

Police and Crime Panel Regulations **– non-criminal complaints and misconduct**

Introduction

This guidance accompanies The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012. The Regulations cover England and Wales.

The Regulations set out the way in which complaints or conduct matters about a Police and Crime Commissioner (PCC), the Mayor of London (in his capacity as the holder of the Mayor's Office for Policing and Crime (MOPAC)) and their deputies will be handled.

This guidance explains those Parts of the Regulations that apply to complaints that are not serious (criminal) complaints – i.e. Parts 1, 2, 4 and 5. **It does not address the investigation of serious complaints and conduct matters under Part 3.**

The Regulations use several key terms that are also used in this guidance:

- A 'relevant office holder' is a PCC, deputy PCC, the holder of the Mayor's Office for Policing and Crime or the Deputy Mayor for Policing and Crime.
- A 'complaint' is any complaint about the conduct of a relevant office holder.
- A 'serious complaint' is a particular type of complaint – one which alleges that the relevant office holder has committed a criminal offence.
- A 'conduct matter' is an indication that a relevant office holder may have committed a criminal offence, which comes to light otherwise than by way of a complaint (for example through legal proceedings or media reporting).

The Regulations are divided into Parts:

- Part 1 deals with general matters, including definitions of key terms used within the Regulations, general duties of the various parties, delegation of powers and duties by Police and Crime Panels (PCPs) and the functions of the Independent Police Complaints Commission.
- Part 2 sets out the process for the initial handling of all complaints, including both non-criminal and serious (criminal) complaints, and all conduct matters.
- Part 3 covers the investigation of serious (criminal) complaints and conduct matters by, or on behalf of, the Independent Police Complaints Commission (IPCC).
- Part 4 deals with the resolution of complaints that are not serious (criminal) complaints.
- Part 5 deals with the provision and recording of information about complaints and conduct matters.

Structure of this guidance

- Section 1 of this guidance covers certain general duties on the various parties in relation to complaints and conduct matters (as set out in Part 1 of the Regulations.)
- Section 2 deals with the process for the initial handling of all complaints and conduct matters (as set out in Part 2 of the Regulations.)
- Section 3 covers special cases, including withdrawn and discontinued complaints, and conduct occurring outside England and Wales (as set out in Part 2 of the Regulations)
- Section 4 deals with the resolution of complaints, (Part 4 of the Regulations.)
- Section 5 covers provision and recording of information (Part 5 of the Regulations.)

1. General matters

General duties of PCPs, PCCs and chief officers of police

The PCP must ensure that it is kept informed about complaints and conduct matters and their handling – regulation 6(1).

If the PCP decides to delegate any or all of its functions (details as outlined below), it should ensure that it has measures in place to check that the monitoring officer is dealing with complaints in a way it considers appropriate.

This guidance is not concerned with the investigation of serious complaints, but it should be noted that every PCP, relevant office holder and chief officer of police must ensure that anyone undertaking an investigation either carried out directly by, or on behalf of, the IPCC is given the assistance and co-operation they reasonably require – regulation 6(4) and (5).

Delegation of powers and duties by PCPs

With the exception of the resolution of complaints, a PCP may delegate any of its powers or duties under the Regulations to the chief executive of the PCC (or, in the case of the London Assembly PCP, the monitoring officer of the Greater London Authority (GLA)) – regulation 7(1).

PCP broader powers of delegation

The Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 selectively apply existing local authority enactments to PCPs. This includes Section 101(2) of the Local Government Act 1972 which allows a committee or joint committee discharging functions to arrange for the functions to be discharged by a sub-committee or an officer, in the absence of a contrary direction from the authority or authorities. Therefore, this provision enables the PCP to delegate a range of functions to the monitoring officer of the host local authority - this will include the ability to delegate the initial handling of complaints.

Where the London panel – referred to as the Police and Crime Committee (PCC) - delegates powers or duties in relation to the notification and recording of complaints and conduct matters to the GLA monitoring officer, the monitoring officer must notify the MOPAC's chief executive of all complaints and conduct matters received – regulation 7(3).

A PCP may choose to delegate all, some, or none of its functions, or delegate them only in particular circumstances.

