

# Public Document Pack

## Police and Crime Panel for Lancashire Complaints Sub Committee

Wednesday, 19th September, 2018  
1.00 pm  
1.00pm, Room CH1:09, County Hall, Preston

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### AGENDA

1. **Appointment of Chair for the meeting**
2. **Police and Crime Panel Complaints Procedure**  
To note the Police and Crime Panel Complaints Procedure under which the meeting was convened and will be conducted.

**PCC-Complaints Procedure Updated January 2018**

**2 - 13**

### Part 2 - Exclusion of the Press and Public

3. **Complaint 44**  
To consider the report attached in respect of a complaint received in respect of the Police & Crime Commissioner.

Date Published: 13<sup>th</sup> September 2018

## **POLICE AND CRIME PANEL COMPLAINTS PROCEDURE**

### **LANCASHIRE POLICE AND CRIME PANEL COMPLAINTS PROCEDURE**

#### **BACKGROUND**

1. This procedure has been adopted to comply with the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 which are issued under the Police Reform and Social Responsibility Act 2011.

2. The Panel handles:-

- All non-criminal complaints directed against Police and Crime Commissioner (the Commissioner) and if appointed, any Deputy Police and Crime Commissioner; and
- Criminal complaints and conduct matters that are referred back to the Panel by the Independent Office for Police Conduct (IOPC) to be treated by the Panel as a non-criminal complaint.

#### **PLEASE NOTE**

The Commissioner is elected to make sure that local police meet the needs of the local community, and his role is to overseeing how the area is policed; the police budget; the amount of Council Tax charged for the police; and the information you get about what the local police are doing. Whilst the Commissioner has to be satisfied that the Chief Constable has in place a system that enables complaints against police officers to be dealt with, it is not part of the Commissioner's role to look at individual complaint cases against police officers.

The Panel does not deal with complaints involving the conduct/behaviour of Police officers or the delivery of operational policing matters. Complaints involving Police Officers or in respect of Police Operational matters are dealt with by:

Lancashire Constabulary Professional Standards Department,  
Police Headquarters  
PO Box 77  
Hutton  
Preston  
LancashirePR4 5SB  
Email: [hq-professionalstandards@lancashire.pnn.police.uk](mailto:hq-professionalstandards@lancashire.pnn.police.uk)

Alternatively, you can contact the IOPC directly.

#### **AIMS/OBJECTIVES**

3. To set out the way complaints against the Commissioner and the Deputy Commissioner will be handled by the Police and Crime Panel (the Panel).

4. To reassure the public those complaints against the Commissioner is dealt with fairly and appropriately.

5. To reassure the public that any complaint relating to a criminal offence will be referred by the Panel to the IOPC.

## **DEFINITIONS AND INTERPRETATION**

6. In these Procedures:

‘Sub-Committee’ means the Complaints Sub-Committee appointed by the Panel to handle complaints on its behalf.

‘Secretary’ means the Secretary for the Panel who will be the Monitoring Officer or Deputy Monitoring Officer for the Host Authority.

The term ‘Commissioner’ includes the Deputy Commissioner.

### **Meaning of ‘Complaint’**

7. This Procedure relates to complaints about the conduct of the Commissioner.

‘Conduct’ means the way things are done or not done, acts or omissions, statements that are made and the way decisions taken.

## **PLEASE NOTE**

It does not cover complaints about the merits of a decision, for example where somebody disagrees with a policy the Commissioner has introduced. The Panel can consider whether a decision was taken properly and in accordance with procedures, but it cannot substitute another view for that of the Commissioner.

8. The Regulations divide complaints into three categories; a complaint, a serious complaint and a conduct matter.

- A complaint is any complaint about the conduct of the Commissioner.
- A ‘serious complaint’ is a complaint which alleges that the Commissioner has committed a criminal offence.
- A ‘conduct matter’ is where there exists an indication that the Commissioner may have committed a criminal offence and this comes to light other than by way of complaint.

