

## SURREY POLICE AND CRIME PANEL

### POLICE COMPLAINTS REFORM

15 September 2020

#### SUMMARY

This report reminds the panel of the main changes to the police complaints review system and details how they have been 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 were intended to improve public confidence in the police complaints process.

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

The main impact for PCCs and their offices is in regard to public complaints. The legislation now requires PCCs to take over the appellate function previously currently carried out by Forces' PSDs (Professional Standards Departments) for what used to be termed 'Local Resolution' level complaints.

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 1<sup>st</sup> February 2020.

In short, PCCs had 3 models to choose from in terms of their new function. These are summarised as:

- Model 1 – this was the minimum requirement from PCCs and required PCCs to review complaints cases if requested from the public to consider whether the Force had taken 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 take 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 – included 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- incorporated models 1 and 2 and gave 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 was the model taken on by most PCCs, including all other PCCs in the South East region. This was the least costly model for the OPCC and ensured that the initial complaint or dissatisfaction was dealt with by the delivery organisation.

There were various options for how to carry out the review function, which was to be decided by the PCC. The most popular method used by PCCs (including Sussex, Thames Valley and Kent) was to either employ someone specifically to carry out the role or to use existing staff to make review decisions on behalf of the PCC.

In Surrey, the PCC decided to employ a Complaints Review Manager (CRM) on a part-time basis. Current staff within the OPCC did not have the capacity to absorb the review work but would support the new CRM.

The role was advertised and a selection process took place resulting in the appointment in mid-March 2020 of a recently retired senior police officer from a neighbouring force's PSD who had the relevant experience of complaint handling.

## **THE PROCESS OF COMPLAINT RESOLUTION**

The new legislation came into place on 1<sup>st</sup> February 2020 and applied to all complaint cases coming to the attention of Surrey Police PSD from that date.

Under the terms of the Police Reform Act (PRA), the AA makes an assessment of each new complaint by placing it in one of the following categories:

- Non schedule 3 – These represent low level dissatisfaction with police actions. They are recorded as complaints and forwarded to local supervision to address by way of SR (service recovery). There is no right to review at the conclusion of the process.
- Schedule 3 - Otherwise by Investigation. These relate to complaints which are still assessed as 'low level' in that they are not so serious that the officer/staff would be subject to criminal or misconduct proceedings, however there is a

need to determine whether the service provided by police was acceptable or not, therefore a more formal response is required. In effect, this is the 'old style' Local Resolution. This category also applies to Non-Schedule 3 cases (above) where the complainant is not willing to be involved with Service Recovery. The complaint is resolved by PSD who provide an outcome letter to the complainant. There is a right to review the outcome by way of the OPCC.

- Schedule 3 - Subject to Special Procedures. These are the more serious matters where it is alleged that an officer/staff may have committed a criminal offence or misconduct so serious that, if proven, would justify formal misconduct proceedings (i.e. a hearing or meeting.) These matters are subject to a formal investigation by PSD or, where applicable, the Independent Office for Police Conduct (IOPC). There is a right to review the outcome of PSD investigations by way of the IOPC.

The OPCC therefore has a responsibility to review complaint outcomes relating to the middle category only.

'Schedule 3 - Otherwise by Investigation' complaints in Surrey are handled solely by the PSD. As the name suggests, they are not subject to a formal investigation and the subject officer is not served any Regulation 17 notice. PSD are, however, expected to gather all available relevant evidence and address each allegation by determining whether the service provided was acceptable and whether or not there are areas for individual or organisational learning. At the conclusion, a final outcome letter is provided to the complainant explaining its findings. Contained within this letter is a paragraph explaining the right to request a review and the means of how to do so.

## **THE ROLE OF THE COMPLAINTS REVIEW MANAGER.**

The role of the Complaints Review Manager (CRM) is to conduct such reviews on behalf of the Surrey PCC.

Requests for reviews are received either by:

- Online submission via a link on the OPCC website
- Email or letter sent direct to the OPCC
- Email or letter sent (mistakenly) to PSD or IOPC and forwarded by them to the OPCC.

Only written requests are considered and any complainant making a request over the phone is advised accordingly.

Under the terms of the IOPC Statutory Guidance, there is no requirement for a complainant to state any grounds for their appeal.

The CRM must first decide whether such a request is applicable. Grounds for rejection at this stage include:

- The OPCC is not the correct appeal body, i.e. it should be the IOPC instead

- The request is out of time – there is a 28 day limit in which to lodge a request for review
- The PSD have not yet completed their enquiries. A request for review only becomes valid once a final outcome letter has been submitted by PSD.

## **PROCESS USED BY THE CRM**

On accepting a valid request for review, the CRM sends a formal letter to the complainant introducing himself and identifying his role. A target date is set by which time the complainant will receive a report detailing the CRM's review. This target date was initially 28 days, however, as of 1<sup>st</sup> August, it has been increased to 56 days. While the 28 day target had a 100% compliance rate over the first four months, due to a sudden rise in requests for review during June and July, it was determined that an extended timeframe would be more accurate and would more realistically manage complainants' expectations.

The new 56 day target is still considered to be reasonable when in comparison to former times when the equivalent appeals were conducted by the IOPC (then IPCC) within a 3-6 month timeframe.

There is no time for completion date specified within the IOPC Statutory Guidance.

The CRM also notifies the AA that a review has been requested and they inform the subject officer/staff.

