

Police and Crime Panels

Handling complaints about the Police and Crime Commissioner and their Deputy



Contents

| | |
|--|----|
| Introduction | 4 |
| Synergy with existing local authority procedures | 4 |
| Compatibility with the Local Government Ombudsman (LGO) Advice | 5 |
| Key stages in the development of a complaints procedure | 5 |
| Functions of the panel | 7 |
| Initial complaint handling: what is involved | 7 |
| Initial sorting of complaints | |
| Referral of criminal matters | |
| Flow diagram | |
| Summary of a panel's key functions | 9 |
| Initial handling of complaints and conduct matters | |
| Resolution of non-criminal complaints | |
| Provision and recording of Information | |
| Role of the Local Government Ombudsman | 11 |
| Delegation of functions | 12 |
| Options for delegation | 12 |
| Option 1: Panel/host authority retains all functions | |
| Option 2: A 'triage' role for the Chief Executive of the PCC | |
| Option 3: Making arrangements for securing informal resolution of complaints | |
| Option 4: Delegation of receipt, triage and resolution activity | |
| Delegation – some key points to consider | 13 |
| Funding delegated panel functions | |
| Perceptions of independence in the complaints process | |
| Summary tables of pros and cons of delegation | 14 |

| | |
|--|----|
| Variable factors affecting a panel’s decision | 17 |
| <u>Anticipated number of complaints</u> | |
| <u>Relationship with the PCC</u> | |
| <u>Relationship between the PCC and their Chief Executive</u> | |
| Oversight of delegated functions | 18 |
| Operating the procedure | 19 |
| Transferring cases between the panel and the IPCC | 19 |
| Standard forms and practical arrangements for referral | 20 |
| Disapplication of the Regulations | 20 |
| Local resolution under Part 4 | 20 |
| <u>Other guidance which may assist</u> | |
| Annex | 22 |
| LGO information on the features of an effective complaints procedure | 22 |

Status of the guidance

Every attempt has been made to provide a fair picture of the current state of the law, to present an accurate and comprehensive assessment of our interpretation of the provisions of the legislation, and to suggest ways of working to ensure that panels can be effective, and their work proportionate, relevant and timely. However:

This guidance should not be relied upon as giving legal advice; it will be for officers in individual authorities to come to their own decisions, working with councillors, to decide on the right approach.

This guidance should not be interpreted as setting out the view of the Home Office, and the recommendations, suggestions and advice given should not be interpreted as being endorsed or approved by the Home Office.

Introduction

This guidance is to provide advice on how Police and Crime Panels (referred to in this advice as panels) can carry out their statutory responsibilities and delegate some functions to deal with non-criminal complaints about Police and Crime Commissioners (PCCs) or their deputies.

The role of panels in this area is set out in the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012¹ (References in this guidance to particular Regulations refer to this legislation). The Home Office has issued a plain English guide to these Regulations² which helps set out what the Regulations mean and their policy intention.

It is important to understand at the outset that complaints and conduct matters concerning a PCC or a Deputy PCC that allege criminality must be referred to the Independent Police Complaints Commission (the IPCC). The IPCC will then decide whether the matter requires investigation. There will therefore need to be movement and transfer of cases between panels and the IPCC. Readers of this guidance will need to consider the advice produced by the IPCC on arrangements for liaison between panels and the IPCC³.

1 The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 are available on the stationary office website here: <http://www.legislation.gov.uk/ukxi/2012/62/introduction/made>

2 The Home Office Plain English guidance to the Regulations was published on 9 November and is available at <http://www.homeoffice.gov.uk/publications/police/pcc/pcp-complaints-handling-process>

3 The IPCC has issued guidance about the transfer of

The LGA has liaised with both the Home Office and the IPCC in the production of this guidance. This guidance should be read alongside:

- The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the Regulations).
- The Home Office Plain English (non-criminal complaint) Guide to the Regulations.
- A guide produced by the IPCC on the transfer of cases between the panels and the IPCC.

Synergy with existing local authority procedures

The LGA recognise that the host authority for each panel will already have tried and tested procedures for dealing with complaints about the council or councillors. Many of these will be processed informally, and an authority's arrangements for dealing with complaints in this way are likely to be very similar or at least compatible with the processes to be established for resolution of non-criminal complaints about the PCC under Part 4 of the Regulations.

cases between the panel and the IPCC; this guidance was circulated by the LGA to host authorities on November 14th 2012 and posted on the LGA K-Hub website on November 16th 2012 at <https://knowledgehub.local.gov.uk/group/policeandcrimepanelsupportandwidernetworkinggroup/activity> Further IPCC advice on dealing with criminal complaints about the PCC, might also follow, but only after they have had some experience of the practical application of the Regulations.

The LGA suggest therefore that where host authorities carry out work on complaints themselves (ie in areas where functions are not delegated) they should if possible use existing in-house systems for dealing with complaints as a model or framework for the creation of PCC complaint procedures.

