



Police and Crime Panel

30 November 2012

The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012

Report of Colette Longbottom, Head of Legal and Democratic Services

Purpose of the Report

- 1 To advise the Panel of its obligations under the Elected Policing Bodies (Complaints and Misconduct) Regulations 2012 ("the Regulations").
- 2 To propose steps forward to comply with those Regulations.

Background

- 3 There are a number of functions connected with complaints and conduct matters which are the responsibility of the Panel.

The Initial Handling of Complaints and Conduct Matters (part 2 of the Regulations) – Serious Complaints

- 4 Where a complaint or conduct matterⁱ about the PCC comes to the attention of the Panel (or the PCC) it has a duty to obtain and preserve the evidence and comply with any directions from the Independent Police Complaints Commission.
- 5 A new complaint has to be recorded by the Panel, unless it has already been dealt with through criminal proceedings. If the Panel or anyone else decides not to refer or record a complaint, then it must notify the complainant of the decision to take no action on the grounds for that decision.
- 6 The Panel must also record a new conduct matter. The IPCC can also direct the Panel to record a conduct matter which has come to its attention.
- 7 A serious complaint or 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 that it should be referred" (Regulation 13). A serious complaint is defined as "a qualifying complaint made about conduct which

ⁱ As defined by the IPCC "any matter which is not and has not been the 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".

constitutes or involves, or appears to constitute or involve, the commission of a criminal offenceⁱⁱ.

- 8 The Panel 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 refer the matter back to the Panel to handle. Again the parties, if appropriate, have to be notified of the decision.
- 9 For complaints not being dealt with by the IPCC, the Panel can decide to deal with this by informal resolution under part 4 of the Regulations.
- 10 The Panel can decide not to apply the Regulations in certain circumstances. These are in summary:-
 - (i) Where the complaint is an employment issue;
 - (ii) It is more than 12 months old;
 - (iii) The matter is already the subject of a complaint ;
 - (iv) It is anonymous, vexatious, oppressive or an abuse of the procedures, or repetitious.
- 11 A complaint can be withdrawn or discontinued by a complainant, in which case 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.
- 12 The PCC must notify the Panel of any allegation, investigation or proceedings in relation to their conduct outside England and Wales and in such circumstances, the Panel can handle the manner in whatever manner it thinks fit.
- 13 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. This depends upon the extent to which the Panel has delegated its functions.
- 14 The Regulations enable the Panel to delegate all of the powers or duties imposed on it by these Regulations (with the exception of part 4, Resolution of other Complaints). The Chief Executive of the PCC needs to agree to such delegation and the Chief Executive of the PCC has indicated that she is willing to accept the delegation in the following term; “the initial receipt of complaints, and referral to the members of the Police and Crime Panel, if it appears to be of any substance”.

Resolution of Other (Non-Criminal) Complaints

- 15 If a complaint concerns the conduct of the PCC or their Deputy, then the Panel must make arrangements for the complaint to be subject to informal resolution.

ⁱⁱ Schedule 7 paragraph 2(6) of the Police Reform and Social Responsibility Act 2011.

- 16 The 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 can not be the PCC) appointed by the Panel (Regulation 28(3)). In a case where a sub-committee or person is appointed, the arrangements made by the Police and Crime Panel may include arrangements for the complaint 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.
- 17 According to Regulation 28(7), a complaint can not be formally investigated, although requiring the PCC or Deputy to provide information or documents, or summoning him or her to appear before the Panel, do not count as an investigation for these purposes (and is therefore permissible)
- 18 Other steps designed to gather information about, or corroborate the complaint, such as taking statements from witnesses seeking documents from other parties, are prohibited.
- 19 If the person complained against chooses not to comment, this has to be recorded. The Panel can not offer an apology for the PCC's conduct unless the PCC has admitted the conduct in question, and agreed to the apology.
- 20 The Panel has to keep a record of the outcome of the procedure and send a copy to the parties. Details of the record can be published, but only after the parties have been given an opportunity to make representations, that they have been considered and the Panel is of the opinion it is in the public interest to do so.

The Provision and Recording of Information (Part 5 of the Regulations)

- 21 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.
- 22 The Panel has to send a copy of the record of the complaint to the complainant and a copy of the complaint to the person complained against. The copy of the complaint 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.
- 23 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 the power or performance of the duty under the Regulations.
- 24 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 must also 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.
- 25 Complainants and any persons complained about should be sent a copy of any resolution (Regulation 28(12)).

- 26 If at any stage there is a complaint about the way in which the Panel was carried out delegated the above functions, the matter can be referred to the Local Government Ombudsman, provided the matter has been subject to local complaint procedures which have come to a conclusion.

