



Contact: Amelia Christopher
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Ref: PCP 0038 (C1-C40)

Complainant C1-C40

Surrey County Council
 Woodhatch Place
 11 Cockshot Hill
 Reigate
 Surrey
 RH2 8EF

15 November 2021

Sent via email/posted to Complainant

Outcome of Complaint – Reference: PCP 0038 (C1-C40)

Dear Complainant,

Your complaint against the Surrey Police and Crime Commissioner (PCC) was referred by the Chief Executive of the Office of the Police and Crime Commissioner for Surrey (OPCC) to the supporting officer of the Surrey Police and Crime Panel alongside thirty-nine other complaints (or thirty-eight in the case of two multiple complainants) - referred from the OPCC between 31 August 2021 - 13 October 2021.

Following advice from the Complaints Sub-Committee's legal advisor on the handling of the multiple complaints received (totalling forty complaints: C1-C40 and thirty-eight complainants) since the PCC's interview with the Mail on Sunday published on 22 August 2021: *"Police and Crime Commissioner for Surrey launches blistering attack on Stonewall for promoting 'dangerous transgender ideology that threatens the safety of our women and girls'"*, with complaints directly on that interview and/or the alleged transphobic tweets/social media posts by the PCC, C38-C39 are two additional complaints from existing complainants and relate to the PCC's quote in a tweet by the LGB Alliance and speaking at the LGB Alliance Conference and C40 was the most recent complaint made concerning the PCC speaking at the LGB Alliance Conference; a Complaints Sub-Committee was convened in order to consider your complaint alongside thirty-nine other complaints (or thirty-eight in the case of two multiple complainants).

[A summary of each individual complaint has been removed and the forty complaints are summarised below:

Ref: **PCP 0038** – (collated complaint: forty complaints and thirty-eight complainants)

Since the PCC's interview with the Mail on Sunday on 22 August 2021 "*Police and Crime Commissioner for Surrey launches blistering attack on Stonewall for promoting 'dangerous transgender ideology that threatens the safety of our women and girls'*", with complaints directly on that interview and/or the alleged transphobic tweets/social media posts by the PCC, with two additional complaints from existing complainants relating to the PCC's quote in a tweet by the LGB Alliance and speaking at the LGB Alliance Conference and the most recent complaint made concerned the PCC speaking at the LGB Alliance Conference.]

The Panel's Complaints Sub-Committee met on 5 November 2021 to consider your complaint. Whilst the Complaints Sub-Committee aims to consider a complaint normally to be held within four weeks, allowances were made as a result of further legal advice being sought in advance of the Complaints Sub-Committee and due to the administrative complexity of handling multiple complaints.

Remit of a Police and Crime Panel

The Police Reform and Social Responsibility Act 2011 sets out that a Police and Crime Panel is restricted to informal resolution of any non-serious complaint made against a PCC.

The Police and Crime Panel is responsible for overseeing complaints made about the conduct of the PCC. The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 interprets "conduct" as including "acts, omissions, statements and decisions (whether actual, alleged or inferred)." The role of the Police and Crime Panel is to consider the information submitted and determine the most suitable course of action to assist with informal resolution of the complaint, such as through convening a Complaints Sub-Committee.

The Complaints Sub-Committee has a non-investigatory role and only has the power to consider complaints about the conduct of the Police and Crime Commissioner (and Deputy Police and Crime Commissioner):

In accordance with the Complaints Protocol in considering the complaint before it the Complaints Sub-Committee shall have regard to:

- The Code of Conduct of the Police and Crime Commissioner;
- Whether the complaint discloses a specific conduct failure identifiable within the Code of Conduct of the Police and Crime Commissioner;
- Whether the complaint related to operational policing matters which the Police and Crime Commissioner has no authority over;
- The remedies available to it.

The remedies available

In accordance with the Complaints Protocol the remedies available to the Complaints Sub-Committee are restricted to the following:

- Asking the Panel's Support Officer to write an explanatory letter to the complainant on behalf of the Complaints Sub-Committee;
- Requesting that an officer of the PCC's Office write an explanatory letter to the complainant;
- Suggesting a change to the Office of the PCC policy;
- Requesting that an apology be tendered by the person complained about (no apology may be tendered on behalf of the person complained against unless that person has admitted the alleged conduct and agreed to the apology).

Regarding Police and Crime Panels, there exist no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the office-holder concerned and the remedies set out above, the PCC is held accountable by the ballot box.

The Complaints Sub-Committee's Considerations

The Complaints Sub-Committee was required to consider forty complaints following statements made by the PCC in an interview with the Mail on Sunday, a statement issued by the PCC, comments made on her twitter feed and her attendance at an LGB Alliance conference. The comments made were in the course of an ongoing public debate, which has been referred to elsewhere as the "transgender debate", with differing views being expressed which have been broadly described as being from a gender critical or gender identification stance.

The debate generates strong feelings and the Complaints Sub-Committee wished to make clear that its role was not to consider or reach any view on the merits of any side of this debate. Its sole responsibility was to consider the conduct raised in the complaints concerning the PCC, the Code of Conduct and other obligations which apply to the office, and if any remedy it was able to take could help the informal resolution of the complaints before it.

Any conclusions reached on these questions should not be read as providing support or diminishing the views of either side in that debate. Neither should they be read as categorising the PCC's views on any side of the debate.

Having regard to the PCC's Code of Conduct:

The Complaints Sub-Committee focused on the following six provisions of the Code of Conduct:

"This code does not apply when I am acting in a purely private capacity."

