

**SURREY POLICE AND CRIME PANEL****POLICE COMPLAINTS REFORM****19 September 2018****SUMMARY**

This report aims to outline the changes to the complaints process resulting from the Policing & Crime Act 2017. The report attempts to set a timetable for these changes to be implemented and what the impact is likely to be for the Surrey Police and Crime Panel.

**BACKGROUND**

The Policing & Crime Act 2017 introduced a significant change to the Police Complaints system, building on the previous years' reforms both of the complaints/conduct system, and of police governance in the form of PCCs.

The intention is that PCCs should take over the appellate function currently carried out by Forces' PSDs (Professional Standards Departments) for current 'local resolution' level complaints. Local resolution means dealing with complaints against the police at a local level – for example, through the involvement of an inspector at a police station. The inspector can talk with the complainant so they understand what the complaint is about and take any appropriate action to put things right. The inspector may also want to take the opportunity to explain what has happened from the perspective of the police officer involved.

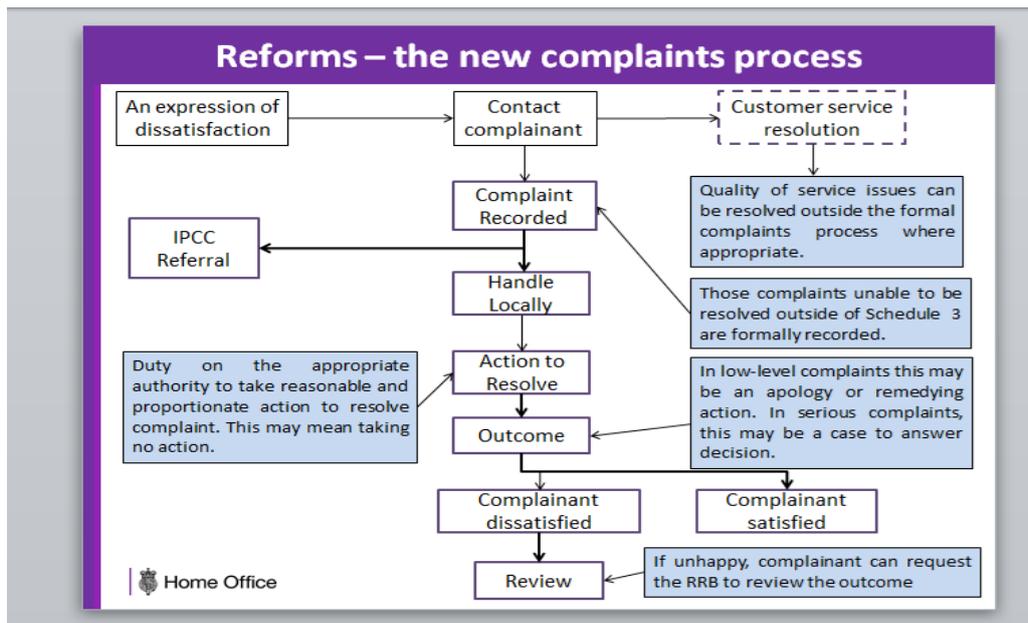
The present arrangements are that if someone is unhappy with the outcome of their complaint, and that matter is not defined as a serious one under the legislation, then they have a right of appeal back to the Force. This is perceived, understandably, as not being sufficiently independent and the Government believed it did not give the public confidence in complaints handling or the Police Service in general. Therefore, PCCs will be obliged to take on this appeal function (in future to be known as 'reviews'): the intention is that it will give greater independence, allow PCCs to have more effective oversight and scrutiny of the actions of the Force, and provide increased public confidence. However, the definition of "local resolution" as we currently know it will not be applicable moving forward, as the rules around recording complaints will change and PCCs will therefore have the ability to handle appeals/reviews of all but the most serious cases. In other words, the workload for PCCs in future is likely to be greater than the current workload for Force colleagues.

