

Report title: Police Complaints Reform	
Report to: Essex Police, Fire and Crime Panel	
Report author: The Police, Fire and Crime Commissioner for Essex	
Date: 13 February 2020	For: Noting
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County Divisions affected: All Essex	

1. Purpose of Report

This report provides an overview of the changes to the police complaints system and how the PFCC is responding to these.

2. Recommendations

That Panel members note the update.

3. Context / Summary

Background

The Policing and Crime Act 2017 paved the way for reform of the police complaints system, not least by broadening the definition of a complaint to include any expression of dissatisfaction with the police force that is expressed by or on behalf of a member of the public. This could relate either to customer service and / or policing practice. This broke the previous explicit link between a complaint and the conduct of an individual officer(s) or staff member(s).

The case for reform of the police complaints and disciplinary systems was founded on historic over-use of formal disciplinary proceedings, resulting in lengthy investigations into low level concerns and conduct issues. Under the previous system, around a third of misconduct meetings nationally resulted in management advice, much of which was seen as meaningless as the actions arising were seen as being done to, rather than with, the officer concerned, resulting in limited opportunities for learning and development at both an individual and a force level. In addition, there was no formal process to quality assure management action or advice and no regulated oversight of whether management advice or action was being effectively delivered and implemented.

As part of the Improving Police Integrity programme, the police complaints and disciplinary systems have recently completed the third and final phase of reform. Phase 1 related to the misconduct regulations applying to former officers and the introduction of the barred and advisory lists. Phase 2 related to

the transition of the Independent Police Complaints Commission (IPCC) to the Independent Office for Police Conduct (IOPC) and the introduction of legislation enabling designated bodies to make super-complaints¹. Phase 3 relates to the introduction of the following:

- Police (Conduct) Regulations 2020
- Police (Complaints and Misconduct) Regulations 2020
- Police (Performance) Regulations 2020
- Police Appeal Tribunal Rules 2020

Phase 3 has impacted on the way in which all complaints, misconduct and death or serious injury (DSI) investigations are handled. These reforms are intended to make the police complaints system more responsive, independent, transparent and customer focused, less concerned with blame and more concerned with service improvement. This phase has provided a stronger role for Police and Crime Commissioners (PCCs) and Police, Fire and Crime Commissioners (PFCCs) within the complaints system and provided three different models for them to consider adopting:

Model 1 (mandatory requirements): Includes a statutory duty to hold the Chief Constable to account for the exercise of their functions in relation to handling complaints. The force maintains responsibility for first contact with the complainant, whilst responsibility for hearing reviews (previously appeals) against complaint outcomes that would previously have been the responsibility of the Chief Constable transfers to the Commissioner.

Model 2 (the triage or initial complaints handling model): As well as the responsibilities within option 1, PCCs and PFCCs take on a triage function which carries out the initial handling and assessment of complaints. This would include the duty to make initial contact with complainants to understand how best their issues might be resolved as well as the ability to resolve complaints outside of Schedule 3 of the Police Reform Act 2002 (in the case of lower severity complaints and only with the complainant's agreement). More serious complaints would still be passed to the force to deal with. Under this model, the Commissioner would also have responsibility for the recording of complaints.

Model 3 (the customer contact model): As well as the responsibilities within options 1 and 2, PCCs and PFCCs would take on responsibility for keeping all complainants updated throughout the handling process, and for informing them of the final outcome and their right of review.

In all of these models the Police maintains the responsibility to investigate complaints. Other responsibilities under each of the three models can be summarised as follows:

¹ Organisations can apply to become designated bodies to raise systemic issues in policing where a feature of policing by one or more force is / appears to be significantly harming the interests of the public.