“Objectivity - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.”

“Selflessness - Holders of public office should act solely in terms of the public interest.”

“Integrity: Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.”

“Leadership - Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.”

- 2. General Obligations: “I agree:-
 - a. To treat others with dignity and respect
 - b. Not to use bullying behaviour or harass any person
 - c. Not to conduct myself in a manner which:
 - i. Is contrary to the policing protocol and/ or
 - ii. Could reasonably be regarded as bringing my office into disrepute”.

Advice to the Complaints Sub-Committee

The Complaints Sub-Committee was advised (with reference to the judgement in the Employment Appeal Tribunal: Forstater v CGD Europe & others UKEAT/0105/20/JOJ 10th June 2021):

Whether any particular expression of beliefs on either side of a debate amounts to unlawful discrimination or harassment in any given situation will always be a highly fact-sensitive question. But, in general, expressing beliefs as part of a respectful discussion or where relevant to the circumstances, or outside work as part of the public debate about these issues, is likely not to be discriminatory.

The Tribunal found *in that case*, that holding and expressing gender critical beliefs does not inherently interfere with the rights of trans people, even though some people may find such beliefs offensive or distressing. This does not mean that people with gender critical views can ‘indiscriminately’ or ‘gratuitously’ refuse to use a trans colleague’s preferred pronouns. To do so may constitute unlawful harassment of that person. But expressing gender critical views, including referring to a trans person’s biological sex, will not necessarily constitute harassment, and whether it does in any given situation is a highly fact-sensitive question.

In the application of these principles to the consideration of the complaints before it, the Complaints Sub-Committee was advised that the PCC is entitled to express her beliefs and views, whatever side they may be on, in the course of public debate, even though some people might find the views offensive or distressing. The Complaints Sub-Committee needed to consider whether the way in which the views were expressed by the PCC, was indiscriminate, gratuitous, disrespectful or without showing dignity to others, which could be considered a breach of the Code of Conduct.

Regarding the Public Sector Equality Duty (PSED) raised in some complaints, the role of the PCC is subject to the PSED, and the PCC must have due regard to the duties when discharging the functions of the office, such as setting the police and crime objectives for their area through a police and crime plan. It was beyond the Complaints Sub-Committee’s

remit and procedure to determine whether the PCC had breached statutory duties in the discharge of functions; such findings are made in the courts. In any event, the expression of views in a developing public debate, was not considered to be the point at which a function was discharged.

The Complaints Sub-Committee's Findings

The Complaints Sub-Committee carefully considered all the material before it, being the complaints, the supporting statements made by the complainants together with extracts from twitter and screenshots, the Mail on Sunday article, the PCC's statement published on the OPCC website, and the responses from the PCC.

- Concerning the PCC's interview with the Mail on Sunday on 22 August 2021 (and subsequent attendance to the LGB Alliance Conference) the Complaints Sub-Committee considered she acted in her capacity as PCC which was clarified by her statement as PCC on 26 August 2021; the PCC's Code of Conduct therefore applied.
- That the PCC had regard to the obligations of Objectivity, Leadership, Selflessness and Integrity. Her role includes addressing areas of concern raised by residents as she may consider appropriate and in the public interest. The PCC is entitled to express her views on such matters in the course of public debate, and the views she expressed on transgender issues did not inherently interfere with the rights of trans people and could not be said to be discriminatory in themselves.
- That the PCC had not contravened her General Obligations 2 a-c (ci cii); the PCC expressed views that she is entitled to express, and they were expressed in way that is expected in a tolerant society. The Complaints Sub-Committee did not consider there were any examples when the PCC expressed her views in a way that was indiscriminate, gratuitous, disrespectful or without showing dignity to others.
- The PCC's role is to hold the Chief Constable and Surrey Police to account, the way she expressed her views did not breach the Policing Protocol in relation to the distinction between the operational policing function held by Surrey Police and the PCC's strategic function.
- That the question of whether the PCC breached the Public Sector Equality Duty was not within the Complaints Sub-Committee's remit or procedure to determine in relation to the discharge of her functions. The expression of a view in a developing public debate was not considered to be the discharge of a function.

Outcome of the Complaints Sub-Committee

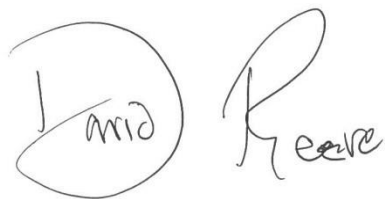
In respect of the Complaints Sub-Committee's considerations above, the Complaints Sub-Committee concluded that the PCC had not breached the provisions of the Code of Conduct and no further action on the forty complaints - PCP 0038 - would be taken, the remedy chosen was:

5.4.1 Asking the Panel's Support Officer to write an explanatory letter to the complainant on behalf of the Complaints Sub-Committee;

*5.7 The Panel's Support Officer will make a record of any informal resolution and will, usually within **5 working days**, provide copies to the complainant and the person complained about. (Allowances have been made due to the administrative complexity of handling multiple complaints).*

If you are not satisfied with the outcome of the Complaints Sub-Committee you can make a complaint to the Local Government and Social Care Ombudsman who will consider the case. Please see the following link to the website: <https://www.lgo.org.uk/make-a-complaint>

13
Yours sincerely,

A handwritten signature in black ink. The first part is a large circle containing the word "David". To its right is the word "Reeve" written in a cursive style.

Councillor David Reeve
Chairman of the Complaints Sub-Committee