

the commissioner and the operational independence of the chief constable (and chief fire officer).

Key lines of enquiry of the panel for a deputy commissioner might focus around her/his understanding of the commissioner's vision and priorities and the role that the deputy would play in support of the commissioner's strategy and delivery of the plan. The panel might also ask questions in relation to public engagement or other significant requirements to fulfil the role profile in the more political context of the deputy commissioner post.

Handling complaints

Panels have two roles in relation to complaints handling:

- scrutinising and supporting commissioners on their oversight of force complaints and the handling of a chief constable complaint, following reforms to the police complaints and disciplinary system, and
- a direct role in dealing with non-criminal complaints about the commissioner, one of their special functions.

Reform of complaints handling

The Policing and Crime Act 2017 provides for the overhaul of the police complaints and discipline systems, in line with the Home Office's stated view that 'PCC oversight and direct involvement in complaints handling provides an opportunity to gain powerful insights in how a local force operates and key concerns for members of the public'. When fully implemented, the reforms will see commissioners take on an enhanced role in the complaints system.

All commissioners will have an explicit statutory duty to hold the chief constable to account for the efficient and effective handling of complaints locally, and

they will take on responsibility for complaints' reviews (appeals), which are currently handled internally by forces. Commissioners will also be able to give notice to their chief constable that they will take on 'front-end' initial complaints handling, ie receiving and recording complaints (optional model 2), or take on initial complaints handling together with maintaining contact with the complainant throughout the process (optional model 3).

It is a decision of the commissioner in consultation with the chief constable whether to take one of the optional models – and if so, which one. Regulations will specify the steps a commissioner must take before giving notice to take on optional functions (including consultation on the proposed optional model) and to whom s/he can delegate her/his functions. Formal resolution of complaints will remain the responsibility of the chief constable as the head of the organisation about which complaints have been received.

The 2017 Act also provides for a system of police super-complaints. This reform came into effect on 1 November 2018 and enables organisations designated by the Home Secretary to raise concerns that a feature, or combination of features, of policing in England and Wales is, or appears to be, significantly harming the interests of the public. The super-complaint system is designed to bring systemic issues in policing to light that are not otherwise captured by the existing complaints system based around individual complaints. Super-complaints will be considered by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) the College of Policing and the Independent Office for Police Complaints who, together, will consider the matters raised and make recommendations as to what (if anything) needs to happen as a result of the super-complaint. The role of panels will be limited to scrutinising any national recommendations for the commissioner that come out of these.

Panels will need to be aware of the impact of changes effected by the 2017 Act. When complaints reforms are in place, this will include scrutinising the commissioner on the discharge of her/his functions in respect of complaints and super-complaints, the notification of them, her/his capacity to fulfil this new duty and any potential consultation on and extension of the commissioner's role to include either of the optional models. They will not have this role until the reforms are in place.

Panel complaints handling

Type of complaints

In terms of their own specific responsibility for complaints, regulations⁴ require panels to consider non-criminal complaints about the conduct of a commissioner and/or deputy commissioner, where appointed.

Complaints may refer to conduct matters including actions and omissions, statements or procedures, including the way decisions are taken. They do not include the merits of a decision with which a complainant may disagree, but only whether the decision was taken properly in accordance with procedures. Regulations divide complaints into:

- complaints – conduct of the commissioner or deputy commissioner
- serious complaints – allegation the commissioner or deputy commissioner has committed a criminal offence
- conduct matter – indication that the commissioner or deputy commissioner may have committed a criminal offence, which has come to light other than through a complaint.

Panels must refer serious complaints and conduct matters to the Independent Office for Police Conduct.

Options for dealing with complaints

It is for panels to decide how to handle their complaints function. Options include:

- work undertaken by a complaints sub-committee of the panel that reports to the panel
- delegation of the first sift of the complaint by the chief executive of the commissioner's office, possibly in the presence of a representative of the panel
- delegation of the informal resolution of the complaint.

There should be clear procedures illustrated by a flowchart with clear timescales, a form for submitting and outlining a complaint, definitions of complaints including vexatious complaints and information about routes for complaints that are not the responsibility of panels. These should be accessible to the public, including on the panel's website. These procedures should reassure the public that complaints against the commissioner or deputy are handled fairly and appropriately by the panel or referred to the proper body.

Complaints should where possible be acknowledged within five working days and conducted within forty working days (eight weeks) if dealt with through the informal resolution process.

There is a duty to record the complaint or to state reasons why it was not recorded, or other action taken, and to obtain and preserve evidence. If a complaint is recorded, the complainant and the commissioner or deputy commissioner will be provided with a copy of the record of the complaint, if necessary with redaction to protect the identity of the complainant or any other person, unless this might prejudice a criminal investigation or not be in the public interest.

4 www.legislation.gov.uk/ukxi/2012/62/contents/made

Three options are then available to the panel:

- to refer a serious complaint or conduct matter to the IOPC
- to refer the complaint to the panel or its complaints sub-committee for informal resolution
- to take no action.

