

Police and Crime Panel

Meeting to be held on 26th November 2012

Procedure for dealing with Complaints about the Police and Crime Commissioner

Contact for further information: Roy Jones, 01772 533619, Office of the Chief Executive, roy.jones@lancashire.gov.uk

Executive Summary

This report presents options for consideration on how the Police and Crime Panel will fulfil its statutory duty for the handling of complaints against the Police and Crime Commissioner, and the Deputy Police and Crime Commissioner if appointed.

Recommendation

The Panel is asked to consider the options set out in the report for the handling and resolution of complaints made against the Police and Crime Commissioner, and to

- a) agree the model it wants to adopt for the initial handling and administration of complaints (option A 1, 2 or 3);
- b) agree the model it wants to adopt for the informal resolution of complaints (option B 1, 2 or 3);
- c) agree arrangements for the review and monitoring of complaints received.

Background and Advice

The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 ("the Regulations") set out the processes by which complaints against a Police and Crime Commissioner (PCC) and a Deputy Police and Crime Commissioner (DPCC) are to be dealt with. The Regulations are based upon the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2004 for handling complaints against Chief Constables and Senior Police Officers.

Under the Regulations, the Independent Police Complaints Commission (IPCC), the Office of the Police and Crime Commissioner (OPCC), the Police and Crime Panel (the Panel) and the Chief Executive for the PCC (the Chief Executive) all have some responsibility for dealing with complaints, depending on their nature and seriousness.

The Police and Crime Panel has responsibility for handling all complaints (including conduct matters) directed against the PCC and DPCC. The Panel must consider each complaint that is made and determine what action should be taken, in

accordance with the Regulations. Any complaints or matters raised which indicate that the PCC or DPCC has, or may have, committed a criminal offence must be referred to the IPCC for them to consider and deal with appropriately.

The Regulations provide that the Panel may delegate all or any of its powers or duties under the Regulations, with the exception of Part 4 (informal resolution of complaints), to the Chief Executive of the Office of the PCC. This includes the process for the handling of complaints.

Very recently, the Home Office have issued guidance, to support the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 that confirms that this process can now be delegated also to the Monitoring Officer of the host authority.

A. Options for Handling Complaints

At the meeting in October a report was presented regarding the responsibility of the Panel to handle complaints made against the PCC. The report included the possible delegation of responsibility for handling complaints to the PCC's Chief Executive. However, as a detailed report on the processes involved was due to be presented to the next meeting it was agreed that consideration of the report should be deferred to await the more detailed report.

The recently made Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 selectively apply some existing local authority enactments to Police and Crime Panels. The selected provisions include the power under Section 101(2) of the Local Government Act 1972, which allows a committee or joint committee discharging functions to arrange for those functions to be discharged by a Sub Committee or an officer, in the absence of a contrary direction from the authority or authorities.

Under these provisions the Panel could delegate functions around the initial handling and administration of complaints to the Monitoring Officer of Lancashire County Council as the lead/host local authority and/or to a Sub Committee of the Panel.

The Regulations also require the Panel to identify a contact point for the IPCC for initial complaint handling. The contact point is required to be available at the weekends and out of hours.

Set out below are various options for the Panel to consider.

Option 1. Consideration of complaints by the Panel

The Panel has the statutory role of overseeing all complaints against the PCC and DPCC and informally resolving non-criminal complaints, as well as complaints or conduct matters that are referred back to the Panel by the IPCC.

Some of the actions which are necessary to fulfil the Panel's duties regarding complaints are required to be taken within (more or less) a 24 hour period and there

are a number of other administrative actions that should also be undertaken promptly.

Whilst at this stage, the nature or volume of complaints that might arise is unknown, in view of the size and composition of the Panel and the frequency of meetings, it is not considered practicable to deal with the consideration of all complaints at full meetings of the Panel.

Option 2. Delegated Authority to the Chief Executive of the PCC

In relation to those matters that cannot wait for the Panel as a whole to meet to consider and those administrative actions that should be undertaken promptly, the Panel has the option in legislation, and as provided for in the Regulations, of naming the PCC's Chief Executive as the first point of contact for all complaints made against the PCC, and a DPCC if appointed.

