



## **POLICE AND CRIME COMMISSIONER**

### **POLICE COMPLAINTS AND CONDUCT SYSTEM**

#### **STATEMENT OF POLICY AND PROCEDURE**

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## **1. Introduction**

- 1.1. The Policing and Crime Act 2017 established the basis for the long-term reform of the complaints and conduct system that applies to police officers. This has been divided into three phases. The first phase, now implemented, introduced a barred and advisory list to ensure that former officers could not avoid accountability for gross misconduct and to prevent them from re-joining the police service. The second phase, also now implemented, saw the replacement of the Independent Police Complaints Commission with the Independent Office for Police Conduct (IOPC) with changes to role, powers and governance in respect of the complaints and conduct system.
- 1.2. The third phase, which has led to the creation of this policy document, overhauls the regulations on complaints and conduct and implements the reforms in the 2017 Act to provide a new regulatory framework. Whilst the introduction of this new regulatory framework has been delayed, it will now come into force on 1 February 2020.
- 1.3. This policy document sets out some of the key aspects of the law and responsibilities relating to the Police and Crime Commissioner in this area and how they will be applied in the County of Suffolk from the introduction of the new regulatory framework in 2020.
- 1.4. This document does not seek to explore each and every aspect of the complaints and conduct system, rather just those areas where the Police and Crime Commissioner has a specific responsibility to discharge. It needs to be read in conjunction with the key legislation and the various guidance produced by the Home Office and Independent Office for Police Conduct that relates to it.

## **2. Overview of the Statutory Obligations upon Police and Crime Commissioners relating to Police Complaints and Conduct**

- 2.1. The Police and Crime Commissioner for Suffolk (the PCC) is a statutory role established by the Police Reform and Social Responsibility Act 2011. The role, functions and powers of the PCC are set out in the 2011 Act, which established PCCs. The Policing Protocol Order 2011 also helpfully summarises the requirements and responsibilities placed upon the PCC. Whilst this legislation touches upon the PCC's responsibilities in the police complaints and conduct system, the vast bulk of the PCC's responsibilities in this area is found elsewhere.

### Review of Complaints

- 2.2. The Policing and Crime Act 2017 gives PCCs the responsibility for reviews in respect of complaints considered by the Chief Constable. This responsibility is covered in detail in section 3 of this statement wherein it is set out how the PCC will operate the discharge of this function.

- 2.3. The 2017 Act also gives PCCs the option to give notice to the relevant Chief Constable that they, rather than Chief Constable, will exercise certain other complaints functions. Those functions are initial complaints handling (including the recording of complaints) and responsibility for being the single point of contact throughout the complaints handling process. Whilst the PCC in Suffolk will discharge the review function, which is a mandatory requirement, the PCC has determined thus far, in common with the majority of other PCCs, not to give notice to the Chief Constable to take on the additional voluntary complaints functions (see Decision Paper 37-2019, Complaints Reforms). Accordingly the Chief Constable will remain responsible for initial complaints handling and be the contact point throughout the complaints handling process.
- 2.4. Section 3 sets out how the PCC will operate the discharge of the statutory review function placed upon PCCs. Section 3 needs to be read and applied in conjunction with the identified “Key Reading” on which it is based.

#### *Protocol*

- 2.5. The section also has an associated Protocol found at Appendix A. This Protocol sets out how the provisions relating to review will operate as between PCC and Chief Constable and what can be expected from each of the parties where there is an interface between their respective responsibilities.

#### Complaints against the Chief Constable

- 2.6. PCCs are responsible for complaints against Chief Constables. The new complaints system will bring changes to how this operates in practice. Guidance on the handling of matters about chief officers is set out in Annex A of the Statutory Guidance on the Police Complaints System published by the IOPC. There is an automatic requirement to refer complaints above a certain threshold to the Independent Office for Police Conduct.

#### Misconduct Hearings – Legally Qualified Chairs and Independent Members

- 2.7. A Regional approach has been taken to maintaining lists of legally qualified chairs and independent members. Section 5 has an associated statement whereby the Region has set out its approach to appointing the membership of particular misconduct panels to hear misconduct cases.

