

NORTH YORKSHIRE POLICE, FIRE AND CRIME PANEL

Procedure for the Handling of Complaints about the Police, Fire and Crime Commissioner and Deputy Police and Crime Commissioner

1. Background

- 1.1. This procedure has been agreed by the North Yorkshire Police, Fire and Crime Panel ('the Panel') in accordance with the requirements set out in the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 ('the Regulations'), for the initial handling of all complaints about the Police, Fire and Crime Commissioner ('the PFCC') and his/her deputy ('the DPCC') and for the informal resolution of non-criminal complaints. Reference is made in the procedure to the relevant provision in the Regulations determining the requirements.
- 1.2. The procedure does not deal with the investigation of serious complaints and conduct matters. It does however make provision for the referral of serious complaints to the Independent Office for Police Conduct ('the IOPC'), and in some cases referral back.
- 1.3. The Regulations permit the Panel to delegate some or all of its functions in the handling of complaints (see paragraph 3 below) and the Panel has decided:
 - a) To delegate the initial handling of complaints and conduct matters to the lead officer for the Panel within the host authority (see paragraph 3.3 below).
 - b) To appoint a sub-committee of any three members of the Panel to carry out the informal resolution (see paragraph 6.3 below).
- 1.4. References in this procedure to duties and responsibilities on the part of the Panel should be interpreted as duties and responsibilities on the part of any person to whom those duties and responsibilities are delegated to.
- 1.5. The panel has adopted a Habitual and Vexatious Complaints Policy which identifies situations where complainants, either individually or as part of a group, or a group of complainants, might be considered to be "habitual or vexatious". The policy outlines ways of responding to these situations.
- 1.6. Definitions:
- 1.7. The following are key terms used in this procedure:
 - a) A 'complaint' is a complaint about the conduct of the PFCC or DPCC.
 - b) A 'serious complaint' is a particular type of complaint – one which alleges that the PFCC/DPCC has committed a criminal offence.
 - c) A 'conduct matter' is an indication that the PFCC/DPCC 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).

- 1.8. These procedures aim to secure the proper initial handling of all complaints, and the informal resolution of a complaint concerning non-criminal behaviour in accordance with Part 4 of the Regulations. The Panel cannot impose sanctions but may choose to use their powers to require the PFCC/DPCC to attend a hearing to answer questions, request information and documents from the PFCC/DPCC, and publish a report or recommendation.
- 1.9. Informal resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the Complainant, without an investigation or formal proceedings. It is not a disciplinary process, and does not involve the imposition of any sanction.

2. General

- 2.1. The Panel has the following general duties:
 - a) To ensure it is kept informed about complaints and conduct matters and their handling (Regulation 6).
 - b) Where the Panel delegates any or all of its functions in accordance with paragraph 3 of this procedure, it must ensure that measures are in place to check that the complaints are being dealt with in an appropriate way.
 - c) This procedure is not concerned with the investigation of serious complaints, but the Panel must ensure that anyone undertaking an investigation either carried out directly by, or on behalf of, the IOPC is given the assistance and co-operation they reasonably require (Regulation 6).

3. Delegation of Powers and Duties in Relation to the Handling of Complaints

- 3.1. Apart from the resolution of complaints, the Panel may delegate its powers and duties in relation to the handling of complaints under the Regulations.
- 3.2. The Panel may delegate all, some, or none of its functions, or delegate them only in particular circumstances.
- 3.3. The Panel has delegated the initial handling of complaints and conduct matters to the lead officer for the Panel within the host authority, who will determine whether the complaint is:
 - a) An issue about operational policing matters rather than about the PFCC/DPCC. Such matters will be referred to the police force to be dealt with through their normal channels rather than under these procedures,
 - b) A complaint (other than a serious complaint) for informal resolution by the Panel;
 - c) A serious complaint which must be referred to the IOPC; or
 - d) One which should be disapplied in accordance with Regulation 15 (paragraph 4.18 of the procedures).
- 3.4. The designated lead officer for the Panel within the host authority is:

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4. Initial handling of Complaints

4.1. Notification and recording of complaints

- 4.2. Where a complaint is made to the IOPC, Chief Constable, or the PFCC/DPCC, they must notify the Panel of the complaint, unless they are satisfied the complaint is being, or has been, dealt with through criminal proceedings, or where the complaint has been withdrawn (Regulation 9).
- 4.3. Where a complaint is made, the Panel must decide whether it is the relevant Panel i.e. the Panel for the police area for which the PFCC/DPCC has been appointed. If it is not the relevant Panel, it must notify the Panel for the police area involved of the complaint.
- 4.4. Where the Panel is the relevant Panel, it must first consider whether to record the complaint. If the Panel does record the complaint, it
- a) must notify the Complainant and the person complained against that a recording decision has been taken,
 - b) may alter the record to hide the identity of the Complainant or any other person (Regulation 31),
 - c) may decide not to provide a copy of the record if it believes that doing so might prejudice any criminal investigation or pending proceedings or otherwise be contrary to the public interest, but must keep such a decision under regular review (Regulation 31).
- 4.5. The duties to notify or record complaints do not apply where the complaint has been, or is already being, dealt with by criminal proceedings, if the complaint has been withdrawn (Regulation 9) or if the complaint does not pertain to the conduct of the PFCC or DPCC. The Panel (or, by delegation, the lead officer) may also take a decision not to record and to take no further action if the complaint falls within one or more of the categories detailed at section 4.18 (Disapplication of the Regulations).
- 4.6. Where a decision is taken not to notify or record a complaint, the person taking the decision must notify the Complainant of it, and of the grounds on which it the decision was made (Regulation 10).

- 4.7 Notification and recording of conduct matters
- 4.8 If a the Panel is notified that civil proceedings are being brought, or are likely to be brought, by a member of the public against the PFCC or DPCC and it appears the proceedings involve or will involve a conduct matter, the Panel must record the matter.
- 4.9 If a conduct matter comes to the attention of the Panel, otherwise than in the context of civil proceedings, the Panel must record it (Regulation 12).
- 4.10 If the Panel is satisfied that the matter has already been recorded as a complaint, or is the subject of past or present criminal proceedings the obligation to record does not arise (Regulations 11 and 12).
- 4.11 Reference to the IOPC
- 4.12 The Panel must refer a complaint to the IOPC if:
- a) the Panel determines that it is a serious complaint i.e. about a criminal offence, or
 - b) the IOPC requires it to be referred (Regulation 13).
- 4.13 The Panel must also refer any conduct matter (defined in paragraph 1.7c) above) it has recorded, or that has been called in by the IOPC, to the IOPC. A referral must be made as specified in advice notes issued by IOPC. The reference to the IOPC must be made as soon as is practicable and no later than the end of the day after the day when it became clear that the matter had to be referred. (Regulation13).
- 4.14 Where the Panel refers a complaint or conduct matter to the IOPC they must notify:
- a) the Complainant, and,
 - b) the person whose conduct the complaint or matter relates, except where doing so might prejudice the possible future investigation of the complaint or conduct matter.
- 4.15 The IOPC may refer the complaint or conduct matter back to the Panel. The IOPC must notify the Complainant and the person complained against if it refers a complaint or conduct matter back to the Panel (Regulation 14).
- 4.16 A conduct matter referred back shall be dealt with in any manner that the Panel determines which may include taking no action in relation to it.
- 4.17 If a complaint is referred back, it must be dealt with by informal resolution, unless the Regulations are disapplied in accordance with paragraph 4.18 below.

