

Report to the Thames Valley Police & Crime Panel

Title: Report of the Thames Valley Police & Crime Panel Complaint Sub-Committee

Date: 2 February 2018

Author: Clare Gray, Scrutiny Officer,
Thames Valley Police & Crime
Panel



Background

1. As set out in the Police Reform and Social Responsibility (PRSR) Act 2011, and further explained in the Policing Protocol Order 2011, Police and Crime Panels (PCPs) perform a scrutiny function for PCCs, providing challenge and support, and acting as a critical friend. PCPs are currently responsible for handling non-serious complaints made about a PCC, and resolving these through the process for “informal resolution”, as set out in the PRSR Act 2011 and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.
2. A Sub-Committee of the Panel discharges this duty on its behalf. The Chairman of the Sub-Committee is currently Curtis James Marshall.
3. It was agreed that the Sub-Committee should submit its report to the Panel on a quarterly basis, when complaints had been considered.

Complaints Received

4. One complaint was considered at the Sub-Committee meeting on 17 November 2017.
5. Members agreed that the complaint did not fall within the jurisdiction of the Panel as set out in the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012. Under Regulation 15(3)(e) the Panel may decide that the complaint should not be subject to resolution under Part 4 of the Regulations or that no action should be taken in relation to it at all if the complaint is considered to be vexatious, oppressive or an abuse of process.

New Complaints Regime

- The Home Office is planning for Phase 3 of the police integrity reforms to be implemented in early 2019. This phase includes a major overhaul of the police complaints system, including an enhanced role for PCCs.

- As part of the reforms, all PCCs will take on the mandatory new function of responsibility for complaints appeals (in future to be called ‘reviews’) which don't go to the Independent Office for Police Conduct (IOPC)(Model 1 Oversight and Complaints reviews). The Policing and Crime Act 2017 also provides for PCCs to have an explicit statutory duty to hold the Chief Constable to account for the exercise of the Chief Constable’s functions in relation to the handling of complaints.
- PCCs also have the option to take on further functions within the complaints system. The attached Home Office presentation sets out models 2 and 3 options, but in summary they are:
 - Model 2 (Customer Service, Resolution and Recording) – PCCs can choose to take on responsibility for initial complaints handling.
 - Model 3 (Contact) – Initial complaints handling plus responsibility for communications with the complainant throughout the complaints process.
- There is no deadline for PCCs to decide which of the optional models of complaints management they wish to implement. A PCC will be able to take on the optional functions at any point, following commencement, by giving their Chief Constable notice of their intention to do so. Requirements for notice periods and consultation with interested parties before a PCC takes on any optional functions, will be set out in regulations.
- PCCs will have considerable flexibility over how they operate any of their new complaints functions, including the ability to delegate certain functions.
- However, it is recognised that a PCC’s management of the aspects of the complaints process that they are responsible for, will be a legitimate area of scrutiny for Panels to consider. If a PCP begins to receive significant numbers of complaints about the PCC’s management of police complaints, this may indicate issues that the panel wishes to scrutinise.
- The reforms to the police complaints system in the 2017 Act are wide-ranging and the enhanced role for PCCs forms only part of the overall package of reforms. The Home Office recognise that guidance on the new system is important and the IOPC are undertaking a complete overhaul of existing statutory guidance on police complaints. In addition the IOPC will be developing guidance on dealing with vexatious and unreasonable complainants.
- For Panels, the recent Government response to the consultation on PCC complaints also recognises the need for guidance on handling complaints against PCCs. The Home Office and LGA will work with Panels in 2018 to take this forward, including building on the IOPC guidance on vexatious and unreasonable complainants and providing guidance on managing complaints about PCCs arising from their role in police complaints.

Consultation on complaints against PCC’s

Having carefully considered the consultation responses, the Government intends to:

1. clarify, through non-statutory guidance, what constitutes a complaint, using the Nolan Principles to set out the expected level of conduct for a PCC, and ensuring PCPs take forward complaints about a PCC’s conduct rather than their policy decisions;
2. ensure that police approaches to dealing with unreasonable complainant conduct can be used in response to vexatious complaints made against PCCs. Sector-led guidance developed to assist forces in handling vexatious complaints made against the police will be available to help PCPs in handling such complaints made against PCCs;
3. provide PCPs with greater investigatory powers to seek evidence pertinent to a complaint through the appointment of an independent investigator; and

4. clarify, through non-statutory guidance, the parameters of “informal resolution” and setting out that where agreement cannot be reached, it is open to PCPs to make recommendations on the expected level of behaviour of a PCC, and that they have powers to require the PCC to respond.

The Government intends to amend the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 to allow Panels to conduct an investigation into a complaint, where the Panel considers it necessary to do so. Where the Panel does consider it necessary to investigate a complaint, they will be required to appoint an independent individual to carry out this investigation. The amended regulations will enable this individual to gather evidence relating to the specific complaint and the conduct of the PCC, and present their findings to the PCP. The Government recognises the need to restrict the investigations to the terms of the individual complaint to ensure evidence gathering is proportionate and necessary, and will look to include measures within the regulations requiring PCPs to ensure proportionality and necessity of evidence gathering. It is clear that while expanding the role of the Chief Executive to include complaints investigation would fit with existing responsibilities of the role, requiring a Chief Executive to investigate their own employer could present a significant conflict of interest.