9. To assist attached to these procedures is a complaint handling flowchart.

## **INITIAL HANDLING OF COMPLAINTS**

### **Submitting a complaint**

10. The Panel has delegated its authority for the initial handling of complaints, together with other aspects of the process, as set out in these procedures, to the Secretary.

If you wish to make a complaint against the Police and Crime Commissioner you will need to contact the Secretary:-

David Fairclough, Monitoring Officer  
Email: [david.fairclough@blackburn.gov.uk](mailto:david.fairclough@blackburn.gov.uk)

11. When submitting a complaint it is helpful to provide as much information as possible, to be specific regarding what was allegedly said or done, the date it happened, and whether there were any witnesses. A form is available on the website.

### **Timescales**

12. Wherever possible complaints will be acknowledged within 5 working days, and concluded within eight weeks if dealt with through the informal resolution process (see below).

### **Duty to preserve evidence**

13. Where a complaint comes to the attention of the Panel, the first task is to ensure that all appropriate steps are taken to obtain and preserve evidence relating to the complaint.

This duty is ongoing until or unless arrangements are made for the complaint to be dealt with through informal resolution.

### **Notification and recording of complaints**

14. If the complaint relates to another PCC and police force area, the Panel for that area must be notified and the complaint passed on to them

15 If the complaint relates to the Lancashire Commissioner it will be recorded unless the complaint has been, or is already being, dealt with by criminal proceedings or the complaint falls within one of the exemptions or has been withdrawn.

16. If it is apparent at the time for recording a complaint that one of the exemptions applies to that complaint, (See Paragraph 30 below) then Secretary may decide not to record the complaint. Instead the Secretary will note that the recording of the complaint was considered and the reasons why it has not been recorded and any other actions taken. The complainant should be informed of that decision not to accept the complaint and the reasons why.

17. If the complaint is recorded, the complainant and the Commissioner will be provided with a copy of the record of complaint.

However:

- The record may be altered to protect the identity of the complainant or any other person.
- In some cases the Secretary may decide not to provide a copy of the record, if doing so might prejudice any criminal investigation or pending proceedings or would in some other way not be in the public interest. Any decision not to provide the record will be kept under regular review.

### **Options available to the Panel.**

18. There are 3 options available to the Panel:

- A 'serious complaint' or 'conduct matter' will be referred to the IOPC;
- A complaint can be referred to the Panel for informal resolution (see below);
- A decision can be taken to take no action.

### **Notification and recording of conduct matters**

19. If an issue arises because of a media report or for example by a notification of legal proceedings against the Commissioner, and it appears that the Commissioner may have committed a criminal offence, this is referred to as a '**conduct matter**'.

20. A 'conduct matter' is where no formal complaint has been received, but the matter should be treated in the same way as if there was a 'serious complaint'.

21. Such 'conduct matters' will be recorded in the same way as a complaint unless it is satisfied that the matter has already been recorded as a complaint or the subject of past or present criminal proceedings.

22. A conduct matter must be referred to the IOPC.

### **Reference to the Independent Office for Police Conduct (IOPC)**

23. The Panel is not responsible for investigating or determining whether a crime has been committed. The Secretary will decide which complaints may amount to criminal conduct and therefore should be referred to the IOPC. The Secretary may take advice from the IOPC before making the referral.

24. Any 'conduct matter' and any 'serious complaint' (i.e. a complaint about conduct that constitutes or involves, or appears to, the commission of a criminal offence) must be reported to the IOPC as soon as possible.

25. Other complaints must also be referred, if the IOPC requires the matter to be referred to them.

26. Referrals should be made as soon as possible and no later than the close of business the day after the Panel becomes aware that the matter should be referred.

27. The complainant and the person complained about should be notified, unless doing so might prejudice a future investigation.

28. It is possible for the IOPC to decide not to investigate a matter but to refer any complaint back to the Panel for informal resolution. The IOPC shall notify the complainant and the Commissioner that the matter has been referred back to the Panel. The complaint is then treated as a non-criminal complaint by the Panel.

