

Warwickshire Police and Crime Panel

5 December 2012

Complaints Handling

Recommendations

- (1) That the Panel approves the arrangements for handling complaints as set out in section 3 below.
- (2) That the Panel delegates to the Chief Executive of the Office of the Police and Crime Commissioner the powers and duties set out in Appendix 1.
- (3) Notes the overall obligations on the Police and Crime Panel in Appendix 2

1.0 Key Issues

- 1.1 One of the Police and Crime Panel's statutory functions is to deal with non-criminal complaints against the Police and Crime Commissioner (the PCC) and against the deputy Police and Crime Commissioner (the DPCC), as well as criminal complaints or conduct matters that are referred back to the Panel by the Independent Police Complaints Commission (the IPCC).
- 1.2 This report recommends the adoption of arrangements for dealing with such complaints.

2.0 Proposal

- 2.1 The Police and Crime Panel (the Panel) has the statutory role of overseeing all complaints against the PCC and DPCC and informally resolving non-criminal complaints, as well as criminal complaints or conduct matters that are referred back to the Panel by the IPCC.
- 2.2 The introduction of a complaints system to be administered by a local government joint committee in relation to the holder of a political post could be confusing for both the public bodies involved and the general public. Therefore, close working between the Panel, its administrators and the Office of the PCC is vital, as is making the process as clear as possible, and accessible, to the public.
- 2.3 The aim of the complaints system is to deliver resolution as quickly and effectively as possible for the majority of complainants through local resolution. However the Panel does not have any power to impose sanctions, offer apologies on behalf of the PCC/Deputy PCC (without his agreement) or any form of monetary compensation. It is a power to facilitate a resolution between the complainant and the PCC/Deputy PCC.

- 2.4 The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the Regulations) set out the Panel's powers and duties in regard to complaints. The Regulations are very detailed and a summary of the Panel's obligations have been included in Appendix 2
- 2.5 In accordance with the Regulations, the Panel is required to maintain suitable arrangements for handling Complaints, recording conduct matters where there is an indication that the PCC/DPCC may have committed a criminal offence and prescribing the manner in which any complaints alleging conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence (Serious Complaints) and Conduct Matters are handled.
- 2.6 The IPCC is required to secure that the Panel maintains such arrangements and to secure that:
- the arrangements comply with the Regulations, are efficient and effective
 - manifest an appropriate degree of independence;
 - public confidence is established and maintained in the existence, and the operation of the arrangements; and
 - such arrangements are conducive to, and facilitate, the reporting of misconduct by the PCC/DPCC.
- 2.7. The Panel may delegate all or any of its powers or duties under the Regulations, with the exception of its role in relation to the informal resolution of complaints), to the Chief Executive of the Office of the PCC for the Warwickshire Police Area (the Chief Executive). The Panel may carry out informal resolution by dealing with the matter itself or by appointing a subcommittee, 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 and then report back to the Panel the conclusion of the process.

3. Proposed Arrangements for Handling Complaints

- 3.1 Some of the actions required to be taken to fulfil the Panel's duties are required to be taken within (more or less) a 24 hour period and there are a number of administrative actions that should also be undertaken promptly. Therefore, these are matters that cannot wait, and in any event it would not be efficient, for the Panel as a whole to meet to consider.
- 3.2 In order to be efficient and effective, as required by the Regulations, it is recommended that the Panel appoints the Chief Executive as the first point of contact for all complaints made against the PCC/DPCC and delegates the powers and duties in Appendix 1 to the Chief Executive to act on the Panel's behalf.
- 3.3 Some of the actions required to be taken to fulfil the Panel's duties may not be delegated to the Chief Executive or there may be circumstances where the

Chief Executive has a conflict of interest and the appropriate degree of independence cannot be maintained.

- 3.4 It is therefore recommended that the Panel delegates authority to the Chair of the Police and Crime Panel (or the Vice-Chair if the Chair is unable to act) in consultation with the Panel's Monitoring Officer to decide whether or not any particular matter should be dealt with by the Police and Crime Panel itself or whether to appoint a Complaint Sub-committee, or a single Panel Member to deal with the matter.

Composition of Complaint Sub-committee

A Complaint Sub-committee shall be comprised of at least three members of the Police and Crime Panel to sit as and when required. The selection of members to serve on a Complaint Sub-committee shall be made by the Chair of the Police and Crime Panel (or Vice-Chair if the Chair is unable to act) in consultation with the Monitoring Officer of the Police and Crime Panel.

