



Home Office

Complaints about Police and Crime Commissioners

Summary of consultation responses and next steps

Contents

1. Foreword
2. Executive summary
3. Summary of responses and Government response
 - a. Complaint definition and guidance
 - b. Complaint investigation powers – legislation
 - c. Complaint investigation powers - finance
 - d. Informal resolution guidance
4. Other considerations

1. Foreword

Since coming into post, Police and Crime Commissioners (PCCs) have brought real local accountability to policing in England and Wales. PCCs have worked hard to keep their communities safe, using their personal mandate to drive reform, hold chief constables to account, and ensure that their local communities have a stronger voice in policing.

PCCs have driven positive change not just in policing and crime, but in criminal justice, mental health, and the wider emergency services. Collectively, they have presided over falls to a record low in crimes traditionally measured by the Crime Survey of England and Wales, and have delivered value for money for taxpayers by finding efficiencies and ensuring sense in how police budgets are spent.

As the role of PCCs continues to evolve, the Government is taking forward its commitment to “enable fire and police services to work more closely together and develop the role of our elected and accountable Police and Crime Commissioners”. Government is building on the success of the PCC model, expanding the role of the PCC further to drive better joint working with the criminal justice system, and through the Policing and Crime Act, introducing measures to enable them to take on responsibilities for fire and rescue services locally where a case is made.

Further, the Policing and Crime Act, as part of wider reforms to Police complaints, will enable PCCs to take on responsibility for key parts of the Police complaints system to bring greater accountability and independence to the complaints process.

With PCCs taking on a greater role, the Government believes the time is right to amend the system for non-serious complaints made against a PCC. The Government is committed to deliver a more transparent complaints procedure and provide satisfactory outcomes for complainants.

2. Executive summary

As set out in the Police Reform and Social Responsibility (PRSR) Act 2011, and further explained in the Policing Protocol Order 2011, Police and Crime Panels (PCPs) perform a scrutiny function for PCCs, providing challenge and support, and acting as a critical friend.

PCPs are currently responsible for handling non-serious complaints made about a PCC, and resolving these through the process for “informal resolution”, as set out in the PRSR Act 2011 and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.

On 17 December 2015 the Government published a consultation paper on a number of proposals to create a more transparent and easily understood complaints system for non-serious complaints made against PCCs.¹ The consultation ran for 12 weeks, ending on 10 March 2016. A total of 63 full responses were received from a range of organisations and interested individuals, using the online survey and via email and post, commenting on 17 questions posed in the consultation paper. We have reviewed and analysed responses to the consultation and summarised our findings. We would like to thank all those who have taken time to respond and contribute to the consultation process.

Having carefully considered the consultation responses, the Government intends to:

1. clarify, through non-statutory guidance, what constitutes a complaint, using the Nolan Principles to set out the expected level of conduct for a PCC, and ensuring PCPs take forward complaints about a PCC’s conduct rather than their policy decisions;
2. ensure that police approaches to dealing with unreasonable complainant conduct can be used in response to vexatious complaints made against PCCs. Sector-led guidance developed to assist forces in handling vexatious complaints made against the police will be available to help PCPs in handling such complaints made against PCCs;
3. provide PCPs with greater investigatory powers to seek evidence pertinent to a complaint through the appointment of an independent investigator; and
4. clarify, through non-statutory guidance, the parameters of “informal resolution” and setting out that where agreement cannot be reached, it is open to PCPs to make recommendations on the expected level of behaviour of a PCC, and that they have powers to require the PCC to respond.

These changes to the system for non-serious complaints ensure that the fundamental principle of the PCC policy that of accountability to the electorate is not undermined. Government is confident that the changes outlined above will improve the transparency of the complaints procedure and deliver more satisfactory outcomes for complainants.

These measures will apply to England and Wales. Further details on these measures and how the consultation has informed them, are set out within this document.

