

AGENDA ITEM 9

Essex Police and Crime Panel	EPCP/016/15
Date: 29 October 2015	

Review of Procedure for Complaints about the Police and Crime Commissioner

Report by the Director for Corporate Law and Assurance, Essex County Council
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Purpose of report

This report asks the Panel to approve a revised process for dealing with complaints made about the Police and Crime Commissioner and the Deputy Police and Crime Commissioner.

Background

The Panel's statutory functions include dealing with complaints about the PCC and his Deputy. The process is controlled by regulations. Complaints about either the PCC or the Deputy PCC are all handled in the same way.

In October 2014 the Panel adopted a process to deal with complaints. Since that time we have a year's experience in operating the process. We also now have the benefit of guidance to police and crime panels published by the Local Government Association in April 2015. The LGA review considers experiences of Panels and reports that many Panels have found it helpful to revise their processes in the light of experience.

The Statutory Framework

The Panel has delegated power to deal with complaints to a sub-committee.

All complaints about the Commissioner or the Deputy Commissioner are dealt with by the sub-committee unless the complaint involves an allegation that an offence has been committed by the Commissioner or the Deputy Commissioner, in which case the complaint must be referred to the Independent Police Complaints Commission ("the IPCC"). The IPCC must then decide either to arrange for an investigation to take place or to refer it back to the Panel to deal with.

When the Panel is responsible for a complaint it must 'make arrangements for the complaint to be subjected to informal resolution'. The sub-committee cannot investigate the complaint, it can only subject the complaint to informal resolution.

The Panel may – but need not - disapply the statutory process in certain circumstances. If the complaints process is disapplied then the Panel may take whatever action it wishes (including taking no action at all). The statutory complaints process may be disapplied if the complaint:

- relates to a management issue
- is made more than 12 months after the complainant became aware of the facts (without good reason)
- is anonymous
- is vexatious, oppressive or an abuse of process
- is repetitious or duplicates another complaint.

.Development of the Revised Process

The Director for Corporate Law and Assurance and the OPCC both consider that it would be helpful to have a clearer process which gives more detail as to how informal resolution will be dealt with and how the focus should be on informal resolution. This aligns with experience elsewhere (as reported in the Local Government Association guidance). Many panels have revised their processes for considering these decisions in the light of experience.

It seems clear that the best way to resolve a complaint is by agreement if this is possible. In some cases the best way of achieving agreement may not be via consideration by a sub-committee.

The revised Process which the Panel is requested to adopt is set out at **appendix 1** and has the following key changes:

- the revised process more closely mirrors the regulations
- the revised process is more focussed on informal resolution and how this is achieved
- in particular it envisages the appointment of a reviewing officer to report to the Panel on a draft complaint
- the revised process envisages that rather than the Director for Corporate Law and Assurance acting – as she currently does - as a gatekeeper to the Panel, she should be able to act in a way which is more focussed on informal resolution. For example it is proposed that she may recommend that the parties follow a different process such as mediation. This may not be suitable in some cases – as mediation can only work if all parties agree to participate, but it will provide alternative ways of seeking to resolve a

complaint. Ultimately it is envisaged that the most serious and entrenched cases will continue to be referred to the Complaints Sub-Committee.

- It envisages that in less serious cases the Monitoring Officer may want to express a view about the complaint, which might include making a recommendation to the parties. This would only happen in the least serious cases. The purpose of including this power is that the Panel is required to follow a process of informal resolution. It seems difficult to see how this can be complied with if the complaint is considered by someone who is not authorised to express a view on the complaint. The parties are free to reject any such view.
- The process envisages that the Complaints Sub-Committee may wish to consider publication of the outcome of a complaint in some cases, after consulting the parties. This decision would not be delegated to the Monitoring Officer.
- The recommended process would permit the Director to refer all criminal allegations to the IPCC, as required by law.

The Office of the Police and Crime Commissioner has been consulted on a draft of the revised process. The key points made and the Monitoring Officer's response to those (along with an indication of where the draft process has been changed in response) is set out at **appendix 2**.

