

CUMBRIA POLICE, FIRE AND CRIME PANEL Protocol for the Handling of Complaints and Conduct Matters about the Police, Fire and Crime Commissioner and the Deputy Police, Fire and Crime Commissioner

1. Background

- 1.1. This protocol has been agreed by the Cumbria, Fire Police 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 the Deputy Police, Fire and Crime Commissioner ("the DPFCC") and for the informal resolution of non-criminal complaints. Reference is made in the protocol to the relevant provision in the Regulations determining the requirements.
- 1.2. The protocol does not deal with the investigation of 'serious complaints' (as defined below at paragraph 1.6) and conduct matters as the Panel is not responsible for such matters. It does however make provision for the referral of such '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). The Panel has decided to delegate the handling of complaints and conduct matters to the Monitoring Officer within the host authority ("the Lead Officer").
- 1.4. References in this protocol 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's Habitual and Vexatious Complaints Policy 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".
- 1.6. Definitions:
- 1.7. The following are key terms used in this protocol:
 - a) A 'complaint' is a complaint about the conduct of the PFCC or DPFCC;

- b) A 'serious complaint' is one which alleges that the PFCC or DPFCC has committed a criminal offence; and
 - c) A 'conduct matter' is an indication that the PFCC or DPFCC 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 protocols aim to secure the proper initial handling of all complaints, and the informal resolution (see paragraph 1.9 below) 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 or DPFCC to attend a hearing to answer questions, request information and documents from the PFCC or DPFCC, 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 to ensure:
- a) It is kept informed about complaints and conduct matters and their handling (Regulation 6);
 - b) Where the Panel delegates any of its functions in accordance with paragraph 3 of this protocol, that measures are in place to check that the complaints are being dealt with in an appropriate way; and
 - c) 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 and Conduct Matters

- 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 some of its powers in respect of handling of complaints and conduct matters to the Lead Officer (or their appointed deputies) , who will determine whether the complaint is:
- a) An issue about local crime or neighbourhood concerns rather than about the PFCC or DPFCC. Such matters will be referred to either the police force or fire and rescue service to be dealt with through their normal channels rather than under these protocols;
 - 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 (see paragraph 4.27 below).
- 3.4 The Panel has appointed a sub-committee of any three members of the Panel to: determine whether a complaint should be disapplied in circumstances where an appropriate informal resolution cannot be identified by the Lead Officer. The Monitoring Officer will consult with the Chair and Vice-Chair when convening the sub-committee.
- 3.5 The contact point for the Panel is :

The Monitoring Officer
Westmorland and Furness Council
South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4DQ

Email: monitoringofficer@westmorlandandfurness.gov.uk

4. Initial handling of Complaints and Conduct Matters

- 4.1. Duties to preserve evidence
- 4.2. Where any complaint or conduct matter about the PFCC or DPFCC comes to the attention of the Panel, the Panel must secure that all appropriate steps are taken to obtain and preserve evidence relating to the conduct in question (Regulation 8).

