

**Date:** 30 September 2013  
**Report of:** The Secretary of the West Midlands Police and Crime Panel  
**Report to:** The West Midlands Police and Crime Panel

## **Management of Complaints against the Police and Crime Commissioner and Deputy Police and Crime Commissioner Procedure Update and Summary of Cases**

### **1. Purpose**

This report builds on the interim complaints procedure the Panel approved in October 2012 and learning from handling a number of complaints. It suggests amendments to the interim procedure and seeks comments on the public information document. This paper also summaries the complaints received to date.

### **2. Recommendations**

The Panel is asked to:

- a) Approve the revised complaints procedure (appendix A);
- b) Approve the establishment of a Complaints Sub-Committee to informally resolve complaints in cases where the Monitoring Officer deems it appropriate;
- c) Comment on the public information document (appendix B); and
- d) Consider and comment on the complaints summary report in Paragraph 5 and agree to annual update reports.

### **3. Background**

The Panel's complaints procedure was developed to ensure compliance with the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 issued under the Police Reform and Social Responsibility Act 2011.

The Regulations give the Panel a statutory role for handling all complaints against the PCC and Deputy PCC. This includes triage and categorising complaints, recording decisions, referral of criminal allegations and conduct matters to the Independent Police Complaints Commission (IPCC), deciding when to disapply the Regulations, communication with the all parties, as well as brokering Informal Resolutions of non-criminal complaints.

In October 2012 the Panel approved the Interim Complaints Procedure and following further guidance from Home Office, agreed in January 2013 to delegate all complaint handling, recording decisions and the brokering of informal resolutions to the Birmingham City Council Monitoring Officer. Birmingham Scrutiny Office supports the Monitoring Officer in these functions.

This report builds on the interim complaints procedure and learning from handling a number of cases by the Panel Officers.

#### 4. **Summary of changes to the Panel's Complaints Procedures (Appendix A)**

The updated complaints procedure is attached at Appendix A. The following changes are proposed, with the establishment of a Complaints Sub-Committee (Item F) being the most significant.

- A. **Reordering** the procedures in a sequential order to make the stages easier to follow.
- B. **Greater clarity on the type of complaints** that can be considered under these procedures and those that fall beyond the Panel's remit. This includes explaining the limitations of handling complaints where someone disagrees with a PCC policy (See appendix A paragraphs 2.2 and 4.2-4.4) and the arrangements for redirecting complaints to the correct body (Paragraph 6.2).
- C. Adding **timescales** to our procedures for acknowledging receipt of and concluding complaints (Paragraph 14). No timescales are specified in the Regulations (except when referring serious complaints to the IPCC). However it was felt important to adopt the principle set out in the Local Government Ombudsman guidance for running an effective complaints system that a complaints process should take no longer than 12 weeks from receipt to resolution.
- D. **Further details about the informal resolution stage** of the process and additional information regarding the restrictions on any investigation (Paragraph 16.4).
- E. Advising complainants about their **right to refer the matter to the Local Government Ombudsman** when the procedures have been exhausted and they are unhappy about the way their complaint has been handled (Paragraph 20).
- F. **Establishment of a Complaints Sub-Committee** (Paragraph 17) to conduct informal resolution in cases where the Monitoring Officer deems it the most appropriate method to do so. This will not be an appeal body.

It is suggested the Sub-Committee will consist of three Panel Members drawn from the full membership and substitute members, depending on availability and in conjunction with the Panel Chair. Where possible it will include at least one Independent Panel Member.

Both parties will have the opportunity to attend the meeting to make a statement in support of their position and will be expected to answer

questions. The Sub-Committee will consider the written and oral evidence and secure an informal resolution.

#### **4. Public Information Document and Complaint Form (Appendix B)**

A public information document on submitting a complaint has been drafted (see Appendix B). It aims to guide potential complainants through the process. The document includes a complaint form to assist complainants set out the necessary information to process their complaint. It is proposed to publish these documents on the Panel website.

Members' comments are welcomed.

#### **5. Summary of Cases Received 22 November 2012 - 31 August 2013**

Two complaints against the PCC have been dealt with by the Monitoring Officer on behalf of the Panel to date. Summary details are set out in the Table 1 below.

A further 8 complaints were received relating to operational policing matters or about a PCC policy. These were passed to the appropriate body and therefore not handled under this complaints procedure.

It is suggested that further reports on the number and nature of complaints about the PCC or Deputy PCC be presented to the Panel on an annual basis.

**Table 1: Summary of complaints 22/11/12-31/08/13**

<b>Case Reference</b>	<b>Date Recorded</b>	<b>Summary of Complaint</b>	<b>Outcome</b>	<b>Live or Closed</b>
WMPCP00113	04/06/13	PCC role in previous WM Police investigation	Decision made to Disapply the Regulations under Reg. 15(3): complaint was an abuse of the procedures for dealing with complaints	closed
WMPCP00813	13/08/13	PCC failure to register as data controller with Information Commissioner	Referred to IPCC who decided not to investigate as it determined no criminal offence had been committed	closed

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## **List of Appendices**

Appendix A - WMPCP Complaints Procedure – Revised Version for Approval

Appendix B - Public Information Leaflet with Complaint Form

## **Background Information**

- Police Reform and Social Responsibility Act 2011
- Local Policing Bodies (Complaints and Misconduct) Regulations 2012
- Home Office Guidance Police and Crime Panel Regulations – non-criminal complaints and misconduct
- Interim WMPCP Complaints and Misconduct Procedure 29 October 2012
- WMPCP Complaints and Misconduct Procedure Update Report 21 January 2013
- Guidance on Running an Effective Complaints System – Local Government Ombudsman

## **APPENDIX A: REVISED PROCEDURE**

### **West Midlands Police and Crime Panel Complaints and Misconduct Procedure Dealing with Complaints about the West Midlands Police and Crime Commissioner and Deputy Police and Crime Commissioner**

#### **1.0 Introduction**

- 1.1 This procedure has been developed to ensure compliance with the elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the Regulations) issued under the Police Reform and Social Responsibility Act 2011 (the Act). It set out the process and responsibilities for dealing with complaints about the conduct of the West Midlands Police and Crime Commissioner (PCC) or Deputy Police and Crime Commissioner (Deputy PCC). Nothing in this procedure overrules the provisions of those Regulations.

