

**DERBYSHIRE POLICE AND CRIME PANEL**

**23<sup>rd</sup> January 2020**

**Report of the Director of Legal Services of Derbyshire County Council  
COMPLAINTS PROCEDURE**

**1. Purpose of the Report**

Following discussion at the previous meeting of the Panel, to consider for review the current Complaints Procedure adopted by Derbyshire's Police and Crime Panel (PCP).

**2. Information and Analysis**

The current Complaints Procedure was adopted by Derbyshire's Police and Crime Panel in April 2013. A copy of the Procedure is attached at Appendix 1.

The Panel has statutory responsibilities under the Elected Local Policing bodies (Complaints and Misconduct) Regulations 2012. These include the Panel ensuring that it is kept informed about complaints and conduct matters and their handling in respect of Derbyshire's Police and Crime Commissioner and his Deputy, together with responsibilities regarding informal resolution in respect of particular complaints. There are further requirements to notify and refer complaints to the Independent Police Complaints Commission in certain circumstances.

In accordance with the regulations detailed above, the Panel is able to delegate the receipt, initial handling and recording functions relating to complaints to the Chief Executive of the Commissioner or the Monitoring Officer of the host authority (the Director of Legal Services of Derbyshire County Council). Under the current procedure, at paragraph 4.1, the Panel has delegated authority for the initial handling of complaints together with other aspects of the process to Derbyshire County Council's Monitoring Officer and Director of Legal Services under section 101(2) of the Local Government Act 1972.

The Panel is also able to delegate the functions regarding informal resolution to a sub-committee, a single member of the Panel, or to a person who is not a member of the Panel. Under the current Procedure, the Panel has also delegated this function to the Monitoring

Officer and Director of Legal Services of Derbyshire County Council under at paragraph 4.1.

The current Complaints Procedure has been in place since April 2013 and Members of the Panel have indicated a wish to review it.

LGA guidance from May 2015 “*Good Practice for Police and Crime Panels: Guidance Document*” recommends that in reviewing the complaints procedure, it is good practice for panels to consider:

- Clearly setting out responsibility for all types of complaint
- Reviewing whether a triage system would be useful
- Making sure that complainants understand that recording a complaint is not the same as upholding it
- Considering whether it is appropriate for the chair of the panel to see all complaints
- Many complaints against police officers to the IPCC are partly upheld through lack of recording although the substance later fails. The produces unsatisfactory outcomes – consider scrutinising the PCC’s performance in tackling this
- Having clear guidance for recording complaints
- Developing clear guidance for recording complaints
- Rather than referring to the IPCC general casework team; referrals should be to a specialist link with experience of PCC complaints
- Having a process to take back and conclude complaints when received back from the IPCC

Therefore, Members may consider it appropriate to identify a working party to review the Complaints Procedure, taking into account the guidance provided by the LGA.

### **3. Considerations**

In preparing this report, the relevance of the following factors has been considered: financial, legal, prevention of crime and disorder, equality and diversity, human resources, environmental, health and transport considerations.

### **4. Background Papers**

The file currently held by the Director of Legal Services.

**5. Officer's Recommendation**

That a working group from the Panel is established to review the Complaints Procedure.

**Simon Hobbs  
Director of Legal Services  
Derbyshire County Council**

## **Derbyshire Police and Crime Panel**

### **Complaints Procedure**

#### **1. Background**

- 1.1 This procedure has been adopted to ensure compliance with the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 ('the Regulations') which are issued under the Police Reform and Social Responsibility Act 2011.
- 1.2 This policy covers complaints against the Police and Crime Commissioner for Derbyshire ('the Commissioner') and the Deputy Police and Crime Commissioner for Derbyshire ('the Deputy Commissioner'). It does not cover complaints against the Commissioner's office and staff, or complaints regarding operational policing, the Chief Constable and other police officers.

#### **2. Aims/Objectives**

- 2.1 To set out the way complaints against the Commissioner and the Deputy Commissioner will be handled by the Derbyshire Police and Crime Panel ('the Panel').
- 2.2 To reassure the public that complaints against the Commissioner and the Deputy Commissioner are dealt with fairly and appropriately.
- 2.3 To reassure the public that any complaint relating to a criminal offence will be referred by the Panel to the Independent Police Complaints Commission ('IPCC').

#### **3. Definitions**

- 3.1 'Complaint': is any complaint about the conduct of a commissioner or deputy commissioner.
- 3.2 'Conduct Matter': is an indication that a commissioner or deputy commissioner may have committed a criminal offence, which comes to light otherwise than by way of a complaint (for example, through legal proceedings or media reporting).
- 3.3 'Serious Complaint': is a particular type of complaint – one which alleges that the commissioner or deputy commissioner has committed a criminal offence.

#### **4. Submitting a complaint**

- 4.1 The Panel has delegated authority for the initial handling of complaints, together with other aspects of the process, to Derbyshire County Council's Monitoring Officer and Director of Legal Services, under Section 101(2) of the Local Government Act 1972.

