

## SURREY POLICE AND CRIME PANEL

### 21 April 2022

# Police Complaints Reform

## SUMMARY

This report informs the panel of the review role of the Police & Crime Commissioner in the police complaints process.

## 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 continued to be the body to which people made 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 was in regard to public complaints. The new legislation required PCCs to take over the appellate function previously carried out by Forces' PSDs (Professional Standards Departments) for what used to be termed 'Local Resolution' level complaints.

In Surrey, the PCC employed a Complaints Review Manager (CRM) on a part-time basis to discharge this appeal (known as 'review') function. Current staff within the OPCC did not have the capacity to absorb the review work but would support the new CRM. Surrey's CRM is a retired senior police officer from a neighbouring force's PSD who has 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 (disciplinary) 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 register 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 COMPLAINTS REVIEW MANAGER (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 8 weeks, however, as of March 2022, it has been increased to 10 weeks. While the 8 week target had a compliance rate over 95%, due to a sudden rise in requests for review from January 2022 onwards, together with the size of some of the individual reviews requested, it was determined that an extended timeframe would be more accurate and would more realistically manage complainants' expectations.

The new 10 week target is still considered to be reasonable. In any case, 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 and Legislation
- 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.

It is not the role of the CRM to re-investigate the complaint.

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 review requests	Review Not Accepted	Review Accepted	Review Not Upheld	Review Upheld	Review Yet To Be Completed
2020	117	21	96	90	6	0
2021	133	24	109	99	9	1
01/01/22-23/03/22	45	11	34	6	0	28

## OBERVATIONS

### (i) Total Requests Received.

For the first two years of operating under the new regulations, the amount of applications for reviews received by the OPCC has remained relatively constant at a rate of around 2.5 requests per week. Throughout this two year period, the rate of applications received has also been constant with little sign of any peaks and troughs.

There has been no single policing event that has prompted any sudden rise in complaints requiring review to distort the figures, nor was there any particular impact caused by the Covid-19 pandemic.

The first two years have seen an average of around 130 new review requests per year.

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 (LR). 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.

There has therefore been a substantial increase in the number of appeals/reviews in the first two years of the task being conducted by the CRM on behalf of the PCC. The OPCC has reacted to this rise by increasing the hours worked by the CRM. Initially his terms of employment were for 14 hrs per week. From April 2021, this was increased to 22.5 hrs per week.

Since 1<sup>st</sup> January 2022, there has been a sudden steep rise in the number of review applications received which, at the time of writing, are approaching 50 in the first three months of the year. If this figure were to continue at the same rate throughout the year, the projected number of reviews for 2022 would be approaching 200.

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

Over the course of the two year period 1<sup>st</sup> Feb 2020 – 31<sup>st</sup> Dec 2021, a steady 18% of all requests for review were rejected by the Complaints Review Manager.

The reasons for this all fall within the following categories:

- The request was submitted out of time. - Under the Police Reform Act, the complainant must submit any request for a review within 28 days of receiving their final outcome letter from the complaint handler. If such a request is submitted outside this time deadline, the CRM may ask if there are any valid reasons for the late submission and may show discretion by accepting late requests. If this is not the case, the request will be regarded as invalid.
- The request was submitted to the wrong appeal body (ie it should have been made to the IOPC). On such occasions, the requests are forwarded to the IOPC.
- 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.
- The request is made too early. The complainant must allow the complaint handler to complete their investigation before requesting any review, therefore no request is accepted before the complainant has received the PSD's final outcome letter.

There has been a steady 18% rejection rate for two years, however, since January 2022, this too has increased sharply to 24%. The overwhelming reason for this particular rise has been due to late requests for reviews.

#### (iii) Review Accepted

Over the course of the two year period 1<sup>st</sup> Feb 2020 – 31<sup>st</sup> Dec 2021, a steady 82% of all requests for review have been accepted as meeting the criteria requiring a formal review.

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

(a) Complaints regarding a poor investigation by Surrey Police.

The main subjects involving alleged poor investigations or poor service tend to relate to the following:

- Neighbourhood disputes
- Domestic abuse
- Criminal investigations
- Child/vulnerable adult protection

(b) Overbearing conduct by Surrey Police. This relates to:

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

#### (iv) Review Not Upheld

The vast majority of reviews are not upheld because the CRM has decided that the service provided to the complainant was reasonable and proportionate.

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

In the first year (1<sup>st</sup> Feb 2020 – 31<sup>st</sup> Dec 2020) the CRM upheld 6.25% of all reviews (6 out of 96)

In year 2 (1<sup>st</sup> Jan 2021 -31<sup>st</sup> Dec 2021) this figure rose to 8.25% (9 out of 109)

(Only 6 reviews have been conducted for reviews received after 1<sup>st</sup> January 2022, therefore the recent figures are too low to consider.)

By way of comparison with other police forces, the IOPC Police Information Bulletin (Q4 2021) reported that in the year ending 31/03/21, our Most Similar Forces had an Upheld Rate of 9%, while the National Average was 14%.

The reasons for upholding reviews are generally because:

- The complaint allegation has not been properly addressed
- Insufficient enquiries were carried out to resolve the complaint.

On such occurrences, the CRM makes separate contact with PSD to advise as to his decision and recommendation on the further action required.

A copy of the final review report is then 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 29 cases awaiting consideration. Given the CRM works part-time on a 22.5 hours/week basis, this represents approximately 10 weeks' worth of work.

In terms of timeliness, the IOPC Police Complaints Information Bulletin (Q4 2021) reported that for the year ending 31/03/21, the average number of days to complete a review were as follows:

Surrey OPCC – 27 days  
Most Similar Forces – 42 days  
National – 36 days

**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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