Existing procedures for the informal resolution of complaints might be used as a consistent basis for establishing compatible procedures, standardised administration arrangements, response times, IT and methods and options for investigation, mediation and resolution.

For the above reasons the following advice is not intended to be prescriptive, and recognises the need to dovetail any new panel complaint procedures with what is already in place and works well locally.

Compatibility with the Local Government Ombudsman (LGO) Advice

The Local Government Ombudsman in England and its equivalent in Wales (the Wales Public Service Ombudsman) has jurisdiction over panels and will deal with complaints about the administrative functions of panels which includes the handling of complaints. Locally established complaints procedures should be drafted or amended in the light of advice from the LGO entitled 'Running a Complaints System'⁴.

Existing local authority complaint procedures should therefore already comply with the LGO advice, and where this is the case, they will provide a good basis for the new

panel procedures for dealing with PCC complaints. However we strongly suggest that panels should also refer to the LGO advice mentioned above when establishing new panel complaint procedures locally.

Key points from the LGO advice have been summarised in the annex to this document for ease of reference. Developing an effective local complaint procedure will be essential to ensure that issues can be resolved quickly and efficiently. Using the LGO guidance as a model will form the foundations of a good complaints procedure and therefore reduce the likelihood of complaints escalating to the level of the Local Government Ombudsman.

Although complainants have a right of appeal to the LGO, it should be noted that local complaints procedures would need to have been followed to their conclusion before there is any possibility of the LGO becoming involved.

The LGO stress that the purpose of a complaints system is to put right what has gone wrong and to learn from it. Clearly in this context dealing with complaints about the PCC can help inform the panel's wider scrutiny work.

Key stages in the development of a complaints procedure

The first stage is to understand the role of the panel and then what options are available for the operation and delegation of its functions (as outlined later in this guidance) and then consider any preferred panel delegation arrangements.

⁴ LGO Guidance on Running a Complaints System see: <http://www.lgo.org.uk/publications/advice-and-guidance#guidance>

Involvement of the chief executive of the PCC and their staff will be important, if the panel wishes to consider delegating certain panel functions to the PCC's monitoring officer. Whilst the panel has powers to delegate, the other organisations potentially affected do not have a legal obligation to accept the delegation.

Discussion and agreement in this area is therefore needed so that all parties agree and understand the arrangements and the scope of what is expected of them and, as far as possible, only notify the panel about matters which relate to the conduct of a relevant office holder (as per Regulation 9(2)).

Having decided and agreed any delegation arrangements, the panel should then identify a contact point for the panel and inform the PCC (as required by Regulation 30) who will then advertise the relevant contact point as specified by the panel. This might be a contact for the chief executive of the PCC if the panel's initial handling function has been delegated to the PCC's monitoring officer.

Such delegation options are discussed later in this guidance, however it is important to note that the panel's key functions will remain with the panel unless they have been delegated.

The IPCC has said it will also need confirmation of the locally determined contact point and arrangements for fulfilling the panel function of recording complaints and conduct matters, so the IPCC can refer any complainants to the relevant point of contact. The IPCC may also need to use this point of contact for liaison about matters of a serious and/or criminal nature which might need to be referred from the panel to them under Regulation 13.

The procedure established locally would then be confirmed in writing to help provide clarity to all concerned.



Functions of the panel

The functions of the panel are set out in several different parts of the Regulations. The general duties of panels are given in part 1 (Regulation 6); recording and receipt is covered in part 2; the key function of 'resolution of other complaints' is detailed in part 4; and requirements in relation to recording of information about complaints are detailed in part 5.

Initial complaint handling: what is involved

One of the main functions of a panel is to act as a central point for collation and recording of all complaints, and to provide a 'gateway' to the procedures for dealing with both non-criminal and criminal complaints about the PCC or the deputy PCC.

The panel (or the relevant monitoring officer if this function has been delegated by the panel) must keep a record of all complaints, purported complaints and conduct matters that they receive, (see Regulation 34). In practice this could be a simple spreadsheet which is held securely and kept regularly updated.

Regulation 9 includes certain requirements for complaints to be sent to the panel, but there are a variety of other routes by which complaints or purported complaints about the PCC or their deputy PCC may reach the panel.

Initial sorting of complaints

The 'post bag' of complaints about the PCC will inevitably include a wide range of items, some of which should be re-directed to other recipients. The panel's role in the initial sorting or 'triage' of all complaints is therefore important.

Some of these complaints may require referral to the chief constable where they are about the delivery of operational policing matters. Other matters in the post bag may actually be disagreements about a particular policy of the PCC and not really complaints; such issues might need to be dealt with sensitively when notifying the complainant and referring the matter back to the PCC for their information.

It is envisaged that these kinds of referral will be common, and standard approaches for dealing with them might be shared with the help of the LGA as panels gain experience and develop good practice in this area.

Other matters may be more difficult to categorise where they consist of a number of interrelated issues, including some with a potentially criminal element.