#### **2.0 Role of Panel under the Regulations**

- 2.1 The West Midlands Police and Crime Panel (“the Panel”) has a statutory responsibility under the Regulations for handling complaints regarding the non-criminal behaviour of the PCC or Deputy PCC and for informally resolving such complaints. In addition the Panel is responsible for recording and referring Serious Complaints and Conduct Matters to the Independent Police Complaints Commission (IPCC) and dealing with any that are referred back to it by the IPCC.
- 2.2 There are separate procedures for complaints about operational policing matters, about the Chief Constable and other police officers, complaints about the PCC’s staff, including the Assistant PCCs and the Non-Executive Board Members which are not covered in the Regulations and so are beyond the remit of the Panel.

#### **3.0 Powers Delegated to the BCC Monitoring Officer**

- 3.1 On 21 January 2013 the Panel has agreed to delegate responsibility for all complaint handling, recording decisions and the brokering of informal resolutions to the Birmingham City Council Monitoring Officer as Host Authority (under s28 (3) of Regulations). Any reference within this procedure or the Regulations to ‘the Panel’ should be read as ‘the Monitoring Officer acting on behalf of the Panel’.
- 3.2 The Monitoring Officer is supported in this function by Birmingham Scrutiny Office.
- 3.3 In practice it will be the Monitoring Officer who will make formal decisions on complaints under delegation from the Panel, but in exercising that function the Monitoring Officer and Scrutiny Office will work with the Chief Executive of West Midlands Office for Policing and Crime to ensure that complaints received are correctly identified as being complaints which are subject to the Regulations and other complaints (for example complaints about the PCC’s staff or the police force) are redirected as appropriate.

## 4.0 Key Definitions

4.1 The Regulations and relevant legislation contains a number of key definitions:

A “**Complaint**” means a general complaint about the conduct of the PCC and/ or the Deputy PCC, whether or not that conduct is potentially criminal (s31(1) (a) of the 2011 Act).

“**Conduct**” includes acts, omissions, statements and decisions (whether actual, alleged or informed) (Reg. 2 (1)).

“**Criminal Offence**” means any offence triable in England and Wales (Reg. 2 (1)).

A “**Recorded Complaint**” means a complaint that the Police and Crime Panel (the Panel) formally records because it has determined it is a complaint about the conduct of the PCC and/or Deputy PCC, and it is the correct Panel to handle it (Reg.9 (5)). The Panel will formally record the complaint by entry in the Recorded Complaints and Conduct Matters Register database.

A “**Conduct Matter**” means a matter where there is an indication (whether from the circumstances or otherwise) that the PCC and/ or Deputy PCC may have committed a criminal offence (s31 (1)(b) of the 2011 Act), which comes to light other than via a complaint, e.g. a media report or legal proceedings (Home Office Guidance Note).

A “**Serious Complaint**” means a complaint about the conduct of the PCC and/ or the Deputy PCC which constitutes, involves, or appears to constitute or involve the commission of a criminal offence (Paragraph 2 (6) Schedule 7 to the 2011 Act). The Panel must notify the Independent Police Complaints Commission (IPCC) of a Serious Complaint.

4.2 The Panel can only handle complaints relating to the personal conduct of the PCC or Deputy PCC in their Office for Policing and Crime capacities primarily, although complaints may extend to their conduct in their private or other public capacities.

4.3 The Regulations and this complaints procedure do not cover complaints about the merits of a decision, for example where somebody disagrees with a policy the PCC has introduced. Although the Panel may consider complaints about whether a decision was taken properly and in accordance with procedures.

4.4 Concerns from the general public about a particular policy is something the Panel should be aware of and reflect upon as it scrutinises the PCC’s policies. However these cannot be taken up through this complaint procedure.

## 5.0 Submitting a Complaint

5.1 Complaints about the conduct of the PCC or Deputy PCC should be sent in writing to:

**WMPCP, Scrutiny Office, Council House, Victoria Square, Birmingham, B1 1BB**

Or by email: **wmpcp@birmingham.gov.uk**

- 5.2 Complaints cannot be accepted via Twitter, Facebook, or telephone.
- 5.3 A Complaint Form has been developed to assist complainants set out the necessary information. This can be downloaded from the Panel's website [www.birmingham.gov.uk/wmpcpcomplaints](http://www.birmingham.gov.uk/wmpcpcomplaints) or emailed or posted out on request.
- 5.4 Complainants may wish to arrange for someone to act on their behalf, such as a friend or relative. However, written consent must be provided by the complainant before the Panel can discuss the case with them.
- 5.5 Where the Monitoring Officer considers that a complaint requires further information or detail in order for him to properly consider it under the Regulations, the complainant may be asked to provide such detail.

*5.6 Direct complaints to the PCC and Deputy PCC and preservation of evidence*

- 5.6.1 By no later than the end of the working day following the day on which the complaint was made to them, the PCC and/ or Deputy PCC must notify the Monitoring Officer in writing via email to [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk) of the matter of the complaint and provide details of the steps they have taken to preserve such evidence, including its location and in whose custody it is in.