#### Complaints Monitoring and Dip-Sampling

- 2.8. The PCC has a role in the complaints system to maintain oversight to help ensure that the complaints process is operating effectively and ethically and to hold the Chief Constable to account for this.

### Police Appeals Tribunals

- 2.9. PCCs have administrative responsibility for running particular police appeals tribunals, including selecting the membership of such. Section 7 has an associated statement whereby the Region has set out its approach to appointing the membership of particular police appeals tribunals.

### Delegation of Complaints and Misconduct Function by the PCC to Officers of the Office of the PCC

- 2.10. The arrangements for delegation of functions in relation to complaints and misconduct are set out in Section 8 below and are further described and provided for in the PCC's Scheme of Governance and Consent.

## **3. Review of Complaints**

#### *Key Reading:*

- *Statutory Guidance on the Police Complaints System – IOPC*
- *The Police (Complaints and Misconduct) Regulations 2020*
- *The Police Reform Act 2002, Schedule 3*
- *College of Policing Guidance on Outcomes in Police Misconduct Proceedings*

### Right of Review

- 3.1. There is a right of review in respect of complaints that have been investigated by the Chief Constable and those that have been dealt with other than by investigation.
- 3.2. An application for a review will be considered either by the PCC or by the IOPC.

### Relevant Review Body

- 3.3. The IOPC is the relevant review body where:
- 3.3.1. the appropriate authority is a local policing body;
  - 3.3.2. the complaint is about the conduct of the Chief Constable, Deputy Chief Constable or an Assistant Chief Constable;
  - 3.3.3. the Chief Constable, as appropriate authority, is unable to satisfy themselves, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of criminal or disciplinary proceedings against a person serving with the police, or would not involve the infringement of a person's rights under Article 2 or 3 of the European Convention of Human Rights;
  - 3.3.4. the complaint has been, or must be referred to the IOPC;

- 3.3.5. the IOPC is treating the complaint as having been referred;
  - 3.3.6. the complaint arises from the same incident as a complaint falling within 3.3.2 – 3.3.5;
  - 3.3.7. any part of the complaint falls within any of the above.
- 3.4. In all other cases the PCC is the review body.
- 3.5. The question at 3.3.3 of whether the IOPC is the relevant review body must be assessed on the substance of the complaint alone, not on the merit of the allegations or with hindsight after the complaint has been dealt with.

#### Applications for Review

- 3.6. In each application for review received by the PCC, the PCC will consider whether the PCC is the relevant review body. If the PCC receives an application for review, but the IOPC is the relevant review body, it will be forwarded to the IOPC. The PCC will notify the complainant that the application for review has been forwarded and that the IOPC is the relevant review body. The PCC will forward the application electronically. In such a case the application will be taken to have been made when it was forwarded.
- 3.7. On receipt of an application for review where the PCC is the relevant review body, the PCC will send an acknowledgement to the complainant. This acknowledgement should inform when the complainant can expect to hear about the review, what will happen next and advise a point of contact in case of queries.
- 3.8. The PCC will notify the appropriate authority and the original Investigating Officer as to the receipt of any review application. The Protocol at Appendix A sets out the steps to be taken to notify the person complained against.
- 3.9. The PCC will request any information from any person which it considers necessary to deal with a review. Any information requested by the PCC for this purpose must be supplied, and the PCC expects this request to be responded to as soon as is reasonably practicable.

#### Assessing the Application for Validity

- 3.10. Once the PCC has considered and determined that they are the relevant review body the application will be assessed.
- 3.11. An application for review must be made in writing and must state:
- details of the complaint;

- the date on which the complaint was made;
- the name of the force or local policing body whose decision is subject of the application;
- the date on which the complainant was provided with the details about their right of review at the conclusion of the investigation or other handling of their complaint.

Should an application fail to provide any information as set out above the PCC may decide to proceed as if the requirements to provide the information had been complied with.

