

Norfolk Police and Crime Panel Complaints Procedure: Dealing with Complaints about the Conduct of the Police and Crime Commissioner for Norfolk Detailed Guidance

1. Introduction

This procedure deals with complaints about the conduct of the Police and Crime Commissioner for Norfolk (the PCC) and/or the Deputy Police and Crime Commissioner (the DPCC), as required by the Police Reform and Social Responsibility Act 2011 (the Act). The appropriate regulations are the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011 (the Regulations) and nothing in this procedure overrules the provisions of those Regulations. In addition, references in this document to the relevant office holders, to the Police and Crime Commissioner and the person appointed as the Deputy Police and Crime Commissioner or to the person complained about, are to those two persons in their Office for Policing and Crime capacities primarily, although complaints may extend to their conduct in their public and private capacities.

2. Role of Police and Crime Panel under the Regulations

The Norfolk Police and Crime Panel (the Panel) is given specific functions under the Regulations as to the handling and determination of complaints against the PCC and/or the DPCC. The Regulations permit the Panel to delegate some or all of these functions to the PCC's Chief Executive (the Chief Executive) and the County Council's Head of Democratic Services (the HDS) in consultation with a nominated member of the Panel. The Panel has decided to delegate the function of the initial handling of complaints to the PCC's Chief Executive, so reference to the Panel in this document (except in the case of the informal resolution procedure) should be interpreted as a reference to the PCC's Chief Executive.

The Chief Executive will make a formal recording of decisions on complaints to ensure that complaints received are correctly identified as being complaints which are subject to the Regulations and that other complaints (for example complaints about the PCC's staff or the Police Force) are directed elsewhere as appropriate.

3. Key concepts

The legislation contains a number of key definitions:

- A complaint means a complaint about the conduct of the PCC and/or the DPCC, whether or not that conduct is potentially criminal.
- A recorded complaint means a complaint that the Panel is obliged under the Regulations to formally record.
- A conduct matter means a matter where there is an indication (whether from the circumstances or otherwise) that the PCC and/or the DPCC may have committed a criminal offence. Conduct matters can arise without a

complaint being made and must be notified to the Independent Office for Police Conduct (IOPC).

- A serious complaint means a complaint made about the conduct of the PCC and/or the DPCC which constitutes or involves, or appears to constitute or involve the commission of a criminal offence. Serious complaints must be notified to the IOPC.

4. Evidence threshold

Conduct matters and serious complaints must be referred by the Panel to the IOPC. The difference between a conduct matter and a serious complaint is the level of evidence present in the complaint as to whether a criminal offence has potentially been committed by the PCC and/or the DPCC.

It is not the Panel's function to investigate or determine whether a crime has been committed; only a court of criminal jurisdiction can definitively rule on the matter. Any investigations related to a potential crime will be undertaken by the IOPC. However, the Panel acts as a filter and will decide how a complaint should be classified, handled and taken forward under the Regulations. For a criminal offence to have been committed a number of different elements constituting the offence must be present e.g. the physical facts, usually evidence of intention or lower degree of purpose, causation etc. Therefore, as part of its functions, the Panel will take these matters into account when coming to a view as to whether something is a conduct matter or a serious complaint. In neither case is the criminal law standard of proof - beyond all reasonable doubt – applicable, as the Regulations do not require this level of certainty and the Panel will make the decision on the basis of evidence that is likely to be substantially below the normal civil law standard of the balance of probabilities, noting also that:

- A conduct matter only requires there to be an indication or sign that a criminal offence may have been committed. A low degree of evidence that enough of the necessary elements required to constitute any particular offence are present is likely to be an adequate sign of criminal conduct, resulting in the matter being referred to the IOPC as a conduct matter.
- A serious complaint requires stronger evidence, as it must show that there is conduct that appears to constitute or involve the commission of a criminal offence. Therefore the level of evidence that the necessary elements are present will be more than for a conduct matter, but much less than required under the normal civil standard.

5. Appropriate Police and Crime Panel

The Regulations only confer jurisdiction on the Police and Crime Panel where it is the appropriate panel under the Act for the relevant office holders in question. The Police and Crime Panel will normally be the appropriate panel for all complaints concerning the conduct of the PCC and/or the DPCC.