Area of responsibility	Model 1	Model 2	Model 3
Receiving and recording complaint	Police	PFCC	PFCC
Assessing and allocating complaint	Police	PFCC	PFCC
Acting as a single point of contact (SPOC) and communicating with complainant	Police	Police	PFCC
Resolving complaints otherwise than by investigation	Police	Police	PFCC/Police
Reviews	PFCC	PFCC	PFCC

The Commissioner considered these options during the summer of 2017 and decided, as set out in *Decision Report 68-17 Changes to Handling of Police Complaints set out in the Policing and Crime Act 2017 and the response by Essex Police* (attached at Appendix A) to implement Model 1 above, but also to establish a permanent Quality of Service Team within Essex Police, following a successful pilot undertaken between September 2016 and March 2017. This team was established in advance of the reforms taking effect, but effectively undertakes many of the same responsibilities outlined in Model 2 above and, wherever possible, resolves issues to the complainant's satisfaction.

Essex Police's Quality of Service Team

The Quality of Service Team provides members of public with an initial point of contact for dissatisfaction, low level concerns and victim enquiries across the county. Prior to the pilot there was no central function and capture of dissatisfaction and low level concerns, and members of the public and victims of crime reported making multiple contacts before finding an answer to their enquiry. The Quality of Service Team now deals with this demand at the first point of contact and identifies a solution that meets the customer's requirements to avoid escalation and provide a fast and effective response to the public. The aims of the team are to:

- Wherever possible, resolve issues "there and then" and to the satisfaction of the complainant, reducing unnecessary escalation;
- Introduce a continuous improvement process to ensure low level concerns are resolved, the root cause identified and change delivered in order to improve the experience of future service users, and
- Accurately assess the impact of force change on low level concerns and dissatisfaction.

During the pilot period, the total number of complaints received by Essex Police's Professional Standards Department (PSD) decreased by 14% overall (recorded complaints reduced by 27%, while "there and then" complaints

reduced by 4%)². Initial base lining work estimated that the original team of four staff received an average of 500 telephone and email contacts from the public each month, 10% (50) of which were resolved at the first point of contact, with the remainder forwarded to Local Policing Area (LPA) officers and other departments for resolution. Post pilot, the team deals with around 8,500 contacts from members of the public, 46% (3,900) of which are resolved at the first point of contact, without referral to anyone else for resolution, thereby reducing the abstraction of local officers to deal with concerns from the public and providing a faster, more responsive service to the public.

After the initial pilot, and as a result of the increased volume of public contact, agreement was given to increase the size of the team by two members of staff. The team of six staff now provides an independent assessment and resolution of public dissatisfaction and low level concerns. These provide a valuable source of feedback and provide opportunity for Essex Police to improve its service and, in turn, public confidence and trust.

The level of public initiated contact has increased since the re-focus of the team, which is now more accessible than ever before with the introduction of more channels for the public to raise concerns and seek resolution about the service received. The channels currently being used include:

- Telephone via 101 interactive voice recognition (IVR). The Quality of Service team is accessed direct via option 3.
- Online via Complaints and Dissatisfaction webpages.
- Live chat or instant messaging, allowing the public to talk in real time with a member of the Quality of Service team.
- Direct contact details publicised via burglary packs, victim contact cards, rural crime information and crime prevention advice. Letters sent to every victim of crime introduce the Quality of Service Team and detail how to contact it.

Published complaints data demonstrates that Essex Police has improved its ranking nationally, moving from 21st in 2016/17 to 17th in 2017/18 in relation to allegations per 1,000 employees³. During this time Essex Police made it easier for members of the public to report a complaint due to improvements in the online reporting process on the force website. Information relating to the ongoing performance and impact of the Quality of Service Team is reported to Essex Police's Chief Officers Group monthly. A full evaluation of the new approach was carried out in March 2019 and is attached as Appendix B to this paper.

The reformed police complaints system

Having been set out in the Policing and Crime Act 2017, the new statutory framework finally came into force on 1 February 2020 although, at the time of writing, the final IOPC statutory guidance and Home Office statutory guidance

² Review of Quality of Service Team – March 2019

³ Allegations per 1,000 employees This is a direct transfer of data from <https://www.policeconduct.gov.uk/tags/essex-police> report bulletins, [Performance data - Q4 2016 bulletin](#) and [Performance data - Quarter 4 2017 bulletin](#).

are still yet to be published. The drafts that have been circulated however provide a robust indication of the full impact of the changes.

