

ANNEX B

Surrey Police and Crime Panel Complaints Protocol

1. Background

- 1.1. The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the '2012 Regulations') make the Surrey Police and Crime Panel (the 'Panel') responsible for handling complaints about the conduct of the Police and Crime Commissioner for Surrey and, where appointed, the Deputy Police and Crime Commissioner for Surrey.
- 1.2. The Panel is responsible for considering non-criminal complaints, and serious complaints and conduct matters referred to it by the Independent Office for Police Conduct ('IOPC'), and agreeing a course of action to assist the informal resolution of complaints.
- 1.3. This Protocol sets out the process for handling and considering such complaints. It should be read in conjunction with the 2012 Regulations and any relevant guidance issued by the Home Secretary, Home Office or IOPC.

Definitions

- 1.4. '**Informal resolution**' is the process of solving a problem in a relaxed or unofficial fashion. Guidance published by the Home Office explains:

"Informal resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant, without an investigation or formal proceedings. It is not a disciplinary process, and does not involve the imposition of any sanction. It is a flexible process that may be adapted to the needs of the complainant and the individual complaint. It may involve the person complained against explaining their conduct and, if appropriate, apologising for it. This could be done by correspondence or in a face-to-face meeting. The method of informal resolution is left up to the individual PCP, provided that it is in accordance with the Regulations and guidance issued by the Secretary of State."¹

- 1.5. A '**relevant office holder**' is a police and crime commissioner or deputy police and crime commissioner.
- 1.6. '**Conduct**' includes acts, omissions, statements and decisions (whether actual, alleged or inferred).
- 1.7. A '**complaint**' is any complaint about the conduct of a relevant office holder.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/117479/pcp-complaints-handling-process.pdf

- 1.8. A **'serious complaint'** is one which alleges that a relevant office holder has committed a criminal offence.
- 1.9. A **'conduct matter'** is a matter where there is an indication that a relevant office holder may have committed a criminal offence, which comes to light otherwise than by way of a complaint (for example through civil proceedings or media reporting).
- 1.10. **'Evidence'** means information or material used to establish the truth or validity of a fact or proposition.
- 1.11. **'Investigation'** means conducting a systemic or formal inquiry to discover and examine the facts of an allegation so as to establish the truth of a matter.
- 1.12. **'Document'** means anything in which information of any description is recorded.

2. Initial handling of complaints and conduct matters

- 2.1. Under regulation 7 of the 2012 Regulations, the Panel has delegated its powers and duties under Part 2 of the 2012 Regulations to the Chief Executive of the Office of the Police and Crime Commissioner for Surrey (the 'Chief Executive'); and under section 101(2) of the Local Government Act 1972, has delegated responsibility for those powers and duties to the Complaints Sub-Committee to be exercised in the circumstances described in paragraph 2.2 below.
- 2.2. Where the Chief Executive considers there to be any actual, or that there could be a perceived, conflict of interest in respect of them discharging any of their functions under part 2 of this Protocol, they shall refer the matter to the Complaints Sub-Committee as soon as practicable, which shall exercise the functions of the Chief Executive as set out in this Protocol as though all references to the 'Chief Executive' read 'Complaints Sub-Committee'.
- 2.3. Where a complaint is sent directly to a relevant office holder or the Panel, or where the Panel becomes aware of a conduct matter, they shall refer to the complaint or conduct matter to the Chief Executive as soon as practicable.
- 2.4. Where expedient, the Chief Executive may contact a complainant to fully understand their complaint.

Evidence

- 2.5. Where the Chief Executive becomes aware of a complaint or conduct matter, they shall take, and continue to take, all appropriate steps to obtain and preserve evidence relating to the conduct in question until the matter has been referred for informal resolution, and shall comply with any relevant directions from the IOPC.
- 2.6. Where a relevant office holder becomes aware of a complaint or conduct matter in relation to their own conduct, they must take, and continue to take, all appropriate steps to obtain and preserve evidence relating to the conduct in question and must comply with any relevant directions from the IOPC or Chief Executive.