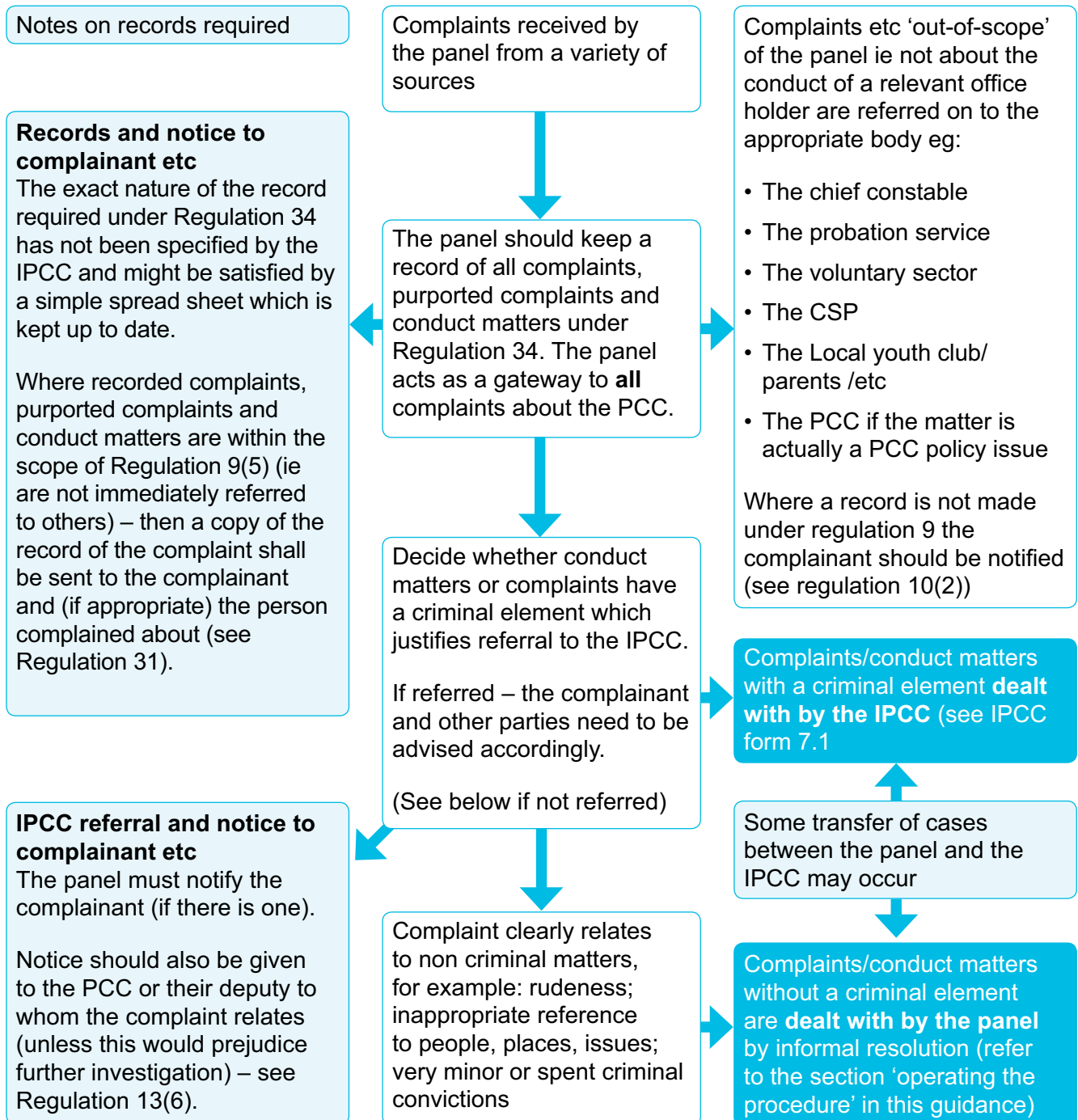
Referral of criminal matters

Complaints or conduct matters that are criminal in nature or have a criminal element must be referred to the IPCC (see later in this guide for details or refer to the Regulations). Complaints or conduct matters that do not meet this threshold should be informally resolved by the panel under part 4 of the Regulations.

It should be noted that the IPCC cannot record conduct matters or complaints. This is the statutory responsibility of the panel. When complaints or conduct matters (with a criminal element) come to the attention of the IPCC, the Commission will refer the matter in the first instance to the panel to be recorded in accordance with the Regulations (Regulation 9(1)).

Flow diagram

The diagram below explains how the initial complaint receipt and triage arrangement would operate in practice.



This key triage/filtration stage can be delegated to the chief executive of the PCC under Regulation 7; or the monitoring officer of the host authority.

Summary of a panel's key functions

The panels' functions for which they are responsible can be summarised as follows:

Initial handling of complaints and conduct matters (part 2 of the Regulations)

When a new complaint is received by the panel, it has to be recorded by the relevant panel unless it is already being dealt with through criminal proceedings. If the panel, relevant office holder, or chief officer of police decides not to record or refer a complaint then they must notify the complainant of the decision to take no action and the grounds for that decision.