### **Investigations by the IPCC**

29 If the IOPC decide to carry out a full investigation, the IOPC become responsible for producing an Investigation Report and for providing that report to the complainant and further, any publication of that report will be a matter for the IOPC.

The outcome of an IOPC investigation is not a matter that can be considered by the Panel.

### **Circumstances when the Panel does not need to deal with a complaint**

30. The Secretary can decide not to refer the complaint for resolution, or to take no action at all, in the following circumstances: -

- A complaint by a member of the Commissioner's staff, arising from their work
- 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
- A complaint about conduct that is already the subject of another complaint
- An anonymous complaint
- A complaint which is vexatious, oppressive or otherwise an abuse of process for dealing with complaints
- A repetitious complaint. For example the complaint is substantially the same as a previous complaint; or it concerns substantially the same conduct; or it contains no fresh allegations or evidence;

31. The complainant will be notified if the decision is taken not to deal with his/her complaint.

### **Withdrawn complaints**

32. A complainant can withdraw or discontinue their complaint at any time, by notifying the Panel in writing (addressed to the Secretary) and signing the notification. This must be recorded, and if the complaint has been referred to the IOPC they must be updated too.

33. The Panel may decide not to treat the complaint as withdrawn, but to treat it as a 'conduct matter' and refer it to the IOPC in accordance with the procedure set out in paragraph 23 above.

34. The Commissioner will be kept informed, unless to do so might prejudice a criminal investigation or pending proceedings, or would in some other way be contrary to the public interest.

### **Conduct occurring outside England and Wales**

35. The Commissioner is under a duty to notify the Panel via the Secretary, of any allegation, investigation or proceedings relating to his/her conduct outside England and Wales. The Panel can take whatever action it thinks fit in these circumstances. This decision will be made by the Secretary in consultation with the Chair of the Sub-Committee.

### **Informal Resolution of Complaints**

36. The Complaints Sub Committee will deal with the informal resolution of complaints. The Secretary will decide which complaints should be referred to the Complaints Sub-Committee for informal resolution. These procedures apply equally to the Police and Crime Panel and its Complaints Sub-Committee.

37. If a complaint is not referred to the IOPC or has been referred back by the IOPC then unless the complaint falls under Paragraph 30 above, it may be dealt with by informal resolution.

38. 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 taking place. 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.

39. If a complaint has already been satisfactorily dealt with by the time it comes to the Panel's attention, the complaint may be considered resolved and no further action taken. The Secretary can take this decision following consultation with the Chair of the Sub-Committee.

40. If action is to be taken the Secretary will make arrangements following consultation with the Chair of the Sub-Committee.

41 The Secretary will write to the complainant, setting out timescales; provide details of the informal resolution procedure; and giving the complainant and the Commissioner an opportunity to make further written comments in support of the complaint (allowing two weeks to respond)

42. Any complaint may be remitted at any time for informal resolution to be undertaken by the Panel itself, if the Secretary, the Chair of the Sub Committee, the Sub-Committee or the Panel considers that this may lead to a more satisfactory resolution of the complaint. The complainant or the Commissioner can also request remittal to the Panel.

43. Informal resolution will be discontinued if the IOPC notifies the Secretary/ the Panel that they require the complaint to be referred to them, or if the Secretary decides the complaint should be referred to the IOPC under paragraph 23 above.

#### **Requirements for informal resolution by the Panel**

44. The intention is for the procedure to be flexible so it can be adapted to individual circumstances.

45. However, there are some formal requirements which are set out below:

- If a complaint is dealt with by way of informal resolution the Panel does not investigate the complaint, and the duty to preserve evidence does not apply once informal resolution is initiated.
- The Panel has power to require the Commissioner to provide information and documents to them and to attend to answer questions. This does not amount to an investigation. The Panel cannot gather information about or corroborate the complaint by taking statements from witnesses or by seeking documents from other parties.
- The complainant and the Commissioner must be given the opportunity to comment in writing on the complaint as soon as is practicable.
- Any failure by the Commissioner to comment on the complaint when invited to do so will be noted in the written record.
- The Secretary shall send to the Panel the relevant papers and pertinent details of the complaint, 5 working days before the meeting

#### **46. The Meeting**

- The complainant and the Commissioner, the Chief Executive or a member of the PCC staff may be invited to the meeting. However



neither the complainant nor the Commissioner is entitled to speak in respect of the complaint at that meeting. However they may be invited to speak at the discretion of the Chair.