Where a PCP chooses to delegate the initial handling of complaints and conduct matters, the chief executive or monitoring officer of the PCC may then wish to adopt a triage approach to handling, determining whether the complaint received was:

- An issue raised about local crime or neighbourhood concerns rather than about the conduct of a relevant office holder - to be dealt with by the police force through normal channels of feedback, such as beat meetings, rather than under the Regulations;
- A complaint other than a serious complaint - for informal resolution by the PCP; or
- A serious complaint - to be referred to the IPCC.

2. Initial handling of complaints

Duties to preserve evidence

Where a complaint or conduct matter about a relevant office holder comes to the attention of the PCP, the PCP must secure that all appropriate steps are taken to obtain and preserve evidence relating to the conduct in question – regulation 8(1).

Where a relevant office holder receives a complaint, or becomes aware of a complaint made to the PCP, the chief officer of police or the IPCC, or becomes aware of a conduct matter, the relevant office holder must take all appropriate steps for obtaining and preserving evidence relating to the conduct in question – regulation 8(2)

The PCP or relevant office holder must comply with any direction given to it by the IPCC in this regard – regulation 8(5) and (6).

All of the duties in regulation 8 are continuing duties on the PCP. The PCP, or the person handling the complaint on its behalf, should consider at the outset what steps are necessary for obtaining and preserving evidence. The situation should be reviewed at regular intervals, until or unless arrangements are made for the complaint to be subjected to informal resolution. Informal resolution may not involve the investigation of the complaint (i.e. obtaining evidence about it). It follows that the duty to obtain evidence under Regulation 8 does not apply once informal resolution is initiated.

The duty is to secure that appropriate steps are taken for obtaining and preserving evidence – the appropriate steps may need to be taken by a party other than the PCP. The PCP, or the person handling the complaint on its behalf, should be ready to ask any other relevant party to obtain or preserve evidence as necessary.

Notification and recording of complaints

Where a complaint is made to the IPCC, chief officer of police or a relevant office holder, they must notify the relevant PCP of the complaint – regulation 9(1), (3) and (4). The exceptions to this are when the person is satisfied the complaint is being, or has been, dealt with through criminal proceedings, or where the complaint has been withdrawn (see Section 3) – regulation 9(6).

Where a complaint is made to a PCP, it must determine whether it is the relevant PCP¹ in relation to the relevant office holder who is the subject of the complaint; if it is not the relevant PCP, it must notify the other relevant PCP of the complaint – regulation 9(2)

Where a PCP determines that it is the relevant PCP, or is notified of a complaint by, it must record the complaint – regulation 9(5).

Where a complaint is recorded, the PCP must provide the complainant and the person complained against with the record that has been made – regulation 31(1). However, the record may be altered to hide the identity of the complainant or any other person – regulation 31(2). In addition, the PCP may decide not to provide a copy of the record if it believes that doing so might prejudice any criminal investigation or pending proceedings or otherwise be contrary to the public interest, but the PCP must keep such a decision under regular review – regulation 31(2) to (4).

The duties to notify or record complaints do not apply where the complaint has been, or is already being, dealt with by criminal proceedings against the relevant office holder, or the complaint has been withdrawn – regulation 9(6).

Where a decision is taken not to notify or record a complaint, the person taking the decision must notify the complainant of it, and of the grounds on which it was made – regulation 10.

Notification and recording of conduct matters

If a PCP is notified that civil proceedings are being brought, or are likely to be brought, by a member of the public against a relevant office holder and it appears the proceedings involve or will involve a conduct matter, the PCP must record the matter (if it is the relevant PCP in relation to the office holder) or notify the relevant PCP (if it is not) – regulation 11.

If a conduct matter comes to the attention of the PCP, otherwise than in the context of civil proceedings, the PCP must record it – regulation 12.

The obligation to record does not arise if the PCP is satisfied that the matter has already been recorded as a complaint, or is the subject of past or present criminal proceedings against the relevant office holder – regulation 11(4) and 12(2).

¹ i.e. The PCP for the police area for which the relevant office holder has been appointed.

Reference to the IPCC

A PCP must refer a complaint to the IPCC if the PCP determines that it is a serious complaint (it is about conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence), or the IPCC requires it to be referred – regulation 13(1).

A PCP must refer any conduct matter it has recorded, or that has been called in by the IPCC, to the IPCC. By definition, a conduct matter contains an indication that a criminal offence may have been committed.

A referral must be made in the way that the IPCC specifies². The reference must be made as soon as is practicable, and no later than the end of the day after the day when the PCP became aware that the matter had to be referred or was required to be referred to the IPCC – regulation 13(3) and (4).