¹ Complaints about Police and Crime Commissioners- <https://www.gov.uk/government/consultations/complaints-about-pccs>

3. Summary of responses and Government response

a. Complaint definition and guidance

The process for how complaints against a PCC should be taken forwards is set out in the Police Reform and Social Responsibility Act 2011 and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012. These regulations set out the role of the Police and Crime Panel (PCP) in handling complaints, and also define that a complaint to be handled by the PCP should relate specifically to the PCC's conduct.

The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 also refer to a PCP's handling of vexatious complaints. Those working on complaints have indicated that a disproportionate amount of time can be spent in managing vexatious complaints, and in its response to the 'Improving Police Integrity' consultation, Government committed to look into reforms that would make it easier for forces to handle persistent and vexatious complaints.

Comments in response to the consultation

Respondents were asked to comment on proposals to provide PCPs with non-statutory guidance setting out what constitutes a complaint. This proposed guidance would supplement the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012, set a clear marker for what should and should not be classed as a complaint, and ensure that any complaints taken forwards relate to a PCC's conduct rather than their policy decisions.

The consultation proposed that as a PCC is a directly elected public office holder, the guidance should frame the expectations for a PCC's conduct around the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.²

We also asked respondents to comment on whether measures to make it easier for forces and PCCs to handle vexatious complaints should be extended to PCPs, to give PCPs greater flexibility to manage these complaints and to ensure a consistent approach across complaints systems. The questions and a summary of the responses are set out below.

Q1 To what extent do you agree or disagree that the seven Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership should frame the concept of conduct of a PCC?

The majority of respondents felt that the concept of conduct should be framed around the Nolan principles, to create greater clarity for what should and should not be classed as a complaint. Respondents felt that the use of the Nolan principles would ensure a PCC's behaviour would be set against the highest standards. Some respondents reported that the Nolan principles were already in use locally within established codes of conduct and welcomed the Government's proposals.

A few respondents felt that whilst there was no real objection to the Nolan principles framing the conduct of PCCs, the College of Policing Code of Ethics,³ which sets standards of professional

² Nolan Principles- The 7 Principles of Public Life: <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

³ Code of Ethics- A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales http://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf

behaviour for the policing profession of England and Wales, could be adopted to set standards for PCCs and ensure consistency across the service.

Q2 To what extent do you agree or disagree that the Government should extend measures being developed to make it easier for forces and PCCs to handle vexatious complaints to PCPs?

Whilst some respondents felt that within the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 the regulation for the dissapplication of a complaint provided PCPs with sufficient powers to deal with vexatious complaints, the majority felt that aligning with sector-led approaches developed to make it easier for forces to handle vexatious complaints would provide additional flexibility.

Respondents felt that a disproportionate amount of time is used managing vexatious complaints and with the role of the PCC increasing it would be important to provide PCPs with flexibility around handling these complaints. Respondents also felt that a consistent approach to vexatious complaints across the policing complaints system would make it easier for the public to understand.

Government response

The Government believes that as the PCC is a directly elected public office holder, as with other office holders, the Nolan principles should be used to set the expected standard of conduct for this office. This is further supported by evidence that the Nolan principles are already recognised in some force areas within locally established codes of conduct for PCCs.

It is evident that there should be a clear marker for what should and should not be classed as a complaint, to ensure complaints about conduct rather than policy decisions are taken forward. To do this, the Government will work with the Local Government Association - with advice from the College of Policing - to produce supplementary, non-statutory guidance for PCPs. This guidance will use the Nolan Principles to set out clearly the standards of conduct expected from PCCs, and will robustly tie the procedures of informal resolution to matters of conduct rather than policy.

