

SURREY POLICE AND CRIME PANEL

POLICE COMPLAINTS REFORM

7 February 2020

SUMMARY

This report informs the panel of the main changes to the police complaints system and how they are being implemented in the Surrey OPCC.

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 reforms are intended to improve public confidence in the police complaints process.

Each police force will continue to be the body to which people will make their complaint or expression of dissatisfaction. The OPCC has no role in this initial complaint. The Professional Standards Department (PSD) of Surrey Police will be the 'Appropriate Authority' as set out in the legislation for receiving complaints.

The main impact for PCCs and their offices is in regard to public complaints. The intention in the legislation is that PCCs take over the appellate function previously currently carried out by Forces' PSDs (Professional Standards Departments) for current 'local resolution' level complaints. This is explained further in the attached paper provided to the panel in September 2018 (**Annex A**).

The changes were expected to come about during Spring 2019 but due to difficulties in parliamentary timetabling this timescale was delayed. OPCCs were informed in January that the regulations would be coming into force on 1st February 2020. The new legislation can be viewed here:

<http://www.legislation.gov.uk/ukxi/2020/2/contents/made> and

<http://www.legislation.gov.uk/ukxi/2020/4/contents/made>

As outlined in the attached paper, PCCs had 3 models to choose from in terms of their new function. These can be summarised as:

- Model 1 – this is the minimum requirement from PCCs and requires PCCs to review complaints cases if requested from the public to consider whether the Force took proportionate action, and then contact the complainant with the outcome. This role was carried out by PSD until February 2020. 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. Initial complaints would be handled by force PSDs.

- Model 2 – includes the elements outlined in model 1, but with the additional responsibilities for the OPCC for 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 3- incorporates models 1 and 2 and gives the OPCC the additional responsibility for keeping the complainant updated throughout, and providing the outcome letter.

REVIEW MODEL FOR SURREY

In Surrey, the PCC decided to adopt Model 1. This is the model that most PCCs are adopting, including all other PCCs in the South East region. This is the least costly model for the OPCC and ensures that the initial complaint or dissatisfaction is dealt with by the delivery organisation.

There are then various options of how to carry out the review function, which is up to the PCC to decide. The most common methods being used by PCCs are to either employ someone specifically to carry out the role or to use existing staff to make review decisions on behalf of the PCC. A small number of PCCs are also considering the use of 'people's panels' or independent groups to assist with the review process. In Surrey, the PCC has decided to employ a Complaints Review Manager (CRM) on a part-time basis. Current staff within the OPCC did not have capacity to absorb the review work but will support the new CRM. The role has been advertised and a person selected, who is expected to join the OPCC mid-March 2020.

In terms of timings for the reviews, the legislation came into place on 1st February and applies to all complaint cases raised with Surrey Police PSD from the 1st February. PSD will deal with any complaints reported after 1st February and send outcome letters when their investigation is complete. It is expected to be 4 to 6 weeks before the OPCC would expect to carry out any reviews.

There will be a communication page on the OPCC website with regard to the complaints and review processes as well as a form to complete to request a review.

In terms of implementing the review system, the OPCC will be using the national complaints system, Centurion, which will require licenses and training.

The new Complaints Review Manager will put in a process for making recommendations and means by which Surrey Police can respond.

The cost of implementing the new model is currently expected to be around £40k to £50k a year to cover salary costs, training costs, technology and system licensing. This will be reviewed once the system has been up and running.

CHIEF CONSTABLE COMPLAINTS

Under the new regulations, the OPCC is the 'Appropriate Authority' for Chief Constable complaints. PCCs have always handled complaints against Chief Constables and this will not change. However, the process for logging, recording and referring complaints to the IOPC (Independent Office of Police Conduct) has changed. The OPCC team have received training on the new processes. There are likely to be more Chief Officer complaints logged at first point of contact and more data collected by the IOPC. Whilst there is unlikely to be an increase in substantiated complaints, the new process could increase logged and recorded complaints against Chief Constables.

Under the new regulations, most complaints against a Chief Officer will be referred to the IOPC. The mandatory referral criteria includes any complaint relating to a chief officer where the appropriate authority is unable to satisfy itself from the complaint alone, that the conduct complained of if proved would not justify the bringing of criminal or disciplinary proceedings. The test must be applied to the complaint alone. The gathered material should be sent to the IOPC for the IOPC to consider whether the indication test is met. This means that for all chief officer complaints, the first consideration once it is logged is whether it needs recording and referring.

For a conduct matter, the local policing body will have applied the indication test (gathered and reviewed the evidence readily available) to decide if there is an indication that the chief officer may have committed a criminal offence or behaved in a way which would justify the bringing of disciplinary proceedings. This indication test is applied before deciding whether something meets the definition of a conduct matter. Therefore, all conduct matters, as they already meet that definition, will require referral to the IOPC.

OTHER CHANGES

The total changes to the police complaints and misconduct system are extensive. Many of these changes have an impact on forces themselves and the IOPC rather than PCC offices. There are some changes not detailed above that OPCCs will have to consider. These include:

- increased data collection and reporting requirements
- increased role in oversight and scrutiny of force complaints and expressions of dissatisfaction
- provision of Legally Qualified Chairs (LQC) for misconduct hearings – previously these were recruited by OPCCs but selected for each hearing by PSDs. From 1st February OPCCs will also select the LQC

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.

The OPCC will be amending the Scheme of Delegation to make it clear that reviews are delegated to the Complaints Review Manager (CRM). Any complaints against the CRM would be dealt with by the Chief Executive. The OPCC would like to ask the panel to amend their protocol between the PCP and OPCC to reflect the new complaints legislation.

The PCP might like to consider how it scrutinises the process and performance of the PCC in how he manages the reviews of complaints. They may wish to request data or reports.

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.

ATTACHMENT: Police Complaints Reform Paper to the Panel, 19th September 2018

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