

**Report to: West Midlands Police and Crime Panel**  
**Report of: Panel Secretary**  
**Date: 7 March 2016**

## **Complaints about Police and Crime Commissioners: Public Consultation – Draft Response from the West Midlands Police and Crime Panel**

### **1. Introduction**

The Home Office is consulting on the handling of complaints about the conduct of Police and Crime Commissioners. This report seeks Panel Members' views on the draft response to the Home Office attached at Appendix A.

### **2. Recommendation**

**Members' comments are invited on the response to the Home Office consultation 'Complaints about Police and Crime Commissioners' before it's submission on 10 March 2016.**

### **3. Background**

The Government has committed to reforming the police complaints system to make it more transparent and easily understood and in its 'Improving Police Integrity' paper proposes to expand the role of PCCs within police complaints. It is also seeking to amend the system for handling non-serious (i.e. non-criminal) complaints about PCC conduct, which are handled by Police and Crime Panels.

The proposed changes would require amendments to the Police Reform and Social Responsibility Act 2011, and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.

### **4. The Proposed Changes**

The Government proposes changes in three broad areas:

1. Clarifying, through non-statutory guidance, what constitutes a complaint, ensuring Panels take forward complaints about a PCC's conduct rather than their policy decisions.
2. Providing Panels with greater investigatory powers to seek evidence pertinent to a complaint.
3. Clarifying, through non-statutory guidance, the parameters of "informal resolution" and setting out that, where agreement cannot be reached, it is open to Panels to make recommendations on the expected level of behaviour of a PCC, and that they have powers to require the PCC to respond.

### **5. Draft Panel Response**

The suggested response from the panel is set out in Appendix A. Members' comments are invited and will be included in the response to the Home Office. The deadline for submissions is Thursday 10 March 2016.

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#### **Background Papers**

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

To	Home Office
From	West Midlands Police and Crime Panel
Regarding	Complaints about Police and Crime Commissioners: Public Consultation
Date	

## 1. Introduction: Development of the West Midlands Police and Crime Panel Complaints Procedure

The West Midlands Police and Crime Panel consists of 12 councillors from the 7 local authorities within the West Midlands Force Area (Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton), together with two independent co-opted members.

The Panel has statutory responsibilities under the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 for handling and recording complaints about the conduct of the West Midlands Police and Crime Commissioner and Deputy PCC.

The Panel approved an Interim Complaints Procedure in October 2012 and following further guidance from the 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 City Council's Scrutiny Office supports the Monitoring Officer in these functions.

In September 2013 the Panel revised its Complaints Procedure to take into account updates to the Regulations and learning from dealing with initial complaints. An easy read guide to the process was also produced.

The Panel also established a Complaints Sub-Committee to consist of three panel members that would be called upon to conduct informal resolution in cases where the Monitoring Officer deemed it the most appropriate method to do so.

In January 2015 the Panel agreed to include further clarification in the Complaints Procedure about the role of the PCC in relation to complaints against West Midlands Police. This clarified that whilst the PCC must monitor all complaints made about the Force, he has no remit or legal authority to act as an advocate for individuals, investigate individual cases or direct the Chief Constable on how to manage or respond to an individual complaint. Therefore such complaints about the PCC fall beyond the Panel's jurisdiction and the Complaints Procedure.

The Panel receives an annual complaints monitoring report to update Members on the complaints that have been dealt with by the Monitoring Officer on its behalf.

**The complaints procedure, public guide and an online complaint form are on the Panel's website [www.westmidlandspcp.co.uk](http://www.westmidlandspcp.co.uk).**

In the absence of any guidance regarding who should handle a complaint made against the Panel itself, it was agreed that each elected Panel Member was subject to their respective appointing authority's Codes of Conduct and the two independent co-opted members of the Panel adopted the Code of Conduct of the host authority (Birmingham City Council).

The Panel has recorded 10 complaints since November 2012 to date  
Of these

- 3 have been referred to the IPCC
- 1 complaint was withdrawn by the complainant
- On 4 occasions a decision was made to 'disapply the regulations' and take no further action because the complaint was deemed an abuse of the procedures (Regulation 15)
- 2 complaints have been taken to informal resolution

## 2. Overall comments regarding complaint handling responsibilities

Of all the complaints received since 2012 by the West Midlands Police and Crime Panel only one has been about conduct of the PCC.

