

## **Police, Fire and Crime Panel for Essex**

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

#### **1. Introduction**

- 1.1 The Police, Fire and Crime Panel for Essex ('the Panel') has responsibility for the initial handling of complaints made about the conduct of the Police, Fire and Crime Commissioner for Essex ('the PFCC') or the Deputy Police, Fire and Crime Commissioner ('the Deputy PFCC'). Complaints are governed by a statutory complaints procedure<sup>1</sup>. The panel is required to refer criminal complaints to the Independent Office of Police Conduct (IOPC).
- 1.2 The Panel has authorised the Monitoring Officer of Essex County Council (or another authorised officer of ECC) 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 PFCC if it includes an allegation which relates to any act, omission, statement or decision of the PFCC or his Deputy (whether actual, alleged or inferred).
- 1.6 When following this procedure the Panel and those working on its behalf will ensure that they make such adjustments as it is reasonable to have to take in order to accommodate needs arising from the disability of a person involved.

#### **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 PFCC or a Deputy PFCC)?
  - (b) Is the Police, Fire and Crime Panel for Essex the correct panel for the complaint (ie does the complaint relate to the Essex PFCC or Deputy PFCC)? If the Panel is not the correct Panel then the Monitoring Officer will refer the complaint to the correct panel.
  - (c) Has the complaint been withdrawn?

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<sup>1</sup> The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.

- (d) Does the complaint relate to a new matter which is 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 IOPC**

3.1 The Monitoring Officer will consider whether the complaint includes any allegation which, if proved, would indicate that either the PFCC or the Deputy PFCC is likely to have committed any criminal offence. If the Monitoring Officer, after consulting the Chairman of the PFCP, considers that it does include such an allegation then the matter must be referred to the Independent Office of Police Conduct (IOPC) and the Monitoring Officer will make the referral.

3.2 The IOPC 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, in which case the complaint will move to stage 3.

3.3 In the remainder of this document a reference to the PFCC is to be read as a reference to the Deputy PFCC if the complaint is about that officer.

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

4.1 If the complaint is not required to be referred to the IOPC - or if the IOPC refers the complaint back to the PFCP - 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 disapplied then the Panel can respond to the complaint in whatever way it feels fit. This would include deciding not to respond to it.

4.3 The Monitoring Officer is not required to disapply the statutory process, but may do so - after consulting the Chairman of the PFCP- if and to the extent that one or more of the following criteria apply:

- (a) The complaint is concerned 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.

Complaints relating to the PFCC's alleged behaviour towards his staff will not normally be considered. Complaints about the activities of the PFCC's staff cannot be considered directly. The Panel can consider complaints that the PFCC has failed to respond adequately to complaints he has received about his staff may be considered if the PFCC's response is so inadequate as to amount to misconduct.

- (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 IOPC 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 disapplied.

4.4 If the Monitoring Officer considers that the statutory process should be disapplied, the Monitoring Officer should, before finally deciding to do so, write to the complainant to explain

- (a) why the Monitoring Officer considers that the statutory process should be disapplied;
- (b) how it is proposed to deal with the complaint if the procedure is disapplied; 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 the letter, the Monitoring Officer then disappplies the process then the Monitoring Officer 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 although the complainant may ask the Local Government and Social Care Ombudsman to look at whether an appropriate process has been followed.

## 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 PFCC (and the Deputy PFCC if the complaint is about the Deputy PFCC) with proposals for informal resolution.

5.2 There are four possible approaches as set out below. Two of them encourage the parties to reach agreement and two of them involve an opinion being reached by the Panel; Unless agreed otherwise by the parties, informal resolution will follow one or more of the following:

- (a) **Period for local settlement:** The PFCC (or Deputy PFCC) 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 PFCC (or Deputy PFCC) does not believe that such a process is likely to resolve the complaint.

If this route is followed then the PFCC (or Deputy PFCC) 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) **Mediation:** The Monitoring Officer (either in person or via another person appointed for this purpose) 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) **Resolution by Monitoring Officer, after Consulting the Chairman of the PFCP.** The Monitoring Officer may come to a conclusion about the complaint. As part of this conclusion the Monitoring Officer may, after consulting the Chairman of the PFCP, make recommendations about action the Monitoring Officer considers should be taken by the PFCC (or Deputy PFCC). This is only suitable for less serious complaints where the Monitoring Officer believes that it may be helpful for a person independent of OPFCC and complainant to express a view without convening 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) **Resolution by the Complaints Sub Committee** The Monitoring Officer may, after consulting the Chairman of the PFCP, 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 more serious complaints, regardless of whether or not any other process has been followed. The basic process for this is set out at appendix 1 (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 parties may agree to follow an approach which is different to those set out in 5.2. The Monitoring Officer will write to the Complainant and the PFCC (or Deputy PFCC) 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 If a period for local settlement or mediation is allowed but does not resolve the complaint to the satisfaction of all parties then the Monitoring Officer will, after consulting the Chairman of the PFCP, adopt one of the processes in 5.2(c) or 5.2(d) instead.

## **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 and to the monitoring officer of the Office of the Police, Fire and Crime Commissioner.

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; or
- (b) The Sub-Committee considers that the response of the PFCC (or Deputy PFCC) 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.
- 6.4 Publication of the outcome is entirely at the discretion of the Sub Committee.

**Process for the Sub-Committee to Review Complaints**

- 1.1 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 PFCC should take.
- 2. Process to be followed by the Reviewing Officer**
- 2.1 The Reviewing Officer is not permitted to investigate the Complaint, although they may ask for information. The Reviewing Officer will:
  - (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. No party can be required to provide any information if it would be unlawful for them to provide that information.
- 2.4 Any material sent to the Reviewing Officer will normally be shared with all other parties and the Sub-Committee.
- 2.5 Notwithstanding 2.4 a party may apply to the reviewing officer with an application not to share a document or documents, if there are exceptional reasons not to do so.
- 2.6 An application under paragraph 2.5 should clearly set out the nature of the material and why the party does not want it to be shared.
- 2.7 A decision on the application will then be taken by the Reviewing Officer or the Monitoring Officer.
- 2.8 If a party is dissatisfied with the decision under paragraph 2.7 they may appeal to the Sub-Committee.
- 2.9 Other than as agreed in paragraph 2.7 or 2.8 above, material submitted to the Reviewing Officer should not be redacted or altered in any way.
- 2.10 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.

### **3. Before the Meeting**

- 3.1 The Monitoring Officer will send the parties the final report. The version of the 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 / or Vice-Chairman of the Panel and one or two further members taken from a pool of Panel members nominated at the Annual meeting to comprise a membership of three. 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 PFCC or Deputy PFCC (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 PFCC (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 PFCC (or Deputy PFCC) and making a recommendation as to whether or not the PFCC 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 any action which the Sub Committee considers should be taken by the PFCC.
  - (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.
- 4.15 There is no right of appeal or review of the Sub-Committee's decision although the complainant may ask the Local Government and Social Care Ombudsman to look at whether an appropriate process has been followed.

## **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 PFCC the Monitoring Officer will ask the PFCC to consider the recommendations and to respond (usually within fourteen days) to say whether or not the PFCC accepts the recommendations and
  - (a) what action the PFCC has taken (or proposes to take); and
  - (b) if the PFCC 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 PFCC'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 PFCC.

- 5.5 Having considered the PFCC's response, the Sub-Committee may make further recommendations to the PFCC on how it feels the complaint may be resolved informally or ask the PFCC 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