It is also proposed to formalise the terms of reference of the Complaints Sub-Committee which have not previously been codified.

Recommendations:

- (1) Adopt the Revised Complaints Process in the form at Appendix 1.
- (2) Adopt the terms of reference for the Complaints Sub-Committee as set out at Appendix 3.
- (3) Agree to delegate decision-making to officers to make decisions as set out in the Complaints Process at Appendix 1.

Police and Crime Panel for Essex

**Procedure to be Followed when Considering Complaints About the
Police and Crime Commissioner or Deputy Police and Crime Commissioner**

1. Introduction

- 1.1 The Police and Crime Panel for Essex ('the Panel') has responsibility for considering complaints made about the conduct of the Police and Crime Commissioner for Essex ('the PCC') or the Deputy Police and Crime Commissioner ('the Deputy PCC'). Complaints are governed by a statutory complaints procedure.
- 1.2 The Panel has authorised the Monitoring Officer of Essex County Council (or another officer of ECC authorised by her) to make some decisions about complaints under the complaints procedure. Unless the context otherwise requires, any reference to the Monitoring Officer in this policy includes a reference to an officer of ECC authorised by the Monitoring Officer.
- 1.3 The Panel has also created a Complaints Sub-Committee which is authorised to take any action under the Complaints Procedure.
- 1.4 Any decision or action which may be taken by the Monitoring Officer may also be taken by the Panel or by a Complaints Sub-Committee in an appropriate case.
- 1.5 A complaint is about the 'conduct' of the PCC if it includes an allegation that the PCC has personally done something which the PCC ought not to have done, or that the PCC has failed to do something which the PCC ought to have done. Some illustrative examples are given in appendix 1.

2. Stage 1: Recording the Complaint

- 2.1 When a complaint is received the Monitoring Officer will consider the following questions:
 - (a) Does the complaint relate to the conduct of an office holder (either a PCC or a Deputy PCC)?
 - (b) Is the Police and Crime Panel for Essex the correct panel for the complaint (ie does the complaint relate to the Essex PCC or Deputy PCC)? If the Panel is not the correct Panel then the Monitoring Officer will refer the complaint to the correct panel.
 - (c) Is the complaint still current (i.e. it has not been withdrawn)?
 - (d) Does the complaint relate to a new matter (ie a matter which has not been or is not already the subject of criminal proceedings against the office holder)?

- 2.2 If the answer to all four questions is 'yes' then the Monitoring Officer will record the complaint.

3. Stage 2: Determining whether the complaint should be referred to the IPCC

- 3.1 The Monitoring Officer will consider whether the complaint includes any allegation that either the PCC or the Deputy PCC has committed any criminal offence. If it does include such an allegation then the matter must be referred to the Independent Police Complaints Commission (IPCC) and the Monitoring Officer will make the referral.
- 3.2 The IPCC may investigate - in which case the Panel has no further involvement - or it may decline to investigate and refer the complaint back to the Panel.

4. Stage 3: Determining the Statutory route to be followed

- 4.1 If the complaint is not required to be referred to the IPCC - or if the IPCC refers the complaint back to the PCP - then the next step is for the Monitoring Officer to consider whether or not to disapply the statutory process.
- 4.2 If the statutory process is disappplied then the Panel can respond to the complaint in whatever way it feels fit (which includes not responding to it).
- 4.3 The Monitoring Officer is never required to disapply the statutory process, but may do so if one or more of the following criteria apply:

- (a) The complaint is concerned entirely with the conduct of a relevant office holder in relation to a person who was working in his capacity as a member of the office holder's staff at the time when the conduct is supposed to have taken place.

This ground applies even if the complaint is that the PCC's response to the complaint is inadequate. However, the process will not automatically be disappplied if this applies.

- (b) More than 12 months have elapsed between the incident, or the latest incident giving rise to the complaint and the making of the complaint **and** either—

- (i) no good reason for the delay has been shown, or
- (ii) injustice would be likely to be caused by the delay;

- (c) The matter is already the subject of a complaint. Note that the complaint does not have to be from the same complainant.

