

<b>Report title: Police Complaints Update</b>	
<b>Report to:</b> Essex Police, Fire and Crime Panel	
<b>Report author:</b> The Police, Fire and Crime Commissioner for Essex	
<b>Date:</b> 22 March 2022	<b>For:</b> Noting
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<b>County Divisions affected:</b> All Essex	

### **1. Purpose of Report**

This report provides an overview of the Commissioner's activities during 2021 in relation to their responsibilities for complaint handling.

### **2. Recommendations**

That Panel members note the update.

### **3. Background**

The Police, Fire and Crime Commissioner is responsible for handling complaints against the Chief Constable and for holding the Chief Constable to account for the discharging of his responsibilities in relation to handling complaints against the force. In addition, new statutory regulations came into force on 1 February 2020 which gave effect to changes introduced by the Policing and Crime Act 2017. The new regulations significantly altered the handling of police complaints and created a stronger role in the process for the Commissioner, particularly by transferring responsibility for reviewing complaints recorded and handled by Essex Police that do not meet the criteria for referral to the Independent Office for Police Conduct (IOPC) from the constabulary to the Commissioner.

The new regime also broadened the definition of a complaint to include any expression of dissatisfaction with the police force, expressed by or on behalf of a member of the public. The reforms were intended to make the police complaints system more independent and transparent as well as being less concerned with blame and more concerned with service improvement.

## **4. Activity During 2021**

### *Complaints against the Chief Constable*

During 2021, the Commissioner received five complaints against the Chief Constable. This is a significant reduction from 21 in 2020 and 22 in 2019.

All five complaints received in 2021 were deemed to be invalid. However, correspondence regarding one of these cases remains ongoing.

### *Reviews*

A complaint review is not intended to be a re-investigation of the original complaint, but neither is it a simple quality check. The reviewer must reach a conclusion as to whether the complaint was resolved in a “reasonable and proportionate” manner and focus on outcomes. The officer undertaking the review should be provided with, and should review, all paperwork and evidence that was considered by the force, which can be voluminous. Amongst other factors, the reviewer is required to consider:

- Where the original outcome does not meet the complainant’s expectations, whether there were clear and sufficient reasons given for that outcome for the complainant to understand the conclusion reached.
- Whether the complainant was adequately communicated with throughout the process.
- Whether written correspondence demonstrates empathy and is presented in understandable language.
- The seriousness of the incident giving rise to the complaint, the impact on the complainant and the potential for public interest.
- Any additional concerns / learning which are evident from the review.

The detailed review required under the new regulations provides more in-depth insight and understanding. This enables improved scrutiny, which is better for the complainant and produces a more robust outcome. However, as a result, complaint reviews tend to be complex, and so currently take an average of 2.5 days each to complete. Neither regulations nor statutory guidance set any target timescales in which reviews are to be completed, although the Commissioner is required to account to the IOPC if any are not completed within a year. So far, none in Essex have exceeded this threshold.

The review must result in a decision as to whether the request is ‘upheld’ or ‘not upheld’. Upheld reviews can result in recommendations being made to the force which must receive a response (to the complainant and the Commissioner) within 28 days, advising whether the recommendation is accepted, along with any action taken or planned in response to this. The force may also propose an alternative to the original recommendation. Implementation of the actions carried out by the force in response to recommendations is monitored through the PFCC’s usual scrutiny processes, including quarterly meetings with Essex Police’s Professional Standards Department (PSD) (described in greater detail later in this report).

Both outcomes (‘upheld’ and ‘not upheld’) can also result in the identification of

‘organisational learning’ and ‘oversights’ for the force. These do not require a formal response but are summarised in reports to the quarterly meetings with PSD, allowing themes to be identified and further monitoring to be put in place where this would be beneficial. Organisational learning points are also shared with the complainant to provide reassurance that the complaint has resulted in improvement and to inspire confidence. Oversights are additional concerns / learning that emerge from the undertaking of the review, but which do not form part of the original complaint, so do not have to be shared with the complainant.

Since the last report to the Panel on this subject (in February 2021), the Commissioner has received 167 requests for a complaint review. This is a significant increase on the 96 received in the previous 12 months. It was hypothesised in the previous report that the coronavirus pandemic may have increased the number of requests for reviews, due to people having more time available to make a complaint and perhaps the general mood of the nation making people more inclined to complain. It was also noted that the restrictions imposed by the Government precipitated complaints directly relating to the policing of the regulations which would not have featured in the complaints caseload pre-pandemic. Internal audit work carried out during 2021/22 (described in more detail later in this report) has confirmed that the two major peaks in mortality from Covid-19, which coincided with the periods in which England faced the most stringent lockdown restrictions, were indeed followed by subsequent peaks in the number of complaint reviews requested. The pandemic also contributed to delays in dealing with requests for reviews received by letter or answerphone message, as the working from home arrangements that were implemented in line with Government guidance meant that there was not always an individual present in the office to log and process these.