Therefore, to provide greater levels of independence within the complaints process, the Government intends to provide within the amended regulations a wider list of appropriate individuals who the PCP is able to appoint as investigator. This will ensure PCPs are able to appoint a monitoring officer who does not report directly to the PCC who is under investigation. This list of options will include a local authority monitoring officer from within the force area, a Chief Executive from outside the force area, or a local authority monitoring officer from outside the force area. The regulations will provide flexibility for this list to be expanded in the future, and will specify that PCPs cannot appoint a monitoring officer where this individual reports directly to the PCC who is under investigation.

IPCC

On 8th January 2018 the new corporate structure of the IPCC came into effect and the organisation will be re-named the Independent Office for Police Conduct (IOPC). The purpose of these reforms is to help deliver a more resilient organisation - one that is well placed to deliver its functions efficiently and effectively and ensure that complaints made against the police are responded to in a way that builds trust and public confidence. On the 8th January the existing Commission will be replaced by a single executive head of the IOPC - the Director-General (DG).

Super Complaints

The eight week public consultation on the criteria organisations must fulfil in order to become designated bodies, to be able to raise a super-complaint under the new system, closed on 8th December. Responses are currently being analysed with the intention to publish the Government response in the New Year.

Resource Implications

The Home Office do not expect that PCCs’ new role in police complaints should lead to an increase in the complaints about PCCs that Panels are required to deal with. This is because complaints about this issue are extremely unlikely to relate to PCC conduct issues. In addition, Panels will not provide an additional tier of appeal for complainants who are not satisfied with a PCC’s decision following a complaint appeal/review.

The Government believes that funding for any costs incurred during investigations should be agreed locally. For example, where responsibility to investigate a PCC falls to a Chief Executive from a different force area, neighbouring force areas may wish to establish reciprocal agreements whereby the cost of investigation is absorbed by their offices. Alternatively, where a PCP delegates investigatory responsibility to a local authority monitoring officer, the PCP may decide to reimburse the monitoring officer for any expenses incurred during any investigation. The Government does not anticipate that PCPs will incur large additional costs if investigations are delegated to a local authority monitoring officer, and so costs for this should be absorbed within existing Panel budgets. With PCCs taking on a greater role in the handling of complaints made against their police force, and with the responsibilities held by a PCC increasing, the Government recognises that the number of complaints about the PCC may increase. The Government will keep under review the funding provided to PCPs, including the resource available to investigate complaints.

Recommendation

It is recommended that the Thames Valley Police & Crime Panel note the report of the Complaint Sub-Committee

Background Papers

LGA Briefing Paper

Consultation re complaints against PCC's

Panel Guidance

The Home Office and LGA will work with Panels in 2018 to take this forward, including building on the IOPC guidance on vexatious and unreasonable complainants and providing guidance on managing complaints about PCCs arising from their role in police complaints. Amendments will also need to be made to the Police Regulations 2012.

In terms of operation of the Panel the following points should be noted:-

No change

- Currently, under the regulations a Chief Executive may have delegated authority to deal with the initial handling of a complaint: this will remain unchanged. However, the final decision on whether a complaint should be investigated, and who to appoint as an independent investigator from the list of suitable individuals, will be a matter for the PCP to determine.
- Complaints Sub Committee – to continue as constituted

Possible Changes

- The Scrutiny Officer in consultation with the Chairman and the Monitoring Officer will appoint an investigatory officer where it is considered appropriate to do so. The Government intends to provide within the amended regulations a wider list of appropriate individuals who the PCP is able to appoint as investigator.
- Amend the website and terms of reference to make it clear that complaints need to be about the PCC's conduct rather than their policy decisions.
- Refer incomplete or unclear complaints back to the Chief Executive of the Office of the PCC seeking further information (this should ensure that the PCC does not need to attend the Sub-Committee to answer further questions).
- Removing the non-recording of a complaint and removing the various categories for handling a complaint (local resolution, disapplication, discontinuance).
- If there is an increase in complaints generally it may be helpful for the Scrutiny Officer (in consultation with the Chairman) to be given authority to look at the complaint initially before it is sent to the Sub-Committee for consideration.
- Provide more detailed guidance on informal resolution including the setting out of formal recommendations to the PCC with the powers to require the PCC to respond. This could as before include an action plan which once completed can be referred back to the Sub-Committee for them to determine that the matter has been resolved.
- The Complaints Sub Committee may want to consider inviting the PCC once a year to account for their management of the aspects of the complaints process that they are responsible for, particularly if a number of complaints have been received on this area. With the increased role for PCCs – there will be an explicit statutory duty to hold the Chief Constable to account for complaints handling. This could include reference to the operation of the Complaints, Ethics and Integrity Panel.
- The Home Office want to shift from a system that focuses on processes to one in which forces see complaints as an opportunity for corporate learning.