There is also the option, based on a combination of other PCCs' work and a desire on the part of the Government to allow a localised approach to PCC involvement in the wider complaints process, for various other functions of Forces' PSDs to be taken on by PCCs. PCCs could choose to be the recording body for complaints or also attempt

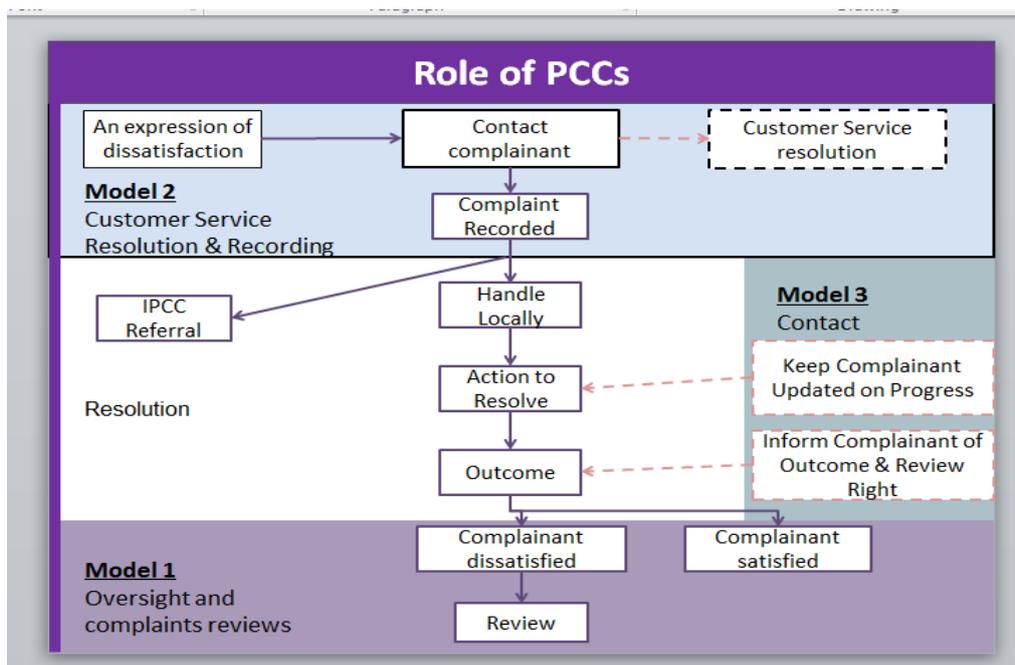
to resolve very low level matters outside of the formal processes. Additionally, PCCs will have the discretion to take responsibility for keeping complainants updated and providing the final outcome. Surrey's PCC has indicated he does not intend to take on these wider additional responsibilities, but will be required to take on the appeal/review function.

## NEW COMPLAINTS HANDLING PROCESS AND OPTIONS

The below is taken from a Home Office presentation in 2017, and sets out the new streamlined process for handling complaints.



Again, taken from the Home Office presentation, below is the simplified version of the three models PCCs could adopt.



### **Model 1**

Model 1 is the minimum requirement of all PCCs. It will require PCCs to receive appeals (to be known as reviews) from the public, consider whether the Force took proportionate action, and then contact the complainant with the outcome. This role is currently discharged by PSD.

Where the PCC feels that either the complaint was not handled correctly, or the outcome was not appropriate, then recommendations can be made that the Force takes action to rectify this. However, it is important to note that the PCC has no power to direct that remedial action take place, as the Chief Constable retains operational control. There is the possibility that an officer could refuse to take the action requested, which could lead to reputational issues for the PCC (in terms of looking ineffective/weak) and a potential disagreement with PSD staff and/or the Chief Constable.

This option would be the least disruptive and least costly. Based on the assumption that an equivalent appropriate decision maker is appointed by the PCC, with expert knowledge provided from the existing team, and with an additional member of staff to provide administrative support, these staff could, potentially, be accommodated in the existing OPCC building. This would require a budgetary uplift.