- 5.6.2 Where a complaint is made directly to the PCC and/ or Deputy PCC then both are under a statutory duty to take all such steps as appear to them to be appropriate for obtaining and preserving evidence in relation to the conduct in question, both initially and from time to time after that. (In discharging this duty they shall take such steps as a reasonable person would consider appropriate in the circumstances to obtain and preserve evidence, and in any event shall comply with any requests of the Panel.

*5.7 Direct complaints to the Police and Crime Panel Members*

Any complaint addressed to an individual Panel Member should be immediately directed by the recipient to the Monitoring Officer via email to [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk), along with any other available information that is relevant to the complaint, in accordance with the Regulations.

*5.8 Direct complaints to the Police*

Where a complaint is made to the Chief Officer of Police, they have a duty to notify the Monitoring Officer in writing via email to [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk).

*5.9 Direct complaints to the Independent Police Complaints Commission*

When a complaint is made to the IPCC, it has a duty to notify the Panel to enable a recording decision to be made, unless the IPCC considers that there are exceptional circumstances to justify notification not being given.

**6.0 Triage and Recording of Complaints**

- 6.1 Upon receipt of a complaint the Monitoring Officer will determine whether it falls within the scope of the Panel's complaints procedures, whether to record it and (if so) how the Recorded Complaint is to be dealt with under the Regulations.
- 6.2 If the complaint falls outside the remit of the Panel e.g. is relates to operational policing, the complainant will be advised and the offer given to pass it to the appropriate body.
- 6.3 If the complaint relates to another police force area it will be passed to the relevant police and crime panel (Reg. 9 (2)(b)).

## **7.0 Record of Complaint**

- 7.1 If the complaint relates to the conduct of the West Midlands PCP or Deputy PCC it will be recorded on the West Midlands Recorded Complaints and Conduct Matters Register unless the Monitoring Officer is satisfied that any of the following exceptions apply, (in whole or in part) (Reg. 9 (6)):
  - (i) if it has been or is currently being dealt with by criminal proceedings: this will normally be the case where the Police have formally charged the person complained about or information alleging an offence has been laid before a magistrate's court; or
  - (ii) the complaint has been withdrawn in accordance with Regulation 16.
- 7.2 If the Monitoring Officer decides not to record the complaint due to the above and, therefore, to take no action upon it, the complainant will be notified and given the grounds on which that decision was made, whether in relation to whole or part of the complaint (Reg.10 (2)).
- 7.3 Where a complaint is recorded, a copy of the record will be sent to the complainant with information about the next steps to be taken in relation to the complaint (Reg.31 (1) (a)).
- 7.4 When a complaint is recorded the person complained against and the Chief Executive West Midlands Office for Policing and Crime will also be informed and provided with a record of the complaint (Reg. 31(1) (b)). However, the record may be altered to hide the identity of the complainant or any other person. In addition a record may not be sent if in doing so might prejudice any criminal investigation or pending proceedings or otherwise be contrary to the public interest. The Monitoring Officer will take these decisions and will keep this under review (Reg. 31(2) to (4)).

## **8.0 Notification and Recording of Conduct Matters**

- 8.1 If an issue arises other than via a complaint, for example through legal proceedings or media report, where there is an indication (whether from the circumstances or otherwise) that the PCC or Deputy PCC may have committed a criminal offence in England or Wales or, although committed elsewhere, it is an offence triable in England or Wales, this is referred to as a Conduct Matter.
- 8.2 A Conduct Matter, therefore, occurs where no formal complaint has been received.

8.3 Where the existence of such a Conduct Matter is brought to the Panel's attention by virtue of either

- (i) the Conduct Matter, or
- (ii) the facts relating to the incident giving rise to the Conduct Matter

forming part of either:-

- (a) civil proceedings being brought; or
- (b) likely to being brought,

against either any PCC or Deputy PCC, the Panel will record the Conduct Matter, or refer the matter to the Panel responsible for that PCC or Deputy PCC (Reg 11).

8.4 A Conduct Matter must be recorded, and entered onto the Recorded Complaints and Conduct Matters Register, unless the Monitoring Officer is satisfied either of the following exceptions apply (Reg. 12(2)):

- (i) the matter has already been recorded as a complaint under regulation 9(5); or
- (ii) the matter has been, or is already being, dealt with by means of criminal proceedings against the PCC or Deputy PCC. This will normally be the case where the Police have formally charged the person with a criminal offence or information alleging an offence has been laid before a magistrate's court.

8.5 If the IPCC becomes aware of a Conduct Matter which has not been recorded by the Panel then the IPCC may direct the Panel to record the matter (Reg.12 (3)).

8.6 In order to enable the Panel to discharge its duties under the Regulations, the Panel needs to be informed about any proceedings where the PCC and/ or Deputy PCC is the defendant to or an interested party in legal proceedings.

8.7 The PCC, Deputy PCC, the Chief Executive West Midlands Office for Policing and Crime, every counsel, solicitor or legal or other advisor instructed or retained by them are therefore required, as soon as reasonably practicable, to notify the Monitoring Officer and provide written details to the Monitoring Officer via email to [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk).

8.8 Such persons are expected generally to cooperate with the Panel in the discharge of its statutory duties under the Regulations (Reg.11) to such extent as is not inconsistent with any legal professional privilege or obligation of confidence.

## **9.0 Conduct Occurring Outside England and Wales**

9.1 The PCC and Deputy PCC are under an individual duty to notify the Panel via the Monitoring Officer of any allegation, investigation or proceedings relating to their conduct outside England or Wales. The Panel can handle the matter in whatever manner (if any) it thinks fit in these circumstances (Reg.17). This decision will be made by the Monitoring Officer.