Delegation of Functions

- 27 As said previously, the Regulations allow the panel to delegate some work to sub-groups, other bodies or individuals including the Chief Executive of the PCC.

- 28 The options for delegation are:-

Option 1: Panel/Host Authority keeps all Functions

In this case the Panel can do everything specified above. If this is the preferred option, the Panel will need to satisfy itself that it is able to comply with all its statutory duties, particularly in relation to the recording of complaints and conduct matters, and for referring relevant matters to the IPCC.

Option 2: Delegate receipt of complaints to Chief Executive of PCC

The receipt of complaints is a matter which the Chief Executive of the PCC has agreed to have delegated to her, and this is recommended as the most efficient way of proceeding in relation to the initial receipt of complaints.

- 29 It is recommended that the Panel delegates to the Chief Executive of the Police and Crime Commissioner, receipt of complaints and referral to the members of the Police and Crime Panel, if it appears to be of substance.
- 30 As that is the extent of the delegation which is agreed by the Chief Executive, the Panel needs to consider whether it would delegate any other functions.

Re: Of the two above options, delegation of receipt of complaints by the Chief Executive of the PCC is recommended.

Delegation of Resolution

- 31 Regulation 28 allows a Panel to delegate the resolution of non-criminal complaints, including various elements of investigation to a sub-committee, or an individual from the Panel, or a person who is not a member of the Panel. This could be, for example, a mediator.
- 32 The responsibility for informally resolving complaints can not be delegated to the Chief Executive. The Panel will need to decide, therefore, whether it would wish to retain informal resolution as a whole Panel, or delegate this to a sub-committee.
- 33 The advantage of the Panel retaining the whole function is that there is a pooling of experience brought by all the members coming together;
- 34 The disadvantages of Panel retaining the whole function are:-

1. An attempt to informally resolve an issue involving one Officer with up to twelve members, could be seen as cumbersome, confrontational and not conducive to an atmosphere of informal resolution;
 2. For a matter that may require more than one meeting, whilst diary arrangements can be easily fixed for a small Panel, ensuring continuity, this would be more difficult for a whole Panel assembly.
- 35 It is therefore recommended that the Panel consider delegating the function of informal resolution.
- 36 It is recommended at this stage, that the Panel consider delegation to a sub-committee, rather than to one person. This will enable a pooling of experience and mutual support in resolving what may be a difficult issue.
- 37 It is therefore proposed that the Monitoring Officer of the Panel, on having a complaint referred to the Panel by the Chief Executive of the PCC, be authorised to convene a sub-committee to consider the complaint and deal with it subject to agreed procedures. In conjunction with this, it is recommended that the Panel agree that informal resolution of complaints be delegated to a sub-committee of members appointed by the Monitoring Officer to the Panel. It is, however, suggested that such appointment take place after the Monitoring Officer has consulted with the Chair, or in her absence, the Vice Chair, who may request that the matter be referred to the full Police and Crime Panel instead.

A Complaints Procedure

- 38 In order to ensure consistency and compliance with the Regulations, it is necessary for the Panel to agree procedures for dealing with complaints. It is proposed that such procedures comply with guidance produced by the Local Government Ombudsman. They must also comply with the Regulations. It is also suggested that they include a provision for dealing with vexatious, repetitive or other complaints. Attached at Appendix 2 is a draft procedure for approval.

Recommendations and Reasons

- 39 It is recommended that:-
- (i) that the Panel note the report;
 - (ii) that the Panel delegates to the Chief Executive of the Police and Crime Commissioner, receipt of complaints and referral to the members of the Police and Crime Panel, if it appears to be of substance;
 - (iii) That the panel delegates the informal resolution of Part 4 complaints to a sub-committee of three members, to be selected by the Monitoring Officer after consultation with the Chair and Vice Chair who may direct that the matter referred to the full Panel.

- (iv) that the Panel agrees that the Committee Services of the host authority keep the records required by the Regulations (with the exception of the record kept by the Chief Executive of the PCC);
- (v) the Panel approves the draft procedures appended at Appendix 2;

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Appendix 1: Implications

Finance – None specific within this report.

Staffing - None specific within this report.

Risk - None specific within this report.

Equality and Diversity / Public Sector Equality Duty - None specific within this report.

Accommodation - None specific within this report.

Crime and Disorder - None specific within this report.

Human Rights - None specific within this report.

Consultation - None specific within this report.

Procurement - None specific within this report.

Disability Issues - None specific within this report.

Legal Implications – Within the body of the report.