A new conduct matter⁵ which comes to the attention of the panel also has to be recorded by the panel. The IPCC can direct the panel to record a conduct matter which has come to its attention.

Where a complaint or conduct matter about the PCC has come to the attention of the panel (or the PCC) they have a duty to obtain and preserve the evidence and comply with any directions from the IPCC.

A serious complaint or a conduct matter must be referred to the IPCC "as soon as is practicable and in any event, not later than the end of the following day when it becomes clear it should be referred" (Regulation 13).

The panel also has to notify the complainant and, if appropriate, the person complained

against that the matter has been referred. The IPCC then has to decide whether or not to investigate or to refer the matter back to the panel to handle. Again the parties, if appropriate, have to be notified of the decision.

If a complaint is being handled by the panel directly and they decide that the complaint should not be dealt with by informal resolution (Part 4) or that the Regulations should not be applied, the panel may handle the complaint in whatever way they see fit. They must notify the complainant of their decision; (the complainant must also be informed of their right to appeal to the Local Government Ombudsman and in Wales the Public Service Ombudsman for Wales).

The panel can decide not to apply the Regulations in certain circumstances. In summary these are where the complaint is an employment issue; it is more than 12 months old; the matter is already the subject of a complaint; is anonymous, vexatious, oppressive or an abuse of the procedures or repetitive. (Regulation 15(2).)

A complaint can be withdrawn or discontinued by a complainant. The relevant parties have to be notified and the fact recorded. If the complaint relates to a conduct matter then the matter may still be investigated under the Regulations if it is in the public interest to do so. Again the parties, if appropriate, have to be notified of any decision.

The PCC must notify the panel of any allegation, investigation or proceedings in relation to their conduct outside England and Wales. In such circumstances the panel can handle the matter in whatever manner they think fit.

⁵ The Police Reform and Social Responsibility Act 2011 provides a broad definition of conduct matters in section 31(1)(b). In relation to the police, a conduct matter is defined by the IPCC as "any matter which is not and has not been subject of a complaint where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify bringing criminal proceedings".

The panel must also nominate a point of contact for the panel to whom cases can be referred. This point of contact may or may not be the panel – dependant on the extent to which the panel's functions as above have been delegated.

Whilst the above arrangements are clearly panel functions, their operational delivery can be delegated. This could be to the host authority's monitoring officer or to the chief executive of the PCC. (Different options for delegation are covered later in this guidance.)

Although awareness about all complaints relating to the PCC and policing matters may provide useful information to assist with a panel's wider scrutiny work, the scope of a panel's activity in dealing with non-criminal complaints about the PCC is much more narrowly drawn. The panel's role in complaint handling and dealing with non-criminal complaints therefore needs to be clearly set out and understood locally to avoid confusion and gradual 'mission creep,' particularly on particular complaints which may have several perhaps interrelated elements.

Resolution of non-criminal complaints (part 4 of the Regulations)

If a complaint concerns the non-criminal conduct of the PCC or their deputy then the panel must make arrangements for the complaint to be subject to informal resolution.

Informal resolution may be conducted by the panel itself, a sub-committee of the panel, a single member of the panel or another person (which cannot be the PCC) appointed by the panel (see Regulation 28(3)). If anyone other than the panel is handling the complaint, provision may be made to refer a complaint back to the full panel (see Regulation 28(5)).

According to Regulation 28(7) a complaint cannot be formally investigated, although requiring the relevant office holder to provide information or documents, or summoning him or her to appear before the panel, does not count as investigation for these purposes.

Other steps designed to gather information about or corroborate the complaint such as taking statements from witnesses or seeking documents from other parties are prohibited.

If the person complained against chooses not to comment, this has to be recorded. The panel cannot offer an apology for the PCC's conduct unless the PCC has admitted the conduct in question and agreed to the apology.

The panel has to keep a record of the outcome of the procedure and copy this to those concerned. Details of the record can be published, but only after the parties have been given an opportunity to make representations, they have been considered and the panel is of the opinion it is in the public interest.

Provision and recording of Information (part 5 of the Regulations)

The panel has to tell the PCC the name and address where complaints are to be sent and the PCC has to publish the information as required by the panel.

After recording a complaint, a copy of that record should be sent by the panel to the complainant concerned with a further copy to the person complained against. Although the copy may be anonymised, or may not be provided, if to do so might prejudice a criminal investigation or proceedings, or would be contrary to the public interest. Any such decision must be kept under review.



All records have to be kept by the panel as required by the Regulations. The panel has to keep records of every complaint and purported complaint that is made to it, every conduct matter recorded by it and every exercise of a power or performance of a duty under the regulations.

The panel has a duty to provide the IPCC with any information, documents or evidence that it requires, in the form and time specified. The panel also has to allow the IPCC access to premises either in relation to an investigation or so that the IPCC can examine the efficiency and effectiveness of the arrangements for handling complaints. (Equivalent powers exist in relation to the investigation of complaints by the LGO.)