9.2 Accordingly, by no later than the end of the working day following the day on which the investigation, allegation or proceedings (as above) comes to their attention, the PCC and/ or Deputy PCC shall notify the Monitoring Officer in writing via email to [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk) of the matter.

9.3 This obligation applies to conduct within England and Wales that took place before the PCC was elected to office or the Deputy PCC was appointed to office.

## **10.0 Referral of Recorded Serious Complaints and Recorded Conduct Matters to the IPCC**

10.1 The Monitoring Officer has authority for filtering complaints and deciding which may amount to criminal conduct as a Serious Complaint and should be referred to the IPCC (using IPCC Referral Form 7.1). The Monitoring Officer may take advice from the IPCC before making a referral.

10.2 The Monitoring Officer must refer the following to the IPCC:

- (i) All Recorded Conduct Matters;
- (ii) All Serious Complaints (i.e. a complaint that constitutes or involves or appears to constitute or involve, the commission of a criminal offence); and
- (iii) Any Serious Complaint or Recorded Conduct Matter where the IPCC has called it in.

10.3 If any of the above comes to the attention of one of the named Panel Officers at a point when liaison with the Monitoring Officer is not possible i.e. out of office hours or Bank Holidays, then it may be referred to the IPCC without reference to the Monitoring Officer.

10.4 On referring a Recorded Complaint or Conduct Matter to the IPCC, the Panel will notify the complainant (where there is one) and the person complained about of the referral, unless it appears that notifying the PCC or Deputy PCC might prejudice a possible future investigation (Reg. 13(6)). The Monitoring Officer will make this decision.

### *10.5 Call-in by the IPCC*

The Panel must refer a Recorded Complaint to the IPCC if required to do so (Reg. 13(3) and (4)).

### *10.6 Timescales for Referral to the IPCC*

Referrals should be made as soon as is practicable, and in any event no later than the end of the day following the day on which it becomes clear to the Panel that the Recorded Complaint or Conduct Matter is one that should be referred to the IPCC, or was required to (Reg. 13 (3)). The details in the Register will be made available to the IPCC, together with such other information considered appropriate.

### *10.7 Referral-back from the IPCC*

10.7.1 Where the IPCC decides it does not need to investigate a Serious Complaint referred to it, it will refer the complaint back to the Panel to be dealt with by

informal resolution. The IPCC will notify the complainant and the person complained against about this decision (Reg.14 (2)(a) and (3)).

10.7.2 Where the IPCC decides that it does not need to investigate a Conduct Matter it will refer the matter back to the Panel to be dealt with in such a manner, if any, as the Panel thinks fit. The IPCC will notify the PCC or Deputy PCC complained against about this decision (Reg. 14(2)(b) and (3)).

## **11.0 Circumstances where the Panel does not need to deal with a complaint**

11.1 If the Monitoring Officer considers that a Recorded Complaint (which is not one that otherwise must be referred to the IPCC) is one in respect of which no action should be taken, and it falls within the circumstances set out below, then he may decide to handle the Recorded Complaint in whatever manner he thinks fit (Reg. 15 (2)).

11.2 The types of Recorded Complaint where the Regulations may be disapplied and dealt with in this way are:

- (i) A complaint concerned entirely with the PCC's/ Deputy PCC's conduct in relation to a person who was working as a member of the PCC staff at the time when the conduct was supposed to have taken place (Reg.15 (3) (a));
- (ii) Where more than twelve months have elapsed since the incident and there is no good reason for the delay, or injustice would be caused by the delay (Reg.15 (3) (b));
- (iii) The matter has already been the subject of a complaint (Reg.15 (3) (c));
- (iv) The complaint is anonymous (Reg.15 (3) (d));
- (v) The complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints (Reg.15 (3) (e)); or
- (vi) The complaint is repetitious (Reg.15 (3) (f)).

11.3 A "Repetitious Complaint" (above) is one which is

- (i) the same or substantially the same as a previous complaint, or concerns substantially the same conduct as a previous conduct matter, contains no fresh allegations which affect the account of the conduct complained of, no fresh evidence which was not reasonably available at the time the previous complaint; or
- (ii) has already been referred to the IPCC and dealt with appropriately (Reg. 15 (4)).

11.4 The Monitoring Officer may handle these complaints in whatever manner (if any) they think fit (Reg. 15 (2)).

11.5 The Monitoring Officer will notify the complainant of any decision not to apply the Regulations to a Recorded Complaint or to take no further action in relation to it and provide the grounds for that decision (Reg.15 (5)).

## **12.0 Habitual or vexatious complaints**

12.1 Where, in the reasonable opinion of the Monitoring Officer, the complaint is either:

- (i) made with either the objective of causing disproportionate or unjustified level of disruption, irritation or distress to either the PCC, Deputy PCC , the Police and Crime Panel, or the Monitoring Officer; or
- (ii) is a disproportionate, manifestly unjustified, inappropriate or improper use of the complaints process,

The Monitoring Officer can disapply the Regulations and take no further action in accordance with Regulation.15 (3) (e).

### **13.0 The Panel’s duties to obtain and preserve evidence**

13.1 When a complaint or conduct matter comes to the attention of the Panel, it is under a duty to ensure all appropriate steps are taken to obtain and preserve evidence in relation to the conduct in question, both initially and from time to time after that. It is not the Panel’s role to investigate matters and it is likely that before taking steps to obtain or preserve evidence it will normally consult the IPCC. The IPCC may also give the Panel and the PCC and /or Deputy PCC directions for obtaining and preserving evidence (Reg. 8).