- 3.12. It is expected that an application for review should be considered even in the absence of any of the information required unless the lack of information makes it impossible to identify the case to which the application relates. It may be appropriate to contact the complainant to clarify issues. If after taking reasonable steps to contact the complainant it has not been possible to make contact nor gather information to conduct the review, the application may be considered invalid.
- 3.13. Only a complainant, or someone acting on their behalf, can make an application for a review in relation to a complaint. An application from anyone else will be invalid.
- 3.14. An application can only be made if there has been a written notification of the outcome of the handling of the complaint.
- 3.15. An application cannot be made to review an outcome of the handling of complaints outside of Schedule 3 of the Police Reform Act 2002.
- 3.16. An application cannot be made to review the outcome of a directed or independent investigation.
- 3.17. Applications for reviews must be made within 28 days starting with the day after the complainant was provided with details about their right of review at the conclusion of the investigation or other handling of their complaint.
- 3.18. Should an application be made to the wrong review body, the time elapsing between the application being received and it being forwarded to the PCC as the correct review body will not be taken into account for the purposes of the 28 day period.
- 3.19. A complainant cannot exercise their right of review before the completion of the handling of the matter.
- 3.20. If the handling has been completed but any of the information about the complainant's right of review that was obliged to be given by the Chief Constable was not given, the application should not be treated as out of time.

- 3.21. Where an application is out of time, the complainant should be asked to provide any reasons as to why it is late, and which should be taken into account when deciding whether an application for a review should be progressed.
- 3.22. The PCC may extend the period for making an application for a review where it is satisfied that, because of the special circumstances of the case it is just to do so. Each case should be considered on their own particular merits. A non-exhaustive list of factors for consideration is set out in the IOPC Statutory Guidance.
- 3.23. If, having considered any special circumstances, the application for review is judged to be out of time and the PCC is not satisfied that it is just to extend the time, the application may be treated as invalid and not considered further. Such a decision and the reasons therefore should be notified to the complainant in writing as soon as reasonably practicable.

#### Conduct of the Review

- 3.24. The purpose of the review is to consider whether the outcome of the complaint is reasonable and proportionate in the circumstances and to consider, if it was not reasonable and proportionate, how to put it right. Each case must be considered on its own particular merits. The PCC will take a consistent approach in their overall handling and decision-making approach upon reviews. The PCC will observe the principles of reasonable decision-making by a public body. The PCC will act fairly and in good faith and make decisions as quickly as is practicable. The PCC will give due consideration to any representations made by the complainant, the person complained about and the Chief Constable as appropriate authority.
- 3.25. A review must consider whether the outcome of the investigation or other handling is reasonable and proportionate. The following matters should be taken into account.

#### *Process and Method of Handling*

- 3.26. Where a flaw is found in the handling of a complaint, the review is likely to be upheld unless the PCC finds that the same outcome would have been reached notwithstanding the flaws.

#### *A Decision to Take No Further Action*

- 3.27. Where such a decision has been reached the PCC will consider:
  - 3.27.1. where it is considered that the complaint had been made previously, whether there is new evidence since the previous complaint was made that should have been acted on;



- 3.27.2. where it was considered that the complainant was not co-operating with the handling of the complaint, whether that co-operation was necessary to provide a reasonable and proportionate outcome; and whether reasonable and proportionate efforts were made to communicate with the complainant and the complainant was reasonably able to co-operate.
- 3.28. In considering the efforts made to communicate, the PCC will look at the methods used, any communication preferences or needs of the complainant, and any attempts to communicate through their representative (if any).
- 3.29. Where the PCC considers that further co-operation was not required from the complainant, or that reasonable steps were taken to communicate with them, the PCC will consider whether it was reasonable and proportionate to take no further action based on the information available.

*Information Provided to the Complainant*

- 3.30. An outcome can only be considered reasonable and proportionate if sufficient information about it has been provided to the complainant for them to understand any findings, determinations and/or actions taken or proposed. When determining whether the complainant was provided with sufficient information about the outcome of their complaint, the PCC will consider the requirements and guidance set out in the IOPC Statutory Guidance upon communicating a complaints outcome.
- 3.31. Where information that has not been provided to the complainant is the only reason that the PCC considers that the outcome is not reasonable and proportionate, and the PCC is able to provide the missing information from the evidence they have reviewed, this will be provided to the complainant by the PCC. Although the review can be upheld on this basis the PCC will not need to make any further recommendation to address this issue.