Complainants and any persons complained about should be sent a copy of any resolution (see regulation 28(12)).

Role of the Local Government Ombudsman

If at any stage there is a complaint about the way in which the panel has carried out or delegated the above functions, the matter can be referred to the LGO, provided that the matter has been subject to local complaint procedures which have been exhausted.

Delegation of functions

Although the panel's responsibilities are set out in the Regulations as summarised above, the Regulations also allow panels to delegate some of this work to sub-groups, other bodies or individuals including the host authority monitoring officer and the chief executive of the PCC.

The Regulations need to be read alongside the Home Office Guidance to understand the range of different options for delegation available. To improve clarity these are set out below:

Options for delegation

Option 1: Panel/host authority retains all functions

The panel does not have to delegate anything under parts 2, 4 and 5 of the Regulations. It should be noted that if this is the preferred option, the panel will need to satisfy itself that it is able to record complaints and conduct matters and refer these to the IPCC as required by the Regulations.

Variations on option 1

A: Delegation of initial handling and/or resolution to a sub-committee of the panel or a particular person on the panel.

B: Delegation of initial complaint handling and/or resolution to the monitoring officer of the host authority under local government legislation (the 1972 Act).

Option 2: A 'triage' role for the chief executive of the PCC (delegation of receipt, and initial handling and recording functions of the panel)

Regulation 7 allows the panel to delegate initial receipt of complaints to the chief executive of the PCC (in their role as monitoring officer) who will then distribute the complaints to the panel, the IPCC or the chief constable (or anyone else) as appropriate.

The 'triage' work in question would involve an element of investigation to gather sufficient information to be able to decide under Regulation 13 which is the appropriate body to deal with the complaint. This may involve for example contacting the complainant to request more information or clarification, which might help determine whether or not the complaint was a serious complaint.

Option 3: Making arrangements for securing informal resolution of complaints

Regulation 28 requires a panel to make arrangements to secure the informal resolution of complaints, although responsibility for securing resolution cannot be delegated.

Variations on option 3

The arrangements a panel can make include the ability to appoint a sub-committee of the panel, or an individual from the panel or a person who is not a member of the panel to secure the informal resolution.

This could be for example a private mediation company, social enterprise or voluntary organisation, or the chief executive of the PCC, or a local authority officer.

Option 4: Delegation of receipt, triage and resolution activity

A panel could also combine options 2 and 3 above, eg it could delegate the initial triage role to the chief executive of the PCC, and responsibility for securing the informal resolution of complaints to one of the bodies set out in option 3 above (which could include the chief executive of the PCC).

Delegation – some key points to consider

Funding delegated panel functions

It should be noted that neither the Regulations nor the Home Office guidance state who, in the event of certain panel functions being delegated, should pay for the work involved. This would presumably be a matter of local discussion and determination. In this context it should be noted that the chief executive of the PCC (or anyone else to whom the panel might wish to delegate functions) are not under a duty to accept such delegation.

Perceptions of independence in the complaints process

It should be noted that members of the public might view the complaints process as not sufficiently independent where the panel has delegated certain functions to the chief executive of the PCC in their monitoring officer role.

There are however a number of factors which might provide reassurance on this point, and might mean that delegation to the monitoring officer of the PCC as described above could make a lot of sense from the panel's perspective, given the limited resources it will have available:

- Regulation 13(1-3) requires cases which are actually serious and criminal in nature to be investigated by the IPCC – these must be referred. If later investigation revealed that obviously criminal matters were not referred, the chief executive would have been contravening the Regulations.
- The panel should introduce procedures to monitor any 'triage of complaints' where this aspect of complaint handling has been delegated to check that part 4 complaints are sifted in a fair and transparent way and are not for example lost in the system.
- If a complaint is made to a PCC about their own conduct, the PCC has to inform the panel (under Regulation 9(4)). If the chief executive of the PCC consults with the PCC but then does not refer complaints about the PCC to the panel, they would be contravening the PCC's duty to notify the panel under Regulation 9(4).
- The PCC or other relevant officer cannot deal with complaints about themselves – this is prohibited under Regulation 7(2).
- An additional safeguard is the ability of the IPCC to compel the panel to record and refer a particular matter if it considers it is in the public interest to do so.
- The Home Office does not consider that such a role for the chief executive of the PCC represents a conflict of interest. They point out that many organisations have satisfactory procedures for dealing with complaints on an in-house basis.

Summary tables of pros and cons of delegation

This guidance does not seek to determine what the most appropriate approach is, and to some extent this will only be determined in the light of experience of operating the system for a period of time.