6. Recorded Complaints and Conduct Matters

The Panel will establish a formal Register for recording complaints and conduct matters under the Regulations. The Register will take the form of an electronic database within which to record all key details pertaining to a complaint including the date received, contact details of the complainant, a summary of the complaint, the category into which it falls (conduct matter, serious complaint or other recorded complaint), the date on which it was recorded, an indication of intended action on the complaint and any other relevant information. A complaint or conduct matter entered into the Register is a recorded complaint or recorded conduct matter for the purposes of these procedures.

7. Conduct matters

A conduct matter is a matter in the case of which there is an indication that the PCC and/or the DPCC may have committed a criminal offence. A complaint does not need to have been made for a conduct matter to arise and to be dealt with under the Regulations.

Where the Panel is notified that civil proceedings against the PCC and/or the DPCC have been or are likely to be brought by a member of the public and which appear to involve or would involve a conduct matter, the conduct matter must be recorded by the Panel and entered into the Register.

However, if the Panel is satisfied that either of the following exceptions apply, it is not necessary to record a conduct matter:

- the matter has already been recorded as a complaint under regulation 9(5) of the Regulations i.e. as a recorded complaint (see below); or
- the matter has been, or is already being, dealt with by means of criminal proceedings against the PCC and/or the DPCC: this will normally be the case where the Police have formally charged the person with a criminal offence or information alleging an offence has been laid before a magistrate's court.

If the IOPC becomes aware of a conduct matter which has not been recorded by the Panel, the IOPC may direct the Panel to record the matter and the Panel must do so.

8. Conduct matters occurring outside England and Wales

The PCC and/or the DPCC are under an individual duty to notify the Panel of any allegation, investigation or proceedings in relation to their conduct which would otherwise be a conduct matter under the Regulations only by reason of the fact that the conduct in question did not occur in England or Wales. If the Panel receives such a notification from the PCC and/or the DPCC, it will be handled in whatever manner the Panel considers to be appropriate.

Accordingly, by not later than the end of the working day following the day on which the investigation, allegation or proceedings (as above) comes to their attention, the PCC and/or the DPCC shall notify the Panel in writing of the matter.

9. Making complaints about the PCC and/or the DPCC

We would recommend that all complaints are made to the PCC's Chief Executive (the Chief Executive), who has been given delegated authority by the Panel to carry out the initial handling of complaints in consultation with a nominated member of the Panel. He can be contacted in the following ways:

By post: Chief Executive, Office of the Police and Crime Commissioner for Norfolk, Jubilee House, Falconers Chase, Wymondham, NR18 0WW

By email: opccn@norfolk.pnn.police.uk

By telephone: (01953) 424455

Complaints can also be sent to the following people and organisations:

- The Norfolk Police and Crime Panel (the Panel)
- The Independent Office for Police Conduct (the IOPC);
- The Chief Constable;
- Directly to the PCC and/or DPCC.

It will be the duty of these people and organisations to refer complaints to the Chief Executive of the PCC. This is why we recommend that your complaint is made directly to the Chief Executive.

10. Recipients' duties on receipt of a complaint

Direct complaints to the Panel

The Panel has a duty to ensure that it is kept informed of matters relating to the conduct of the relevant office holders which might give rise to a complaint and to provide the IOPC with all such assistance as it reasonably requires.

Where the Panel considers that an oral or written complaint requires further information or detail in order to be properly considered under the Regulations, it may ask the complainant to provide such detail.

The Panel will consider the complaint, and whether to record it and (if so) how the recorded complaint is to be dealt with.

Direct complaints to the PCC and DPCC and preservation of evidence

By not later than the end of the working day following the day on which the complaint was made to them, the PCC and/or the DPCC must notify the Panel in writing of the matter of the complaint and provide details of the steps they have taken to preserve evidence relating to the conduct in question, including its location and in whose custody it is (see below).