*Findings and Recommendations*

- 3.32. In the first instance consideration should be given to whether any findings and determinations reached upon the complaint are reasonable and proportionate. For example consideration should be given to whether:
- the complainant understood and were all allegations or concerns addressed;
  - appropriate enquiries were made to be able to provide a reasonable and proportionate outcome;
  - relevant guidance was considered;
  - aspects of the complaint were not addressed or lines of enquiry not pursued;

- information or evidence was weighed appropriately and fairly
- the findings or determinations logically flow from the information or evidence?

*Actions proposed*

3.33. When deciding whether any actions proposed are reasonable and proportionate the PCC will consider:

- whether due regard was given to the applicable legal tests and relevant guidance;
- whether the complaint handler attempted to understand the outcome the complainant was seeking and gave that due consideration;
- whether the proposed actions have sought to remedy the issues raised by the complainant, so far as is reasonably possible;
- whether the proposed actions were fair in all the circumstances;
- whether actions have been proposed or taken in respect of any learning or other issues identified through the handling of the matter.

3.34. Sometimes other issues might be identified which would be appropriate to be passed back to the Chief Constable as feedback and which would be appropriate as part of the PCC's oversight role.

Outcome of the Review

*Reviews of Complaints Dealt with other than by Investigation*

3.35. Where the PCC is the relevant review body and finds that the outcome is not reasonable and proportionate, the PCC may:

- recommend that the Chief Constable refer it to the IOPC, if the complaint has not been previously referred;
- recommend that the Chief Constable investigate the complaint;
- make a recommendation with a view to remedying the dissatisfaction of a complainant.

*Reviews with Respect to an Investigation*

3.36. Where, following an investigation, the PCC is the relevant review body and finds that the outcome is not reasonable and proportionate, the PCC may:

- make a recommendation to the Chief Constable that the complaint be re-investigated;
- if the complaint has not been previously referred to the IOPC, recommend that the Chief Constable refer it to the IOPC;
- make a recommendation to the Chief Constable in respect of any person serving with the police:
  - that the person has a case to answer in respect of misconduct or gross misconduct, or has no case to answer in relation to the person's conduct to which the investigation related;
  - that the person's performance is, or is not, satisfactory;
  - that disciplinary proceedings of the form specified in the recommendation are brought against the person in respect of the person's conduct, efficiency or effectiveness to which the investigation related;
  - that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct, efficiency or effectiveness as may be so specified;
- make a recommendation with a view to remedying the dissatisfaction of the complainant;
- make a recommendation that the Chief Constable notify the Crown Prosecution Service (CPS) if the PCC considers that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related and they consider it appropriate for the matters to be considered by the CPS (or they fall within a prescribed category), and provide them with a copy of the report.

3.37. When considering making a recommendation in relation to conduct, performance or practice requiring improvement, the PCC will have regard to Home Office guidance and the College of Policing Guidance on Outcomes in Police Misconduct Proceedings.

3.38. Any decision by the PCC about whether to recommend that the report be considered by the CPS will be made in light of the report's findings and the evidence gathered. The reasons given by the Chief Constable for not referring the report to the CPS will also be taken into account. The PCC will provide a full rationale in the event the PCC decides not to recommend that a referral to the CPS be made, despite the report indicating that a criminal offence may have been committed.

#### *Notification of the Outcome*

3.39. Once the review has been considered the PCC will notify:

- the Chief Constable;
- the complainant;
- any interested person; and
- the person complained against (if any) unless it would prejudice an investigation or re-investigation of the complaint (which may be given via the Chief Constable);

of the decisions and the reasons for the decisions.

3.40. The notification will be in writing and should use clear language. Sufficient information will be provided to enable understanding of the decision and why.