Where a PCP refers a complaint or conduct matter to the IPCC they must notify the complainant (if there is one) and, except where doing so might prejudice a possible future investigation of the complaint or conduct matter, to the person whose conduct the complaint or matter relates – regulation 13(6).

Having had a complaint or conduct matter referred to it, the IPCC may refer the complaint or matter back to the PCP. A complaint referred back in this way must be resolved in accordance with Part 4 of the Regulations (unless the Regulations are disapplied – see the next paragraph). A conduct matter must be dealt with in any manner that the PCP determines, which may include taking no action in relation to it. The IPCC must notify the complainant and the person complained against if it refers a complaint or conduct matter back to the PCP – regulation 14.

Disapplication of the Regulations

Having decided that a complaint does not need to be referred to the IPCC (because it is not a serious complaint), or having referred a complaint to the IPCC and had it referred back, the PCP may decide that the complaint should not be subjected to resolution under Part 4 of the Regulations or, indeed, that no action should be taken in relation to it at all. The PCP may only do this if the complaint falls into any one of various specified categories – regulation 15(2) and (3).

The categories are:

- A complaint by a member of the relevant office holder's staff, arising from the staff member's work as such (see regulation 15(3)(a)).
- A complaint that is more than 12 months old, where there is no good reason for the delay or the delay would be likely to cause injustice (see regulation 15(3)(b)).
- A complaint about conduct that is already the subject of another complaint (see regulation 15(3)(c)).
- An anonymous complaint (see regulation 15(3)(d)).

² The IPCC has produced guidance for PCPs on handling complaints and conduct matters. This can be found at http://www.ipcc.gov.uk/en/Pages/pcc_mopac_complaints.aspx

- A complaint which is vexatious, oppressive or otherwise an abuse of process for dealing with complaints (see regulation 15(3)(e)).
- A repetitious complaint (see regulation 15(3)(f), and also regulation 15(4) for the particular circumstances in which a complaint is repetitious).

The PCP must notify the complainant if it decides not to handle a complaint in accordance with Part 4 of the Regulations or to take no action in relation to it (regulation 15(5)).

3. Special cases – withdrawn complaints and conduct outside England and Wales

Withdrawn and discontinued complaints

At any stage a complainant may decide that they wish to withdraw their complaint or that they wish to discontinue it.

If a PCP receives written notification to this effect, signed by the complainant or someone authorised to act on his behalf, the PCP must record the fact – regulation 16(1).

If the complainant notifies (in writing, signed by the complainant, his solicitor or someone authorised to act on his behalf) the IPCC that they are withdrawing their complaint or wishes it to be discontinued, but does not tell the PCP, the IPCC must send a copy of this notification to the PCP and the PCP must record the fact – regulation 16(1).

Where the complaint is one which was referred to the IPCC and has not been referred back to the PCP, the PCP must inform the IPCC that it has recorded the fact that the complaint has been withdrawn or discontinued – regulation 16(3).

The IPCC will then consider whether the complaint should be treated as a conduct matter. If the IPCC determines that it should be so treated, they will notify the PCP – regulation 16(5) and (6).

In the case of a complaint which was not referred to the IPCC, or was referred to the IPCC and then referred back, the PCP itself must decide whether the complaint is to be treated as a conduct matter. A complaint is to be treated as a conduct matter if the PCP determines that it is about conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence – regulation 16(4).

Where it is determined (whether by the IPCC or the PCP) that a withdrawn or discontinued complaint should be treated as a conduct matter, the PCP must record it as a conduct matter and the Regulations apply to it accordingly – regulation 16(6).

If a complainant indicates that they wish to withdraw or discontinue their complaint but does not provide signed notification in writing to that effect, the PCP must write to the complainant to determine whether or not they wish to withdraw or discontinue – regulation 16(7) and (8)(a).

If the complainant confirms that he wishes to withdraw or discontinue the complaint, or does not reply within 21 days, the PCP should treat it as if it had received signed, written notification of the complainant's wish to withdraw or discontinue the complaint – regulation 16(8)(b).

If the complainant indicates that they do not, in fact, wish to withdraw or discontinue the complaint, the PCP must continue to deal with it in accordance with the Regulations – regulation 16(8)(c).

The PCP must notify the person complained against if it records a complaint as being withdrawn or discontinued, if the complaint is to be treated as a conduct matter, or if the Regulations cease to apply to the complaint on the basis that it has been withdrawn or discontinued – regulation 16(9).

