

POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE POLICE AND CRIME PANEL

Report Of	CHIEF CONSTABLE/POLICE AND CRIME COMMISSIONER
Subject	COMPLAINTS AGAINST POLICE: UPDATE ON NEW LEGISLATION
Date	WEDNESDAY 12 DECEMBER 2018 – 1.00 P.M.
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Purpose of Report

1. The purpose of the report is to update members on changes to the handling of police complaints.

Recommendation

2. The Panel are recommended to discuss and note the contents of the report.

Force Performance on Complaint Handling

3. The Professional Standards Department (PSD) of Leicestershire Police is responsible for the efficient and effective delivery of public complaints, discipline, corruption and vetting issues in line with the departments' strategy to deliver performance and improve standards across the portfolio. Force performance in this area continues to improve whilst conforming to regulatory and ethical standards. PSD has been subject to recent rigorous Her Majesty's Inspector of Constabulary, Fire and Rescue Service (HMICFRS) inspection in relation to counter corruption together with the wider Police Effectiveness and Efficiency and Legitimacy (PEEL) review and Independent Office of Police Conduct (IOPC) quarterly performance assessment.
4. The latest IOPC data for 1st April 18 to 1st September 18 shows that the Force performance continues to improve:-
 - 97% of complaint cases are recorded within 10 days compared to 91% for same period last year (Most Similar Forces (MSF) 93%).
 - 82 days to finalise complaint cases compared to 119 days for the same period last year (MSF 93 days)
 - 48 days to locally resolve allegations compared to 60 days for the same period last year (MSF 64 days)
 - 123 days to finalise by Local Investigation compared to 185 days for the same period last year (MSF 120 days)
 - 27% IOPC investigation appeals upheld compared to 29% for the same period last year (MSF 48%).

5. These performance figures represent a positive position for the Force and performance has moved from it being one of the lowest nationally ranked PSD to being in the top quartile today, indeed it has been recognised nationally for best practice.

New Legislation

6. The Policing and Crime Bill received Royal Assent on the 31st January 2017 and is now an Act of Parliament. The Act is divided into 9 Parts. Part 2 covers Police Complaints, Discipline and Inspection. This legislation when fully implemented will result in significant changes to the way in which public complaints are handled and potential conduct matters are dealt with. Changes are intended to provide a system that is:-

- More customer focused and resolves complaints in a timely fashion.
- Less bureaucratic
- More transparent and independent with effective local oversight
- Allows for identification of patterns and trends of dissatisfaction being raised
- Less Adversarial for Officers.

7. The intention was to deliver the legislative changes in three phases. These are set out below.

Phase 1 - The Barred and Advisory List

8. The Barred and Advisory List came into effect in December 2017.

The Barred List

9. The principle of the Barred List is similar to that already used in other professions, such as teaching and the medical profession, where individuals can be 'struck off' and prevented from practising. It will hold information on those who are dismissed from policing – officers, staff and specials – and thereafter prevent them from re-entering the service. This includes being employed by policing bodies such as the Office of the Police and Crime Commissioners, Her Majesty's Inspectorate of Constabularies and Fire & Rescue Services or the Independent Office for Police Conduct.

The Advisory List

10. The Advisory List will contain information on those who have resigned or retired whilst under investigation for gross misconduct, and includes designated volunteers who have had their designated status withdrawn. Again the forces and the other policing bodies mentioned above must consider this information during their appointment process.
11. The College of Policing, as the professional body for policing, has been given a statutory role in how these lists are held and maintained, similar to how the General Medical Council or Royal College of Nursing operate in the medical profession.
12. With the Advisory List it will not matter that someone had already planned to retire, or resigned in the preceding 12 months. Being investigated for matters that could lead to dismissal places a person on the Advisory List pending the outcome. If the outcome is that they would have been dismissed, then the person will be moved to the barred list, otherwise they are removed from the Advisory List.
13. The lists also replace the Disapproved Register previously held by the College, and the legislation is not retrospective so the names on it will not be transferred to the new lists. Instead they will continue to be recorded on the Police National Database to be searched through established vetting practices.

14. Currently Leicestershire Police have 3 people on the Barred List and 6 people on the Advisory List.

Phase 2 – Independent Police Complaints Commission (IPCC) Reforms/Super-Complaints

15. On 8 January 2018, the Independent Police Complaints Commission (IPCC) became the Independent Office for Police Conduct (IOPC). The IOPC features a new governance structure with a single Director General having sole responsibility for casework strategy and resources.
16. On 1 November 2018, the Police Super-complaints system became operational. A super-complaint is a complaint which relates to one or more police forces whereby a feature or combination of features is, or appears to be, significantly harming the interests of the public. The Super-Complaints system has been designed with the intention of identifying and addressing systemic issues which are not otherwise dealt with by the existing complaints systems.
17. Super-complaints can be raised by ‘Designated Bodies’ – a status which organisations have received from the Home Secretary after the criteria detailed at Section 29B of the Police Reform Act 2002 has been applied. There are currently 16 organisations with ‘Designated Body’ status which include Action on Elder Abuse, Children’s Commissioner for England, Liberty and Women’s Aid Federation of England.
18. Super-complaints are handled by Her Majesty’s Chief Inspector of Constabulary in the first instance.