In conducting a review, the CRM reviews all available evidence which typically could include:

- Initial complaint form
- Decision to Log and Record (DTLR) form of PSD
- CAD records relating to the incident
- Niche records including occurrence logs, crime reports, custody records
- Body Worn Video (BWV)
- CCTV
- Officers' written accounts
- Witness statements
- Correspondence between the complainant and PSD
- Attempts made at Service Recovery
- Force Policies
- Final Outcome Letter by a D.I. of PSD
- Request for Review and representations made by the complainant

This review is a remote process and once all relevant evidence has been established, together with any representations made by the complainant, there is no further physical or phone contact with either the AA or the complainant.

The purpose of the review is to determine whether the handling of the complaint by PSD was reasonable and proportionate. This incorporates whether sufficient enquiries were conducted in resolving the complaint and whether the outcome was a fair one.

At the conclusion of the review, the CRM provides a detailed report explaining his findings. A copy of the report is submitted to both the AA and the complainant. The decision of the CRM is final and there is no right to appeal this decision. If still dissatisfied, the complainant's only recourse is to request a judicial review.

If the CRM finds that the outcome is not reasonable or proportionate he may make a *recommendation* to the AA to remedy the dissatisfaction of the complainant. There is no power to make any *direction* to the AA.

Where a recommendation is made to the AA, the AA must consider that recommendation and respond in writing within 28 days stating whether they accept that recommendation and, if they do, the steps they will take to comply. If they do not accept it, they must state the reasons why. A discussion may take place between the AA and the CRM prior to any decision being made by the AA.

## STATISTICS

Year	Total requests received	Review Accepted	Review Not Accepted	Review Not Upheld	Review Upheld	Review Yet To Be Completed
01/02/20 to 10/08/20	36	30	6	18	3	9

## OBERVATIONS

### (i)Total Requests Received.

In the 27 weeks since the introduction of the new legislation on 1<sup>st</sup> February 2020, the OPCA has received 36 requests for reviews.

Due to the transition from the former process to the new, the first request for a review was not received until 18<sup>th</sup> March, therefore in effect, the 36 requests have been made over a 21 week period.

Since mid-March, the reviews have been received on a constant basis with little sign of any peaks and troughs. There has been no single event that has prompted any sudden rise in complaints requiring review to distort the figures.

On this basis, if the current rate of reviews is to continue, the total figure over the first 12 months is projected to be around 90.

Although any comparison with past years cannot be exact due to this being a new procedure under new legislation, it is fair to accept the new review process for the OPCC has replaced the former Local Resolution. In the 12 month period 01/04/18 to 31/03/19, there were 50 LR appeals considered by the then appeal body, the Head of PSD.

It is likely therefore that there will be a substantial increase in the number of appeals/reviews in the first year of the task being conducted by the CRM on behalf of the PCC.

#### (ii) Review Accepted

Of the 36 requests received to date, 30 have been accepted as meeting the criteria requiring a formal review.

Of the 30 requests that have been accepted for review, the nature of the complaint can be divided into two broad categories:

(a) Complaints regarding a poor investigation by Surrey Police. 22 requests for review were received relating to such complaints. The alleged poor investigations or poor service involved matters of:

- Neighbourhood disputes (7)
- Domestic abuse (6)
- Criminal investigations (6)
- Child protection (2)
- Missing persons (1)

(b) Overbearing conduct by Surrey Police. 7 such requests for review were received for matters including:

- Wrongful arrest and conviction
- Illegal searches
- Breaches of PACE

#### (iii) Reviews not accepted/ not completed

Of the 36 requests received to date, 6 cases have not required the CRM to complete a full review.

The reasons for this are:

- 3 cases where the complainant has submitted requests or sufficient correspondence requiring a response from the CRM, however has then decided to withdraw from the process or has simply not engaged any further.
- 1 case was out of time (i.e. request made after the 28 day deadline)
- 1 case involved the request being made too early (i.e. before PSD had completed their investigation)
- 1 case of wrong appeal body (it was forwarded to the IOPC)

#### (iv) Review Not Upheld

The majority of reviews are not upheld because the CRM has decided that the service provided to the complainant was reasonable and proportionate. Of the 21 reviews completed to date, 18 have been not upheld.

This high figure is not surprising because all complaints are initially handled by the Professional Standards Department who are trained, experienced and accustomed to dealing with such complaints, therefore there is a good level of competence in complaint handling at source in Surrey.

This differs from some other police forces where complaints of this level are forwarded to supervisors on local divisions and departments for them to resolve with the complainant. This 'widened pool' of complaint handlers can result in some complaints being handled by supervisors without the necessary skills or experience.

#### (v) Upheld reviews

To date, 3 reviews have been upheld by the CRM.

By way of comparison with previous times, annually 5-10% of all appeals against Local Resolutions were upheld by the appeal body, the Head of PSD. The current rate is c.14%, however the number of cases is too low to make any meaningful comparison.

The reasons for upholding these three reviews have been:

- Complaint allegation not being properly addressed (2 cases)
- Insufficient enquiries carried out to resolve complaint.

On each occasion, the CRM has made separate contact with PSD to advise as to his decision and recommendation on the further action required.

A copy of the final review report has then been submitted to both PSD and the complainant outlining the position.

On one occasion only, there has been an initial disagreement by the AA with the CRM's decision, however this resulted in a meeting which successfully resolved any dispute.

(vi) Review Yet To Be Completed.

There are currently 9 cases awaiting consideration. Given the CRM works part-time on a 15 hours/week basis, this represents approximately 5 weeks' worth of work.

**RECOMMENDATION:**

That the Police and Crime Panel notes the update to the management of the new complaints regulations within the OPCC.

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