In deciding and reviewing the best approach it is suggested that the following key points summarised in the tables below should be considered:

Option 1: Panel/host authority keeps all functions

Panel handles all complaints including all elements of receipt, 'triage' investigation as necessary and resolution

| | |
|-----------------------------|--|
| <p>Advantages</p> | <p>Allows access to all information in the incoming 'complaint postbag', which may be useful in providing the panel with a better overview of issues and could help inform the panel's wider scrutiny work.</p> <p>Makes it easier for the panel to properly supervise the handling of complaints.</p> <p>Generally avoids issues related to the potential conflict of interest if complaints were dealt with by the chief executive of the PCC.</p> <p>Provides reassurance to the public that there is no bias in complaint handling or skewed presentation of data about complaints received about the PCC (who might wish to suppress data which indicates their unpopularity).</p> |
| <p>Disadvantages</p> | <p>The panel must be able to comply with its obligations to record and effectively refer matters to the IPCC (careful thought might have to be given to whether this can be achieved without undue delay caused by the need to arrange extra formal panel meetings). The IPCC suggest that it would be helpful for arrangements to be in place such that serious incidents can be recorded and referred outside normal office hours.</p> <p>The number and complexity of incoming complaints is an unknown at this stage. As a result it is difficult to gauge how demanding this would be on panel and local authority resources in terms of the staff and associated training which might be necessary.</p> <p>No extra money is available for host authorities if they decided to handle all complaints.</p> <p>Distraction from the main business and purpose of the panel because of the time involved in actually dealing with complaints.</p> |

Variations on option 1

A: Delegation of initial complaint handling and/or resolution to a sub-committee of the panel or a particular person on the panel who would in either case report back to the full panel as necessary.

B: Delegation of initial complaint handling and/or resolution to the monitoring officer of the host authority under local government legislation (the 1972 Local Government Act).

Both options A and B would have the advantage of avoiding the need for a formal panel meeting to record and refer matters and the delay this could cause. Other advantages include flexibility, specialisation and avoiding possible concerns about bias and lack of independence which might be associated with involvement of the chief executive of the PCC.

Option 2: A 'triage' role for the chief executive of the PCC in their role as the monitoring officer of the PCC who acts as an initial filter of received complaints (ie delegation of receipt, and the initial handling and recording functions of the panel).

| | |
|----------------------|---|
| Advantages | <p>The PCC is bound to be an obvious point of contact for complaints from the public about a wide variety of policing matters – even if alternative contact points are advertised. The chief executive of the PCC might therefore be natural focus for collation and sorting of these complaints.</p> <p>The chief executive of the PCC may be able to draw on relevant legal expertise more easily than the local authority.</p> <p>This arrangement would strengthen any argument that the costs of carrying out the work should fall on the PCC – rather than the host authority, although getting any agreement on the PCC picking up the cost would have to be agreed locally.</p> <p>It might also be argued that the PCC chief executive could be more independent than the panel from a political perspective.</p> <p>Discussion on the complaint handling statistics provided by the PCC could be a useful 'standing item' to promote liaison and discussion when the PCC attends at panel meetings.</p> |
| Disadvantages | <p>A robust additional procedure would need to be put in place to ensure that complaints about the PCC or their deputy were being properly handled.</p> <p>Even with robust procedures as above in place, it might be hard to convince the public that there is an independent process in place for dealing with complaints about the PCC.</p> |

Option 3: Making arrangements for securing informal resolution

Regulation 28 allows a panel to appoint a sub-committee or an individual from the panel or a person who is not a member of the panel to secure informal resolution of complaints. This table assumes that the **chief executive of the PCC** is appointed under Regulation 28 to secure resolution of non-criminal complaints.

| | |
|-----------------------------|--|
| <p>Advantages</p> | <ul style="list-style-type: none"> • This arrangement would help the panel to concentrate on its main role of scrutinising and reviewing the decisions made by the PCC. • The chief executive of the PCC might have more resources available in terms of dedicated staff to investigate such matters. • Complaints about the PCC might arrive in batches which would require considerable input to investigate and resolve. It may be easier for the chief executive of the PCC and their staff to respond and re-direct staff to investigate cases where there are unpredictable fluctuations in workload. • This arrangement would support arguments that the costs of dealing with particularly time consuming cases should not fall to the host authority, but instead should rest with the office of the PCC particularly where the actions of the PCC may have in effect generated some of the complaints. • Discussion on the complaint resolutions carried out by the PCC could be a useful 'standing item' to promote liaison and discussion when the PCC attends at panel meetings. |
| <p>Disadvantages</p> | <ul style="list-style-type: none"> • A robust additional procedure would need to be put in place for the panel to be satisfied that informal resolution of complaints was being secured in a satisfactory manner, and that where necessary matters would be referred back to the panel. • Providing reassurance to the public that there is an independent process in place for dealing with complaints about the PCC might be difficult. |

Variations on option 3

As suggested above, options might include the appointment of a particular person or body outside the panel to secure the informal resolution of complaints. This might include a private company or perhaps a social enterprise or voluntary group specialising in mediation or complaint resolution.

These options would have advantages of avoiding any perception of bias, and they may provide effective routes to resolution. In the case of private companies however they would of course need to be funded to carry out the work.