Phase 3 – Systemic Complaints and discipline Reforms.

19. The reforms to the complaints and discipline procedures were due to be implemented in April 2019. However, this has been delayed due to the availability of parliamentary time to lay the statutory instruments (regulations). Once the statutory instruments have been before Parliament there will be a six month lead in time to enable all stake holders sufficient time to prepare. No amended timetable has been put forward at this stage although it is hoped that the regulations will be laid before Parliament in February 2019.
20. Some of the key complaint reforms in the legislation are:-

Definition of Complaint

Currently a complaint has to be about the conduct of an officer. This will be replaced by a broader definition being “any expression of dissatisfaction with a police force”. This covers general customer service, and police practice issues, not only misconduct of an individual officer(s).

Removal of the Non - Recording Decision

A complaint must be formally recorded if the complainant wants it recorded or if the recording body determines the complaint is to be handled in accordance with Schedule 3 to the Police Reform Act 2002. ‘Serious’ complaints must be handled in accordance with Schedule 3.

Resolving Issues Outside the Formal System

Where appropriate, and the complainant agrees, complaints can be resolved otherwise than in accordance with Schedule 3. Intention is that such complaints will still need to be ‘logged’ or ‘registered’ to ensure we capture at least some minimal data on all complaints made.

Simplification

Removing the various categories for handling a complaint (local resolution, disapplication, discontinuance). These terms and concepts are pretty meaningless to the public

Reasonable and Proportionate

A series of statutory duties on the force: to contact the complainant to understand how complaint might be resolved; to take reasonable and proportionate action to resolve complaint; to keep complainant updated; and to inform complainant of outcome. In some cases, that may be to take no action. Must investigate if an indication matter is "serious".

Complaints Appeals

Streamlining appeals – replacing current five appeal points with one "review" point at the outcome of a complaint.

Police and Crime Commissioners (PCCs)

21. The Policing and Crime Act 2017 makes major changes to the handling of complaints including allowing Police and Crime Commissioners to take on a greater role in the police complaints system, choosing between three different models. PCC's will also become the review body for reviews/appeals currently heard by a chief officer and will have explicit responsibility for holding Chief Officers to account for the way in which complaints are dealt with by the force. The three models available to the PCC are as follows:-

Model 1

Model 1 is the minimum requirement of all PCCs. It will require PCCs to receive appeals (to be known as reviews) from the public, consider whether the Force took proportionate action, and then contact the complainant with the outcomes. This role is currently discharged by PSD.

Where the PCC feels that either the complaint was not handled correctly, or the outcome was not appropriate then recommendations can be made that the Force takes action to rectify this. However it is important to note that the PCC has no power to direct that remedial actions take place as the Chief Constable retains operational control.

This option would be the least disruptive and least costly. This model would also provide the cleanest separation of functions to preserve the PCC's 'hold to account' function. The more involved the PCC is with operational complaints handling, the more difficult is to hold the Force to account for their actions. The PCC will appear more independent, in terms of managing appeals and ensuring that the Chief Constable carries out his/her role in the eyes of the public.

Model 2

This will incorporate the elements of Model 1 but with the additional responsibilities of receiving complaints, contacting complainants and then either recording the matter formally under the Police Reform Act (PRA) 2002, or attempting to informally resolve the issue for the complainant.

Model 2 would give the PCC a complete oversight of any dissatisfaction being raised allowing a greater focus on key issues and potentially a greater ability to hold the Chief

Constable to account. However this model would require a larger additional cost for the OPCC including staffing. In terms of public perception the PCC would potentially suffer from the same issue the police currently do, by being the same body that receives and records a complaint and then handles any subsequent appeal/review. It could give rise to the belief that it was not independent and fair.

Model 3

This incorporates Models 1 and 2 and gives the PCC the additional responsibility for keeping the complainant updated throughout and providing the outcome letter.

Model 3 would give the PCC a complete oversight of dissatisfaction being raised allowing a greater focus on key issues and a greater ability to hold the Chief Constable to account. It would provide greater interaction with the public which could potentially increase the PCC's profile.

This model would have the same implications as Model 2.

22. At this time the PCC has indicated that he will be implementing Model 1.
23. The Force is fully sighted on the proposed amendments with representation on the National Heads of PSD, Chair of the Regional Heads of PSD and the National Complaints Practitioners Working Group together with the National Centurion IT Working Group. An officer from the Office of Police and Crime Commissioner is also a member of the Home Office Practitioner Working Group. These working groups are overseeing the implementation of the national legislation.
24. Once the regulations have been laid and the PCC has confirmed his operating Model the necessary reviews of working practices and training can be implemented. During this implementation period it will be necessary to run a dual regime to cover complaints under both "old" and "new" legislation.

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