Model 1 would also provide the cleanest separation of functions to preserve the PCC's 'hold to account' function. The more involved the PCC is with operational complaints handling, the more difficult it is to hold the Force to account for their actions. The PCC will appear more independent, in terms of managing appeals and ensuring that the Chief Constable carries out their role, in the eyes of the public.

However, this is the least innovative and radical approach to taking on board the Government's desire for reform of the complaints system, and gives the PCC the least leverage in improving the service to members of the public. It also means they will have least oversight and knowledge of the issues that the public are complaining about, as the Force will still be receiving complaints directly. This element would be moderated however by the increased level of performance monitoring that has been agreed.

These changes are set to come into effect in Spring of 2019.

### **Model 2**

This will also incorporate the elements of Model 1, but with the additional responsibilities of receiving complaints, contacting complainants, and then either recording the matter formally under the Police Reform Act (PRA) 2002, or attempting to informally resolve the issue for the complainant.

Model 2 would give the PCC a complete oversight of any dissatisfaction being raised by Surrey's residents in respect of Surrey Police, allowing a greater focus on key issues and potentially a greater ability to hold the Chief Constable to account.

However, this model would require a larger additional cost for the OPCC, including staffing costs and accommodation. In terms of the public perception, the PCC would potentially suffer from the same issue the police currently does: by being the same body that receives and records a complaint, and then handles any subsequent appeal/review, it could give rise to the belief that it was not independent and fair.

In practical terms, the administration of informally resolving complaints would pose some issues. As they tend to be for the lowest level issues (lack of an update, minor incivility, and so on) they are best handled directly by frontline staff, potentially the individual being complained about or their supervisor. Moreover, the quicker they are enacted the better for the complainant and the more likely they are to be accepted and resolved.

Additionally, if the OPCC takes responsibility for the initial handling of complaints, then it is likely that members of the public will assume that the OPCC owns the entire system. They would therefore understandably come to the OPCC for updates, which could lead to the OPCC assuming the work of Model 3 without the resourcing. It has also been observed in other Force areas that operate this system, such as Hertfordshire, that officers have a tendency to direct people to make a complaint directly to the OPCC, rather than attempt to resolve the matter immediately themselves.

### **Model 3**

This incorporates Models 1 and 2, and gives the OPCC the additional responsibility for keeping the complainant updated throughout, and providing the outcome letter.

Model 3 would give the PCC a complete oversight of any dissatisfaction being raised by Surrey's residents in respect of Surrey Police, allowing a greater focus on key issues and potentially a greater ability to hold the Chief Constable to account. It would provide greater interaction with the public, which could potentially increase the OPCC/PCC's profile.

However, there would be a significant increasing in staffing and accommodation required for recording initial handling decisions, updates and outcome letters away from those managing appeals. In terms of the public perception, the OPCC would more likely suffer from the same issue that the Police does: to be the same body that receives and records a complaint, and then keeps the individual updated, and then goes on to handle any appeal, would give rise to the belief that the appeal process was not independent and fair. The public would regard this as a conflict of interest.

As with Model 2, Model 3 would present some practical difficulties in the OPCC having to administer an operational process over which it had no control.