It is clear that within some force areas, a disproportionate amount of time can be spent in managing vexatious complaints. With the role of the PCC increasing, greater flexibility is needed to manage any complaints made against them. The Government will therefore aim to ensure that police approaches to dealing with unreasonable complainant conduct can be used in response to vexatious complaints made against PCCs. Sector-led guidance developed to assist forces in handling vexatious complaints made against the police will be available to help PCPs in handling such complaints made against PCCs.

b. Complaint investigation powers - legislation

The Police Reform and Social Responsibility (PRSR) Act 2011 sets out that PCPs are explicitly prohibited from “investigating” complaints. The Government proposed in the consultation to amend the PRSR Act 2011 to remove the restriction on PCPs’ ability to investigate. This was with the aim of providing PCPs with greater flexibility to establish evidence pertinent to a complaint and provide a satisfactory outcome for both the complainant and PCC.

The Government also proposed to amend the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 to allow the PCP to appoint an independent individual to carry out an investigation, in order to gather evidence relating to the specific complaint and the conduct of the PCC, and present a recommendation report to the PCP.

Comments in response to the consultation

Powers to Investigate

The Government proposed making amendments to the PRSR Act 2011 in order to remove the restriction on the PCP’s ability to investigate a non-serious complaint. The questions asked in consultation and a summary of the responses are set out below.

Q6 To what extent do you agree or disagree that PCPs should be given greater investigatory powers to investigate a complaint (either directly or through the appointment of an independent investigator)?

The majority of respondents agreed that PCPs should be given greater powers to investigate a complaint, providing PCPs with greater flexibility to establish evidence pertinent to the complaint. Respondents indicated that with the responsibilities held by a PCC expanding, greater investigatory powers would prove useful. However, there was acknowledgement that the majority of complaints should continue to be resolved without an independent investigation.

Whilst some respondents felt that sufficient powers to gather evidence pertinent to a complaint already existed within the regulations, they did indicate that providing PCPs with further investigatory powers could prove useful. Respondents stated that the regulations needed to specify further the basis for investigations to ensure the majority of complaints would continue to be resolved informally, and to avoid any inefficient use of time and resources in investigating low level complaints.

Q7 To what extent do you agree or disagree that PCPs should be given the power to investigate complaints themselves, rather than appoint someone to do it?

Q8 Please explain your answer to question 7.

The majority of respondents felt that PCPs should not be given the power to investigate complaints themselves, but should appoint someone else to conduct any investigation. Many commented that PCPs did not have the resource, time or expertise to investigate complaints themselves and that Panel-led investigations would lack impartiality. Some respondents felt that although PCPs should not investigate complaints themselves, it was important to retain flexibility to allow PCPs to determine how to manage their complaints process locally.

Q9 What do you think the benefits are of PCPs investigating complaints themselves, rather than appointing someone else to do it?

Q10 What do you think the disadvantages are of PCPs investigating complaints themselves, rather than appointing someone else to do it?

Some respondents felt that by PCPs investigating complaints themselves, complaints would be resolved in a speedy, flexible and cost effective manner. In contrast to this, some of the reasons cited for why PCPs should not investigate complaints themselves included insufficient expertise in how to conduct complaints investigations, and a lack of time and resources.

The majority of respondents felt that allowing PCPs themselves to investigate complaints would create a distinct lack of impartiality within the complaints process, leading to a decrease in public confidence. As such, any benefits to the PCP investigating complaints directly would be outweighed by this perceived or potential lack of impartiality. One respondent commented that impartiality would be “severely blurred” if PCPs investigated complaints themselves whilst another felt that this approach would be “counter-productive” to all parties involved.

Monitoring Officer

The Government also proposed to amend the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012. The proposed amendments would allow for investigation through the appointment (by the PCP) of an independent individual to gather evidence relating to the specific complaint and the conduct of the PCC, and report to the PCP with their findings. Questions relating to the appointment of an independent investigator and a summary of the responses are set out below.

Q11 To what extent do you agree or disagree that PCPs should be able to appoint an independent investigator?