- Where the PFCC or DPFCC receives a complaint, or becomes aware of a complaint made to the Panel, the chief constable, chief fire officer or the IOPC, or becomes aware of a conduct matter, they must take all appropriate steps for obtaining and preserving evidence relating to the conduct in question.
- 4.3. Where the PFCC or DPFCC receives a complaint, or becomes aware of a complaint made to the Panel, the chief constable, chief fire officer or the IOPC, or becomes aware of a conduct matter, they must take all appropriate steps for obtaining and preserving evidence relating to the conduct in question.
 - 4.4. The Panel, the PFCC and the DPFCC must comply with any direction given to it by the IOPC in this regard.
 - 4.5. These duties in relation to the preservation of evidence are continuing duties on the Panel.
 - 4.6. The Panel, or the person handling the complaint on its behalf, should consider at the outset what steps are necessary for obtaining and preserving evidence, and should review the situation at regular intervals, until or unless arrangements are made for the complaint to be subjected to informal resolution.
 - 4.7. Informal resolution of a complaint may not require the investigation of the complaint (i.e. obtaining evidence about it). Therefore, the duty to obtain evidence does not apply once informal resolution is initiated.
 - 4.8. The duty is to secure that appropriate steps are taken for obtaining and preserving evidence. Therefore, the Panel, or the person handling the complaint on its behalf, should be ready to ask any other relevant party to obtain or preserve evidence as necessary.
 - 4.9. Notification and recording of complaints
 - 4.10. Where a complaint is made to the IOPC, chief constable, chief fire officer, the PFCC or the DPFCC, 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).
 - 4.11. Where a complaint is made, the Panel must decide whether it is the relevant Panel i.e. the Panel for area for which the PFCC or DPFCC has been appointed.
 - 4.12. Where the Panel is the relevant Panel, it must record the complaint, and
 - a) must provide the Complainant and the person complained against with the record that has been made,
 - 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).
- 4.13. The duties to notify or record complaints do not apply where the complaint has been, or is already being, dealt with by criminal proceedings or the complaint has been withdrawn (Regulation 9).
- 4.14. 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).
- 4.15. Notification and recording of conduct matters
- 4.16. If 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 DPFCC and it appears the proceedings involve or will involve a conduct matter, the Panel must record the matter.
- 4.17. If a conduct matter comes to the attention of the Panel by any other means, the Panel must also record it (Regulation 12).
- 4.18. 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).
- 4.19. Reference to the IOPC
- 4.20. The Panel must refer a complaint to the IOPC if:
- a) the Lead Officer determines that it is a serious complaint i.e. about a criminal offence, or
 - b) the IOPC requires it to be referred (Regulation 13).
- 4.21. The Panel must also refer any conduct matter (defined in paragraph 1.7 c) above) it has recorded, or that has been called in by the IOPC, to the IOPC.
- 4.22. 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. (Regulation 13).
- 4.23. 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.

4.24. 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).

4.25. 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.

4.26. If a complaint is referred back, it must be dealt with by informal resolution, unless the Regulations are disapplied in accordance with paragraph 4.27 below.

4.27. Disapplication of the Regulations

4.28. 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 by a member of the PFCC's staff, arising from the staff member's work as such,
- b) A complaint that is more than 12 months old, where 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) A complaint which is vexatious, oppressive or otherwise an abuse of process for dealing with complaints
- e) A repetitious complaint as defined in Regulation 15

4.29. The Lead Officer must notify the Complainant if the Panel decide 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, their 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 they wish 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 and the DPFCC have a duty to notify the Panel of any allegation, investigation or proceedings relating to their 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. Procedures for Informal Resolution

- 6.1 Informal resolution must be undertaken in accordance with procedures approved by the Secretary of State and issued in guidance (Regulation 28).
- 6.2 Informal resolution cannot involve formal investigation. The Panel requiring the person complained against to provide information and documents to the Panel and to attend before the Panel to answer questions does not amount to investigation for these purposes.
- 6.3 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.
- 6.4 The Panel cannot impose sanctions but may choose to use their powers to require the PFCC or DPFCC to attend a hearing to answer questions, request information and documents from the PFCC or DPFCC, and publish a report or recommendation.
- 6.5 If a complaint comes to the Panel's attention after it has been resolved, the Panel cannot take any further action in relation to that complaint. If the Panel considers that there are additional matters raised in the complaint, which were not dealt with in the original complaint, the Panel may consider the complaint as a whole.
- 6.6 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.

6.7 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.

6.8 If the complainant will only agree to the informal resolution proposal that the Monitoring Officer considers inappropriate, the Monitoring Officer shall refer the complaint to the Complaints Sub-Committee to review the complaint.

6.9 The Sub-Committee shall consider whether to discontinue the complaint or whether there is an alternative proposal. The Sub-Committee will be held in private.

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

7.4. Where a complaint is recorded, the Panel should give a copy of the record to the Complainant and the person the complaint has been made against.

7.5. The identity of the Complainant and any others can be kept anonymous in this copy of the record.

7.6. 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.

7.7. Keeping of records, and the provision of information and access to the IOPC

7.8. 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.

- 7.9. The Panel, PFCC, DPFCC chief constable and chief fire officer must provide information, documents, evidence or other material to the IPCC when required to do so (Regulation 35).
- 7.10. The Panel and the PFCC 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).
- 7.11. 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.

7.12. Manner of notifications

Any notification required to be given under these protocols or the Regulations must be given in writing (Regulation 37).