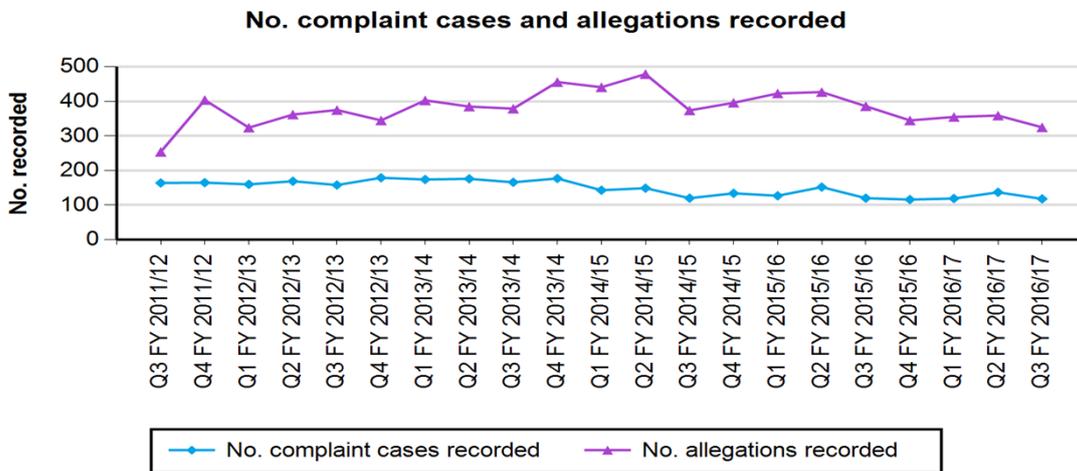
### MODEL FOR SURREY

The Surrey Commissioner, along with his neighbouring Commissioners (Sussex, Kent, Hampshire and Thames Valley), has decided to adopt Model 1. This will ensure that there will be an equitable approach across the region, which is important in terms of collaboration. However, although the regions Commissioners have all decided to adopt the same Model, the Act provides scope for PCCs to adapt the Model to suit their own local needs. Consequently, delivery of that Model is different in almost every case. For instance, Hampshire have considered the appointment of a “people’s panel” to review the decision making process of the Force, whereas Sussex are looking to provide the review process within its existing Office establishment. In spite of Surrey’s encouragement for PCCs to work collaboratively when taking on new responsibilities for appeals, there was no appetite to do so from regional colleagues.

In Surrey, the Commissioner is likely to adopt a Model that replicates one that has already been successfully delivered in Wiltshire over the last five years. This will see the appointment of a “Complaint’s Ombudsman” type role, perhaps a retired senior police officer with relevant experience and skills, who will, with administrative support from the Office, carry out the review function currently carried out by the Head of PSD.

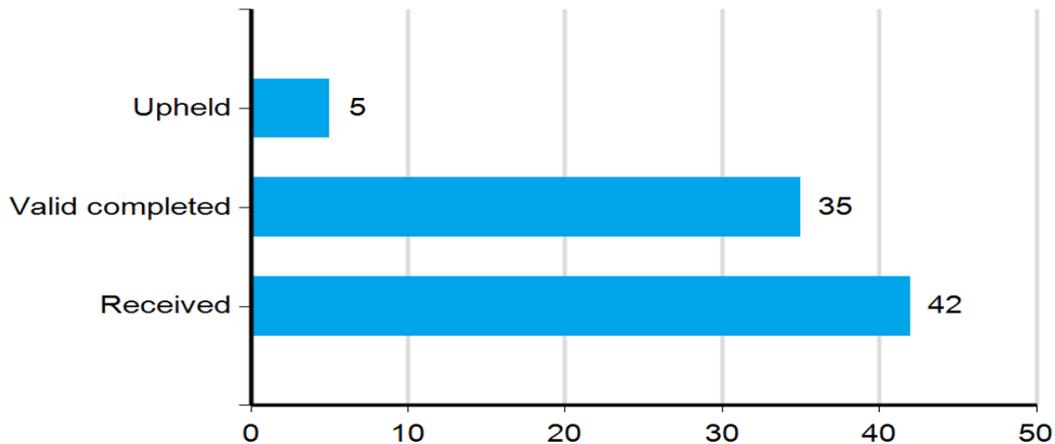
### EXPECTED IMPACT ON OPCC

To provide a basis for all further assumptions, information was gathered on the numbers of complaints made (2016/17); how they were handled; and whether they were appealed, and the amount of contact required.