The PCC's Chief Executive must also be the Monitoring Officer and will, therefore, already have the function of assessing the lawfulness and propriety of the PCC's actions, and for doing so in an effective and impartial manner.

In many ways, this arrangement reflects current police authority arrangements where staff would handle complaints against members. The handling of member complaints by the Chief Executive/Monitoring Officer of the same authority also reflects normal practice in local government.

The Chief Executive's staff at Lancashire Police Authority have considerable experience of dealing with complaints made against senior police officers under the police legislation referred to above, which has been used as a model for developing the suggested PCC complaints handling procedure below.

The recently published Home Office Guidance considers that this delegation arrangement reflects current police practice where police authority staff handle complaints against members, and does not suggest that this task is currently not carried out effectively and impartially.

The following is the proposed model should the Panel decide to delegate responsibility for the handling of complaints against the PCC to the PCC's Chief Executive:

Initial Handling

- a) All incoming complaints which appear to relate to the conduct of the PCC or DPCC will immediately on receipt be forwarded to the Chief Executive who will, within 5 working days of receipt, express a view as to the process for the handling of the complaint (in whole or in part).
- b) The view of the Chief Executive as to the process for the handling of the complaint (in whole or in part) will be shared with the Secretary to the Panel.

- c) The view expressed by the Chief Executive on any complaint received will be whether:
- (i) The complaint is one to which the Regulations relate and which is required to be recorded and whether the complaint may require referral to the IPCC.
 - (ii) The complaint relates to a member of staff from the Office of the PCC and should be referred to the PCC's Chief Executive to deal with.
 - (iii) The complaint relates to the Chief Constable and is a matter to be dealt with by the PCC.
 - (iv) The complaint relates to a police officer and should be referred to the Chief Constable (Professional Standards Department) to deal with.
 - (v) The complaint should be handled otherwise than in accordance with Part 4 of the regulations (informal resolution) on the grounds set out in Regulation 15(3).
 - (vi) The complaint is more than 12 months old, a matter already subject to a complaint, is anonymous, repetitious, vexatious, oppressive or an abuse of procedure, in which case no action will be taken.
- d) If a situation arose where the Chief Executive considered that there was either an actual or perceived conflict of interest in relation to an individual complaint, the Chief Executive would refer the matter back to the Panel. The Panel would delegate the consideration of matters so referred to the Lead Authority's Monitoring Officer or a Sub Committee of the Panel.
- e) The Panel reserves the right to reverse the delegation to the Chief Executive both generally and in relation to any particular complaint.

Assistance

- f) The Chief Executive will provide assistance, information and access to premises to the IPCC or its appointed investigator in relation to any investigation of a Serious Complaint or Conduct Matter by the IPCC.
- g) The Chief Executive will notify the complainant and keep them informed of progress in accordance with the Regulations and as agreed with the complainant.
- h) All requests for a complaint to be withdrawn which appear to relate to the conduct of the PCC or DPCC will immediately on receipt be forwarded to the Chief Executive and, within 5 working days of receipt, the Chief Executive shall express a view as to process for the handling of the request in accordance with the provisions of the Regulations and Guidance. The view of the Chief Executive as to the process for the handling of the request will be shared with the Secretary to the Panel.

Option 3. Delegation to the Host Authority Monitoring Officer or a Sub Committee

As stated above the recently published Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 allows the panel to delegate the process for the handling of complaints against the PCC to the Monitoring Officer of the lead/host authority or a Sub Committee. This would include the detailed recording and referral of complaints to the IPCC described at Option 2 above.

The recent Guidance published by the Home Office confirms that the resources to be made available to the Host Authority for the support of the PCP's scrutiny function includes the handling of complaints and points to the ability to delegate this function to the PCC's Chief Executive to 'minimise this administrative burden'.

B. Informal Resolution

Informal resolution is the process provided for the PCP in legislation for the resolution of complaints against the PCC and 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 does not involve the imposition of any sanction and 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 either by correspondence or in a face to face meeting.

The method of informal resolution is for the Panel to determine, provided that it is in accordance with the Regulations and guidance issued by the Secretary of State.

