



VERA BAIRD^{QC}
POLICE & CRIME COMMISSIONER

**POLICE AND CRIME PANEL
REPORT OF THE MONITORING OFFICER**

1ST AUGUST 2017

COMPLAINTS AGAINST THE POLICE AND CRIME COMMISSIONER

1. Purpose of the Report

- 1.1 To provide the Police and Crime Panel (PCP) with information about the complaints and purported complaints received about the Police and Crime Commissioner (PCC) and how they are dealt with together with examples to illustrate the process.

2. Background

- 2.1 The Police and Crime Panel has the statutory role of overseeing all complaints against the PCC and resolving non-criminal complaints, as well as ensuring criminal complaints or conduct matters are referred to the Independent Police Complaints Commission (IPCC). The Regulations permit the Panel to delegate some or all of these roles to the PCC's Monitoring Officer which is the case in Northumbria.
- 2.2 The Police Reform and Social Responsibility Act 2011 (the Act) sets out the legal framework for dealing with complaints against the PCC. The appropriate regulations are the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the Regulations).
- 2.3 The Act and the Regulations contain a number of key definitions:
- a) "Complaint" means a general complaint about the conduct of the Commissioner and/or the Deputy Commissioner, whether or not that conduct is potentially criminal.
 - b) A "Recorded Complaint" means a Complaint that the Monitoring Officer is obliged under the Regulations to record by entry in the Recorded Complaints and Conduct Matters Register database.
 - c) A "Conduct Matter" means a matter where there is an indication (whether from the circumstances or otherwise) that the Commissioner and/or Deputy Commissioner may have committed a criminal offence. Conduct Matters can arise without a Complaint being made and must be notified to the IPCC.
 - d) A "Serious Complaint" means a Complaint about the conduct of the Commissioner and/or the Deputy Commissioner which constitutes or involves or appears to constitute or involve, the commission of a criminal offence. Serious Complaints must be notified to the IPCC.

- 2.4 Complaints that are Conduct Matters or Serious Complaints must be referred by the Monitoring Officer to the IPCC. It is not the Monitoring Officer'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 IPCC. However, the Monitoring Officer acts as a filter and will decide how a complaint or other information concerning potential criminal conduct should be classified, handled and dealt with under the Regulations.
- 2.5 The aim of the complaints system is to deliver resolution as quickly and effectively as possible; for the majority of complainants this will be achieved through local resolution. In accordance with the Regulations, the Panel is required to maintain suitable arrangements for handling and recording complaints. The procedure for dealing with complaints against the PCC was approved by Panel members in November 2012 appointing the Chief Executive of the Office of the Police and Crime Commissioner as the Monitoring Officer.
- 2.6 The Monitoring Officer must establish a formal register ("the Recorded Complaints and Conduct Matters Register") for the purposes of recording Complaints and Conduct Matters under the Regulations. This Register will take the form of an electronic database within which to record all key details pertaining to a Complaint including the date received, 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 information deemed relevant. (A Complaint or Conduct Matter entered into the Register is a "Recorded Complaint" or "Recorded Conduct Matter" for the purposes of the Regulations and the associated IPCC Guidance.)
- 2.7 A member of the public may complain (make a Complaint) about the conduct of the PCC and/or DPCC to the following people or organisations, although, except in the case of alleged criminal conduct, complaints are to be encouraged to be made direct to the PCC's Monitoring Officer or:
- a) The Police and Crime Panel;
 - b) The Independent Police Complaints Commission (the IPCC);
 - c) The Office of the Police and Crime Commissioner (the OPCC);
 - d) A Chief Officer of Police; or
 - e) The relevant office holder: the PCC and/or the DPCC direct.

Any complaint from a member of the public can be sent to the Monitoring Officer in the following ways:

- a) By email: enquiries@northumbria-pcc.gov.uk
- b) By telephone (at any time): 0191 2219800
- c) By post: Monitoring Officer (PCC/DPCC complaints), Office of the Police and Crime Commissioner for Northumbria, Second Floor, Victory House, Balliol Business Park, Benton Lane, Newcastle upon Tyne, NE12 8EW.

3. Complaints received by the Office of the Police and Crime Commissioner

- 3.1 Between November 2012 and March 2017, 20 complaints against the PCC have been received, these have been reported to the panel in the quarterly updates and Annual Report. In this time period, no complaints have been upheld.
- 3.2 The type of complaints received in Northumbria do not follow a uniform pattern, but the majority originate from a situation when the complainant is not happy with the outcome of a complaint they have previously made to the PCC about the Chief Constable. Other complaints for example have included the use of the OPCC logo, a tweet that was written by the Commissioner or concerns around operational issues.

4.0 Receiving and Recording Complaints

- 4.1 On receipt of a complaint there are a number of stages that the Monitoring Officer will consider to ensure that the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 are adhered to.

Stage 1 - The first step in the procedure is to ascertain that the complaint is about the relevant office holder, in this case the PCC.

Stage 2 - If the complaint has not been submitted via the Police and Crime Panel, the panel are notified that a complaint has been received.