Option 4: Delegation of receipt, triage and resolution activity

A panel could also combine delegation of options 2 and 3 above by delegation of the initial triage role to the chief executive of the PCC and then appointment of a sub-committee, panel member or other individual to secure informal resolution of a complaint.

| | |
|----------------------|---|
| Advantages | <ul style="list-style-type: none">• This arrangement would enable the panel to fully concentrate on its main role of scrutinising and reviewing the decisions made by the PCC.• The chief executive of the PCC may be able to draw on relevant legal expertise more easily than the local authority.• This arrangement would strengthen any argument that the costs of carrying out this work might fall on the PCC – rather than the host authority.• If there is a good PCC/panel route for communication – the complaint statistics provided by the PCC could be a useful focus and catalyst for discussions when the PCC attends panel meetings. |
| Disadvantages | <ul style="list-style-type: none">• Robust additional procedures would be needed for the panel to be satisfied that complaint handling and informal resolution of complaints were being dealt with in a satisfactory manner, and that where necessary matters would be referred to the IPCC rather than being dealt with informally.• Providing reassurance to the public that there is an independent process in place for dealing with complaints about the PCC would be more difficult. |

Variable factors affecting a panel's decision

In addition to the above considerations, there are a range of variable factors which might affect the panel's decision to delegate to the PCC's chief executive, including:

Anticipated number of complaints

Clearly the likely number of complaints will be one of the factors which will influence the balance of advantages and disadvantages outlined above. The level of complaints may be difficult to estimate as it will depend on a number of unforeseen variables such as:

- the PCC (and their deputy) and how controversial they and their plans are
- local medial coverage
- controversial issues locally
- how well the complaints arrangements are advertised.

Relationship with the PCC

The relationship with the PCC might affect how important it is to be seen to be independent in handling and referring complaints and conduct matters.

Relationship between the PCC and their Chief Executive

Issues about the independence of the process might be raised if the chief executive of the PCC appears to be too close to their PCC. This might trigger questions about whether complaints can be handled impartially at the filtration stage, particularly if the panel's informal resolution work has also been delegated.

Oversight of delegated functions

Where the delivery of certain panel functions has been delegated to others, the panel will still retain responsibility to check and be assured that the panel functions concerned are being delivered properly. In practice it is suggested that this will mean some kind of dip sampling of the records kept by the chief executive of the PCC, and appropriate follow-up of a selected number of cases.

It is not possible to stipulate precisely the percentage of spot check and case study reviews a panel should undertake. This would depend partially on the level of confidence which the panel builds up in the delivery of the delegated work over time.

It is suggested that the frequency of review might reasonably be pitched high to start with, until some markers for the level of confidence the panel might have can be established which will justify the frequency being reduced. It is suggested that in any event some review and check of complaint handling should remain a regular feature of panel meetings. This could also form part of the panel's wider intelligence gathering about the PCC activities and any associated matters which may need to be scrutinised.

Depending on how often the panel meets, more frequent sub group meetings might be considered to review and monitor delegated complaint handling arrangements.



Operating the procedure

Transferring cases between the panel and the IPCC

After recording a complaint or conduct matter, there may be movement of cases between the panel and the IPCC (clearly in this context, where panel functions are delegated, reference to the panel should be read as meaning whoever the function has been delegated to).

Transfer of cases to the IPCC would most often occur during the initial complaint handling stage, but it may happen later in the process where further information comes to light which results in re-classification of the case.

It will often be clear whether a case includes criminal related conduct elements which will mean referral to the IPCC, but in other situations it may be less obvious. Whilst it might be desirable to seek legal advice to help decide in particular cases, time and resources may preclude this, and it is envisaged that in cases of doubt the panel would refer to (or at least seek advice from) the IPCC.

Similarly the IPCC may send cases back to the panel to resolve informally under Part 4 of the Regulations. Although the panel should only deal with complaints about the PCC which are non-criminal, the panel could be called upon to resolve some matters which may have criminal elements but are judged by the IPCC to be below the threshold of what they can deal with. Examples of these kinds of matters might include spent criminal convictions, minor parking or speeding offences and suchlike.

Whilst the panel will need to accept and deal with these sorts of referrals, the LGA suggest that the panel will need to challenge referrals of this type where the IPCC's assessment might have been incorrect, and it appears that the matter would in fact involve the panel undertaking significant elements of criminal investigation.

It should also be noted that the IPCC has a 'call in' power which a panel must comply with; where a recorded matter which the panel is dealing with is transferred to the IPCC if they request.

Standard forms and practical arrangements for referral

Where cases need to be referred to the IPCC, the Regulations stipulate that this must be as soon as practicable but, in any event, no later than the end of the day following the day on which it first becomes clear to the panel that either the complaint or conduct matter must be referred or the IPCC notifies the panel it requires the matter to be referred to it.

IPCC form 7.1 should be used for making referrals to the IPCC. A copy of this form, associated IPCC contact details and IPCC guidance on the practicalities of transfer of complaints have been circulated by the LGA to host authorities.