The nature of the complaints the Panel has received highlights a clear need for national guidance to clarify what constitutes a complaint as we have found:

- A lack of public understanding that the Panel is not an appeal mechanism for complaints about the police force or chief constable;
- A lack of public understanding that the 'conduct' of a PCC does not extend to their intervention or lack of it into complaints against the Force, its police officers and staff; their failure to act as an advocate for an individual; or their failure to investigate a personal case and that therefore panels cannot consider complaints of this nature; and
- A lack of guidance for Panels as to the threshold of a PCC's personal misconduct.

Overall we feel the complaints handling responsibilities are burdensome and the proposed changes are unlikely to change this.

In our experience we do not believe that introducing the power to investigate would improve the outcome for complainants or the PCC. Indeed we fear this will result in inconsistencies in complaint handling, leading to criticism and mistrust of the complaints process by complainants.

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## 3. Consultation Questions and Responses

### Complaint definition and guidance

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

Strongly agree ✓

Agree

Neither agree nor disagree

Disagree

Strongly disagree

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

Strongly agree

Agree ✓

Neither agree nor disagree

Disagree

Strongly disagree

Regulation 15 3(e) already allows the Panel to 'disapply the regulations' if "...the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints". However, it seems illogical that the Regulations currently require us to formally record a complaint before we can 'disapply the regulations'. Being able to make an early decision if a complaint is thought to be vexatious would be helpful. i.e. prior to having to record it.

We have spent a lot of time on complaints that were eventually deemed to be vexatious. Such cases have required us to seek additional information from complainants to clarify the exact nature of the complaint; receiving and responding to multiple communications from the same complainant on

similar issues; and systematically testing each element of their often complicated and long standing complaint, against our understanding of what constitutes a complaint about the conduct of the PCC.

We believe a clear definition of what constitutes a complaint, and so what the Panel can consider, would assist with complaint sifting.

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### **Complaint investigation**

#### **Q3. How many complaints about a PCC did you receive in the financial year 2014-15?**

0 – 10

During this period a further 17 complaints were received that fell beyond the Panel's jurisdiction. The majority of these related to operational policing matters. Complainants were advised where to redirect their complaint.

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#### **Q4. Of those complaints, how many have you considered where you would have benefited from the ability to investigate the complaint?**

None. We cannot think of an occasion when we would have invoked an investigation.

We currently operate without investigatory powers and have on occasions asked for additional information from complainants in order to determine the exact nature of their complaint.

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#### **Q5. How much investigation, in terms of hours worked, would you expect it to take to investigate a complaint?**

It is very difficult to say with no experience of conducting investigations how many hours it would take. However our most complicated case took well over 26 hours of officer time (not including legal officer time) to administer.

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

Strongly agree

Agree

Neither agree nor disagree

**Disagree** ✓

Strongly disagree

The Government proposes to give Panels greater investigatory powers to give them greater flexibility to establish evidence and provide a satisfactory outcome for the complainant and the PCC. However it believes the majority of complaints should continue to be resolved without investigation.

If the regulations are changed to enable Panels to investigate we strongly believe that clear guidance should be given on the following points:

- How/ who will determine which complaints do and don't require an investigation?
- Could the Panel be criticised for inconsistency of complaint handling/ failure to fully investigate? We believe that all complainants will expect a full investigation of their case.
- If the decision was made not to investigate a complaint, could the outcome of that case be criticised?
- "Investigation" – needs to be well defined.

- If Panels are to investigate, will there be the powers to ensure information is made available? There needs to be a requirement for the PCC and his office to co-operate.
- What are reasonable timescales for conducting an investigation? What the Panel feels is reasonable may not be what a complainant feels.
- What is the cost of conducting an investigation and how will that be met? There is a real concern about resources to conduct investigations, especially at a time when there is concern that the Home Office grant to panels might be cut.