Recording complaints

- 2.7. Upon receipt of a complaint, the Chief Executive shall make a record² of the complaint, unless:
- a. the complaint relates to the conduct of a relevant office holder for another police area, in which case the Chief Executive shall refer the complaint to the police and crime panel for that area;
 - b. the conduct complained about is being, or has been, dealt with by way of criminal proceedings; or
 - c. the complaint is withdrawn in accordance with part 4 of this Protocol.
- 2.8. Where in respect of a complaint the Chief Executive does not make a record or referral to the police and crime panel of another area, they shall notify the complainant of the decision and the grounds on which it was made.
- 2.9. Within five working days of making a record of a complaint, the Chief Executive shall provide a copy of the record to the complainant and the person complained against.
- a. The Chief Executive shall not provide a copy of the record of a complaint to the person complained against if the Chief Executive believes that doing so might prejudice any criminal investigation or pending proceedings or would otherwise be contrary to the public interest.
 - i. If the Chief Executive decides not to provide a copy of a complaint to the relevant office holder, they must review that decision regularly.
 - b. In providing a copy of the record of a complaint to the person complained against, the Chief Executive may keep the identity of the complainant or any other person anonymous.

Conduct matters and serious complaints

- 2.10. Where the Chief Executive becomes aware of an apparent conduct matter, the Chief Executive shall record³ it as a conduct matter unless:
- a. the matter has already been recorded as complaint;
 - b. is the subject of current or previous criminal proceedings against the relevant office holder; or

² Complaints should be recorded in some form of register that can be readily accessed and examined by the IOPC if required.

³ Conduct matters should be recorded in some form of register that can be easily accessed and examined by the IOPC if required.

- c. the matter relates to the conduct of the relevant office holder of another area, in which case the Chief Executive shall provide notice of the matter to the police and crime panel of that area.

2.11. The Chief Executive shall refer to the IOPC:

- a. any recorded conduct matter;
- b. any complaint which the Chief Executive determines to be a serious complaint; and
- c. any complaint or conduct matter which the IOPC requires to be referred,

as soon as is practicable, and no later than the end of the day after the day when the Chief Executive became aware that the matter was one which had to be, or was required to be, referred to the IOPC.

2.12. The Chief Executive shall notify the complainant (if there is one) and person complained against of any referral of a conduct matter or serious complaint to the IOPC.

- a. The Chief Executive shall not notify the person complained against where it appears to the Chief Executive that to do so might prejudice a possible future investigation of the matter.

2.13. Where a conduct matter is referred back to the Chief Executive by the IOPC, the Chief Executive shall remit it to the Complaints Sub-Committee, which shall deal with the matter in such a manner (if any) as it may determine.

Disapplication

2.14. Where a complaint has been recorded, unless the complaint is one which has been, or must be, referred to the IOPC and is not for the time being referred back to the Chief Executive, the Chief Executive shall determine whether a complaint should be handled:

- a. in accordance with the informal resolution procedure; or
- b. in another manner, if any.

2.15. The Chief Executive may only decide that a complaint should be handled otherwise than in accordance with the informal resolution procedure if the complaint falls within any of the following descriptions:

- a. the complaint is concerned entirely with the conduct of a relevant office holder in relation to a person who was working in his capacity as a member of the office holder's staff at the time when the conduct is supposed to have taken place;

- b. more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and there is either no good reason for the delay has been shown or injustice would likely to be caused by the delay;
- c. the matter is already the subject of a complaint;
- d. the complaint discloses neither the name and address of the complaint nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
- e. the complaint is vexatious, meaning it is possible to demonstrate that the complaint is being made without basis and intends to cause worry, upset, annoyance or embarrassment;
- f. the complaint is oppressive, meaning the complaint is made without foundation and is intended or is likely to result in burdensome, harsh or wrongful treatment of the person complained against;
- g. the complaint is an abuse of the procedures for dealing with complaints, such as where it can be demonstrated that the complaints system is being misused or manipulated to influence another process or outcome; or
- h. the complaint is repetitious. A complaint is repetitious if, and only if:
 - i. it is substantially the same as a previous complaint (whether made by or on behalf of the same or a different complainant), or it concerns substantially the same conduct as a previous conduct matter;
 - ii. it contains no fresh allegations which significantly affect the account of the conduct complained of;
 - iii. no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it; and
 - iv. as regards the previous complaint or conduct matter, either
 - A. the IOPC took the steps required by regulation 26(2) of the 2012 Regulations (action in response to an investigation report);
 - B. the complaint was informally resolved;
 - C. the complainant withdrew the complaint; or
 - D. the Chief Executive decided to handle the complaint in whatever way they saw fit.