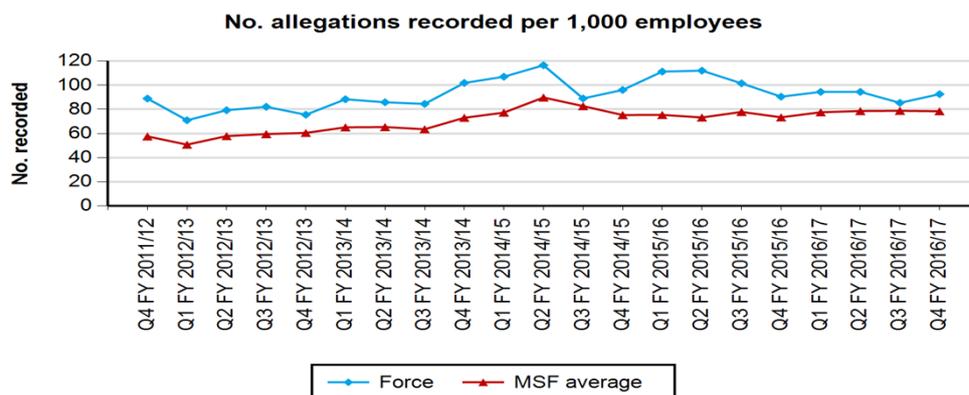


- In 2016/17 Surrey Police’s PSD recorded 483 complaints, approximately 40 complaints a month. These complaints were then broken down into 1,393 allegations, approximately 116 a month. 618 of these allegations were locally resolved.

## Force local resolution appeals 01 April 2016 to 31 March 2017



- 42 of these locally resolved complaints were appealed. However, while it may appear like this is a relatively small number (just 6.8% of all allegations locally resolved), it should be remembered that this figure is dependent on the number of complaints handled by way of local resolutions. For example, in Q3 2016/17 47% of complaints were locally resolved, but in Q2 2014/15 this figure was as low as 13%. It follows that the more local resolutions there are, the more local resolution appeals/reviews there will be. Furthermore, with the definition of “local resolution” set to be withdrawn, some care should be taken when using these figures to make assumptions.
- The number of complaints and allegations handled by Surrey Police has remained fairly static, or slightly reduced, over the last four years. However, if the intention of the Act is successful and the changes lead to greater confidence in the complaints system, brought about by the inclusion of PCCs, it is possible there will be an increase in the number of complaints and appeals.
- As shown, although the number of complaints and allegations received by Surrey Police appears to be slowly reducing, it is interesting to note that Surrey Police records more allegations per 1,000 employees than its most similar forces. Furthermore, Surrey Police is 8<sup>th</sup> nationally on the number of allegations it records per 1,000 employees. Colleagues in PSD have informed the PCC that this is because they are meticulous in recording every allegation separately and not clumping complaints and allegations together.



The following points need to be considered:

- The Policing and Crime Act is implicit in its intention that every complaint should be recorded. However, there are a significant number of complaints, or expressions of dissatisfaction, (458) that are not formally recorded but are dealt with by way of service recovery by the PSD front of house triage team. Indeed, this number is likely to be far higher, with many “complaints” taken by the Contact Centre and resolved there or by referral to the relevant local teams without going near PSD.
- There is, as yet, a lack of clarity on processes and implementation. The Home Office have tentatively suggested that the Act will be enforced by April 2019, but no concrete date has been set. Furthermore, the regulations required to provide clarity on the Act, including amendments to existing legislation, have also yet to be finalised. It is hoped that this will be ready in the coming months.
- There is a lack of detail on what happens should an appeal/review be upheld, and any work that would arise out of this. The PCC will only be able to make recommendations to the Chief Constable that a particular course is followed. In theory, therefore, the complainants appeal/review has been devalued as Surrey Police will be under no obligation to follow the PCCs recommendation. It is important, in terms of public credibility and confidence that Surrey Police and the PCC work hard to ensure these situations are avoided.