*Response by the Chief Constable*

3.41. The Chief Constable is required to respond in writing within 28 days (commencing with the day the recommendation was made) to any recommendation made by the PCC. Such response is expected to include whether the recommendation is accepted and should this be the case the steps proposed to be taken to give effect to the recommendations. If the recommendations are not accepted the reasons why are expected to be given.

3.42. Such response will be copied by the Chief Constable to:

- the complainant;
- any interested person; and
- the person complained against (if any) unless the person making the recommendation considers that to do so might prejudice the investigation.

3.43. The PCC may extend the time limit for a response.

#### **4. Complaints Against the Chief Constable**

4.1. PCCs are responsible for complaints against Chief Constables. The new complaints system will bring changes to how this operates in practice. Guidance on the handling of matters about chief officers is set out in Annex A of the Statutory Guidance on the Police Complaints System published by the IOPC. There is an automatic requirement to refer complaints above a certain threshold to the Independent Office for Police Conduct.

#### **5. Misconduct Hearings – Legally Qualified Chairs and Independent Members**

*Key Reading:*

- *The Police (Conduct) Regulations 2020*
- *The Police (Conduct) (Amendment) Regulations 2024*
- *Home Office – Statutory Guidance on Professional Standards, Performance and Integrity in Policing*

- 5.1. Where misconduct hearings occur under the Police (Conduct) (Amendment) Regulations 2024, the hearings must be conducted by a panel of three persons comprising:
  - 5.1.1. A chair, appointed by the appropriate authority, who must be a senior officer of the police force concerned.
  - 5.1.2. a person appointed by the local policing body, who –
    - has qualifications or experience relevant for the purpose of disciplinary proceedings; and
    - is selected on a fair and transparent basis from the list of candidates with such qualifications or experience maintained by the local policing body.
  - 5.1.3. a person appointed by the local policing body, who need not have such qualifications or experience, selected on a fair and transparent basis from the list of candidates maintained by the local policing body.
- 5.2. In addition to the appointment of the three persons detailed within paragraph 5.1. A person is to be appointed by the local policing body as an adviser to the chair and panel of persons conducting a misconduct hearing, selected on a fair and transparent basis from a list of legally qualified persons maintained by a local policing body.
  - 5.2.1. The legally qualified person appointed must provide advice to the panel of persons conducting or to the person chairing a misconduct hearing upon request by the chair in respect of any legal or procedural issues relating to the misconduct proceedings. The panel of persons conducting or the person chairing a misconduct hearing must have regard to any advice given by the legally qualified person.
- 5.3. If the officer subject of the misconduct hearing is a senior officer, the panel will consist of those individuals as set out at 5.1 and 5.2 above save that the chair at 5.1.1 will instead be Her Majesty’s Inspector of Constabulary and Fire and Rescue Service or an inspector of constabulary nominated by such.
- 5.4. In the Eastern Region the PCCs have joined together to appoint and maintain lists of both legally qualified persons and independent panel members as referred to at 5.1.2, 5.1.3 and 5.2.1 above. Whilst the responsibility to appoint the legally qualified person and independent panel members is an individual one for PCCs, the Eastern Region Offices of PCCs recognised that there were economies of scale to be achieved in undertaking regional recruitments and appointments. Officers from each of the six offices of PCCs in the Region meet regularly as the Member Misconduct Oversight Panel (MMOP) to coordinate and operate all aspects of the administration of legally qualified persons and independent panel members which includes recruitment, appointment to the lists, issue of terms of appointment, indemnification, maintenance of the lists and training.
- 5.5. Appointment of legally qualified persons and independent panel members to a particular case hearing should be on a fair and transparent basis by a PCC following a request from the appropriate authority. The Home Office Statutory Guidance states that “fair and

transparent” will generally mean that a rota system is established so the next available person from the lists is chosen for the hearing. It is stated to be good practice for the PCC to publish how their rota system operates. The Regional PCCs have produced a statement of how their rota system operates and this is found at Appendix B. This statement is published on the Suffolk PCC website.