The majority of respondents felt that the PCP should be able to appoint an independent investigator. Respondents felt that the appointment of an independent investigator, rather than the PCP investigating the complaint themselves, would remove any bias in the complaints process and provide flexibility for PCPs to appoint an individual with the necessary skills and experience to conduct investigations effectively. Although respondents agreed in principle that PCPs should be able to appoint an independent investigator, some respondents felt that the cost implications of doing this would create difficulties.

Q12 To what extent do you agree or disagree that the choice of a monitoring officer (either from the local authority, or from the Office of the PCC) should fall to the panel?

It was clear from responses to the consultation that the majority of respondents felt that the choice of a monitoring officer should fall to the Panel. Although one respondent felt that the choice of independent investigator should not be made by the PCP, but that either the local authority monitoring officer or the Chef Executive should determine whether they themselves had sufficient time and resource available to investigate a complaint, this view was not shared by others.

Q13 To what extent do you agree or disagree that the monitoring officer for the investigation of a complaint should be appointed from the local authority.

The majority of respondents felt that the appointment of a monitoring officer from the Local Authority for the investigation of a complaint would ensure independence in the complaints process. Some respondents felt that the panel should have flexibility over the choice of monitoring officer, as in some instances it would be more appropriate to appoint a monitoring

officer from outside the Police force area. This would then secure greater independence in the complaints process.

Q14 To what extent do you agree or disagree that the monitoring officer for the investigation of a complaint should be the Chief Executive of the PCC's Office?

Whilst some respondents felt that the investigation of complaints was a logical extension of the Chief Executive's role, the majority indicated that it was not appropriate for Chief Executives to investigate complaints. Most respondents highlighted that if the Chief Executive were to investigate a complaint made against the PCC, the close working relationship between the Chief Executive and PCC would create a substantial conflict of interest. One respondent felt this would "endanger" public confidence as the Chief Executive would in effect, be investigating their own employer.

Q15 Do you feel that the role of the independent investigator should be fulfilled by someone other than the PCC's monitoring officer, or a monitoring officer from a local authority within the police force area? If so please indicate who you think should perform this role.

In response to this question, respondents did feel that the role of the independent investigator could be fulfilled by someone other than the PCC's monitoring officer (the Chief Executive) or a monitoring officer from a local authority within the Police force area.

The majority of respondents indicated that as an alternative, the role of independent investigator could be fulfilled by a monitoring officer from outside the Police force area. Respondents felt that appointing the PCC's monitoring officer (usually the Chief Executive) or a monitoring officer from a local authority outside the force area would provide a higher level of independence within the complaints process, while ensuring that the individual still had sufficient expertise to fulfil the role.

Other suggestions of individuals suitable to fulfil this role made by respondents included an experienced lawyer, a nationally approved list of qualified individuals, or the Independent Police Complaints Commission (IPCC).

Government response

Powers to Investigate & Monitoring officer

The Government believes that the majority of complaints should continue to be resolved without investigation, but recognises that in some cases this may restrict the PCP from carrying out their responsibilities to an undesirable extent. To provide PCPs with greater flexibility to establish evidence pertinent to a complaint and provide a satisfactory outcome for both the complainant and PCC, the Government intends to amend the PRSR Act 2011 to remove the restriction on PCPs' ability to investigate.

The Government recognises that it is important to separate the investigatory aspects of complaint handling from the PCP, to ensure that any political differences between the Panel and the PCC are not used as a basis for complaint investigation. To ensure impartiality in the complaints process, it is clear that any investigation into a complaint should be conducted by an independent individual, and not by the Panel itself. The Government intends to amend the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 to allow Panels to conduct an investigation into a complaint, where the Panel considers it necessary to do so. Where the Panel does consider it necessary to investigate a complaint, they will be required to

appoint an independent individual to carry out this investigation. The amended regulations will enable this individual to gather evidence relating to the specific complaint and the conduct of the PCC, and present their findings to the PCP.