Where a complaint is made directly to the PCC and/or the DPCC, then both are under a statutory duty to take all such steps as appear to them to be appropriate for obtaining and preserving evidence in relation to the conduct in question, both initially and from time to time after that. In discharging this duty

they shall take such steps as a reasonable person would consider appropriate in the circumstances to obtain and preserve evidence, and in any event shall comply with any requests of the Panel, as above.

Direct complaints to individual members of the Police and Crime Panel

Any complaint addressed to a member of the Panel or to officers who support it, should be immediately directed by the recipient to the Panel, along with any other available information that is relevant to the complaint.

Direct complaints to the IOPC

When a complaint is made to the IOPC, it is the duty of the IOPC to notify the Panel, unless the IOPC considers that there are exceptional circumstances to justify the notification not being given.

Direct complaints to the police

Where a complaint is made to the Chief Constable, it is the duty of the Chief Constable to give notification of the complaint to the Panel.

11. The Panel's duties to obtain and preserve evidence

When a complaint or conduct matter about a relevant office holder comes to the attention of the Panel, it is under a duty to secure that all appropriate steps are being taken for obtaining and preserving evidence in relation to the conduct in question, both initially and from time to time after that. It is not the Panel's role to investigate matters and it is likely that before taking steps to obtain or preserve evidence it will normally consult the IOPC. The IOPC may also give the Panel and relevant office holder directions for obtaining and preserving evidence.

Accordingly, the Panel may make formal requests of the PCC and/or the DPCC to take such steps as the Panel considers are necessary for obtaining and preserving evidence in relation to the conduct in question, both initially and from time to time after that, including requests that steps are taken concerning the disposition of the property and resources of the PCC's office (such as its buildings, assets, equipment, supplies, accounts, records, information, electronic data etc. in their widest sense and wherever located). A person given a direction by the Panel under this procedure shall comply with it in full and generally to cooperate with the Panel and its authorised officers in the discharge of their statutory duties under the Regulations.

Such persons shall also permit access and render possession of any such evidence in relation to the conduct complained about to the Panel as is in their possession custody or control in accordance with his instructions.

The Panel shall be informed of any instances where there has been a complete or partial failure by any person or organisation to comply with any request regarding evidence.

12. The Panel's duties on notification of a complaint

The Panel will record a complaint unless it is satisfied that any of the following exceptions apply, in which case it is not necessary to record the complaint (in whole or in part):

- if it has been or is currently being dealt with by criminal proceedings, this will normally be the case where the Police have formally charged the person complained about or information alleging an offence has been laid before a magistrate's court or
- the complaint has been withdrawn.

If it is not recorded in the Register, the Panel will notify the complainant of the decision not to record the complaint and, therefore, to take no action upon it, and will explain the grounds on which that decision was made, whether in relation to whole or part of the complaint.

The Panel will send acknowledgement of receipt of a complaint within five working days.

If recorded (in whole or in part) the Panel will supply the complainant with a copy of the record made of the complaint and provide information about the next steps to be taken in relation to the complaint. The Panel will supply a copy of the record made of the complaint to the person complained against, unless he is of the opinion that doing so might prejudice any criminal investigation or be contrary to the public interest.

13. Taking no action on a recorded complaint

If the Panel considers that a recorded complaint (which is not one that otherwise must be referred to the IOPC) is one in respect of which no action should be taken, or it falls within the circumstances set out below, then the recorded complaint may be handled in whatever manner the Panel considers to be appropriate.

The types of recorded complaints that may be dealt with in this way are:

- A complaint by a member of the relevant office holder's staff, arising from the staff member's work as such
- Where more than twelve months have elapsed since the incident and there is no reason for the delay, or injustice would be caused by it;
- The matter is already the subject of a complaint;
- An anonymous complaint;
- A complaint is vexatious, oppressive or otherwise an abuse of the procedures; or
- A repetitious complaint.

For the purpose of this document vexatious complaint is one without foundation which is intended, or tends, to vex, worry, annoy or embarrass. For a complaint to be vexatious, it does not have to be repetitious. It is the

complaint itself that must be judged vexatious, oppressive or an abuse, not the complainant.