Stage 3 - An assessment then establishes if the complaint is deemed to be a Conduct Matter or Serious Complaint as defined by the Regulations, i.e. involves or may involve the commission of a criminal offence. If it is concluded that the complaint is a Conduct Matter or Serious Complaint it is recorded and referred to the IPCC. The complainant and the Commissioner are informed. It is likely at this point that independent legal advice would be sought.

Stage 4 - The Regulations include a section, which outlines the specific category of complaints and circumstances, which enables disapplication of the Regulations. Assessment is made against this categories and the circumstance under which disapplication applies are as follows:

- a. 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 either no good reason for the delay has been shown, or injustice would be likely to be caused by the delay;
- b. the matter is already the subject of a complaint;
- c. where the matter involves an employee rather than the Commissioner;
- d. insufficient information is provided about the person who is making it or against whom it is made; and/or
- e. where a complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with such complaints or the complaint is repetitious.

In these circumstances the complainant will be notified that no further action will be taken in relation to the complaint and set out the reasons why this decision has been taken.

Stage 5 - If the matter is not deemed to be a Conduct Matter or Serious Complaint, the complaint is recorded and is dealt with by local resolution as per the regulations. All of the complaints received to date (July 2017) have been dealt with within this category. The information provided in the correspondence is assessed and further clarification if required, is sought – either from the complainant or any relevant body. The Police and Crime Commissioner is given a copy of the complaint and invited to give any relevant information that would assist with the assessment of the complaint. This information is then brought together and the complaint is either upheld or not upheld. Once the complaint is determined the complainant and the Commissioner are informed.

- 4.2 Finally a summary of the complaints received with the outcome, is then reported quarterly to the Police and Crime Panel. An annual report of complaints is also produced. The next section in this report provides members with two examples and outlines the action taken by the Monitoring Officer in each instance to deal with the complaint in accordance with the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.

5.0 Examples of Complaints received

Example 1 Background and Assessment Process

An email and letter were received into the office addressed to the Chief Executive and Monitoring Officer which contained a complaint against the Police & Crime Commissioner. There were four elements to this complaint alleging that the PCC:

1. Refused to release an investigative report,
2. Failed to comply with her equality duty.
3. Failed in her duty to hold the Chief Constable to account.
4. Neglected her duty in failing to respond appropriately to correspondence.

In respect of this complaint the Monitoring Officer considered all four elements of the complaint against each of the five stages in the approach outlined in Section 4 of this report.

Stage 1 - Having assessed the complaint, it was confirmed that it was in relation to the alleged conduct of the PCC and was recorded on the Recorded Complaints and Conduct Matters Register.

Stage 2 - In this instance the complainant had sent a copy direct to the Clerk to the Police and Crime Panel.

Stage 3 - On assessing the complaint, all four elements, the Monitoring Officer established that the complaint was not a Serious Complaint or Conduct Matter as defined by the Regulations and detailed in paragraph 2.3 of this report therefore did not require a referral to the Independent Police Complaints Commission.

Stage 4 - The circumstances of all the four elements of this complaint do not fall into a category under which the Monitoring Officer would be required to disapply this complaint; disapplication of the regulations was therefore not applied.

Stage 5 – On completing the assessment the Monitoring Officer took the decision to deal with this complaint by local resolution as per the regulations. The Monitoring officer reviewed the correspondence from the complainant. This involved considering a number of files which contained information about previous complaints made against the Chief Constable as these were relevant to the complaint against the PCC.

This complaint was reported to the panel at the February 2017 meeting.

Response to the Complainant

Within 14 days of receipt of the original correspondence, the Monitoring Officer recorded the complaint and informed the complainant that the complaint had been considered under the provisions of the Police Reform and Social Responsibility Act 2011 and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (“the Regulations”). The response confirmed that complaints regarding the conduct of the PCC are dealt with by the PCP for Northumbria and that the Panel had delegated that responsibility to the Chief Executive of the Office of the Police as Crime Commissioner for Northumbria to act as Monitoring Officer.

The response outlined the Monitoring Officer’s understanding of the complaint ensuring that the complainant knew exactly what matters were being considered and informed the complainant that the matter had been determined by local resolution and the conclusions that had been reached in respect of each of the four elements of the complaint are as detailed below:

1. PCC Refused to release an investigative report

A comprehensive response had been sent by the PCC to the complainant at the time the investigation referred to had concluded. A full copy of the investigation report had been provided to the complainant at that time together with an explanation of why the report could not be subject to wider release. This decision was taken after independent legal advice was sought. It was concluded that the PCC had dealt with the release of the investigation report fully and properly and that the complainant had been informed how the report would be used.

2. PCC Failed to comply with her equality duty.

The background to this complaint is that the complainant had previously made a complaint to the PCC that Chief Constable had acted in a sexist manner. The complaint made against the PCC is that in her handling of the complaint against the Chief Constable she failed to comply with her equality duty. The Monitoring Officer advised the complainant that in seeking to resolve the original complaint the PCC commissioned an external review, carried out by an external police force, into the alleged conduct to ensure that a full independent investigation took place. The response to the complainant therefore confirms that Monitoring Officer is satisfied that the PCC had given careful consideration to her equality duty and that the complaint would not be upheld.