However, this duty to notify does not apply if the PCP has previously decided not to notify the person complained against of the complaint on the basis that it might prejudice a criminal investigation or pending proceedings, or be contrary to the public interest – regulation 16(10)

Conduct occurring outside England and Wales

Regulation 17 deals with conduct occurring outside England and Wales. Such conduct may be the subject of investigation or proceedings in the jurisdiction where it occurs.

Relevant office holders are under a duty to notify the PCP of any allegation, investigation or proceedings relating to his conduct occurring outside England and Wales – regulation 17(1). If a PCP receives such a notification they may take whatever action they see fit – regulation 17(2).

4. Resolution of complaints

General

This section of the guidance applies to a case where the PCP:

- Has recorded a complaint;
- Has decided not to refer the complaint to the IPCC (because it is not a serious complaint) or having referred it to the IPCC, has had it referred back; and
- Has not decided to disapply the Regulations.

The way in which such the complaint is resolved in such a case depends on the identity of the person being complained against.

Complaints against the Mayor of London and the Deputy Mayor for Policing and Crime (if a member of the London Assembly at the time the complaint was recorded)

A complaint against the Mayor of London in his capacity as the MOPAC or the Deputy Mayor for Policing and Crime, if he or she is a member of the London Assembly, must be passed by the London Assembly PCP to the GLA monitoring officer. They will then be dealt with under the relevant local government legislation as if it was a written allegation made under that legislation – regulation 29.

(The Regulations refer to the relevant local government legislation as Part 3 of the Local Government Act 2000. This no longer applies to members of the London Assembly – the relevant legislation is now Chapter 7 of Part 1 of the Localism Act 2011.)

Complaints against PCCs, deputy PCCs and the Deputy Mayor for Policing and Crime (if not a member of the London Assembly at the time the complaint was recorded)

The PCP must make arrangements for informally resolving these complaints. These arrangements can include the appointment of:

- a sub-committee or a single member of the PCP to carry out the informal resolution; or
- a person who is not a member of the PCP, such as the PCC's chief executive (or, in the Metropolitan Police District, the GLA's monitoring officer) – regulation 28(3)

The PCP cannot appoint any relevant office holder to informally resolve a complaint – regulation 28(4).

Where the PCP appoints a sub-committee or person to informally resolve a complaint, the PCP as a whole can take back responsibility for the informal resolution at any time if it considers that this will lead to a more satisfactory resolution of the complaint – regulation 28(5).

Informal resolution of any complaint must be discontinued if the IPCC notifies the PCP that they require the complaint to be referred to them, or if the PCP itself decides that the complaint should be referred – regulation 28(2). The PCP would only decide that the complaint should be referred if matters came to light during the informal resolution which indicated the commission of a criminal offence, thus leading the PCP to reverse its decision as to whether or not the complaint was a serious complaint.

The procedures that are to be available for informal resolution are those which are approved by the Secretary of State and issued in guidance – regulation 28(6). They are as follows:

The Secretary of State approves the use of any procedure devised by a PCP for the informal resolution of complaints provided that the procedure:

- Prohibits the investigation of the complaint (see regulation 28(7));
- Provides an opportunity for the complainant and the person complained against to comment on the complaint as soon as is practicable (see regulation 28(9));
- Provides for any failure by the person complained against to comment on the complaint when invited to do so to be noted in the written record (see regulation 28(10));
- Prohibits the tendering of an apology on behalf of the person complained against unless the person has admitted the alleged conduct and agreed to the apology (see regulation 28(11));
- Provides for a record of the outcome of the informal resolution to be made as soon as practicable after the process is completed and for copies to be provided to the complainant and the person complained against (see regulation 28(12)).

Use by the PCP of their powers to require the person complained against to provide information and documents to the PCP and attend before the PCP to answer questions does not amount to investigation for these purposes – regulation 28(7). 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 amount to investigation.

If a complaint has already been satisfactorily dealt with by the time it comes to the PCP's attention, the PCP may consider it to be resolved and take no further action in relation to it – regulation 28(8).

The PCP may publish its record of the outcome of the informal resolution of the complaint, if it considers publication to be in the public interest having invited the complainant and person complained against to comment, and having considered their views – regulation 28(13).