At a high level, this is a significant system wide change with very little similarity between the old and the new system. In effect, this is designed to provide greater access to the system and to ensure that, where issues are raised, they are resolved as soon as possible and to the complainant's satisfaction. From a force perspective, the reformed system is much more focused on identifying and improving the performance of officers and the force as a whole, with a move away from legalistic adversarial processes towards an emphasis on learning and performance improvement.

The paragraphs below summarise changes to the process based upon the legislation, regulations and statutory guidance:

Initial handling and recording of complaints

- There is a much greater emphasis on dealing with issues at an early stage, including before they are officially logged or recorded where possible. Where an issue can be resolved early and to the complainant's satisfaction, there is no requirement to record this. However all expressions of dissatisfaction do need to be logged on a police system.
- Complaints or expressions of dissatisfaction can be made through any channel, including via social media. Appropriate authorities must be able to identify an active expression of dissatisfaction and handle it appropriately.

Referrals to the IOPC

- Appropriate authorities must refer to the IOPC complaints which allege that the conduct or other matter complained about has resulted in a death or serious injury; complaints which fall within the mandatory referral criteria, and those that the IOPC notifies the appropriate authority it must refer.
- The IOPC is now able to present its own cases at misconduct hearings in certain circumstances⁴. This is designed to avoid previously difficult scenarios whereby the appropriate authority might have been "directed" to a Hearing with which it fundamentally disagreed.

Handling complaints

- Non-recording, disapplication, discontinuance, and local resolutions no longer exist as handling options. There will still be provision for "service recovery" to take place, however all complaints will need to be recorded if the complainant so wishes, which may result in a significant increase in recorded complaints compared with previous years.
- Management action and management advice will no longer be available as sanctions. An outcome of Performance Requiring Improvement (PRI) under

⁴ These being if the investigation was directed by the IOPC; if the view of the appropriate authority differs from the determination of the IOPC, or the appropriate authority has notified the IOPC that it does not accept its recommendation; where the appropriate authority and the IOPC agree that the IOPC should present, or the IOPC considers there to be compelling public interests that it presents.

the Reflective Practice Review Process (RPRP) is introduced for matters falling below the level of misconduct. The RPRP can commence at various stages of the complaints / misconduct process and focuses attention on learning and development by the officer(s) involved, their line management and the force more widely.

- All recorded complaints must be handled in a **reasonable and proportionate** manner. The definition of what constitutes **reasonable and proportionate** is set out in the IOPC's statutory guidance though it is expected that there will be further clarification once the process is embedded.
- A complaint must be investigated if there is an indication the allegation may constitute a criminal offence or justify misconduct proceedings; if there has been an infringement of a person's rights under articles 2 or 3 of the European Convention on Human Rights, or if the IOPC has deemed that any complaint or DSI matter must be investigated
- All other complaints will be dealt with otherwise than by investigation, normally by responding to the concerns raised and seeking to resolve them or notifying the complainant of no further action.
- Where investigations are not completed by the appropriate authority within 12 months, a progress report must be provided by the appropriate authority to the IOPC at that point and every six months thereafter. Where the IOPC is undertaking the investigation the report should be provided to the PFCC and Chief Constable.