The Government recognises the need to restrict the investigations to the terms of the individual complaint to ensure evidence gathering is proportionate and necessary, and will look to include measures within the regulations requiring PCPs to ensure proportionality and necessity of evidence gathering.

It is clear that while expanding the role of the Chief Executive to include complaints investigation would fit with existing responsibilities of the role, requiring a Chief Executive to investigate their own employer could present a significant conflict of interest. Therefore, to provide greater levels of independence within the complaints process, the Government intends to provide within the amended regulations a wider list of appropriate individuals who the PCP is able to appoint as investigator. This will ensure PCPs are able to appoint a monitoring officer who does not report directly to the PCC who is under investigation.

This list of options will include a local authority monitoring officer from within the force area, a Chief Executive from outside the force area, or a local authority monitoring officer from outside the force area. The regulations will provide flexibility for this list to be expanded in the future, and will specify that PCPs cannot appoint a monitoring officer where this individual reports directly to the PCC who is under investigation.

Currently, under the regulations a Chief Executive may have delegated authority to deal with the initial handling of a complaint: this will remain unchanged. However, the final decision on whether a complaint should be investigated, and who to appoint as an independent investigator from the list of suitable individuals, will be a matter for the PCP to determine.

The Government will endeavour to deliver amendments to the PRSR Act 2011 to remove the restriction on PCPs' ability to investigate, and amend the accompanying regulations to allow for investigations by an independent individual, when a suitable legislative vehicle is identified and where Parliamentary time allows.

c. Complaint investigation powers - finance

Comments in response to the consultation

The Government in its assessment of the likely financial effect of proposed changes for PCC complaints did not envisage the investigation of complaints being lengthy, and asked Police and Crime Panels and Chief Executives further questions to gain a better sense of how much individual investigations were likely to cost.⁴ The questions and a summary of the responses are set out below.

- Q3** **How many complaints about a PCC did you receive in financial year 2014-2015?**
- Q4** **Of those complaints, how many have you considered where you would have benefitted from the ability to investigate the complaint?**
- Q5** **How much investigation, in terms of hours worked, would you expect it to take to investigate a complaint?**

24 PCPs reported receiving between 0-10 complaints about the PCC in financial year 2014-15. Out of the 27 Panels that responded in total, 11 stated that they would have used a power to investigate complaints on either one or two occasions during the financial year 2014-15. The remaining PCPs noted that they did not receive any complaints during this period which would have benefitted from the power to investigate, and that it was possible to resolve all complaints in these force areas informally using existing powers.

The majority of PCPs and Chief Executives indicated that the number of hours it would take to investigate a complaint was dependant on the nature and complexity of the issues raised. Some respondents indicated that investigations could take a few hours and others estimated that an investigation could take a few weeks.

Government response

The Government does not envisage that investigations into non-serious complaints would become wide-ranging and complex, as the parameters for investigation will be tightly drawn to focus on the conduct of the PCC. The Government intends to include measures within the regulations to ensure proportionality and necessity of evidence gathering. We expect that the majority of complaints will continue to be handled informally and that only a small number of these will benefit from investigation. Given this, the Government does not anticipate that Panels will incur large additional costs.

The Government believes that funding for any costs incurred during investigations should be agreed locally. For example, where responsibility to investigate a PCC falls to a Chief Executive from a different force area, neighbouring force areas may wish to establish reciprocal agreements whereby the cost of investigation is absorbed by their offices. Alternatively, where a PCP delegates investigatory responsibility to a local authority monitoring officer, the PCP may decide to reimburse the monitoring officer for any expenses incurred during any investigation. The Government does not anticipate that PCPs will incur large additional costs if investigations

⁴ Police and Crime Commissioner Complaints: Assessment of the likely financial effect of proposed change-
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486928/6-1462-Annex_A-Financial_Assessment-Police_Complaints.pdf

are delegated to a local authority monitoring officer, and so costs for this should be absorbed within existing Panel budgets.