- 2.16. Where the Chief Executive decides that a complaint should be handled otherwise than in accordance with the informal resolution procedure or no further action should be taken in relation to a complaint, the Chief Executive shall notify the Complaints Sub-Committee in writing of the pertinent details of the complaint and the decision and the grounds on which the decision was made.
- a. Where the Sub-Committee does not object to such a decision within five clear working days of receipt of such a notification, the Chief Executive shall notify the complainant and the person complained against of the decision and the grounds on which it was made.
 - i. Where no further action is to be taken in relation to a complaint, the Chief Executive shall record the complaint as complete.
 - b. Where, within five working days of receipt of a notification of the type described in this paragraph 2.16, a majority of members of the Sub-Committee object to the Chief Executive's decision, the complaint and any associated documentation shall be remitted by the Chief Executive to the Sub-Committee.
 - i. Where the Sub-Committee objects to a decision to disapply the informal resolution process, it shall apply the process to the complaint.
 - ii. Where the Sub-Committee supports disapplication but objects to how the Chief Executive intends to handle a complaint, it may handle the complaint as it sees fit.

Where a complaint is remitted to the Sub-Committee, the Chief Executive shall notify the complainant and person complained against and provide them with the Panel Support Officer's contact details.

3. Informal resolution

- 3.1. Under regulation 28(3) of the 2012 Regulations, the Panel has delegated the Panel's powers and duties under Part 4 of the 2012 Regulations to the Complaints Sub-Committee.
- 3.2. A complaint which is to be subject to informal resolution may at any time be remitted to the Panel as whole if the Panel is of the opinion that would lead to a more satisfactory resolution of the complaint. In such a case, references in part 3 of this Protocol to 'Sub-Committee' shall have effect as though they read 'Panel'.
- 3.3. The Sub-Committee may not investigate a complaint which is to be subject to informal resolution.
 - a. The steps described in subparagraphs 3.4 (b) and (c) below and inviting the person complained against to make representations to the Sub-Committee during the consideration of a complaint does not amount to investigation. However, any

other step intended to gather information about the complaint, other than inviting the comments of the complainant and the person complained against, will amount to investigation

- 3.4. Where a complaint is to be handled under the informal resolution procedure, the Panel Support Officer shall:
- a. arrange a meeting of the Sub-Committee to consider the complaint, ordinarily **within six weeks** of the complaint being remitted to the Sub-Committee;
 - b. write to the complainant with information on the informal resolution procedure and associated timescale and an invitation to provide written comments in respect of the complaint within a period of **two weeks**. Where the Panel Support Officer considers there to be grounds on which the Sub-Committee may determine the complaint to have already been satisfactorily dealt with, they shall also invite the complainant to make representations in that respect;
 - c. following receipt of any comments from the complainant, write to the person complained against with information on the informal resolution procedure and associated timescale and an invitation to provide comments or information in respect of the complaint and any comments received from the complainant, within a period of **two weeks**. Where the person complained against chooses not to comment on the complaint, that fact shall be entered into the record of the complaint by the Chief Executive; and
 - d. By no later than five clear working days from the date of the relevant meeting of the Complaints Sub-Committee, compile a report including:
 - i. the pertinent details of the complaint;
 - ii. any comments or information received in respect of the complaint under subparagraphs (b) and (c) above;
 - iii. the fact of any failure by the person complained against to provide comments in respect of the complaint;
 - iv. the complaint in full and any associated documentation;
 - v. the Terms of Reference of the Complaints Sub-Committee;
 - vi. the Complaints Protocol; and
 - vii. the code of conduct of the person complained against.