13.2 Accordingly, the Panel may make formal requests of any of the following persons to take such steps as the Panel considers are expedient or necessary for obtaining and preserving evidence in relation to the conduct in question, both initially and from time to time after that. This includes requests that steps are taken concerning the disposition of the property and resources of the PCC’s office (such as its buildings, assets, equipment, supplies, accounts, records, information, electronic data etc. in their widest sense and wherever located) or other persons:

- (i) The PCC and/ or Deputy PCC;
- (ii) Any employee of the PCC’s office;
- (iii) Any member or employee of a functional body; and
- (iv) Any person or organisation having a current or past contractual relationship with the PCC’s office or its predecessors or in receipt of a grant from such bodies.

13.3 A person given a direction by the Panel under this procedure shall comply with it in full and generally cooperate with the Panel and its authorised officers in the discharge of their statutory duties under the Regulations.

13.4 Such persons shall also permit access and render possession of any such evidence in relation to the conduct complained about to the Panel as is in their possession, custody or control in accordance with instructions.

13.5 The Panel shall be informed of any instances where there has been a complete or partial failure by any person or organisation to comply with any request regarding evidence.

### **14 0 Timescales**

12.1 Wherever possible complaints will be acknowledged within 5 working days, and concluded within 12 weeks if dealt with through informal resolution.

- 14.2 However, each case is different and the time taken to reach a conclusion will be determined by the nature of the complaint. The complainant and the person complained about will be provided with regular updates of progress.
- 14.3 These are locally agreed timescales as none are specified within the Regulations.
- 14.4 If the Serious Complaint or Conduct Matter is referred to the IPCC this must be done as soon as possible, and no later than the close of business the day after the Panel becomes aware that the matter should be referred (Reg.13(3)and (4)).

## **15.0 Withdrawal of Complaints**

- 15.1 At any stage a complainant may decide that they wish to withdraw their complaint or they wish to discontinue it. If the Panel receives written notification to this effect, signed either by them or their solicitor or other acting on their behalf, it will record the fact on the Register (Reg. 16).
- 15.2 If the Recorded Complaint is with the IPCC, the Panel must notify the IPCC that it has recorded the withdrawal of the complaint. The IPCC will then consider whether the complaint should be treated as a Conduct Matter. The IPCC will notify the Panel accordingly and the Register will be updated.
- 15.3 If the complaint had not been referred to the IPCC, or was referred and then referred back, the Panel must decide whether the complaint should be treated as a Conduct Matter. A complaint should be treated as a Conduct Matter where there is an indication that a criminal offence has been committed (Reg. 16(4)). The Monitoring Officer will make this decision.
- 15.4 Where it is determined (whether by the IPCC or Monitoring Officer) that a withdrawn complaint should be treated as a Conduct Matter, the Panel must record it as a Conduct Matter, and apply the Regulations accordingly (Reg. 16 (6)).
- 15.5 The Regulations also contain provisions for contacting the complainant if they indicate they wish to withdraw their Recorded Complaint, but have not signed the withdrawal request (Reg.16 (8)).
- 15.6. The Panel will notify the person complained against and the Chief Executive of West Midlands Office for Policing and Crime if it records a complaint as being withdrawn or discontinued, if it is being treated now as a Conduct Matter, or if the Regulations cease to apply to the complaint on the basis that it has been withdrawn or discontinued (Reg. 16(9) unless it was previously decided not to notify the person complained against.

## **16.0 Resolution of Complaints**

- 16.1 Under Part 4 of the Regulations the Monitoring Officer must make arrangements to informally resolve Recorded Complaints which the Monitoring Officer has:
- (i) Not referred to the IPCC, or having referred it to the IPCC, has had it referred back; and
  - (ii) Decided not to disapply the regulations.

- 16.2. Informal Resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant, without investigation or formal proceedings. It is a flexible process that may be adapted to the needs of the complainant and the individual complaint. This may be done by correspondence or in a face to face meeting.
- 16.3 The Monitoring Officer will act as a broker to the informal resolution and in attempting to secure resolution of the complaint, will consider whether further information / clarification / explanation is required and/or whether any actions are required.
- 16.4 The following formal requirements for Informal Resolution are set out in the Regulations:
- (i) No investigation can take place. The Panel has the power to require the person complained against to provide information and documents and to attend to answer questions. This does not amount to investigation (Reg. 28 (7)).
  - (ii) The complainant and the person complained against must be given the opportunity to comment on the complaint as soon as practicable (Reg. 28 (9)).
  - (iii) Any failure by the person complained against to comment on the complaint when invited to do so will be noted in the written record (Reg. 28 (10)).
  - (iv) No apology can be tendered on behalf of the person complained against unless the person had admitted the alleged conduct and agreed to the apology (Reg. 28 (11)).
- 16.5 Where it appears to the Monitoring Officer that a Recorded Complaint against the PCC and/ or Deputy PCC has in fact already been satisfactorily dealt with by the time it was brought to the Panel's notice, the Monitoring Officer may, subject to any further representations by the complainant, treat it as having been resolved and take no further action. The Monitoring Officer will take this decision (Reg. 28 (8)).

## **17.0 Complaints Sub-Committee**

- 17.1 If the Monitoring Officer deems that the complaint cannot be resolved based on the written information available, a Complaints Sub-Committee of the West Midlands Police and Crime Panel may be convened, as permitted in Regulation 28 (3), to which the PCC or Deputy PCC will be invited to respond to the allegations in person.
- 17.2 The Complaints Sub-Committee is not an appeal body to reconsider previous Monitoring Officer decisions or informal resolution.
- 17.2 The Complaints Sub-Committee will consist of three Panel Members drawn from the full membership of the Panel, in conjunction with the Panel Chair (or Vice Chair) and based on availability. The Complaints Sub-Committee will include, where possible, one Independent Panel Member. Substitute Panel Members can be appointed to the Sub- Committee.
- 17.3 At the meeting the Monitoring Officer, or their representative, will present the available written information to the Sub-Committee.