- (d) The complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address.

- (e) The complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;

- (f) The complaint is repetitious. A complaint can only be regarded as repetitious if all of (a)-(d) below apply:
- (a) it is substantially the same as a previous complaint (whether made by or on behalf of the same or a different complainant), or it concerns substantially the same conduct as a previous conduct matter;
 - (b) it contains no fresh allegations which significantly affect the account of the conduct complained of;
 - (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it; and
 - (d) as regards the previous complaint, either-
 - (i) the IPCC dealt with the complaint;
 - (ii) the Panel resolved the complaint in accordance with this process;
 - (iii) the complainant withdrew the complaint; or
 - (iv) the statutory complaint process was disappplied.

4.4 If the Monitoring Officer is minded to disapply the statutory process, the Monitoring Officer should, before doing so, write to the complainant to explain

- (a) why she is minded to disapply the process;
- (b) how it is proposed to deal with the complaint if the procedure is disappplied; and
- (c) that before making a decision the Monitoring Officer will consider any representations made by the complainant within 14 days from the date of the letter.

4.5 If, having considered any representations received in response to her letter, the Monitoring Officer then disappplies the process then she must write to the complainant and explain why the procedure has been disappplied and how the complaint is to be dealt with (which may include taking no further action). Any such action is beyond the scope of this policy.

4.6 There is no right of appeal against any decision to disapply the complaints process.

5. **Stage 4: Informal Resolution**

5.1 At this stage the Panel is required to arrange for the complaint to be subjected to informal resolution. The Monitoring Officer will write to the Complainant and the PCC (and the Deputy PCC if the complaint is about the Deputy PCC) with her proposals for informal resolution.

5.2 There is no prescribed process for informal resolution. It may be that one or more of the following could be appropriate:

- (a) The PCC (or Deputy PCC) is invited to consider the complaint and respond to it (for example by apologising or providing the complainant with a detailed explanation of the issues). This is likely to be suitable where the parties have a constructive relationship or where the complaint is minor. This process is unlikely to be suitable where positions have become entrenched or where the PCC (or Deputy PCC) does not believe that such a process is likely to resolve the complaint.

If this route is followed then the PCC (or Deputy PCC) will be given a fixed period of time (usually a month) to resolve the complaint. At the end of the fixed period the Monitoring Officer will contact both parties and ask if the matter has been resolved. If both parties agree that the complaint has been resolved then the complaint will be closed and the matter recorded as resolved.

- (b) The Monitoring Officer (either herself or via another person appointed by her) attempts to facilitate a mediation. This is also likely to be appropriate for less serious complaints. It is not suitable unless both parties agree. Any information disclosed by either party to the mediator may be used in any subsequent resolution. At the end of the mediation the Monitoring Officer will contact both parties and ask if the matter has been resolved. If both parties agree that the complaint has been resolved then the complaint will be closed and the matter recorded as resolved.
- (c) The Monitoring Officer may express a view about the complaint and make recommendations about action which she considers should be taken by the PCC (or Deputy PCC). This is suitable for less serious complaints where the Monitoring Officer believes that it may be helpful for an independent person to express a view without necessarily needing to convene a meeting of the Complaints Sub-Committee. It may also be suitable for less serious complaints where either of the previous processes have failed to resolve the complaint.
- (d) The Monitoring Officer may decide that a complaint should be referred to the Complaints Sub-Committee. The Complaints Sub-Committee will receive a report of the Monitoring Officer and will hold a meeting. This is suitable for the most serious complaints, regardless of whether or not any other process has been followed. The basic process for this is set out at appendix 2 (although this may be varied in any particular case by the Monitoring Officer or by a Complaints Sub-Committee).

5.3 The resolution of the complaint must be informal. The approaches to informal resolution set out above in paragraph 5.2 are illustrative only and it may be that a different procedure may be more appropriate in a particular case. The Monitoring Officer will write to the Complainant and the PCC (or Deputy PCC) and explain a preliminary view as to how the complaint ought to be subjected to informal resolution. Each party will be given a period of time to respond.