A 'repetitious' complaint is one which is the same or substantially the same as a previous complaint, or concerns the same conduct as a previous conduct matter, contains no fresh allegations which affect the account of the conduct complained of, no fresh evidence (being evidence not reasonably available at the time the previous complaint was made and in respect of which a previous determination or withdrawal of complaint has been made).

The Panel must notify the complainant that it has decided to handle the recorded complaint by taking no further action. A decision to take no action will require the agreement of both the Chief Executive and the nominated Panel member.

14. Referral of recorded complaints and recorded conduct matters to the Independent Office for Police Conduct (IOPC)

The Panel must refer the following to the IOPC:

- All recorded conduct matters;
- All serious complaints;
- Any serious complaint or recorded conduct matter where the IOPC has called it in (see below).

Call-in by the IOPC

The Panel must refer a recorded complaint to the IOPC if it is notified that the IOPC itself requires the complaint to be referred to the IOPC.

Referral

Where a recorded complaint or recorded conduct matter is to be referred to the IOPC then the Panel shall do so as soon as is practicable, and in any event not later than the end of the working day following the day on which it becomes clear to the Panel that the complaint or conduct matter is one that should be referred to the IOPC. The details in the Register will be made available to the IOPC together with such other information as the Panel considers appropriate.

On referring a recorded complaint to the IOPC, the Panel must notify the complainant and the person complained about of the referral, unless it appears to the Panel that notifying the PCC and/or the DPCC might prejudice a possible future investigation.

Referral-back

Where the IOPC determines that it is not necessary for it to investigate a recorded complaint, it may refer the complaint back to the Panel, who must deal with the referral in accordance with the "Resolution of other complaints" section (see below). The IOPC will notify the complainant and the person complained against about this decision.

Duty to provide information

The IOPC has a duty to provide the complainant and any person with an interest in the handling of a complaint, with information as will keep them properly informed. Such information includes:

- The progress of the investigation;
- Any provisional findings;
- Submission of the final report.

When an investigation has been completed, any person with an interest in the handling of a complaint shall be notified of the date on which the final report is likely to be submitted and what action regarding the report shall be taken.

This duty shall not apply where the IOPC is of the opinion that disclosure of information may cause an adverse effect and is not in the public interest.

15. Civil proceedings against the PCC and/or the DPCC

The Panel may receive notification that civil proceedings involving or appearing to involve a conduct matter have been brought against the PCC and/or the DPCC. The Panel will record a conduct matter if it determines that it is the right panel in relation to the relevant office holder. The Panel will not record a conduct matter if it has already been recorded as a complaint or is being dealt with by criminal proceedings against the person complained about.

Civil proceedings involve a conduct matter if they relate to it or if they relate to a matter in relation to which a conduct matter, or evidence of such a matter, is or may be relevant.

16. Resolution of other (non-criminal) complaints

A recorded complaint against the PCC and/or the DPCC, which is not referred to the IOPC or is not one in respect of which the Panel has decided to take no action, or is one that has been referred back to the Panel from the IOPC, shall be dealt with by way of informal resolution. Procedures for informal resolution shall not include a formal investigation of the complaint but the PCC and/or the DPCC may be asked to provide documents in relation to the complaint and to attend a meeting to answer questions and/or give evidence. Informal resolution shall not lead to any disciplinary proceedings against the PCC and/or the DPCC.

Informal resolution

The Panel has delegated authority to secure informal resolution to Norfolk County Council's Head of Democratic Services (HDS), in consultation with a nominated member of the Panel.

In attempting to secure resolution of the complaint, the HDS, in consultation with the nominated member of the Panel, will consider whether any further information is required.

Where it appears to the HDS that a recorded complaint against the PCC and/or the DPCC had in fact already been satisfactorily dealt with at the time it was brought to his notice, the HDS may, subject to any further representations, treat it as having been resolved. The HDS shall, prior to making a final decision that a complaint has already been resolved, give the complainant and the person complained against an opportunity to comment on the proposed decision.

Where the person complained against chooses not to comment on the complaint, the HDS shall record this fact in writing.