The only part of a statement made for the purpose of informally resolving a complaint that is admissible in any subsequent criminal or civil proceedings is an admission in relation to another matter which was not the subject of the informal resolution.

5. Provision and recording of information

Address for receipt of complaints

The PCP must notify the PCC (or, in the case of the London Police and Crime Committee, MOPAC) of the name and address of the person to whom members of the public should address complaints. The PCC (or MOPAC) must publish the name and address by such means as the PCP specifies – regulation 30.

Where powers and duties are delegated to the PCC's chief executive or the GLA monitoring officer, it would be sensible for them to be nominated as the person to whom complaints should be sent.

Informing the complainant and relevant office holder

Where a complaint is recorded, the PCP should give a copy of the record to the complainant and the person the complaint has been made against. The identity of the complainant and any others can be kept anonymous in this copy of the record. If the PCP believes it may prejudice criminal investigations or proceedings, or is contrary to the public interest to supply a copy of a complaint, they do not have to provide a copy, but must review that decision regularly.

Keeping of records, and provision of information and access to the IPCC

A PCP must keep a record (of every complaint and purported complaint it receives, every conduct matter it records and every action taken under the Regulations – regulation 34. The format of this record is not specified by the IPCC, but it should include the name, details of the complaint/conduct matter and how the matter has been dealt with. The record must be in a format which is auditable.

A PCP, relevant office holder or chief officer of police must provide information, documents, evidence or other material to the IPCC when required to do so – regulation 35.

A PCP, relevant office holder or chief officer of police must allow a person nominated by the IPCC to have access to any premises occupied, and to documents and other things on the premises – regulation 36. Where the access is required for the purposes of an examination by the IPCC of arrangements for handling complaints or conduct matters under the Regulations, at least 48 hours' notice must be given – regulation 36(3).

Manner of notifications

Where the Regulations require a notification to be given, it is to be given in writing – regulation 37.

6. Glossary

'Informal resolution'

The process of solving a problem in a relaxed or unofficial fashion.

'Investigation'

Carrying out a systematic or formal inquiry to discover and examine the facts of an allegation so as to establish the truth.

'Evidence'

Information or material that is used to establish the truth or validity of a fact or proposition.

7. Frequently asked questions

Q. Will PCCs be held to account for non-criminal behaviour?

A. The Regulations provide for the PCP to secure the informal resolution of a complaint concerning non-criminal behaviour. Although PCPs will not have sanctions available to them, they will be able to use their powers to require the PCC to attend a hearing to answer questions, request information and documents from the PCC, and publish a report or recommendation. Ultimately, PCCs will be held accountable by the ballot box.

Q. What does 'informal resolution' mean?

A. Informal resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant, without an investigation or formal proceedings. It is not a disciplinary process, and does not involve the imposition of any sanction. It is a flexible process that may be adapted to the needs of the complainant and the individual complaint. It may involve the person complained against explaining their conduct and, if appropriate, apologising for it. This could be done by correspondence or in a face to face meeting. The method of informal resolution is left up to the individual PCP, provided that it is in accordance with the Regulations and guidance issued by the Secretary of State.

Q. What resources are going to be made available to PCPs to help them handle complaints?

A. PCPs will be resourced to perform a vital scrutiny function in relation to the PCC, including work in relation to complaints. They will also be able to delegate the initial handling of complaints to the PCC's chief executive, which could minimise the administrative burden involved. They will retain responsibility for the informal resolution of complaints but will be able to delegate this task to a single panellist, a sub-committee of the panel, or another individual, and to return matters to the full panel if required.

Q. Is there a conflict of interest in the PCC's chief executive having a role with the complaints made against their employer?

A. No. The PCP can choose to delegate the initial handling of complaints to the PCC's chief executive but does not have to do this. Ultimate responsibility for handling any complaint remains with the PCP, and it will wish to satisfy itself that the chief executive can deal with any complaint impartially. Similarly, the PCP is able to appoint the chief executive to carry out the informal resolution of a non-criminal complaint, but has a specific power to take back the informal resolution of the complaint if necessary. In many ways, this arrangement reflects current police authority practice where police authority staff may handle complaints against members. The chief executive will already have the function of assessing the lawfulness and propriety of the PCC's actions as monitoring officer, and it is not suggested that they cannot carry out that role effectively and impartially.

8. Other information

For information on the Local Government Ombudsman's role in complaints regarding maladministration, please see <http://www.lgo.org.uk/making-a-complaint/>

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