**Complaints should be sent to:**

**Mr Simon Hobbs  
Director of Legal Services  
Derbyshire County Council  
County Hall  
Matlock  
Derbyshire  
DE4 3AG**

Or emailed to [simon.hobbs@derbyshire.gov.uk](mailto:simon.hobbs@derbyshire.gov.uk)

- 4.2 When making a complaint it is helpful to provide as much information as possible, to be specific regarding what was allegedly said or done, the date it happened, and whether there were any witnesses. A form is available on the website below which complainants may find useful.

[www.derbyshire.gov.uk/community/derbyshire\\_police\\_and\\_crime\\_panel](http://www.derbyshire.gov.uk/community/derbyshire_police_and_crime_panel)

**5. Timescales**

Wherever possible complaints will be acknowledged within 5 working days, and concluded within 40 working days if dealt with through informal resolution (under paragraph 14 below).

**6. Duty to preserve evidence**

Where a complaint is received there is a duty to ensure that all appropriate steps are taken to obtain and preserve evidence relating to the complaint. This duty is on-going until or unless arrangements are made for the complaint to be dealt with through informal resolution (under paragraph 14 below).

**7. Notification and recording of complaints**

- 7.1 A complaint which:

- a) relates to the Commissioner or Deputy Commissioner for Derbyshire;
- b) is not already being dealt with by means of criminal proceedings;
- c) has not been withdrawn (under paragraph 12); and
- d) is received by or notified to the Panel;

will be recorded.

- 7.2 Where a complaint which satisfies paragraph 7.1(a)-(c) above is made to the IPCC, the Chief Constable, the Commissioner or the Deputy Commissioner that person/body will give notification of the complaint to the Panel.
- 7.3 If the complaint relates to a commissioner or deputy commissioner of another police force area, the police and crime panel (PCP) for that area will be notified and will deal with the complaint.
- 7.4 Where the complaint is not notified or recorded as above, the person/body who received the complaint shall notify the complainant of this decision and the grounds for it.

## **8. Copies of complaints**

- 8.1 The Panel will supply the complainant with a copy of the record made of a complaint recorded in accordance with paragraph 7.1 above.
- 8.2 The Panel will supply the subject of the complaint with a copy of the complaint, unless to do so:
- might prejudice any criminal investigation or pending proceedings, or
  - would otherwise be contrary to the public interest.
- 8.3 The copy of the complaint supplied under paragraph 8.2 above may be anonymised.
- 8.4 A decision not to supply a copy of the complaint under paragraph 8.2 above will be kept under regular review.

## **9. Notification and recording of Conduct Matters**

- 9.1 Where a Conduct Matter comes to the attention of the Panel (e.g. in civil proceedings), the Panel will record the matter, unless:
- the Panel is not the relevant PCP in relation to the office holder involved;
  - the matter has already been recorded as a complaint; or
  - the matter is the subject of past or present criminal proceedings against the office holder.
- 9.2 If the Panel is not the relevant PCP in relation to the office holder, the Panel will notify the relevant PCP.

## **10. Reference to the Independent Police Complaints Commissioner (IPCC)**

- 10.1 The Panel is not responsible for investigating or determining whether a crime has been committed. The Panel has delegated authority to Derbyshire County

Council's Director of Legal Services for filtering Complaints and deciding which Complaints may amount to Serious Complaints. The Director of Legal Services may take advice from the IPCC before making a referral.

- 10.2 The Director of Legal Services will refer the following to the IPCC:
- Any Serious Complaint;
  - Any Conduct Matter it has recorded; and
  - Any complaint or matter which the IPCC notifies the Panel that it requires to be referred.
- 10.3 The referral will be made as soon as practicable and, in any event, no later than the close of business the day after the Director of Legal Services becomes aware that the matter should be referred.
- 10.4 Where the Director of Legal Services refers a complaint or Conduct Matter he/she will notify the complainant and, except where doing so might prejudice a possible future investigation, the subject of the complaint or Conduct Matter.
- 10.5 The IPCC may refer any complaint back for resolution.

## **11. Disapplication of the Regulations: circumstances when the Panel does not need to deal with a complaint**

- 11.1 Where a complaint is not a Serious Complaint or the IPCC has referred the complaint back to the Panel, the Director of Legal Services may decide *not* to subject the complaint to resolution or to take any action at all, in the following circumstances: -
- where the complaint has been made by a member of the Commissioner's staff, arising from their work;
  - where the complaint is more than 12 months old where there is no good reason for the delay or the delay would be likely to cause injustice;
  - where the complaint is about conduct that is already the subject of another complaint;
  - where the complaint is anonymous;
  - where the complaint is vexatious, oppressive or otherwise an abuse of process for dealing with complaints; or
  - where the complaint is repetitious (e.g. where the complaint is substantially the same as a previous complaint which has already been dealt with under the Regulations and it contains no fresh allegations or fresh evidence).
- 11.2 Where no action is to be taken in relation to a complaint, the complainant will be notified of this decision and the reason for it.