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

Strongly agree

Agree

Neither agree nor disagree

Disagree

**Strongly disagree**✓

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**Q8. Please explain your answer to question 7.**

- Surely legal/ investigative skills are required to determine what evidence is required and to assess the evidence collected and conduct an investigation?
- Panel Members and secretariat support staff do not have the necessary investigative and legal skills.
- How does this fit with the current arrangement whereby the panel has delegated all complaint handling responsibilities to the Monitoring Officer?
- We have concerns about the time and resources for conducting an investigation.

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

Based on the cases we have handled to date we cannot see any benefits.

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

See response in 8 above.

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

Strongly agree

Agree

**Neither agree nor disagree**✓

Disagree

Strongly disagree

We are unclear who the independent investigator might be and have concerns about the cost of contracting someone to do this at a time when the Home Office grant might be cut.

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

**Strongly agree**✓

Agree

Neither agree nor disagree

Disagree

Strongly disagree

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**Q13. To what extent do you agree or disagree that the monitoring officer for the investigation of a complaint should be appointed from the Local Authority?**

Strongly agree

**Agree**✓

Neither agree nor disagree

Disagree

Strongly disagree

This seems the most logical approach. The West Midlands Police and Crime Panel has delegated all complaint handling responsibilities to the Birmingham City Council Monitoring Officer. However, would there be a conflict of interest having the same person investigating and determining the outcome of a complaint?

We also have concerns about asking the MO to take on further work at a time when further local government resources are not available.

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**Q14. To what extent do you agree or disagree that the monitoring officer for the investigation of a complaint should be the chief executive of the PCCs office?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

**Strongly disagree**✓

We consider this to be a conflict of interest as the Chief Executive of the PCC's Office will be investigating their employer. We know that some Panels have already chosen the PCC's Monitoring Officer to handle complaints about the PCC, but we did not.

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

The consultation talks about an independent investigator. This could be a Monitoring Officer from another council, however there are resources issues. We do not think this role should be carried out by the PCC's Monitoring Officer.

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**Q16. To what extent do you agree or disagree that PCPs' existing powers to make recommendations on the expected level of behaviour of a PCC are sufficient?**

Strongly agree

**Agree**✓

Neither agree nor disagree

Disagree

Strongly disagree

The Panel can already make recommendations and the proposed changes do not strengthen this.

As anything that amounts to a serious complaint will be referred to the IPCC, we feel the Panel's ability to publish a public report on the outcome of a non-serious complaints is sufficient. For Panels to compel the PCC to further recommendations trumps the democratic mandate of the PCC.

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**Q17. To what extent do you agree that, when making recommendations as part of the informal resolution of a complaint, PCPs should tie these recommendations to the expected level of conduct based on the seven Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership?**

Strongly agree

Agree

**Neither agree nor disagree** ✓

Disagree

Strongly disagree

Although the Nolan Principles should frame the complaints framework PCPs should have the flexibility to make recommendations that are necessary in the light of the complaint and so not have to tie them directly to the Nolan Principles.

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#### **Additional comments**

We strongly urge that there is greater clarity on:

##### **What constitutes a complaint**

As well as the proposal to clarify the position regarding complaints about PCC's policy decisions we believe that clarification should be also given to clarify that the following cannot be classed as a complaint about the conduct of the PCC:

- a) their intervention or lack of it into complaints against the police force, its police officers and staff;
- b) failure to act as an advocate for an individual; or
- c) failure to investigate a personal case.

##### **Whether Panel's would be expected to consider complaints relating to the PCCs expanding role in Police complaints**

We believe the legislative proposals to expand the role of PCCs in the police complaints system beyond their current oversight role will lead to complaints being submitted to the Panel about PCC's personal handling of complaint and appeals.

Panels need a clear direction as to whether exercising the following PCC responsibilities could fall within the scope of complaint about a PCC's conduct:

- a) Receiving and recording a complaint;
- b) Assessing and allocating a complaint either for local resolution, local investigation or national investigation by the IPCC;
- c) Acting as a single point of contact and communication for the complainant;
- d) Resolving complaints that are appropriate for local resolution; and
- e) Hearing appeals to local resolution cases.

##### **IPCC**

Finally, our experience of handling complaints has found the IPCC timescales for handling complaints to be excessively long.