With PCCs taking on a greater role in the handling of complaints made against their police force, and with the responsibilities held by a PCC increasing, the Government recognises that the number of complaints about the PCC may increase. The Government will keep under review the funding provided to PCPs, including the resource available to investigate complaints.

d. Informal resolution guidance

Through Schedule 7, paragraph 3(2) of the Police Reform and Social Responsibility Act 2011 a PCP is restricted to informal resolution of any non-serious complaint made against a PCC. Paragraph 3(5) of Schedule 7 defines informal resolution as “encouraging, facilitating, or otherwise assisting in, the resolution of the complaint otherwise than by legal proceedings...”

The Government proposes introducing non-statutory guidance clarifying that informal resolution is not reliant on the agreement of both parties, though this should remain the preferred outcome. Where a PCP is unable to reach an informal resolution which is agreeable to both parties it remains open to PCPs to use their powers under sections 28(6) and 29(3) of the PRSR Act 2011. These sections set out that PCPs have a free standing power to make recommendations and may require a PCC to respond in writing to any recommendations made by them. The questions and a summary of the responses are set out below.

Comments in response to the consultation

16. To what extent do you agree or disagree that PCPs’ existing powers to make recommendations on the expected level of behaviour of a PCC are sufficient?

The majority of respondents indicated that PCPs’ existing powers to make recommendations on the expected level of behaviour are sufficient. However, a few respondents felt that powers needed to go one step further, and allow PCPs to impose sanctions, with one respondent commenting that Panels are currently “toothless”. One association felt that there was “clearly uncertainty” around what powers PCPs have to respond to the outcome of a complaint, and welcomed further guidance. Most respondents felt that the ability to make recommendations, rather than impose sanctions, was an appropriate power for PCPs as ultimately, the PCC’s accountability lies with the public.

17. To what extent do you agree that, when making recommendations as part of the informal resolution of a complaint, PCPs should tie these recommendations to the expected level of conduct based on the seven Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership?

Two respondents felt that PCPs should be given greater flexibility for making recommendations as not all complaints would relate to the seven principles of public life as outlined by the Nolan Principles. However, the majority of respondents agreed that when making recommendations as part of the informal resolution of a complaint, PCPs should tie recommendations to the expected level of conduct based on the seven Nolan principles.

Government response

The Government understands that some aspects of the informal resolution procedure - when considering the PRSR Act 2011 alongside the regulations - have been misinterpreted, and that on some occasions PCPs have felt that their options were restricted if the PCC and the complainant could not agree on a method of informal resolution. Given this, working with the Local Government Association, the Government will develop non-statutory guidance to clarify the parameters of informal resolution, setting out the arrangements for PCPs to make recommendations on conduct and powers to require the PCC to respond.

The guidance will make clear that recommendations should: be linked to the expected level of conduct (based on the Nolan Principles where appropriate); ensure proportionality; and be aimed at preventing future complaints from arising. The Government believes that the ability to

make recommendations, rather than impose sanctions, is an appropriate power for PCPs as ultimately, the accountability of the PCC lies with the public, and not with the PCP.

4. Other considerations

Wales

The proposals outlined in this response will apply to Panels in Wales in the same way as they will apply to Panels in England.

Elected Mayors with PCC functions

The proposed changes for the PCC complaints system will not apply to combined authority mayors who exercise PCC functions. As is the case in London, non-serious complaints made against Mayors with PCC functions will continue to be dealt with under section 27(2) of the Localism Act 2011.

However, where a relevant office holder as listed in the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 is not a member of the combined authority (or in the case of London, is not a Member of the London Assembly), any non-serious complaints will be dealt with in accordance with the 2012 regulations. This means that the proposed changes to the PCC complaints system will apply to relevant office holders – such as the Deputy Mayor for Policing and Crime – where they are not members of the combined authority (or London Assembly).