

## **1. Procedure**

- 1.1 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.
- 1.2 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.
- 1.3 The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the Regulations) make provision regarding the Panel's powers and duties in regard to complaints made about the conduct of the PCC or DPCC (Complaints). The Regulations are detailed and therefore a summary of them is attached at Appendix 1.
- 1.4 The Regulations are based upon the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2004. The aim of the complaints system is to deliver resolution as quickly and effectively as possible for the majority of complainants through local resolution.
- 1.5 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 (Conduct Matters) 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.
- 1.6 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 and manifest an appropriate degree of independence;
  - public confidence is established and maintained in the existence, and with the operation, of the arrangements; and
  - such arrangements are conducive to, and facilitate, the reporting of misconduct by the PCC/DPCC.
- 1.7 The Panel may delegate all or any of its powers or duties under the Regulations, with the exception of Part 4 (informal resolution of complaints), to the Chief Executive of the Office of the PCC (the Chief Executive).
- 1.8 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 and then report back to the Panel the conclusion of the process.

## **2. Arrangements for Handling Complaints**

Proposed Delegated Authority to the Chief Executive

- 2.1 Some of the actions required to be taken to fulfil the Panel's duties outlined in Appendix 1 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.
- 2.2 Therefore, in accordance with the regulations, the Panel delegates the Chief Executive as the first point of contact for all complaints made against the PCC/DPCC and further delegates the following powers and duties to the Chief Executive to act on the Panel's behalf:
- 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;
- 2.4 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.
- 2.5 Where the Chief Executive decides not to take action to notify the appropriate panel or record the whole or any part of the Complaint, she must notify the complainant of this decision and the grounds on which it was made;
- 2.6 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;
- 2.7 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. 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.
- 2.8 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;
- 2.9 In the case of 2.2, 2.3 or 2.4 above, if the Chief Executive considers that either there is an actual, or there could be a perceived, conflict of interest in respect of her 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;
- 2.10 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);

2.11 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 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;

2.12 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, 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).

2.13 In terms of factors in favour of such a delegation to the Chief Executive, the Office of the PCC will have experience of dealing, and greater capacity to deal, with complaints made against the Chief Constable and senior officers under the police legislation referred to above. In addition, by including the express power in the Regulations, the Government is clearly proposing that some delegation to the Chief Executive is appropriate. However, the Panel must of course be alive to the risk of a conflict of interest as the Chief Executive is employed by the PCC, hence the specified and, where appropriate, restricted delegations proposed above. The Panel will also be aware of the possible negative public perception of the Chief Executive being involved in handling complaints against her 'boss' (although this is the usual practice in local government). The Panel may choose to adopt a process of regular 'dip sampling' of all records to see which matters are not being recorded or in respect of which Part 4 is being dis-applied, and why.

### **3. Delegated Authority to a complaints sub-committee**

3.1 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. Therefore the Panel delegates 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 three Panel Members who shall have the following powers and duties to act on the Panel's behalf:

- (a) 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;

- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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);
- (f) The power to decide to dis-apply Part 4 (informal resolution of complaints) i.e. where a complaint falls within the specified description of complaints (see paragraphs 3.16 and 3.17 of Appendix 1), 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 3.3.7 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 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.

#### **4. Delegated Authority to a complaints sub-committee to conduct the informal resolution process**

4.1 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.

- 4.2 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.
- 4.3 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.
- 4.4 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:
  - (a) 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 dis-applied and handled separately or in respect of which no further action is to be taken) and the Protocol attached at Appendix 2 (page 15). 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;
  - (b) 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);
  - (c) 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;
  - (d) 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;

- (e) 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;
- (f) 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
- (g) 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 considered in the preceding quarter by the complaints subcommittee, 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.

4.5 The Regulations provide that procedures that are to be available for dealing with a complaint which is to be subjected to informal resolution are any procedures which are approved by the Secretary of State in guidance. Guidance is expected to be published in the near future. It is therefore proposed that authority be delegated to a complaints sub-committee to amend the Panel's arrangements for handling complaints as required to comply with any such guidance. The Panel may also like to agree a date when the system can be reviewed and revised following a period of operation.

4.6 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. The Protocol attached at Appendix 2 currently makes provision for a matter being progressed through the informal resolution process to be referred back to the Panel at the discretion of the complaints sub-committee.

4.7 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 Panels subject to consideration by the Panel, the Panel's Rules of Procedures approved at its meeting on 29 June 2012 will require amendment in line with the arrangements set out in this report. It is recommended that the Panel approve the amended version of Rule 34 of the Rules of Procedure reproduced at Appendix 3 (page 18).

4.8 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.

## **5. Complaints Made Against the Panel**

5.1 So far, no provision has been made in legislation or guidance regarding who should handle any complaint made against the Panel. The position on this will be reviewed when such provision is made.

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