Considering the complaint

- 3.5 The matters for the Sub-Committee to determine in considering a complaint will ordinarily be:

- a. whether the complaint has already been satisfactorily dealt with (in determining this, the Sub-Committee shall have regard to any relevant comments received from the complainant); and, if not
- b. whether the complaint relates to conduct which constitutes an identifiable breach of the code of conduct of the person complained against; and, if so
- c. what course of action is most likely to secure informal resolution of the complaint.

Remedies

- 3.6 Courses of action which are likely to secure the informal resolution of the complaint include:
- a. the person complained against or Panel Support Officer writing an explanatory letter to the complainant;
 - b. a change of policy by the Police and Crime Commissioner for Surrey or their Office; or
 - c. the person complained against providing a written apology to the complainant.
 - i. No apology may be tendered on the behalf of the personal complained against unless they have admitted the conduct in question and has agreed to the apology.

Recording and sharing the outcome of the informal resolution process

- 3.7 The Panel Support Officer shall as soon as practicable make a record of the outcome of the informal resolution process and send a copy of that record to the complainant, the person complained against and Chief Executive.
- 3.8 The Sub-Committee shall not publish any part of any such record unless:
- a. the Sub-Committee has given the complainant and person complained against opportunity to make representations in relation to the proposed publication; and
 - b. the Sub-Committee, having considered any such representations, is of the opinion that publication is in the public interest.

4. Withdrawal and discontinuation

- 4.1. Where the Chief Executive receives notice in writing, from a complainant, or person acting on their behalf, that the complainant withdraws their complaint or does not wish any further steps to be taken in consequence of their complaint, the Chief Executive shall record that fact and notify the Panel Support Officer; and the notification shall be complied with.

- a. Where the Panel or Panel Support Officer receives any such notification, they shall refer the notification to the Chief Executive.
 - b. Where the Chief Executive receives such a notification in respect of a complaint which has been referred to the IOPC and not been referred back, they shall notify the IOPC.
- 4.2. Where a complainant indicates that they wish to withdraw their complaint or does not wish any further steps to be taken in consequence of their complaint, but the complainant fails to provide notification to that effect in writing signed by him or on his behalf, then:
- a. the Chief Executive shall write to the complainant to ascertain their wishes; and
 - b. if the complainant indicates that he wishes for the complaint to be withdrawn or for no further steps to be taken in relation to it, or if the complainant fails to reply within 21 days, the Chief Executive shall treat the indication as though it was a signed notification, and shall record the complaint as closed and notify the person complained against and the Panel Support Officer.
 - c. Where the Sub-Committee or Panel Support officer receives such an indication, they shall refer it to the Chief Executive.
- 4.3. Receipt of a notification or indication of the type described above does not affect the duty on the Chief Executive, Panel, Sub-Committee and Support Officer to refer to the IOPC any matter which relates to conduct which appears to constitute or involve the commission of a criminal offence.

5. Complaints about the Panel

- 5.1. A person who is not satisfied with the outcome of a complaint handled by the Surrey Police and Crime Panel may make a complaint to the Local Government and Social Care Ombudsman: <https://www.lgo.org.uk/>

6. Miscellaneous

- 6.1. Part VA and Schedule 12 of the Local Government Act 1972 are applied to the Police and Crime Panel and Complaints Sub-Committee by The Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012.
- 6.2. The Panel Support Officer shall maintain a log of all key actions taken by the Panel or Sub-Committee in relation to a complaint and keep the Chief Executive informed of such actions.
- 6.3. The Panel, Sub-Committee and Panel Support Officer may seek legal advice from the Panel's host authority in respect of a complaint at any time.

- 6.4. The Panel, Sub-Committee, Chief Executive and Panel Support Officer shall discharge their functions under this Protocol expeditiously and with care.
- 6.5. Where, at any time, it becomes apparent to the Panel, Sub-Committee or Chief Executive that a complaint appears to involve the commission of a criminal offence by a relevant office holder, they shall refer the matter to the IOPC and take no further action in relation to it unless the matter is referred back by the IOPC.