Reviews (previously referred to as Appeals)

- All reviews will be conducted by either the PFCC or the IOPC (as the Relevant Review Bodies (RRBs)).
- The IOPC will be the RRB for complaints which were investigated; where the complaint is about the conduct of a senior officer, or the complaint arises from the same incident as one being dealt with by the IOPC.
- The PFCC will be the RRB in all other cases, normally where the case was handled otherwise than by investigation and does not concern a senior officer.
- All applications for review must be made within 28 days from the complainant being informed of their right of review (unless certain circumstances exist).
- Where the PFCC is the RRB they may recommend that the appropriate authority refers it to the IOPC; recommend that the appropriate authority investigates the complaint, or make any other recommendation with a view to remedying the dissatisfaction of the complainant.
- Where the IOPC is the RRB it can determine it is necessary for the complaint to be investigated or make a recommendation to remedy the dissatisfaction of the complainant.
- It should be noted that review outcome should only go against the PSD's initial handling of the complaint if this is considered to have been unreasonable and / or disproportionate; not simply because the reviewer would have come to a different conclusion. As such, reviews should only really be upheld if the handling process was legally flawed to an extent that could have impacted on the outcome.

- Recommendations made as a result of reviews do not have to be accepted by the appropriate authority, though it does have to provide a response within 28 days, both accepting the recommendation(s) and explaining how they are responding, or not accepting the recommendation(s) and explaining why. It may also propose an alternative to the original recommendation.

Misconduct Hearings and Police Appeals Tribunals

- The PFCC has responsibility for appointing Legally Qualified Chairs (LQCs) to oversee misconduct hearings.
- LQCs take on a bigger role in the management of misconduct hearings including undertaking prehearing meetings, setting timelines and ensuring the process works efficiently and effectively.
- The PFCC has responsibility for appointing the panel for Police Appeal Tribunals.

Preparation for implementation

In readiness for the implementation of the reforms, the Commissioner has approved an updated Complaints and Expression of Dissatisfaction Policy and Selection of Misconduct and Police Appeals Tribunals Policy, via Decision Report 010-20, which is referenced in the PFCC Decisions Report elsewhere on this agenda. Forms, templates and process charts used by both Essex Police and the PFCC's office have been updated as required and relevant PFCC staff have attended IOPC briefings on the handling of reviews and what constitutes a "reasonable and proportionate" investigation. Access has also been arranged for relevant PFCC staff to the force complaints system and training on this has been arranged.

A robust and lengthy process was recently undertaken to appoint and re-appoint a sufficient pool of Legally Qualified Chairs, all of whom have been invited to participate – alongside relevant police and PFCC staff - in a training event focused on the new regulations on 7 March.

As part of wider restructuring, an existing role within the PFCC's establishment has been adapted to support the Commissioner in fulfilling their new role in respect of reviews of police complaints. The requirement in this regard has been calculated based largely on the current workload of Essex Police's Professional Standards Department in considering appeals against complaints under the old regime. It is acknowledged that the new, broader definition of complaints may attract a higher volume of complaints - and therefore reviews – and also that there may be greater demands placed on both the Police's PSD and the PFCC's office by persistent complainants, as the options not to record complaints or to disapply the legislation in relation to them will no longer be available. The capacity created to deal with this will therefore will need to be kept under review, particularly during the initial months of implementation, to ensure it is sufficient.

Next steps

It is anticipated both locally and nationally that it will take some time to

understand fully how the changes are being adopted and the difference they are making to public confidence and performance improvement. It is therefore anticipated that, as cases work through the system, the IOPC and Home Office will update their guidance to ensure greater consistency of application and that everybody involved in the system benefits from the learning these early cases provide. Local policies and procedures may need to be updated in light of any such changes.

Through the Commissioner's quarterly scrutiny meeting, work is underway to ensure these changes are successfully adopted and provide a better service to the public and increased value to the force. Once the new system is embedded, there is an opportunity for the force and the PFCC to work together to carry out a post-implementation review and, if appropriate, to review the arrangements put in place, taking into account the impacts of introducing Model 1 and the experiences in other force areas where Models 2 or 3 have been adopted. The Police, Fire and Crime Panel will be kept informed of this work as appropriate.

4. Appendices

Appendix A: Decision Report 68-17 Changes to Handling of Police Complaints set out in the Policing and Crime Act 2017 and the response by Essex Police

Appendix B: Review of Quality of Service Team – March 2019