3. PCC Failed in her duty to hold the Chief Constable to account.

As outlined above an external review was commissioned by the PCC into the alleged conduct of the Chief Constable regarding the allegations made by the complainant. As the PCC had commissioned an external review into the alleged conduct to ensure that a full independent investigation took place the Monitoring Officer was again satisfied that the Commissioner had not failed in her duty to hold the Chief Constable to account.

4. Neglected her duty in failing to respond appropriately to correspondence.

The Complainant wanted the PCC to correspond about a third party. There was no written agreement from the third party for this to happen. The Data Protection Act prohibited a response in these circumstances. The Monitoring Officer was therefore unable to progress this complaint.

Independent legal advice was sought then the response was sent to the complainant and the complaint was not upheld.

Further representation

A five page letter was subsequently received from the complainant informing the Monitoring Officer how she should have carried out the investigation in relation to the matters raised in the original complaint and a new complaint was submitted raising the same issues. The letter also stated that if the Monitoring Officer refused to review her investigation, the letter should be accepted as a formal complaint against the Monitoring Officer.

In further correspondence the complainant advised a solicitor had been instructed to commence a judicial review. No further correspondence or proceedings in this respect have been received.

Example 2

Background and Assessment Process

The complaint was sent to the Police and Crime Panel and was forwarded to the Monitoring Officer to deal with.

The Complainant had previously complained to the PCC about a matter pertaining to the Chief Constable. This complaint against the PCC was dissatisfaction that she had passed the complaint to Northumbria Police to be dealt with by a resolving officer from Northumbria Police. This response is in accordance with the local formal resolution process guidelines set down by the Independent Police Complaints Commissioner.

The Monitoring Officer considered this complaint against the five stage approach outlined in Section 4 of this report.

Stage 1 - Having assessed the complaint, it was confirmed that it was in relation to the alleged conduct of the PCC and was recorded on the Recorded Complaints and Conduct Matters Register.

Stage 2 - In this instance the complainant had sent the complaint direct to the Clerk of the Police and Crime Panel who forwarded it to the Monitoring Officer.

Stage 3 - On assessing the complaint the Monitoring Officer established that the complaint was not a Serious Complaint or Conduct Matter as defined by the Regulations and detailed in paragraph 2.3 of this report therefore did not require a referral to the Independent Police Complaints Commission.

Stage 4 - The circumstances of this complaint do not fall into category under which the Monitoring Officer would be required to disapply this complaint; disapplication of the regulations was therefore not applied.

Stage 5 – On completing the assessment the Monitoring Officer took the decision to deal with this complaint by local resolution as per the regulations. The Monitoring officer reviewed the correspondence from the complainant. This involved considering a number of files which contained information about previous complaints made against the Chief Constable as these were relevant to the complaint against the Police & Crime Commissioner.

This complaint is included in the quarterly update to the Police and Crime Panel in August 2017.

Response to the Complainant

Within 8 days of receipt the Monitoring Officer recorded the Complaint and informed the complainant that the complaint had been considered under the provisions of the Police Reform and Social Responsibility Act 2011 and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (“the Regulations”). The response confirmed that complaints regarding the conduct of the PCC are dealt with by the PCP for Northumbria and that the Panel had delegated that responsibility to the Chief Executive of the Office of the Police as Crime Commissioner for Northumbria to act as Monitoring Officer.

The response outlined the Monitoring Officer’s understanding of the complaint ensuring that the complainant knew exactly what matters were being considered and

informed the complainant that she could not respond to the substantive complaint against the Chief Constable as this was still being progressed by the Police and Crime Commissioner.

In respect of the actual complaint against the PCC, the dissatisfaction that an ongoing complaint about the CC had been passed to a resolving officer who is employed by Northumbria Police who would act on behalf of the PCC, the Monitoring Officer did not uphold this complaint and found that the PCC had followed IPCC guidance appropriately. The letter provided the complainant with an understanding of the rules set down by the IPCC in relation to the appointment of a resolving officer (for both direction and control and conduct complaints) with the appropriate skills to address the complaint. IPCC guidance clearly states that the resolving officer must be appointed in order to make enquiries and that this resolving officer must come from the same police force as the Chief Constable complained of.

The letter also included clarification about the decisions taken by the PCC in respect of the original complaint against the Chief Constable as follows:

- Confirming that the PCC had advised the complainant that the complaint had been recorded and would be dealt with by local resolution. The PCC had at that time also made it clear that she was following IPCC guidelines and appointed a force solicitor as the resolving officer.
- The PCC had then received further representation from the complainant regarding the appointment of the original resolving officer. The Commissioner took on board this concern and replaced him with a senior police officer and had advised the complainant accordingly.
- That subsequent communication from the complainant highlighting dissatisfaction with the second resolving officer appointed had been responded to by a member of OPCC staff confirming that the PCC would in all cases follow IPCC guidance.