5.4 The Monitoring Officer will decide on the most appropriate approach to resolving the complaint.

- 5.5 If a process is followed but does not resolve the complaint to the satisfaction of all parties then the Monitoring Officer may adopt a different approach in order to try and resolve the complaint.

6. Recording and Publishing the Outcome

- 6.1 When a complaint has been subject to informal resolution (whether or not to the satisfaction of both parties) then the Monitoring Officer must make a record of the outcome of the resolution and send a copy to both parties.
- 6.2 The Panel or a Complaints Sub-Committee may, after consulting the complainant and the subject of the complaint, publish part or all of the record referred to in 6.1 (subject to any alterations or redactions which they consider appropriate). Publication will be considered if:
- (a) Either party asks for the record to be published
 - (b) The Sub-Committee considers that the response of the PCC (or Deputy PCC) to any recommendations made has not, in their opinion, been adequate and that it is in the public interest for the record to be published.
- 6.3 Publication may take the form of publishing the record or a written summary and may include a press release.

Appendix 1

Examples of complaints and whether or not they can be considered under the complaints procedure.

Example 1: Amy complains that a member of the PCC's staff has been rude to her. She has not previously complained about this to the PCC.

This complaint in its current form cannot be considered because it does not relate to the conduct of the PCC or Deputy. The PCC does not know that she is unhappy with his staff and so has not had the opportunity to take any action.

Example 2: Basil complains that the PCC failed to respond when he made an allegation to the PCC that an employee of the PCC published false information against him.

This complaint can be considered because the PCC's response to the allegation is a complaint about the conduct of the PCC.

Example 3: Clara complained to the PCC about the Chief Constable. She makes a complaint to the Panel stating that the PCC ignored the complaint about the Chief Constable.

This complaint can be considered because the PCC has a personal duty to follow the complaints process and this is a complaint about the conduct of the PCC.

Example 4: Desmond made a complaint about the Chief Constable to the PCC. The PCC decided to disapply the statutory process in this complaint. Desmond complains that this decision was inappropriate.

This complaint can be considered because the PCC has a personal duty to follow the complaints process. However, Desmond probably had a right of appeal to the IPCC against the PCC's decision. Under the regulations this is a complaint that the PCP may consider. However, the Monitoring Officer may wish to disapply the complaints process if she considers that the complaint is an abuse of the process – although this is a matter for her discretion.

Example 5: Ernest reports that he was victim of identity fraud. He is unhappy with the way that the police investigated his allegation. He does some investigation and finds out that the police are hardly investigating this type of offence. He raises it with the PCC who says that this is not a priority for him to raise with the police given the savings they have to make. Ernest complains that the PCC should have raised this with the police.

This is a complaint that the PCC has not done something which the complainant thinks he should have done. It therefore relates to the conduct of the PCC and can be considered under the complaints procedure.

Process for the Sub-Committee to Review Complaints

- 1.2 The Monitoring Officer may appoint a Reviewing Officer whose role will be:
- to gather information about the complaint; and
 - to write a report on the Complaint and make recommendations about whether there is any merit in the complaint and, if so, what action the PCC should take.
- 2. Process to be followed by the Reviewing Officer**
- 2.1 The Reviewing Officer may not investigate the Complaint, although they may ask for information. The Reviewing Officer may follow any process which is fair to the complainant and the PCC (or Deputy PCC), but the process will normally include:
- (a) Send a copy of the complaint to the person complained about and allow them a reasonable opportunity to provide a response and any supporting documents.
 - (b) Send a copy of the response to the complainant to give the complainant a reasonable opportunity to provide any information or documents in response to the evidence.
- 2.2 Further steps may be necessary depending on how the review progresses.
- 2.3 The Reviewing Officer may ask for any further information they consider helpful in order to provide the Sub-Committee with full details about the matters complained of.
- 2.4 Any material sent to the Reviewing Officer will normally be shared with all other parties and the Sub-Committee.
- 2.5 If there are exceptional reasons why a party believes that information should not be shared or that redacted material should be supplied then, before sending the material they should make a written application to the Reviewing Officer explaining:
- the nature of the material that they do not want to be shared and the relevance of that material to the issue being reviewed
 - why they consider that the material ought not to be shared
 - the reasons why they consider that the review can be undertaken in a fair way if the material is not shared with the other party.
- 2.6 The Reviewing Officer or the Monitoring Officer may ask for the material to be supplied for the sole purpose of considering this application. A final decision will be taken by the Reviewing Officer or the Monitoring Officer.
- (a) If the Reviewing Officer or Monitoring Officer decides that material is not to be shared then that material will not be sent to the other party for