A panel may choose not to refer the complaint for resolution nor take action if:

- it does not relate to the actions or statutory responsibilities of the commissioner or deputy commissioner
- the complaint is by a member of the commissioner or deputy commissioner's staff arising from their work
- it is more than 12 months old and there is no apparent good reason for the delay or the delay would cause injustice
- it is already the subject of another complaint
- it is anonymous
- it is vexatious or another abuse of the procedures for complaints
- it is repetitious
- it has been resolved before it comes to the panel's attention.

A complainant can withdraw or discontinue their complaint at any time by notifying the panel in writing with the person's signature and the commissioner or deputy commissioner must be informed. A record of all complaints received should be kept until 12 months after the commissioner or deputy commissioner leaves the post.

Managing complaints and challenge for panels

Many panels (and their host authorities especially) have found complaints handling to be very difficult because they are not responsible for and cannot investigate complaints, yet are expected to encourage

or facilitate informal resolution. Informal resolution is intended to enable the matter to be solved or explained directly with the complainant without an investigation or formal proceeding, and there are no sanctions available. As a result, there has been a seemingly disproportionate amount of time and resources spent on complaints handling.

The panel needs to have information in order to come to a judgement about the action to take. This could require clarification through a meeting with the commissioner, or deputy commissioner if the subject of the complaint.

The support officer or another officer (eg the local authority's monitoring officer) must write to the complainant setting out the procedure and timescales and giving the complainant and the commissioner or deputy commissioner the opportunity to make further written comments about the complaint within a set timescale. The panel has the power to require the commissioner or deputy commissioner to provide information and documents and to answer questions, but not to conduct an investigation by taking statements from others.

The complainant and the commissioner or deputy commissioner with the chief executive or another member of her/his office may be invited to a meeting in private but may only speak at the discretion of the chair.

The panel will consider whether the complaint has been dealt with satisfactorily and been resolved or what course of action is required. This might be an explanation or agreement on how to move forward after mediation. The decision of the panel is to be recorded and notified to the complainant, the commissioner or deputy commissioner, the support officer and the chief executive of the commissioner's office.

There is no right of appeal, but complaints about the process may be submitted to the

support officer or chair of the panel with the option to refer the matter to the Local Government Ombudsman if a satisfactory answer is not considered to have been made.

In reporting about complaints about the commissioner or deputy commissioner, it is appropriate for the panel to report on the number of such complaints and how they have been dealt with, but not provide details of the resolution of individual complaints, for example, in order to protect personal information.

Wider activity to support panels' functions around the discharge of the commissioner's functions

Whilst there is no statutory duty to undertake proactive work, panels may choose to undertake activity in addition to their special functions in order to consider more fully how the commissioner discharges her/his functions, and to inform their statutory work. Panels which undertake such proactive work and additional research are likely to provide more effective challenge and support for their commissioner because they are able to gain greater insight and understanding of the strategic policing landscape in the local area.

What 'proactive' work will look and feel like

The precise nature of this proactive work and how it engages with the commissioner's decision-making and policy cycle is best decided at local level and subject to discussion between the commissioner and the panel. However, it needs to focus on the work of the commissioner, reflect the capacity of members and officers and enhance the effectiveness of the panel in meeting its statutory duties.

Proactive work is likely to look and feel different from the scrutiny, and constructive challenge, of commissioner performance and decisions that have already been made. Whilst it is important to learn lessons through

reviewing how decisions have been made or the impact of policies and actions, proactive work connects more to a panel's supportive role and should be seen by panels and commissioners as an opportunity to liaise in order to expand and develop the evidence base that feeds into the decision-making process.

Building a broader evidence base to support the panel's 'special functions'

This exploratory work of evidence-gathering and thematic investigations enables members to build their knowledge of complex, cross-cutting issues in a way that would be impossible solely through a report submitted by the commissioner or her/his office or background research by an officer supporting the panel. This broader evidence base, once at the panel's disposal, ensures that when a panel considers the draft precept or is consulted about a refresh of the plan(s), it has a better understanding of the policing (and fire and rescue) needs of the area, the opportunities afforded by partners to deliver services and the impact of the plans of the commissioner. The greater knowledge of the panel also allows its members to ask more reasonable and searching questions of the commissioner and to provide meaningful feedback as part of any of the consultation processes, or formal consideration of key agenda items. This information may provide additional insight to the commissioner during meetings with the panel and/or the chief constable.

Understanding issues in her/his local area, including crime and disorder matters, is already part of the role of a councillor and these insights could constructively feed into the panel's deliberations. However, it is important to balance the risk around members of the public and complainants seeking to abuse the trust of councillors in attempts to circumvent normal operational policing arrangements in respect of individual concerns.

An explanation of what this proactive activity by a panel will mean for the commissioner/panel relationship (and potentially, the