Apologies

The HDS, in consultation with the nominated member of the Panel and with support from an informal resolution adviser, will seek to resolve the complaint through the most appropriate procedure. This may involve one or a combination of the following

- an apology from the PCC and/or the DPCC;
- individual communication between the complainant and the person complained about, via the HDS in consultation with the nominated member of the Panel and the informal resolution adviser;
- a face to face meeting between the complainant and the person complained about, mediated by the HDS in consultation with the nominated member of the Panel and the informal resolution adviser.

The HDS shall not tender an apology on behalf of the PCC and/or the DPCC unless the person complained against has agreed to issue the apology.

The HDS has no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the relevant office holder. This may lead to cases when a complainant refuses to accept the outcome decision of a complaint. In such cases, the HDS, in consultation with the nominated member of the Panel, may decide to take no further action, if the complainant insists on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.

Where a recorded complaint has been subjected to informal resolution, the HDS shall as soon as practicable make a record of the outcome of the procedure and send a copy of that to the complainant and the person complained against.

The HDS shall not publish any part of any such record unless they:

- have given the complainant and the person complained against an opportunity to make representations in relation to the proposed publication; and
- have considered any such representations, and is of the opinion that publication is in the public interest.

Timescale

A full response to a complaint should be given within 25 working days after the referral of the complaint to the HDS for informal resolution. Where a complaint is particularly complicated, the complainant will be informed about how long the process may take.

17. Provision and recording of information

The Panel shall notify the PCC's office of the name and address of the person to whom complaints by members of the public should be directed and shall specify how the PCC's office will publish such information.

The Panel shall keep a record of every complaint and purported complaint received; every conduct matter recorded by the Panel arising from civil proceedings or otherwise coming to the attention of the Panel and every exercise of a power or performance of a duty under the Regulations.

The Panel shall provide the complainant and the PCC and/or the DPCC with a record of the complaint. The Panel may choose not to provide a copy of a complaint if he is of the opinion that doing so might prejudice any criminal investigation.

The Panel shall provide the IOPC with all such information and documents specified or described in a notification given by the IOPC to the Panel within the specified time.

18. Withdrawn and discontinued complaints

At any stage a complainant may decide that they wish to withdraw their complaint or that they wish to discontinue it. If the Panel receives written notification to this effect, signed by the complainant or someone authorised to act on their behalf, the Regulations shall cease to apply to that complaint.

If the complainant notifies (in writing, signed by the complainant, his solicitor or someone authorised to act on his behalf) the IOPC that they are withdrawing their complaint or wish it to be discontinued, but does not tell the Panel, the IOPC must send a copy of this notification to the Panel and the Panel must record the fact.

If the complaint is with the IOPC, the Panel must notify the IOPC that it has recorded the withdrawal of the complaint. The IOPC will then consider whether the complaint should be treated as a conduct matter. If the IOPC determines that it should be so treated, they will notify the Panel.

In the case of a complaint which was not referred to the IOPC, or was referred to the IOPC and then referred back, the Panel itself must decide whether the complaint is to be treated as a conduct matter. A complaint is to be treated as a conduct matter if the Panel determines that it is about conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence.

If the complainant wishes to withdraw their complaint, but does not provide signed notification in writing, the Panel must write to the complainant to determine whether or not they wish to withdraw. If the complainant does not reply within 21 days, the Panel will treat it as if he had received signed, written notification of a desire to withdraw.

The Panel must notify the person complained against if it records a complaint as being withdrawn or discontinued, if the complaint is to be treated as a conduct matter, or if the Regulations cease to apply to the complaint on the basis that it has been withdrawn or discontinued. Unless the Panel has previously decided not to notify the person complained against of the complaint on the basis that it might prejudice a criminal investigation or pending proceedings, or be contrary to the public interest.

19. Right of appeal

There is no right of appeal against the decisions taken following receipt of a complaint, either by the PCC's Chief Executive or Norfolk County Council's Head of Democratic Services (both in consultation with nominated Panel members). If a complainant is unhappy about the way their complaint has been handled, they can refer the matter to the Local Government Ombudsman and request that an investigation is carried out on their behalf.