Terms of reference for a Complaint Sub-committee or Single Panel Member in relation to the matter referred:

- To carry out an informal resolution if appropriate of the complaint
- To decide whether the informal resolution procedure should be dis-applied to the complaint on one of the following grounds
 - (a) the Complaint is concerned entirely with the conduct of the PCC/DPCC in relation to a person who was working in his capacity as a member of the PCC/DPCC's staff at the time when the conduct is supposed to have taken place;
 - (b) the matter took place more than 12 months ago and no good reason for the delay has been shown or injustice would be likely to be caused by the delay;
 - (c) the matter is already the subject of a complaint;
 - (d) the Complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
 - (e) the Complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints; and/or
 - (f) the Complaint is repetitious (in accordance with the meaning given in regulation 15(4)).
- To take a decision under the Regulations where satisfied that there is an actual, or there could be a perceived conflict of interest in the Chief Executive taking that decision
- In consultation with the Monitoring Officer to appoint an Authorised Person to deal with a particular aspect(s) of the matter referred.
- With a view to obtaining and preserving evidence relating to the conduct in question 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;

- Generally to exercise the powers and duties of the Police and Crime Panel in respect of any matter referred.

- 3.5 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 about 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.
- 3.6 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 Panel cannot offer on behalf of the person complained about an apology for his/her 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.
- 3.7 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.

4 Timescales associated with the decision/Next steps

It is suggested that these arrangements are reviewed after 12 months in the light of practice.

Background Papers

None

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Delegations to the Chief Executive of the Office of the Warwickshire Police and Crime Commissioner

In exercising the following powers and duties the Chief Executive shall at all times act in accordance with any regulatory requirements and government guidance

- 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;
- 2) to take any necessary steps to obtain, secure and preserve evidence as may be required by the Regulations or by the Panel or by directions of the IPCC
- 3) to maintain complete and accurate records about all complaints and other matters concerning the conduct of the PCC/DPCC covered by the Regulations, including any obligations to act, or refrain from acting, that have arisen under the Regulations
- 4) to allow any member of the Police and Crime Panel to inspect the records held for these purposes during normal office hours
- 5) to provide an update report to each quarterly scheduled meeting of the Panel (the frequency of reporting to be reviewed after 12 months) about all complaints and other matters concerning the conduct of the PCC/DPCC covered by the Regulations, any decisions taken and any outstanding matters of compliance
- 6) upon receiving a Complaint or becoming aware of a Conduct Matter, 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 or Conduct Matter.
- 7) 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.
- 8) 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.
- 9) 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;
- 10) 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);

- 11) 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 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;
- 12) the Chief Executive shall refer no later than 2 working days after the complaint has been recorded to the Chair of the Police and Crime Panel (or Vice-Chair where the Chair is unable to act) any complaint where informal resolution is required or a decision to disapply the informal resolution procedure is required to be taken under Part 4 of the Regulations. The Chair or Vice-Chair as appropriate in consultation with the Monitoring Officer of the Panel shall decide whether the complaint should be dealt with by the Police and Crime Panel, referred to a Complaint Sub-committee or single Panel Member.
- 13) where the Chief Executive has reasonable cause to believe s/he has an actual, or a perceived, conflict of interest in making a decision in respect of a particular matter the Chief Executive shall refer the decision no later than 2 working days after identifying the actual or perceived conflict of interest to the Chair of the Police and Crime Panel (or Vice-Chair where the Chair is unable to act). The Chair or Vice-Chair as appropriate in consultation with the Monitoring Officer of the Panel shall decide whether the complaint should be dealt with by the Police and Crime Panel, referred to a Complaint Sub-committee or single Panel Member.

Complaints and Conduct Matters relating to the PCC or the Deputy Police and Crime Commissioner

- (1) The Panel has various powers and duties in relation to the conduct of the PCC and the Deputy Police and Crime Commissioner ("the DPCC"). These are currently prescribed by the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the "Complaints Regulations")
- (2) Except for its powers and duties conferred by Part 4 of the Complaints Regulations (informal resolution of complaints), the Panel may delegate all or any of its functions under the Complaints Regulations to the Chief Executive appointed by the PCC (unless that person is a PCC/DPCC). The Panel has a duty to ensure that it is kept informed, in relation to the PCC/DPCC, about all matters covered by the Complaints Regulations, anything which is done under, or for the purposes of, them and any obligations to act, or refrain from acting, that have arisen under those regulations, but have not yet been complied with or have been contravened.

General Duties

- (3) The Panel has a duty to provide the Independent Police Complaints Commission ("IPCC")/authorised representatives with all such assistance as may be reasonably required for the purposes of, or in connection with, the carrying out of any investigation.
- (4) Where the Panel becomes aware of:-
 - (a) a complaint about the conduct of the PCC or DPCC; or
 - (b) information that indicates that the PCC/DPCC may have committed a criminal offence but no complaint has yet been made (hereafter referred to as a "Conduct Matter"), the Panel must ensure that all appropriate steps are taken, both initially and from time to time after that, to obtain and preserve evidence relating to the conduct in question.