Disapplication of the Regulations

Where the complaint has been correctly assigned for the panel to deal with, but the complaint falls into various specified categories set out in the Regulation 15(2), the panel may decide not to take any action. The kinds of issues which might fall within this category are matters which are older than 12 months, vexatious, anonymous or repetitious. The complainant should be notified if the Regulations are disappplied.

Local resolution under Part 4

Clarity is needed about what exactly resolution might look like.

Some local authorities' own complaints arrangements may provide good models for dealing with complaints informally. The LGA would be willing to assist in sharing good practice in this area.

In determining what local resolution might involve, it should be noted that Regulation 28(7) precludes investigation designed to gather information about or corroborate the complaint such as taking statements from witnesses or seeking documents from other parties⁶.

The current complaints system for police officers suggests that the term 'informal resolution' is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant. The system states that:

'Local resolution can be a proportionate, timely and effective way of resolving many complaints. It is a simple and flexible way for people to tell the police what happened and find out why it happened. The complainant's acceptance of the outcome should be the objective of any local resolution process.'

Local resolution is not a disciplinary process. It will not lead to any disciplinary proceedings against a police officer or member of police staff and the complaint will be closed after the process has been completed. This does not however prevent a manager from taking management action if appropriate.'

⁶ The Home Office Guide to the Regulations may assist further on this point

The IPCC Statutory Guidance to the police service (Pursuant to Section 22 Police Reform Act 2002) includes some references (for example on pages 79–80 which is reproduced below) on informally dealing with complaints which might also be worth considering⁷.

'Local resolution is a flexible process that may be adapted to the needs of the complainant and the individual complaint. The important point is that a complainant is clear how it will work for him or her and is in agreement with the steps to be taken to resolve the complaint. Local resolution may include:

- resolution over the counter or by telephone after the complaint has been recorded
- providing information
- an apology on behalf of the appropriate authority (see paragraphs 450-453, page 119, for more information on apologies)
- concluding the matter through correspondence explaining the circumstances
- individual communication between the complainant and the person complained about, via the manager handling the complaint
- an apology made by the manager or the professional standards department on behalf of an individual (who has to have admitted the conduct and agreed to make an apology)
- a face to face meeting between the complainant and the person complained about, mediated by the manager handling the complaint or by another person agreed by all parties.'

Under Regulation 28(6) the Home Office may approve procedures for dealing with complaints under part 4; it is unlikely that they would specifically approve individual procedures, however they have stated in their guidance what they would not approve (see page 8 of the Home Office Guide referred to in footnote 6).

Other guidance which may assist

- The ACAS website has some guides on mediation and arbitration in the context of an employer/employee related relationship – see <http://www.acas.org.uk/index.aspx?articleid=1680> – this includes some basic background information on mediation and the stages involved.
- The Civil Mediation Council (<http://www.civilmediation.org/>) has a brief explanation of mediation and what it involves along with a list of registered mediation services providers.
- The Chartered Institute of Arbitrators (<http://www.arbitrators.org/>) is a membership body for those involved in alternative dispute resolution, and also provides training courses and qualifications.
- There are likely to be a range of local mediation services that could provide services or training.

⁷ The IPCC Guidance can be accessed here <http://www.ipcc.gov.uk/en/Pages/default.aspx>

Annex

LGO information on the features of an effective complaints procedure

Principles for effective complaint handling

Accessibility

Communication

Timeliness

Fairness

Credibility

Accountability

Features of an effective complaints procedure

Accessibility: It is well publicised. It is easily accessed and understood, by staff and by the public.

Communication: It includes early direct contact with the person making the complaint and continued contact through the complaints process. There is effective communication between council staff and between the council and its partners regarding complaints. There is effective communication where the complaint involves more than one body. There is an effective recording and feedback loop so that improvements can be made.

Timeliness: It takes no longer than 12 weeks from receipt to resolution.

Fairness: It is clear about roles and responsibilities. Complaints are dealt with in an open-minded and impartial way. Responses are proportionate; one size does not fit all.

Credibility: It is managed by someone who can take an overview and can implement changes in the complaints system. It includes a robust review by someone who has the independence and authority to ask questions, get at the facts and recommend changes in response to complaints.

There is effective leadership that ensures that the complaints system and learning from it has a high profile across the council.

Accountability: Information is provided in a clear and open way and is properly managed. There is follow-up to ensure any decisions are properly and promptly implemented. There is regular monitoring to ensure timescales and satisfaction levels are met. There is periodic review of the process, to keep it up to date and keep the public informed.

The purpose of a complaints system is to put right what has gone wrong and to learn from it.



Local Government Association

Local Government House
Smith Square
London SW1P 3HZ

Telephone 020 7664 3000
Fax 020 7664 3030
Email info@local.gov.uk
www.local.gov.uk

© Local Government Association, December 2012

For a copy in Braille, larger print or audio,
please contact us on 020 7664 3000.
We consider requests on an individual basis.