- 17.4 Given the Panel's inability to investigate, normally the Sub-Committee will only be able to call upon the complainant and the person complained about to attend. Both parties will be invited to make a statement in support of their position and will be expected to answer questions, and where necessary, provide additional evidence to the members of the Sub-Committee.
- 17.5 The Complaints Sub-Committee will consider the written and oral evidence and secure an informal resolution.
- 17.6 It is likely that the Complaints Sub-Committee will need to consider whether to pass a resolution to exclude the press and public from meetings on the basis of discussion of sensitive personal data e.g. alleged offences, in accordance with Part 1 of Schedule 12A to the Local Government Act 1972.

## **18 0 Record of Informal Resolution**

- 18.1 A record of the outcome of the informal resolution will be made as soon as practicable after the process has been completed. Copies will be sent to the complainant and the person complained against (Reg. 28 (12)).
- 18.2 The record of the outcome of informal resolution (or part of it) may be published if it is considered to be in the public interest. Before making the decision the Monitoring Officer will give the complainant and the person complained against the opportunity to make representations in relation to the proposed publication (Reg. 28 (13)).
- 18.3 In cases where an informal resolution cannot be agreed the record will detail the reasons given by the parties why the matter could not be resolved.

## **19 0 Outcome of Informal Resolution**

- 19.1 There will be no formal sanctions with informal resolution; ultimately the PCC and Deputy PCC are held accountable by the ballot box. However the Panel may publish a report or recommendation.

## **20.0 Appeals and complaining to the Local Government Ombudsman**

- 20.1 There is no right of appeal regarding the outcome of the complaint.
- 20.2 The Local Government Ombudsman has jurisdiction over the administrative functions of the Police and Crime Panel and complainants can contact them if they are unhappy with the way that the complaint was handled.
- 20.3 The Panel's complaints procedure will need to be followed to its conclusion, before the Local Government Ombudsman will become involved.

## **21.0 Provision and Recording of Information**

- 21.1 The Panel must maintain a formal register: "the Recorded Complaints and Conduct Matters Register" for the purposes of recording complaints and conduct matters under the Regulations. This Register is an electronic database recording all key details pertaining to a complaint including the date received, the complainant, a summary of the complaint / the category into which it falls (Recorded Conduct Matter, Serious Recorded Complaint or

other Recorded Complaint), the date on which it was recorded, actions taken on the complaint under the Regulations and any other information deemed relevant.

- 21.2 The Panel shall keep records of every complaint and purported complaint made to it or received by it; every conduct matter recorded by the Panel and every action taken under the Regulations (Reg. 34).
- 21.3 The Panel shall provide to the IPCC all such information or documents specified and all evidence or other things so specified or described by the IPCC in a notification given by the IPCC to the Panel and in a manner and within a time so specified (Reg. 35).
- 21.4 Summary reports (such as can be reported in public), regarding complaints dealt with under this procedure will be submitted to the West Midlands Police and Crime Panel on a regular basis for monitoring purposes and at least annually.

Publication Date: 30 September 2013

## **APPENDIX 2: PUBLIC INFORMATION LEAFLET**

# **Making a Complaint about the West Midlands Police and Crime Commissioner or Deputy Police and Crime Commissioner**

This leaflet explains how to complain to the West Midlands Police and Crime Panel about the West Midlands Police and Crime Commissioner (PCC) or the Deputy Police and Crime Commissioner (Deputy PCC).

This leaflet explains what type of complaints the Panel can consider and the process that will be followed in handling and resolving these complaints.

The full version of the Panel's Complaints Procedure can be found at [www.birmingham.gov.uk/wmpcccomplaints](http://www.birmingham.gov.uk/wmpcccomplaints).

The Panel has appointed the Birmingham City Council Monitoring Officer to act on the Panel's behalf in handling complaints and brokering informal resolutions. Any reference to 'The Panel' in the Panel's procedures or the Regulations<sup>1</sup> should be read as 'the Monitoring Officer acting on behalf of the Panel'.

### **We aim to -**

- Handle complaints in a fair and independent way.
- Deal with complaints as quickly and effectively as we can
- Keep all parties informed of progress until the complaint reaches a conclusion.

### **What complaints can we look at?**

The Panel is responsible for dealing with complaints about the conduct of the Police and Crime Commissioner and the Deputy PCC.

"Conduct" means the way things are done or not done, statements are made and decisions taken.

Any complaint alleging criminal conduct will first be recorded by the Panel and then we will pass it onto the Independent Police Complaints Commission (IPCC) for investigation.

Other non-criminal complaints are recorded and then handled by the Panel, usually through Informal Resolution.

If you have an ongoing complaint, we would normally require that complaint process to be completed before we look into the matter.

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<sup>1</sup> The West Midlands Police and Crime Panel Complaints and Misconduct Matters Procedures have been developed to ensure compliance with the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 issued under the Police Reform and Social Responsibility Act 2011.

## What we can't do

There are certain complaints we can't handle because we do not have the legal power to do so.

There are separate procedures for the following complaints:

- Complaints about operational policing matters, the performance of the West Midlands Police or any of its officers are dealt with by the West Midlands Police Standards Department.
- Complaints about the Chief Constable or Office for Policing and Crime staff, including the Assistant PCCs and Non-Executive Board Members are dealt with by the Police and Crime Commissioner.
- Complaints relating to the administration of the Panel should be sent to Birmingham Your Views (see address on page 7). Complaints relating to the conduct of individual Panel Members should be directed to the relevant Standards Board.