comment or as part of the report, although it will be included in the report to the Panel.

- (b) If the Reviewing Officer or Monitoring Officer decides that material can be supplied on a redacted basis then the redacted material may be supplied and will be sent to the Complainant, unless agreed otherwise by the Reviewing Officer or the Monitoring officer.
- (b) If the Reviewing Officer or Monitoring Officer decides that the material can be withheld (or supplied on an unredacted basis) then the Party may either:
 - (i) agree that the material can be shared (or supplied on an unredacted basis); or
 - (ii) require that the material be returned and not considered as part of the review.

2.7 Other than as agreed in paragraph 2.5 and 2.6 above, material submitted to the Reviewing Officer should not be redacted or altered in any way.

2.8 Once the Reviewing Officer is satisfied that all parties have had a fair opportunity to comment on the material submitted by the other party they will produce a report. The report will normally include all material submitted by parties to the complaint.

2.9 The Reviewing Officer may allow the parties to comment on a draft report. The version of the draft report sent to the parties will not include material where it has been agreed that it will not be shared.

3. Before the Meeting

3.1 The Monitoring Officer will send the parties the final report. The version of the draft report sent to the parties will not include material where it has been agreed that it will not be shared. The parties may comment on the final report and any comments received by the Reviewing Officer or the Monitoring Officer will be circulated by him or her to the Sub-Committee and to the other party.

3.2 The Monitoring Officer, in consultation with the Chairman of the Sub-Committee, will decide whether or not the parties should be invited to attend the meeting. As a general rule the parties will not be invited to attend.

3.3 The Reviewing Officer's report will be considered by a Committee of the Panel, comprising the Chairman and Vice-Chairman of the Panel and one other member. The Monitoring Officer may wish to submit a separate covering report clarifying or highlighting certain aspects of the Reviewing Officer's report.

4. Procedure at the meeting

4.1 The Chairman will welcome those attending the meeting and introduce everyone. The Chairman will remind everyone that the purpose of the meeting is for the complaint to be informally resolved.

- 4.2 The Committee will consider excluding the press and public.
- 4.3 The Monitoring Officer will present the findings and recommendations of the Reviewing Officer's report and may ask the Reviewing Officer to present all or highlight certain aspects of his or her report.
- 4.4 Members of the Sub-Committee may ask questions of the Monitoring Officer or the Reviewing Officer.
- 4.5 If present, the complainant (or their representative) will be invited to address the Sub-Committee for up to 10 minutes. No new matters may be raised and no new material may be introduced without the permission of the Chairman.
- 4.6 The Sub-Committee may ask questions of the Complainant (if present) to clarify any part of the complaint.
- 4.7 The PCC or Deputy PCC (or their representative) will, if present, be invited to address the Sub-Committee for up to 10 minutes. No new material may be introduced without the permission of the Chairman.
- 4.8 The Sub-Committee may ask questions to clarify any information provided by the PCC (if present).
- 4.9 No witnesses may be called by any person without the prior permission of the Chairman. If permission is given then the other party and the Sub-Committee will each be given the opportunity to ask questions of the witness. Any witness will be heard as part of the address and an extension of time will be given.
- 4.10 The Monitoring Officer will summarise the issues.
- 4.11 If the parties are present they will be asked to leave while the members deliberate.
- 4.12 The Committee may adjourn a meeting at any time for as long as they think appropriate.
- 4.13 The Sub-Committee will make a decision on the complaint and on how they think that the Complaint should be resolved. This may or may not include expressing a view as to whether there has been misconduct by the PCC (or Deputy PCC) and making a recommendation as to whether or not the PCC should take any action to provide redress. If the Sub-Committee expresses the view that there has been misconduct then it will give reasons for this.
- 4.14 The Sub-Committee may:
 - (a) Make recommendations about future action to be taken by the PCC, which might include an apology or any other step.
 - (b) Ask the Monitoring Officer to provide an explanation to the complainant if it considers that this may assist to clear up or settle the matter directly with the complainant.
- 4.16 There is no right of appeal or review of the Sub-Committee's decision.