Benchmarking work carried out by Internal Audit against other PCCs in the eastern region identified that Essex receives the second highest number of requests for complaint reviews, at 0.83 per 10,000 population, compared with the highest level of 0.92 per 10,000 and an eastern region average of 0.57 per 10,000. When the benchmarking was undertaken, the Essex PFCC had received 158 requests for complaint reviews since the new regulations came into force, compared with 172 in Kent and an average of just 59 across the other force areas.

Of these 167 requests received in Essex since February 2021:

- 186 have been closed (for example, due to being invalid<sup>1</sup>) or completed (compared with 27 in the previous 12 months).
- 23 have been upheld (compared with none in the previous 12 months). Comparisons with IOPC guidance indicate that the upheld rate in Essex is now in line with the national average.
- 32 recommendations have been made (compared with four in the previous 12 months), all of which have been accepted by the force (one with a minor amendment). These have generally focused on the need to revisit all or part of the complaint, or to provide a more thorough explanation of the outcome to the

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<sup>1</sup> A request for a review may be deemed invalid if, for example, it is submitted to the wrong relevant Review Body, it contains insufficient information to progress the review, or it is subsequently withdrawn by the complainant.

complainant, due to the initial explanation being insufficiently clear and easy to understand, and / or not addressing all of the points raised.

- 43 learning points have been identified (compared with none in the previous 12 months). These commonly relate to contact issues and, again, the clarity of outcome communicated to the complainant.
- 40 oversights have been identified (compared with one in the previous 12 months).

When the Panel last received a report on this subject, in February 2021, there was a backlog of 69 requests for reviews. By 26 March 2021, this had risen to 100 and, by 21 May 2021, it had climbed still higher, to 111.

Since the last report to the Panel, significant scrutiny over the clearance of this backlog has continued to be exercised by the Commissioner's Senior Management Team (SMT). In March 2021, the SMT agreed a detailed plan to eliminate the backlog without reducing the quality of outputs from complaint reviews. Whilst it is clearly imperative to respond to requests for reviews in a timely manner, the scrutiny benefits of undertaking reviews are considerable, so we would not want to lose the organisational learning derived from them by conducting them to a lower standard. The plan agreed in March 2021 worked towards a target of clearing the backlog entirely by the end of December 2023. An updated plan was subsequently agreed by the SMT in September 2021, which brought the target clearance date forward to July 2023.

In addition, as referenced above, an internal audit of the PFCC's approach to complaint reviews was included in the internal audit plan for 2021/22, to allow the Commissioner to take assurance that reviews of complaints against Essex Police are processed in line with the IOPC's statutory guidance and in an efficient and effective manner. This was commissioned by the Chief Executive and Monitoring Officer in order to gain a better understanding of the reasons for the backlog and what further actions might be taken to clear it as swiftly as possible and prevent any reoccurrence, as well as to assist with the identification of resourcing requirements moving forward. The final report was issued in February 2022 and confirmed that appropriate policies and procedures govern the complaints process and are made available to staff. It concluded that the Commissioner can take reasonable assurance that the controls upon which the organisation relies to manage this area of work are suitably designed, consistently applied and effective. It did however identify one medium priority management action relating to the logging and progress tracking of complaint reviews, and two low priority management actions, relating to the initial data / information capture from the complainant, which are in the process of being implemented and due for completion by May 2022.

The initial resourcing of this area of work was based on the pre-existing level of complaints and appeals (prior to the change in the regulations), with allowances made for potential increases due to the reforms. Based on these calculations, 0.2 FTE was initially allocated within the Commissioner's establishment to meet this demand. Within 10 months of the new regulations taking effect, however, the significant increase in the number of police complaints, and the consequential impact on the number of reviews requested of the Commissioner, was apparent. At the time of the last report to the Panel on this subject, the Commissioner had already doubled the amount of permanent resource allocated to this function to 0.4 FTE and was

recruiting 2.0 FTE of additional temporary resource whilst a realistic assessment was made of the ongoing resource requirement. These additional temporary resources have been in place since April 2021.

The previous report to the Panel predicted that the backlog would begin to clear faster as new staff became more familiar with, and therefore proficient in, the process. The Internal Audit confirmed that this has indeed been the case, with the number completed per month rising quickly, from two in April 2021 to nine in May 2021 and four in the first week of June alone. When the fieldwork was undertaken, despite the level of resource allocated not being out of kilter with other areas (with all PCCs in the eastern region allocating a maximum of 0.6 FTE to this task) Essex's completion rate was just 23.4% against an average across the other six forces areas of 80.6%. Essex's current completion rate is now 81%, so in line with comparators.

As at 9 March 2022, the backlog had fallen significantly, to 50 reviews pending an outcome. The plan approved by SMT aimed to have 74 reviews outstanding as at 4 March, so progress is significantly ahead of schedule. Of the 50 reviews pending an outcome, 19 were in progress (of which 12 had been completed and were awaiting sign-off of the outcome letter to the complainant) and 31 had not yet commenced.

