
2. Against a disapplication decision
3. Against the outcome of a complaint dealt with by local resolution
4. Against a decision to discontinue an investigation
5. Against the outcome of an investigation

Changes to the complaints regime mean that (1), (2) and (4) will no longer provide points of appeal, as these mechanisms are being removed from the complaints procedure. Similarly in respect of (3) the concept of local resolution is also being removed from the procedure.

Whilst these points of appeal are being removed from the procedure, the provisions relating to appeals are also being changed in the round, so that the complainant will have a *single right to review the outcome of a complaint*. That review will require the reviewing body to consider whether the outcome was reasonable and proportionate. Again, what amounts to 'reasonable and proportionate' is likely to be strongly governed by IPCC guidance.

As explained above, the PCC will be obliged to assume responsibility for receiving and responding to appeals that, under the current regime, are handled by the Head of PSD. That is, all appeals that do not involve: the recording decision; a matter that has been referred to the IPCC; complaints against conduct of a senior officer; complaints made of conduct serious enough to justify criminal or misconduct proceedings; complaints made of conduct that alleges breaches of a person's Article 2 right to life or Article 3 prohibition against torture or degrading treatment.

Transfer of Staff to Local Policing Bodies

Allows the transfer of staff from the force to the OPCC for the purpose of dealing with the PCC's additional responsibilities, e.g. appeals.

Super-complaints

The Act will create the concept of a 'super-complaint'. This concept is borrowed from existing systems run by the Competition and Markets Authority and the Financial Conduct Authority. It will allow organisations (charities, for example) to make complaints about any aspect of policing in England and Wales that causes significant harm to the interests of the public; it is intended to tackle systemic issues, as opposed to individual officers or incidents.

The organisations that are able to make super-complaints will be designated by regulations. The complaint will be made in the first instance to Her Majesty's Chief Inspector of Constabulary. The practical operation of the system will be determined by as yet unpublished regulations made by the Home Secretary.

Volunteers

Currently complaints against police volunteers are handled in whatever way each Force sees fit. The Act will bring such matters concerning certain police volunteers within the police complaints regime.

Changes to the IPCC – Summer 2018

The Act makes a number of changes to the constitution, governance and investigatory powers of the IPCC, including extending their powers of search and seizure, and a new power to investigate concerns raised by whistle-blowers. This latter change effectively creates a new type of investigation that the IPCC can undertake, the nature of which is very similar to current IPCC investigations but with protection for the whistle-blowers identity throughout.

Of most impact, perhaps, is that the IPCC will change its name to the Independent Office for Police Conduct (IOPC).

Police Discipline – July 2017

Currently the disciplinary regime applies to serving officers only. Under the Act it will be extended to former members of police forces who have, for example, resigned or retired before the alleged misconduct came to light. Although the officer/special constable cannot be dismissed if they have already left the force, if the disciplinary proceedings determine the officer would have been dismissed, that person can be added to the 'Police Barred List'.

The Police Barred List already exists but is put on a statutory footing by the Act. Any officer dismissed from a force will be added to this list, held by the College of Policing, and prohibited from being employed by or appointed to any other police force, the IPCC, HMIC or other specified organisation. Any such officer's details will be publically available for a period of five years after addition to the List.

The Act creates a 'Police Advisory List' which will include details of individuals who are subject to gross misconduct investigations at the time of their resignation or retirement, pending the outcome of the investigation or discipline proceedings. If there is a finding of dismissal, the individual will be added to the Police Barred List. If a lesser outcome, or no proceedings are brought, the individual will be removed from the Police Advisory List.