5. After the Meeting

- 5.1 The Monitoring Officer will inform the parties of the outcome of the meeting.
- 5.2 Where the Sub-Committee has made recommendations to the PCC the Monitoring Officer will ask the PCC to consider the recommendations and to respond (usually within fourteen days) to say whether or not the PCC accepts the recommendations and
 - (a) what action the PCC has taken (or proposes to take); and
 - (b) if the PCC does not propose to accept any recommendation then to provide detailed reasons as to why this is the case.
- 5.3 The Monitoring Officer may seek clarification of the PCC's response and may make suggestions as to further actions which may assist with informal resolution of the complaint.
- 5.4 The Monitoring Officer will inform the Sub-Committee of the response to the recommendations received from the PCC.
- 5.5 Having considered the PCC's response, the Sub-Committee may make further recommendations to the PCC on how it feels the complaint may be resolved informally or ask the PCC to consider his response.

Record of Outcome

The Monitoring Officer will prepare a record of the outcome of the procedure and will ask the parties whether they would want the record to be published.

The Monitoring Officer will submit the record of the outcome to the members of the Sub-Committee for approval.

The Sub-Committee will consider whether to publish the record of the outcome of the procedure, taking account of the views of the parties if any views were received.

If so determined by the Sub-Committee, the Monitoring Officer will arrange for the record of the outcome so approved by the Sub-Committee to be published on the Council's website and anywhere else which the Sub-Committee directs.

Appendix 2

Paragraph	Issue raised by OPCC	Response	Description of changes which have been made to draft document.
General	OPCC would be concerned if the intent was essentially that the monitoring officer would be taking all the decisions under the complaints process.	<p>The revised process is designed to reflect the fact that the Police and Crime Panel's only power with respect to complaints is to seek informal resolution. The revised process places emphasis on following a process of local resolution.</p> <p>If a complaint can be resolved by agreement then no decisions will be taken by the monitoring officer.</p> <p>The monitoring officer has already been authorised to make decisions on whether or not to refer complaints to the sub-committee. A decision not to refer a complaint to the sub-committee has the effect of closing a complaint.</p> <p>It is proposed that the monitoring officer may make decisions of this nature on cases she considers not to be of sufficient seriousness to refer to the Police and Crime Panel.</p> <p>It envisages all substantive decisions on cases of any significance will continue to be taken by the Panel or the Complaints Sub-Committee.</p>	None.
Paragraph 1.5	Paragraph 1.5 explains what is meant by conduct. They ask for the statutory definition to be set out and for the deletion of the word 'personally'.	Our view is that although the word 'personally' is not used in the legislation it is important to include it because the Panel cannot consider complaints about	None