In terms of cost for the OPCC, the current level of staffing in Surrey Professional Standards Department (PSD), has been used to give an estimate. Considerations for costs and resources area as follows:

- PSD is led by a Detective Superintendent. He is supported by a Detective Chief Inspector. Below them are three Detective Inspectors, three Detective Sergeants, three Detective Constables and three Constables. They are supported by 24 civilian staff. Allowing for vacancies and job share, this accounts to an establishment of 37.33 full-time equivalent (FTE) posts, costing approximately £1.8m.
- Currently, local resolution appeals are handled by the Head of Department Legislatively, decision making under complaints (i.e. the Appropriate Authority decision) can only be delegated down to a Chief Inspector. It is unlikely that members of the public will be satisfied by anyone below that rank or seniority making a decision about their review.
- The current Head of Surrey PSD estimates that it takes him roughly 1.5 days a week to handle the appeals he currently has. Assuming there is a slight increase in the number of reviews following their appointment, and bearing in mind it will take them some time to become fully accustomed to the work, it would be fair to assume this post would require someone 2.5 days a week as a minimum.
- There will need to be specific administrative support and analytical capability provision allocated. Complainants will expect to talk to someone in the OPCC about their complaint and the decision maker and the PCC will need to be briefed and updated by someone with expert knowledge.
- Recording methods currently employed by the PCCs Office will not be sufficient for the effective management of complaints in the future, regardless of what Model is chosen. Access, at some level, will need to be given to Centurion, the

complaints handling system used by most police forces, and possibly Niche as well, the incident reporting mechanism.

- Consideration will also need to be given to whether it is possible to migrate information held on the OPCC's existing excel based complaints recording system onto the Surrey Police complaints system, Centurion, and whether the OPCC and Surrey Police can use the same Centurion system or whether they will need separate ones.

In summary, the changes described in this paper represent new and additional responsibilities for the PCC/OPCC and will require additional resources. The resources required will be reflected in the budget for the OPCC for 2019/20 which will be received by the panel in February 2019. It is the PCC's firm expectation that any increase in budget for the OPCC will be balanced with a commensurate reduction in budget for Surrey Police PSD.

### **TIMETABLE**

The implementation of the changes is still not fully known. Although the Act has been passed and some details have emerged, there remains a lack of clarity over a number of issues and when the Act will be enforced. The latest estimate is that it will come in to place in April 2019. Officers from the OPCC have met with Surrey Police's Change Delivery team to ensure this deadline is met.

### **IMPACT ON THE POLICE AND CRIME PANEL**

The legislation is clear that complainants will not be entitled to appeal the decision of the PCC in relation to their review to the Police and Crime Panel. This would, in effect, be an appeal of an appeal and would, consequently, be an abuse of the complaints system. This will not prevent people from attempting it, however, and the PCP should be prepared for an uptake in people wishing to appeal a review decision to the PCP. The PCP members and officers will need to be clear and consistent on its approach and explain that it is only able to handle complaints that relate directly to the actions of the Police and Crime Commissioner. Should complainants remain dissatisfied with their review, they will have the option to explore judicial review, in much the same way they have now.

Nonetheless, the PCP might like to consider how it scrutinises the process and performance of the PCC in how he manages the reviews of complaints. Currently the PCC dip-checks PSD files and meets with the Head and/or Deputy Head of PSD every quarter to consider the performance in the last quarter. Consideration is also given to appeals reviewed by the Independent Office for Police Conduct at these meetings. The PCP might like to consider doing something similar, although these will be challenges to overcome in achieving this, such as: GDPR regulations; Vetting; and software requirements.

### **RECOMMENDATION:**

That the Police and Crime Panel notes the changes to the police complaints system and considers how it wishes to scrutinise the OPCC in fulfilling the new duties.

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