The plan approved by the PFCC's SMT aimed for the oldest review in the backlog to be 22 weeks / 5 months as at 4 March 2022. As at 9 March, the oldest review which had commenced but not yet been completed was received on 26 July 2021 (over seven months prior). However, an outcome has been particularly delayed in this case due to an initial lack of clarity regarding the Relevant Review Body, along with the general complexity of the complaint. The oldest request for a review which had not been commenced was received on 26 November 2021 (just over three months prior, so well within the tolerance set out in the plan).

The position in Essex is consistent with that seen nationwide. A workshop and survey of members carried out by the Association of Policing and Crime Chief Executives' (APACCE's) Complaints Network in September 2021 to examine and compare how PCCs across the country were managing complaint reviews concluded that:

- The number of complaint reviews is rising;
- PCCs' offices lack sufficient capacity to manage this workload (with those who, like Essex, have adopted "Model 1" employing between 0.5 and 2.0 FTE on this task), and
- The above two factors combined, along with the absence of statutory timescales, impact timeliness, which in turn creates backlogs of work.

In Essex, the future resourcing requirement has been assessed as part of budget setting for 2022/23, and it is planned to go forward with a total establishment of 2.0 FTE permanent resources along with 1.0 FTE temporary resources (so a further increase from 2.4 to 3.0 FTE), with the temporary resource to be reduced once the current backlog is cleared and the team is processing only the new caseload coming into the organisation. Within this, it is proposed to recruit to a new role of Complaints Manager, which is currently going through the job evaluation moderation stage prior to recruitment.

In conclusion, therefore, progress is running ahead of the agreed plan and the

Commissioner is optimistic that the backlog will be eliminated earlier than the current target date of July 2023. Once the additional post is recruited to, the plan will be revised again with a view to bringing the target date for eliminating the backlog further forward.

*Holding the Chief Constable to account for discharging their responsibilities in relation to handling complaints against the force*

The increase in initial complaints to the force that was seen in 2020 continued into 2021. Simultaneously, there has been an increase in the complexity of complaints, with multiple strands (sometimes up to 10 or even more) often being reported within single complaint cases.

The PFCC undertakes a robust scrutiny programme which includes monitoring all complaints, expressions of dissatisfaction and conduct matters involving Essex Police officers and staff. The Commissioner or their Deputy holds a quarterly formal scrutiny meeting with the Deputy Chief Constable to review current complaints and force wide patterns; to discuss high profile and / or serious cases, and to review organisational improvement activity arising out of this scrutiny. These quarterly meetings are also used by the Commissioner or their Deputy to track the force's progress in implementing recommendations made to Essex Police by the IOPC as a result of complaints it has investigated against the force.

The force's Professional Standards Department provides detailed monitoring information to the Commissioner, covering the volume and categories of complaints received (broken down by Local Policing Area and the ethnicity of the complainant), timeliness and outcomes. A version of this is published on the Commissioner's website for transparency. This report is used to identify themes, trends and patterns in complaints handled by Essex Police as the Appropriate Authority, which are considered in more detail through the quarterly scrutiny meeting between the PFCC's office and the Deputy Chief Constable. A live data dashboard is also in development which, in due course, will allow both the PFCC and the force to monitor such data in real time.

Data indicates that the three areas most commonly complained about to the force are:

- Delivery of service, with "police action following contact" (which includes the general level of service, the police response, timeliness and the quality of investigation) being the most common aspect within this;
- Police powers, policies and procedures, with the use of force and detention in police custody being the most common elements (although complaints relating to police custody reduced by 11 percentage points in Quarter 2 of 2021/22 compared with Quarter 1), and
- Individual behaviours.

The majority (consistently over two-thirds) of initial complaints are finalised within the target of 90 days.

The proportion of initial complaints for which the outcome is that the service provided was acceptable has improved from 38% for the whole of 2020/21 to 43% in Quarter

1 of 2021/22 and 45% in Quarter 2. This remains the most common outcome of initial complaints to the force. Year on year, complaints are resolved to the complainant's satisfaction in around 20% of cases, whilst it is found that the service provided was not acceptable in roughly 10% of cases.

The Commissioner's own staff also carry out a monthly audit of an agreed number of cases (typically seven per month) as part of the PFCC's scrutiny programme. This provides an independent view to the force of the quality of service provided to complainants in respect of:

- Timeliness and delays
- Customer contact
- Case management
- Record keeping

The latest report made observations about the completeness of logs of communication between the PSD and the complainant in several cases. Queries were also raised regarding staff training, which the PSD responded to.

The Commissioner also utilises the findings of the independent public perception survey jointly commissioned with Essex Police to hold the Chief Constable to account for complaints handling. The latest available results (for Quarter 3 of 2021/22) show that 70% of respondents think they would be treated fairly if they made a complaint to Essex Police about an officer or staff member, compared with 74% in Quarter 2 and 88% in Quarter 2 of the previous year. This indicates a reversion to the consistent 70% - 71% response rate reported against this question for the five quarters immediately preceding this. A significant difference has also emerged between respondents from an ethnic minority background (other than white minorities) and white respondents, at 56% and 71% respectively. As this data has only very recently become available, the force is currently exploring the reasons for this, which will be reported back to the Commissioner and monitored through the scrutiny arrangements described in this report.