Paragraph	Issue raised by OPCC	Response	Description of changes which have been made to draft document.
		the Commissioner's staff.	
Paragraph 4	In the section relating to disapplication of complaints, policy should refer to legislation as disapplication of complaints is most likely where the Panel decide that no action should be taken. Suggest a wording change to say "the Monitoring Officer/PCP may disapply the complaint if one or more of the following apply". Suggest that there is confusion in the policy between disapplication of a <i>complaint</i> and disapplication of <i>complaints process</i> .	<p>The purpose of disapplication is to relieve the Panel of the burden of further compliance with the regulations.</p> <p>The proposed amendment is legally inaccurate because it is not possible to disapply a complaint, only to disapply the complaints process from a complaint.</p> <p>However, it is accepted that it would be more accurate if the process referred to disapplication of the 'statutory' process'</p>	Change 'disapply the process' to 'disapply the statutory process'.
Appendix 1	Disagreement with examples as OPCC contend that some of these decisions are matters for the Chief Executive of OPCC not the PCC.	These examples have been reviewed and are considered to be appropriate. The examples given are accurate for the purposes.	None.
Appendix 2 (para 2.2)	Concern that the process does not set out a prescriptive enough process for the Reviewing Officer to follow when undertaking a review.	The process is set out as comprehensively as possible. However, all complaints are different and, unfortunately, it is not possible to have a 'one size fits all' approach. The proposed approach simply reflects this.	None.
Appendix 2 (para 2.1)	Process has 'conflicts' in how the Commissioner and complainant are treated because it says that the subject will have 'an opportunity' to respond whereas the complainant will have a 'reasonable	Agreed it would be better if the Process made it clear that both the complainant and the subject of the complaint had a <i>reasonable</i> opportunity to respond.	Change 'opportunity' to 'reasonable opportunity'

Paragraph	Issue raised by OPCC	Response	Description of changes which have been made to draft document.
	opportunity’.		
Appendix 2 (paragraph 2)	Would be helpful to prescribe a timescale for responses.	All complaints are different and, unfortunately, it is not possible to have a “one size fits all” approach. In practice extensions are usually given to both sides if requested.	None.
Appendix 2 (paragraph 2.3?)	Suggests re-wording of paragraph 23 to say ‘The Reviewing Officer may ask for any further information he/she considers helpful in order to provide the sub-committee with full details about the matters complained of. The Reviewing Officer should not make assumptions in the report. If information is missing and the Reviewing Officer considers it significant, then the Reviewing Officer should either ask for the missing information or advise the Sub-Committee to do so.’	<p>There is no paragraph 23 in the document and this is assumed to be a reference to paragraph 2.3 in the appendix</p> <p>The reviewing officer is barred by statute from investigating and has to assume that parties are ensuring that issues which have been raised by the complainant have been addressed by the Commissioner – and vice versa.</p> <p>The reviewing officer’s role is to draw together the facts presented by the parties together in a report. It is not appropriate for the reviewing officer to take an inquisitorial approach.</p> <p>If a party considers that a reviewing officer has misunderstood the position or that the Panel ought to have further information then they will always have the opportunity to say so in writing before the Panel meets.</p>	None
Appendix 2	The text in para 2.1 of the appendix should be	We consider that ‘may not’ is preferable in this	None.

Paragraph	Issue raised by OPCC	Response	Description of changes which have been made to draft document.
(paragraph 2.1)	changed from 'the Reviewing Officer may not investigate the Complaint' to 'the Reviewing Officer will not investigate the complaint'	context, although 'will not' would also suffice.	
Appendix 2 (paragraph 2.9)	Express concern that the phrase 'the reviewing officer may allow the parties to comment on a report' is unsatisfactory as it is not clear whether comments would be allowed or what the process is in respect of commenting.	<p>The process makes it clear that the Parties always have the right to comment on the final report, but that the decision on whether or not to allow an additional opportunity for comments on a <i>draft</i> report is at the discretion of the reviewing officer.</p> <p>Our view is that it is not always necessary to give parties the opportunity to comment on a draft report. This will no doubt depend on the complexity of the case and the surrounding facts.</p>	None
Appendix 2	Concern that 'some of the proposals lack natural justice'. The only example given is the right of appeal to the Monitoring Officer against a decision not to refer to Panel taken by someone else. OPCC is concerned that MO ought not take this decision on appeal as they will have been involved in original decision.	Agreed. Although this process mirrors the current procedure, where there is a right of appeal and which has withstood scrutiny by the Local Government Ombudsman on reflection we have deleted this right of appeal. The process has been amended so that in future there will be no right of appeal for people who are dissatisfied.	Delete references to right of appeal.
App 2 (para 4.13)	Panel should give reasons for any finding of Misconduct	Agreed. The Complaints Sub-Committee's current practice is to give reasons for any findings of misconduct and it is sensible to make this a requirement.	Amend to clarify that Panel will give reasons for findings