4.18 Disapplication of the Regulations

4.19 Where the Panel decides that a complaint does not need to be referred to the IOPC, or where the IOPC has referred a complaint back, the Panel may decide that the complaint should not be subjected to informal resolution or, indeed, that no action should be taken in relation to it at all where the complaint falls within the following categories (Regulation 15):

- a) A complaint regarding the conduct of the PFCC or DPCC towards a member of their staff,
- b) A complaint that is more than 12 months old, where there is no good reason for the delay or the delay would be likely to cause injustice,
- c) A complaint about conduct that is already the subject of another complaint
- d) An anonymous complaint,
- e) A complaint which is vexatious, oppressive or otherwise an abuse of process for dealing with complaints,
- f) A repetitious complaint as defined in Regulation 15.

4.20 The Panel must notify the Complainant if it decides not to handle a complaint by informal resolution or to take no action in relation to it (Regulation 15(5)). The Complainant must also be informed of their right to refer the matter to the Local Government Ombudsman.

5. Special Cases – Withdrawn Complaints and Conduct outside England and Wales

5.1 Withdrawn and discontinued complaints

5.2 At any stage a Complainant may decide that they wish to withdraw their complaint or that they wish to discontinue it.

5.3 If the Panel receives written notification to this effect, signed by the Complainant or someone authorised to act on his behalf, the Panel must record the fact (Regulation 16).

5.4 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 inform the Panel, the IOPC must send a copy of this notification to the Panel and the Panel must record the fact.

5.5 Where the complaint is one which was referred to the IOPC and has not been referred back to the Panel, the Panel must inform the IOPC that it has recorded the fact that the complaint has been withdrawn or discontinued.

5.6 The IOPC will then consider whether the complaint should be treated as a conduct matter, and if the IOPC so determines, they will notify the Panel.

- 5.7 In the case of a complaint which was not referred to the IOPC, or was referred back to the Panel by the IOPC, the Panel must decide whether the complaint should 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.
- 5.8 Where it is determined (whether by the IOPC or the Panel) that a withdrawn or discontinued complaint should be treated as a conduct matter, the Panel must record it as a conduct matter and the Regulations apply to it accordingly.
- 5.9 If the Complainant indicates that they wish to withdraw or discontinue their complaint but does not provide signed notification in writing to that effect, the Panel must write to ask the Complainant to determine whether or not they wish to withdraw or discontinue.
- 5.10 If the Complainant confirms that s/he wishes to withdraw or discontinue the complaint, or does not reply within 21 days, the Panel should treat it as if it had received signed, written notification of the Complainant's wish to withdraw or discontinue the complaint.
- 5.11 If the Complainant indicates that they do not, in fact, wish to withdraw or discontinue the complaint, the Panel must continue to deal with the complaint in accordance with the Regulations.
- 5.12. The Panel must notify the person complained against if:
- a) it records a complaint as being withdrawn or discontinued,
 - b) if the complaint is to be treated as a conduct matter, or
 - c) if the Regulations cease to apply to the complaint on the basis that it has been withdrawn or discontinued.
- 5.13 The duty to notify in 5.12 does not apply if 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 (Regulation 16(10)).
- 5.14 Conduct occurring outside England and Wales
- 5.15 Conduct occurring outside England and Wales may be the subject of investigation or proceedings in the jurisdiction where it occurs.
- 5.16. The PFCC has a duty to notify the Panel of any allegation, investigation or proceedings relating to his/her conduct occurring outside England and Wales (Regulation 17).
- 5.17. If the Panel receives such a notification they may take whatever action they see fit (Regulation 17).