If we decide your complaint should be directed to another body because it falls beyond our remit, we will explain why and offer to pass it on (see page 3 for more details).

**We cannot consider complaints about the merits of a PCC decision**, for example where someone disagrees with a policy the PCC has introduced, although we could consider whether a decision was made properly and in accordance with the PCC's rules and procedures.

If you have a concerns about a particular policy this is something the Police and Crime Panel should be aware of and reflect upon as it scrutinises the PCC's policies. However these concerns cannot be taken up through this complaint procedure.

**We have no power to investigate complaints in any way**, although we may ask the person complained against to provide information or summon them to answer questions.

## Submitting a complaint

Complaints should be sent in writing to:

**WMPCP  
Scrutiny Office  
Council House  
Victoria Square  
Birmingham  
B1 1BB**

Or by email: [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk)

Please complete our **Complaint Form** which has been designed help you set out the information we need to process your complaint. The complaint form is at the end of this leaflet. A copy can be downloaded from the Panel's website [www.birmingham.gov.uk/wmpcpcomplaints](http://www.birmingham.gov.uk/wmpcpcomplaints), or we can email or post one to you.

We cannot accept complaints via Twitter, Facebook, or telephone.

However in line with the requirements of the Disability Discrimination Act 2000 we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. Please contact us on 0121 464 6871 or email: [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk).

You can arrange for someone to act on your behalf, such as a friend or relative. However, you must write to tell us you have given your consent before we can discuss your case with them.

## **How we will deal with your complaint**

When we receive a complaint we take the following three steps:

### **Step 1- Triage and redirecting out of scope complaints**

We will first check your complaint is about the conduct of the West Midlands PCC or Deputy PCC.

If your complaint relates to another police force area we will pass it to the Police and Crime Panel for that area and tell you we have done that.

If the complaint is about operational policing matters, the performance of West Midlands Police or any of its officers we will explain why the Panel can't handle such a complaint and offer to pass it to the West Midlands Police Professional Standards Department. (See address on page 7).

If the complaint is about the Chief Constable or Office for Policing and Crime staff, the Assistant PCCs or Non-Executive Board Members we will offer to pass it to the PCC. (See address on page 7).

If the complaint relates to a PCC policy or the merits of a PCC decision we will explain why this can't be taken through our complaints procedure, but the Police and Crime Panel may consider it as part of its work programme.

### **Step 2 - Recording your complaint**

If your complaint relates the conduct of the PCC or Deputy PCC we will record it, unless the matter has been or is currently being dealt with by criminal proceedings.

If we decide not to record your complaint we let you know and explain why.

If we record your complaint we will give you and the person complained against a copy of the Record of Complaint. (In certain circumstances your complaint will be kept anonymous or confidential).

### **Step 3 – Deciding how your recorded complaint will be handled**

If we have recorded your complaint at Step 2, we will then decide how to deal with your complaint. This will be one of the following four options A, B, C or D below:

#### **Option A - Is it a Serious Complaint that should be passed to the Independent Police Complaints Commission (IPCC)?**

If your complaint alleges criminal conduct (or which appears to involve a criminal offence that can be triable in England and Wales) we will pass the complaint to the IPCC. The IPCC will then decide how to deal with your complaint. We will tell you if we have passed your complaint to the IPCC.

It is possible for the IPCC to refer any complaint back to us for a resolution. The IPCC will let you know if it does this.

#### **Option B – Are there grounds to reject the complaint?**

We may decide to reject your complaint and take no action in the following circumstances:

- a) The complaint is by a member of the PCC staff, arising from their work;
- b) The complaint is more than 12 months old where there is no good reason for the delay, or the delay would likely to cause injustice;
- c) The complaint is about the conduct that is already the subject of another complaint;
- d) The complaint is anonymous;
- e) The complaint is vexatious, oppressive or otherwise an abuse of processes for dealing with complaints; or
- f) The complaint is repetitious.

If we decide to take no action regarding your complaint we will notify you and give you the reason for the decision.

#### **Option C - Has the complaint already been satisfactorily dealt with?**

If it appears your complaint has already been satisfactorily dealt with by the time it comes to the Panel's attention, we may decide to take no further action.

We will ask for your comments before doing this and consider your views before making this decision.

## **Option D - Should the complaint be taken forward to Informal Resolution?**

If your complaint has not been passed to the IPCC, rejected, or already been dealt with, it will be taken forward to informal resolution.

## **What is Informal Resolution of Complaints?**

Informal resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant, without investigation or formal proceedings.

It is a flexible process that may be adapted to the needs of the complainant and the individual complaint. This may be done by letter or in a face to face meeting of the Police and Crime Panel Complaints Sub-Committee.

If the Monitoring Officer decides the complaint can't be resolved based on written information available, they may arrange a meeting of the Complaints Sub-Committee. At the meeting both parties will be invited to make a statement to support their position and answer questions.

In attempting to secure a resolution we will consider whether further information, clarification or explanation is required and/or whether any actions are required and can be agreed with all parties.

We can not tender an apology on behalf of the person complained against unless the person has admitted the alleged conduct and agreed to the apology.

The Panel has no powers to investigate complaints but is allowed to ask the person complained against to provide information and documents and answer questions.

We cannot impose formal sanctions on the person you have complained about because we do not have the power to do so. Ultimately the PCC and Deputy PCC are held accountable by the ballot box. However we may publish a report or recommendation.

## **Outcome of Informal Resolution**

A record of the outcome of your complaint will be sent both parties and published if it is deemed in the public interest and only after both parties have been given the chance to comment on the proposed publication.

## **Timescales for Handling Your Complaint**

Wherever possible we will acknowledge receipt of your complaint within 5 working days.