Recording Complaints and Conduct Matters

- (5) Except where the subject-matter of a complaint is being/has been dealt with by means of criminal proceedings, or the complaint has been withdrawn, where the Panel is notified that a complaint relating to the conduct of the PCC/DPCC has been made and is satisfied that it is the appropriate panel to consider the matter, the Panel must record the complaint.
- (6) If the Panel is not the appropriate panel to consider the complaint, it must give notification of the complaint to the appropriate panel.

- (7) If the Panel decides not to record the complaint (or any part of it) or to give notification under the preceding paragraph, the complainant must be notified of this decision with reasons.
- (8) Where the Panel becomes aware of a Conduct Matter, the Panel must record it unless the matter has been recorded as a complaint, is being/has been dealt with by means of criminal proceedings or it is not the appropriate panel in which case it must notify the appropriate panel.

Referral to the IPCC

- (9) Where the Panel:

- (a) determines that a complaint is serious (i.e. involving an indication that the PCC/DPCC may have committed a criminal offence);
- (b) records a Conduct Matter; or
- (c) is required to do so by the IPCC,

the Panel must refer the matter to the IPCC notifying the complainant, and the person to whose conduct the matter relates (except where it might prejudice a possible future investigation), of the referral. Such a referral must be made as soon as practicable and in any event by the end of the day after the Panel decided that the complaint was serious, recorded the Conduct Matter or was notified to do so by the IPCC. The referral must be in the manner specified by the IPCC.

- (9) Where the IPCC determines that the matter does not need to be investigated, it will refer the matter back to the Panel notifying the complainant (if there is one) and the person to whose conduct the matter relates. Serious complaints which are referred back to the Panel must be handled in accordance with the informal resolution procedure. Conduct Matters which are referred back to the Panel may be handled in such manner as the Panel sees fit.

Informal Resolution Procedure

- (10) In respect of a recorded complaint, or a serious complaint that has been referred back to the Panel by the IPCC, the Panel must decide whether the matter falls within the description set out in Rule 34(20) below and, if so whether to disapply Part 4 of the Complaints Regulations, and thereby the informal resolution procedure. If it does so, the Panel may handle the matter in whatever manner (if any) that it thinks fit.
- (11) Where it appears to the Panel that the matter has already been satisfactorily dealt with, the Panel may, subject to any representation by the complainant (if any), treat it as having been resolved.
- (12) If, at any time, the IPCC notifies the Panel that it requires the matter to be referred to it, the informal resolution procedure must be discontinued.

- (13) If the matter is to be subject to the informal resolution procedure then the Panel may deal with the matter itself or by appointing:-
- (a) a Sub-committee;
 - (b) a single member of the Panel; or
 - (c) a person who is not a member of the Panel (but not a PCC, DPCC or the Chief Executive appointed by the PCC),

to secure the informal resolution of the complaint and then report back to the Panel at the conclusion of the informal resolution procedure.

- (14) Where a Sub-committee or person is so appointed, the matter may be remitted at any time to the Panel where the Panel considers that this will lead to a more satisfactory resolution of the matter.
- (15) The informal resolution procedure must comply with any guidance issued by the Secretary of State under section 22(5) of the Police Reform Act 2002 (as amended by the Complaints Regulations).
- (16) The Panel or appointed Sub-committee/person must as soon as practicable give the complainant and the person complained about an opportunity to comment on the complaint (if the latter chooses not to comment, this must be recorded in writing).
- (17) The Panel or appointed Sub-committee/person may require the person complained against to provide information or documents or attend before it or him/her to answer questions or give evidence. This will not be deemed to be an investigation.
- (18) The Panel or appointed Sub-committee/person must consider the representations made and documentation provided, and reach a determination on the matter. The Panel or appointed Sub-Committee/person must as soon as practicable make a record of the outcome of the procedures to be sent to the parties. The Complaints Regulations contain provisions regarding the making of apologies and the publication of the record of the outcome of the procedures.

Disapplication of the Informal Resolution Procedure in Relation to Complaints

- (19) The Panel or appointed Sub-committee/person may handle the complaint (including serious complaints referred back to the Panel) otherwise than in accordance with Part 4 of the Complaints Regulations, where the complaint falls within a description specified in paragraph (20) below. The Panel may handle the complaint in whatever manner (if any) that it thinks fit including deciding to take no action in relation to it. The Panel must notify the complainant of this decision.
- (20) The Panel may disapply Part 4 of the Complaints Regulations, where:-
- (a) the complaint is concerned entirely with the conduct of the PCC/ DPCC in relation to a person who was working in his capacity as a member of the PCC/DPCC's staff at the time when the conduct is supposed to

have taken place;

(b) the incident (or the latest incident) giving rise to the complaint took place more than 12 months before the complaint was made and either no good reason for the delay has been shown or injustice would be likely to be caused by the delay;

(c) the matter is already the subject of a complaint;

(d) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;

(e) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints; and/or

(f) the complaint is repetitious (in accordance with the meaning given in regulation 15(4)).