## **12. Withdrawn complaints**

- 12.1 A complainant can withdraw or discontinue their complaint at any time.
- 12.2 If the Panel receives signed, written notification (addressed to the Director of Legal Services) that the complaint is withdrawn or discontinued this will be recorded.
- 12.3 If a complainant indicates that they wish to withdraw or discontinue their complaint but no signed, written notification is received, the Director of Legal Services will write to the complainant to determine whether or not they wish to withdraw or discontinue. If the complainant confirms that they wish to withdraw or discontinue the complaint, or does not reply within 21 days, the Director of Legal Services will treat it as if he/she had received a signed, written notification as above.
- 12.4 If the complaint has been referred to the IPCC they must be updated.
- 12.5 The Panel (or IPCC) may decide to treat the withdrawn/discontinued complaint as a Conduct Matter. This decision will be made by the Director of Legal Services in consultation with the Chair of the Panel. The procedure for Conduct Matters will thereafter be followed.
- 12.6 The person who is the subject of the complaint will be kept informed, unless to do so might prejudice a criminal investigation or pending proceedings, or be contrary to the public interest.

## **13. Conduct occurring outside England and Wales**

The Commissioner and Deputy Commissioner are under a duty to notify the Panel, via the Director of Legal Services, of any allegation, investigation or proceedings relating to their conduct outside England and Wales. The Panel can take whatever action it thinks fit in these circumstances. This decision will be made by the Director of Legal Services in consultation with the Chair and/or Vice-Chair of the Panel.

## **14. Informal resolution of complaints**

- 14.1 Informal resolution is a way of dealing with a complaint by solving, explaining or settling the matter directly with the complainant, without an investigation or formal proceedings. It is a flexible process that may be adapted to the needs of the complainant and the individual complaint.
- 14.2 Informal resolution will involve:

- no investigation, other than requiring the subject of the complaint to provide information and documents to the Panel and attend to answer questions;
- an opportunity for the complainant and the subject of the complaint to comment on the complaint as soon as is practicable;
- recording if the subject of the complaint chooses not to comment on the complaint; and
- no tendering of an apology on behalf of the subject of the complaint unless that person has admitted the conduct in question and agreed to the apology.

14.3 This paragraph applies where the Panel:

- has recorded the complaint;
- has not referred the complaint to the IPCC or has had it referred back; and
- has not decided to disapply the Regulations under paragraph 11.

14.4 Where this paragraph applies the Director of Legal Services, in consultation with the Chair and/or Vice-Chair of the Panel, will make arrangements for the informal resolution of the complaint, unless he/she determines that the complaint has already been satisfactorily dealt with.

14.5 Making arrangements for informal resolution include deciding whether the process will be handled by

- a sub-committee of the Panel;
- a single member of the Panel; or
- another person, such as the Commissioner's Chief Executive, the Director of Legal Services, a voluntary organisation or a private mediation company.

14.6 The Commissioner and Deputy Commissioner cannot be appointed to informally resolve complaints.

14.7 The Panel can take back responsibility for informal resolution at any time.

14.8 Informal resolution will be discontinued if the IPCC notifies the Panel that they require the complaint to be referred to them, or if the Director of Legal Services, in consultation with the Chair and/or Vice-Chair of the Panel, decides the complaint should be referred to the IPCC.

## **15. The outcome of informal resolution**

15.1 There will be no formal sanctions with informal resolution; ultimately the Commissioner and Deputy Commissioner are held accountable by the ballot box.

- 15.2 The aim is to resolve the complaint to the satisfaction of the parties involved. For example, the subject of the complaint may agree that an apology would be appropriate, an explanation might resolve the concern, or an agreement on how to move forward may be reached following mediation.

## **16. Recording and publishing the outcome of informal resolution**

- 16.1 A record of the outcome of the informal resolution will be made as soon as practicable after the process is completed. Copies will be provided to the complainant and the subject of the complaint.
- 16.2 The record of the outcome of informal resolution can be published if it is considered to be in the public interest. This decision rests with the Director of Legal Services in consultation with the Chair and/or Vice-Chair of the Panel. Before doing so the complainant and the subject of the complaint will be invited to comment and their views will be considered.

## **17. Keeping records for monitoring purposes**

- 17.1 The Panel will keep a record of every:
- complaint and purported complaint it receives;
  - every Conduct Matter recorded by it; and
  - every action taken under the Regulations.
- 17.2 The record will be kept until 12 months after the Commissioner and/or Deputy Commissioner leaves office. The record will include the name of the complainant, details of the complaint/Conduct Matter and how the matter has been dealt with.
- 17.3 Summary reports regarding complaints dealt with under this procedure will be submitted to the Panel on an annual basis.

## **18. Appeals**

- 18.1 There is no right of appeal in relation to informal resolution.
- 18.2 A complaint can be made about the way a matter was handled, for example if it was delayed or if there was a failure to record a complaint. In the first instance the complaint should be addressed to the Director of Legal Services:

The Director of Legal Services  
Derbyshire County Council  
County Hall  
Matlock  
Derbyshire  
DE4 3AG

- 18.3 If a satisfactory response is not received the complainant can refer the matter to the Local Government Ombudsman:

The Local Government Ombudsman  
PO Box 4771  
Coventry  
CV4 0EH