Paragraph	Issue raised by OPCC	Response	Description of changes which have been made to draft document.
Appendix 2 (paragraphs 2.5-2.7)	<p>Concern about how the process deals with sharing of information between the parties. The OPCC is concerned that on occasion it may wish to share information with the Panel that it does not wish to be shared with the complainant.</p> <p>Suggest that, when applying for permission to share information on a confidential basis, it is not appropriate for them to have to explain how they think the matter can be considered fairly on a confidential basis.</p>	<p>Since we are not allowed to investigate complaints, the process followed has to be open and transparent.</p> <p>That should normally mean that parties have the opportunity to see material submitted by their opponent.</p> <p>The draft process envisages that there may be exceptional circumstances when it is appropriate for information to be sent to the Panel but not sent to the Complainant. If a party wants special permission to depart from this then the Panel will have to consider how this can be done fairly and it is helpful to have the applicant's views on this.</p>	None.
Appendix 2 (paragraph 2.7)	<p>OPCC wish to have the right to redact material they show to the Panel. This is because it will be sent to people who are not vetted.</p> <p>Members of the Panel and ECC staff are not subject to security clearance.</p>	Agree that there should be a process by which the OPCC can apply for permission to submit redacted material.	Amend to introduce a process by which material can be supplied on a redacted basis.
General	<p>Concern about a perceived expansion of powers of monitoring officer.</p> <p>In particular they are concerned about</p> <p>(a) Power for Monitoring Officer to express a view on a complaint. Express concern that</p>	<p>There is no intention to expand powers of the monitoring officer. As set out in the main body of this report, the approach is to reflect operating experience and maximise the opportunities for local resolution.</p> <p>(a) The monitoring officer already expresses</p>	<p>Amend last sentence of 5.2(c) to read:</p> <p>Where this happens there is</p>

Paragraph	Issue raised by OPCC	Response	Description of changes which have been made to draft document.
	<p>the document says that 'the decision of the Monitoring Officer is final' when the Commissioner may not want to accept the Monitoring Officer's recommendations. Suggest that this should be referred to the Sub-Committee if the recommendations of the Monitoring Officer are not accepted.</p> <p>(b) Power for MO to decide that an informal resolution process should be followed in a particular case.</p>	<p>views on complaints when deciding not to refer them to the sub-committee without this having caused any difficulty. Agree that the statement that the 'view of the Monitoring Officer is final' could be confusing and suggest amendments to make clear that there is no right of review or appeal is in relation to the complaints process only. It is clear that the PCC can disregard the MO's view. It is proposed to change this wording to 'This is only suitable for use in cases which are not serious.' The OPCC's suggestion of a right to refer to the sub-committee is likely to lead to an increase in the number of committee meetings.</p> <p>(b) This is simply a power to take steps to resolve a complaint informally. The Monitoring Officer would only suggest a process which she considered stood a chance of resolving the complaint and is acutely aware that any such process can only be effective if she gets the full co-operation of both sides. If the OPCC do not wish to engage in a particular process then they will not be - and cannot be - required to participate. Our learning from the operation of the process is that a flexible and agile approach will be needed to find a process in which complainants and the OPCC are prepared to engage. It is suggested that the Monitoring Officer is best placed to make this decision. The alternative would be to have these decisions taken by the Complaints Sub-Committee which would reduce the agility of</p>	<p>no right of appeal or review of the decision of the Monitoring Officer.</p>

Paragraph	Issue raised by OPCC	Response	Description of changes which have been made to draft document.
		the process.	

Essex Police and Crime Panel

Complaints Sub-Committee

Terms of Reference

1. The Sub-Committee has full delegated authority to make any decision which the Panel may take with respect to complaints about the Police and Crime Commissioner or the Deputy Police and Crime Commissioner except any decision which the Panel may not delegate by law.
2. The Sub-Committee shall report annually or at such other frequency as the Panel may determine on the discharge of its functions.