We aim to conclude a complaint within 12 weeks if it is dealt with through informal resolution.

However each case is different and the time taken to reach a conclusion will depend on the nature of the complaint.

We will keep all parties regularly updated of progress until the complaint reaches a conclusion.

If the complaint is criminal in nature, we must pass it to the IPCC as soon as possible. We will notify you if we do this. The IPCC will then decide how to deal with the complaint and will contact you.

## **Withdrawing a Complaint**

If you wish to withdraw your complaint you (or someone authorised to act on your behalf) must tell us in writing via post or email.

We may decide to continue with the complaint if we think it relates to criminal conduct and treat it as a Conduct Matter (this is a complaint without a complainant). If we make this decision we will pass the Conduct Matter to the IPCC to look into. We will tell you if we do this.

## **Appeals**

There is no right of appeal regarding the outcome of the complaint, although the Local Government Ombudsman has the power to investigate the administration of Police and Crime Panels.

If you are unhappy with the way your complaint was handled you can refer the matter to the Local Government Ombudsman (See address on page 7).

The Panel's complaints procedure will need to be followed to its conclusion, before the Local Government Ombudsman will become involved.

## **How to obtain this information in other formats**

Please contact us on 0121 464 6871 or [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk) if you need this document or the Complaint Form in a different format.

## Other contact details

### West Midlands Police and Crime Commissioner

Website: [www.westmidlands-pcc.gov.uk](http://www.westmidlands-pcc.gov.uk)  
Contact form: [www.westmidlands-pcc.gov.uk/contact-the-pcc](http://www.westmidlands-pcc.gov.uk/contact-the-pcc)  
Telephone: 0121 626 6060  
Fax: 0121 626 5003  
Address: West Midlands Office for Policing and Crime  
Lloyd House  
Colmore Circus Queensway  
Birmingham  
B4 6NQ

### West Midlands Police Professional Standards Department

Website: [www.west-midlands.police.uk](http://www.west-midlands.police.uk)  
Complaint form: [www.west-midlands.police.uk/contact-us/complaints-compliments/how-to-complain.asp](http://www.west-midlands.police.uk/contact-us/complaints-compliments/how-to-complain.asp)  
Telephone: 101  
Address: Professional Standards Department  
West Midlands Police  
Lloyd House  
Colmore Circus Queensway  
Birmingham  
B4 6NQ

### Independent Police Complaints Commission (IPCC)

Website: [www.ipcc.gov.uk](http://www.ipcc.gov.uk)  
Email: [enquiries@ipcc.gsi.gov.uk](mailto:enquiries@ipcc.gsi.gov.uk)  
Telephone: 03000200096  
Address: Independent Police Complaints Commission  
PO BOX 473  
Sale  
M33 0BW

### The Local Government Ombudsman

Website: [www.lgo.org.uk](http://www.lgo.org.uk)  
Telephone: 0845 602 1983  
Address: P.O. Box 4771  
COVENTRY  
CV4 0EH

### Birmingham City Council Your Views

Website: [www.birmingham.gov.uk/yourviews](http://www.birmingham.gov.uk/yourviews)

For general information about the **West Midlands Police and Crime Panel** please visit our website at [www.birmingham.gov.uk/wmpcp](http://www.birmingham.gov.uk/wmpcp)

## Complaint Form - West Midlands Police and Crime Panel

**Use this form for making a complaint about the West Midlands Police and Crime Commissioner or the Deputy Police and Crime Commissioner**

Please refer to the Complaints Procedure for details of how your complaint will be handled (available at [www.birmingham.gov.uk/wmpcpcomplaints](http://www.birmingham.gov.uk/wmpcpcomplaints)).

Send your completed form, along with any supporting documents to:

**Post:** WMPCP, Scrutiny Office  
Room 331  
Council House  
Victoria Square  
Birmingham, B1 1BB

**Email:** [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk)

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### 1. Your Details

Title:  
First name:  
Last name:  
Address:

Daytime contact telephone:

Email address:

What is your preferred method of contact Post or Email? .....

If you have arranged for someone to act on your behalf (perhaps a friend or relative) you must write to tell us before we can discuss your case with them.

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### 2. Who are you complaining about? Please tick

Bob Jones - Police and Crime Commissioner

Yvonne Mosquito - Deputy Police and Crime Commissioner

Please note the West Midlands Police and Crime Panel can only handle complaints and conduct matters about the Police and Crime Commissioner and his Deputy.
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### 3. Your Complaint Details

Date of the alleged incident:

Time of the alleged incident:

Address where the incident took place:

Please provide details of your complaint including who was involved, what was said and done, if there was any damage or injury and the details of any witnesses or supplementary information you feel is relevant.

Please continue on a separate sheet if necessary.

Please tick if you would like any supporting documents you send with this form returned to you.

Have you spoken to anyone else about this already? If so who?

#### 4. Declaration

I give my consent for you to pass the information contained on this form to the appropriate authority (this may be the Independent Police Complaints Commission, the West Midlands Police and Crime Commissioner or Deputy Police and Crime Commissioner) for their consideration.

**Signed**..... **Date**.....

#### **What we will do with your complaint**

We will first check that the Panel has the power to look at your complaint. We will write to you to explain how we will deal with it or tell you if we need pass it to the correct organisation.

If your complaint alleges criminal conduct the Panel must record it and pass it on to the Independent Police Complaints Commission to investigate. We will let you know if we do this.

#### **Help with filling in this form**

Complaints must be submitted in writing. However in line with the requirements of the Disability Discrimination Act 2000 we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

Please contact us on 0121 464 6871 or [wmpcp@birmingham.gov.uk](mailto:wmpcp@birmingham.gov.uk) if you need this document in a different format.