- The Panel will normally meet within 6 weeks of a complaint being made to decide upon an informal resolution.
- The matter will be considered by the Panel in private (this means that the public and press will be excluded from this part of the meeting when considering the informal resolution in accordance with the rules on access to information as set out by the Local Government Act 1972 as amended).
- The Panel will first consider whether the complaint has been dealt with satisfactorily and, subject to any written representations by the complainant, may decide to treat the complaint as having been resolved. In such a case, the reasons of the Panel will be recorded and notified to the parties in writing.
- If the Panel considers the complaint has not been dealt with satisfactorily, the Panel will decide what course of action may assist in resolving the complaint, and any recommendations it may wish to make in this respect. This may include:-
  - ❖ An explanatory letter to the complainant written by the Chair or an officer of the Panel (on behalf of the Panel);
  - ❖ An explanatory letter being written by the Secretary;
  - ❖ Requesting that the PCC or one of his or her staff write a letter of explanation to the complainant
  - ❖ A suggested change to the Commissioner's policy; or
  - ❖ Requesting the Commissioner issue an apology to the complainant. This could be face to face or in writing. No apology can be tendered on behalf of the Commissioner unless the Commissioner has admitted the alleged conduct and has agreed to the apology.

47. The decision of the Panel will be recorded as soon as practicable, normally within five working days after the process is completed.

48. The outcome of the meeting should be notified to the complainant, the Commissioner, the Secretary and the PCC's Chief Executive. The matter will then be closed.

### **The outcome of informal resolution**

49 Informal resolution is not a disciplinary process, and does not involve the imposition of any sanction; ultimately the Commissioner is held accountable by the ballot box. However the Panel may publish a report or recommendation.

50. The aim of the informal resolution process is to resolve the complaint to the satisfaction of the parties involved. For example, the person complained against may agree that an apology would be appropriate, an explanation might resolve the concern, or an agreement on how to move forward may be reached following mediation.

### **Publishing the outcome of informal resolution**

51. A record of the outcome of the informal resolution must be made as soon as practicable after the process is completed. Copies must be provided to the complainant and the person complained against.

52. The record of the outcome of informal resolution can be published if it is considered to be in the public interest. This decision rests with the Secretary in consultation with the Chair of the Panel. Before doing so the complainant and the person complained against will be invited to comment, and their views will be considered.

### **Keeping records**

53. A record of all complaints received will be kept until 12 months after the Commissioner and/or Deputy Commissioner leave office. The record will include the name of the complainant, details of the complaint and how the matter has been dealt with.

54. Summary reports regarding complaints dealt with under this procedure will be submitted to the Panel on a regular basis.

### **Appeals**

55. There is no right of appeal to an informal resolution.

56. However a complaint can be made about the way the matter was handled, for example if it was delayed or if there was a failure to record a complaint. In the first instance the complaint should be addressed to the Chair of the Panel:

The Chair of the Police and Crime Panel  
Email: [Democraticservices@blackburn.gov.uk](mailto:Democraticservices@blackburn.gov.uk)

57. The Chair with the assistance of the Secretary will respond to that complaint normally within 4 weeks.

58. If a satisfactory response is not received the complainant can refer the matter to the Local Government Ombudsman:

The Local Government Ombudsman [www.lgo.org.uk](http://www.lgo.org.uk)

8 January 2018

*(Approved July 2017 - Updated January 2018 re-renaming of IPCC to IOPC)*

## COMPLAINT HANDLING FLOWCHART