Using the informal resolution procedure, the Panel may deal with the matter itself or by appointing one of the following to secure the informal resolution of the complaint and then report back to the Panel at the conclusion of the process:

- A single member of the Panel,
- A person who is not a member of the Panel (but not the PCC or DPCC nor the PCC's Chief Executive) or
- A Sub Committee

Option 1. Consideration of Informal Resolution by the Panel

The Panel may consider matters of informal resolution at its meetings. Whilst, at this stage, the nature or volume of complaints that might arise is unknown, in view of the size and composition of the Panel and the frequency of meetings, it is not considered practicable to deal with the consideration of the informal resolution of all complaints matters at full meetings of the Panel.

Option 2. Appointment of an Individual

The Regulations allow for delegation of the informal resolution procedure to a single member of the Panel or a person who is not a member of the Panel, although not the PCC or DPCC or the PCC's Chief Executive. This would place responsibility for

decision making on one independent individual and in view of the lack of knowledge of the volume and nature of such complaints, it is recommended that this option is not pursued at this time.

Option 3. Proposed Delegated Authority to a Complaints Sub-Committee

Some of the actions required to be taken to fulfil the Panel's duties may not be delegated to the PCC's Chief Executive (Part 4 – Informal Resolution of Complaints see below). It might be necessary to convene the Panel at fairly short notice to consider the handling or informal resolution of complaints.

In order to facilitate the timely consideration of matters which are referred to the Panel, it is recommended that, initially, the Panel would establish a Complaints Sub Committee comprising five Panel Members for this purpose. The Sub Committee could either be a standing sub committee (which will enable experience amongst a group of members to be gained over time) or a drawn from the full membership each time it needs to meet (which may provide greater flexibility).

It is recommended that the following powers and duties should be delegated to the Sub Committee to act on the Panel's behalf:

- a) To consider complaints which appear to relate to the conduct of the PCC or DPCC where the Chief Executive considers that either there is an actual or perceived, conflict of interest or possible negative public perception in respect of her taking the decision whether to record a Complaint or Conduct Matter, or in respect of her identifying a Serious Complaint for subsequent referral to the IPCC;
- b) To consider any matters referred back to the Panel by the IPCC (including a Serious Complaint that has been referred to the IPCC and then referred back to the Panel);
- c) To consider any complaint referred to the Panel by the Chief Executive in accordance with Part 4 of the Complaints Regulations relating to informal resolution.

In accordance with the Regulations, any matter being handled in accordance with Part 4 may be remitted at any time to the Panel as a whole (whether at the request of the Sub Committee, the complainant or the person complained against, or otherwise) if the Panel is of the opinion that this will lead to a more satisfactory resolution of the complaint.

The Panel may wish to delegate authority to the Secretary to the Panel, in consultation with the Chair of the Panel, to convene a meeting of the Sub Committee when required.

C Monitoring and Review

Regular Reporting

Ultimate responsibility for handling any complaint remains with the Panel. However, if it nominated the PCC's Chief Executive to handle any complaints matters, it would wish to satisfy itself that the Chief Executive could deal with any complaint impartially. This would be done by regular reporting to the Panel and liaison with the host authority on matters in between meetings.

The Chief Executive would provide an update report to each scheduled meeting of the Panel about all complaints and other matters concerning the conduct of the PCC and DPCC covered by the Regulations.

Monitoring – Dip Sampling

As part of any reporting mechanism, the Panel could choose to adopt a process of regular 'dip sampling' of all completed complaints files in order to monitor that complaints are being considered in an appropriate manner.

Review

It is proposed that the arrangements adopted by the Panel for the handling and resolution of complaints will be reviewed after 6 months' operation and a report on the findings of the review will be presented to the Panel in July 2013

Complaints Made Against the Panel

So far, no provision has been made in legislation or guidance regarding who should handle any complaint made against the Panel. The position on this will be reviewed when such provision is made. Each member will be subject to their respective appointing Authority's Codes of Conduct

Consultations

Report prepared in consultation with officers at Lancashire Police Authority.

Implications:

This item has the following implications, as indicated:

Risk management

The provision of an independent Police and Crime Panel for Lancashire is in accordance with the provisions of the Police Reform and Social Responsibility Act 2011.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
Guidance on Police and Crime Panel handling of complaints and conduct matters about the PCC	November 2012	Home Office Website http://www.homeoffice.gov.uk/publications/police/pcc/pcp-complaints-handling-process