6. Resolution of Complaints

- 6.1. This procedure applies where the Panel:
 - a) has recorded a complaint;
 - b) has decided not to refer the complaint to the IOPC (because it is not a serious complaint) or the IOPC has referred it back; and
 - c) the lead officer has chosen not to exercise the authority delegated to him/her under paragraph 3 (d) of the procedures to disapply a complaint in accordance with the regulations.
- 6.2. The Panel must make arrangements for informally resolving these complaints.
- 6.3. The Panel has appointed a sub-committee of any three members of the Panel to: determine whether a complaint should be disappplied where the lead officer has chosen not to exercise that authority; to carry out the informal resolution. The lead officer to determine the names of the three members following consultation with the Chairman, Vice-Chairmen and Monitoring Officer.
- 6.4. The Panel cannot appoint the PFCC/DPCC to informally resolve a complaint.
- 6.5. The Panel as a whole can resume responsibility for the informal resolution at any time if it considers that this will lead to a more satisfactory resolution of the complaint.
- 6.6. The informal resolution of any complaint must be discontinued if the IOPC notifies the Panel that they require the complaint to be referred to them, or if the Panel itself decides that the complaint should be referred, where matters come to light during informal resolution which indicate the commission of a criminal offence, and therefore that the matter has become a serious complaint.
- 6.7. Procedures for Informal Resolution
- 6.8. Informal resolution must be undertaken in accordance with procedures approved by the Secretary of State and issued in guidance (Regulation 28).
- 6.9. Informal resolution cannot involve formal investigation, but the Panel requiring the person complained against to provide information and documents to the Panel and attend before the Panel to answer questions does not amount to investigation for these purposes.
- 6.10. Any other step intended to gather information about the complaint, other than inviting the comments of the Complainant and the person complained against, will amount to investigation and is prohibited.
- 6.11. Informal resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the Complainant, without an investigation or formal proceedings. It is not a disciplinary process, and does not involve the imposition of any sanction.

- 6.12 The Panel cannot impose sanctions but may choose to use their powers to require the PFCC/DPCC to attend a hearing to answer questions, request information and documents from the PFCC, and publish a report or recommendation.
- 6.13 If a complaint has already been satisfactorily dealt with by the time it comes to the Panel's attention, the Panel may consider it to be resolved and take no further action in relation to it.
- 6.14. Complainants and any person complained about must be sent a copy of any resolution. The Panel may publish its record of the outcome of the informal resolution of the complaint, where it considers publication to be in the public interest having considered the views of the Complainant and person complained against.
- 6.15. The only part of a statement made to the Panel for the purpose of informally resolving a complaint, that is admissible in any subsequent criminal or civil proceedings, is an admission in relation to another matter which was not the subject of the informal resolution.

7. Provision and Recording of Information

7.1 Address for receipt of complaints

- 7.2 The Panel must notify the PFCC of the name and address of the person to whom members of the public should address complaints. The PFCC must publish the name and address by such means as the Panel specifies (Regulation 30).

7.3 Informing the Complainant and PFCC/DPCC

- 7.4 Where a complaint is recorded, the Panel should notify the recording decision to the Complainant and the person the complaint has been made against, along with providing a copy of the complaint to the PFCC or DPCC.

- 7.5 The identity of the Complainant and any others can be kept anonymous. If the Panel considers that it may prejudice criminal investigations or proceedings, or is contrary to the public interest to supply a copy of a complaint, they do not have to provide a copy, but must review that decision regularly.

7.6 Keeping of records, and the provision of information and access to the IOPC

- 7.7 A Panel must keep a record (of every complaint and purported complaint it receives, every conduct matter it records and every action taken under the Regulations) (Regulation 34). The record should include the name, details of the complaint/conduct matter and how the matter has been dealt with. The record must be in a format which is auditable.

- 7.8 The Panel, PFCC, DPCC and Chief Constable must provide information, documents, evidence or other material to the IOPC when required to do so (Regulation 35).

- 7.9 The Panel, PFCC or his/her deputy must allow a person nominated by the IOPC to have access to any premises occupied, and to documents and other things on the premises (Regulation 36).
- 7.10 Where the access is required for the purposes of an examination by the IOPC of arrangements for handling complaints or conduct matters under the Regulations, at least 48 hours' notice must be given.
- 7.11 Manner of notifications
- 7.12. Any notification required to be given under these procedures or the Regulations must be given in writing (Regulation 37).