- 5.6. The officer subject to a misconduct hearing will be informed of the person selected to chair a misconduct hearing and to whom they can object in writing within 3 days setting out their grounds for objection. The PCC will either uphold or reject the objection.

#### Delegation of Functions regarding Legally Qualified Chairs and Independent Members

- 5.7. The PCC has delegated the general performance of most PCC functions to the Chief Executive. This includes those functions with regard to the appointment and selection of legally qualified chairs and independent members for hearings. This means that all relevant action, including day-to-day activity and decisions will be undertaken by the Chief Executive and officers acting upon his behalf. The appointment of members to a misconduct panel shall where the appointment is one for the PCC, be made as provided for in section 8 below, which means that the Chief Executive will make such appointments. All appointments should be documented in writing and confirmed to the appointee in writing.

## **6. Complaints Monitoring and Dip-Sampling**

*Key Reading:*

- *Police Reform Act 2002*

- 6.1. The PCC has a role in the complaints system to maintain oversight to ensure that the complaints process is operating effectively and efficiently and to hold the Chief Constable to account for this.
- 6.2. In Suffolk the PCC has agreed with the Chief Constable that the following will comprise an effective monitoring system. These oversight arrangements are designed to ensure that public trust and confidence is maintained by providing reassurance about the integrity of complaints handling by the Suffolk Constabulary.

#### Regular Oversight Meetings between OPCCs, PSDs and IOPC

- 6.3. Representatives from Suffolk and Norfolk OPCCs will attend a quarterly meeting with the IOPC and PSD. These meetings would take place alternately in Norfolk and Suffolk. The meetings would cover, as appropriate, issues relating to:
- the latest quarterly IOPC performance bulletins;
  - force performance issues and what lessons are being learned by forces;

- local and national policy development work.

Formal Chief Constable Reporting on Complaints and Misconduct Matters to the Suffolk Accountability and Performance Panel

- 6.4. The Chief Constable will report twice yearly to the Accountability and Performance Panel upon complaints and misconduct matters. The reports will provide analysis of complaints data, including reasons for changes in the data and explanation of the resulting action as well as learning which is being taken forward by the Force.
- 6.5. The reports to the Accountability and Performance Panel will include a summary of the dip-sampling as referred to below as well as the outcomes of reviews (see section 3) and responses from the Chief Constable.

Dip-Sampling Arrangements

- 6.6. The PCC will undertake a dip-sample analysis on a quarterly basis of 10% of finalised cases and consider the handling of the cases to check that due process has been applied consistently and fairly. In order to give as wide a view as possible, the cases sampled will be drawn from the different resolution types eg local resolution, formal investigation, withdrawals etc.

## 7. Police Appeals Tribunals

*Key Reading:*

- *Police Act 1996, Schedule 6*
- *The Police Appeals Tribunal Rules 2020*
- *Home Office – Statutory Guidance on Professional Standards, Performance and Integrity in Policing*

- 7.1. An officer may appeal from a misconduct hearing held under the Police (Conduct) Regulations 2020 and the Police (Performance) Regulations 2020.
- 7.2. Appeals related to decisions which have been made under the previous versions of these Regulations will be dealt with under the Police Appeals Tribunal Rules 2012.
- 7.3. The Police Appeals Tribunal Rules 2020 and the Home Office – Statutory Guidance set out clearly the circumstances in which an appeal may be brought and how the appeals should be progressed. The Police and Crime Commissioner has important procedural and administrative functions to discharge to enable the effective and efficient disposal of appeals. In the event of an appeal the Police and Crime Commissioner must ensure that they adhere closely to the legislation and the guidance.

Composition of the Police Appeals Tribunal

- 7.4. The composition of the Police Appeals Tribunal (the Tribunal) is set out in Schedule 6 to the Police Act 1996 (as amended).
- 7.5. Where the appellant is not a senior officer the Tribunal shall consist of:
- 7.5.1. a legally qualified chair taken from the list maintained by the Home Office (as distinct from the legally qualified chairs described in section 5 above);
  - 7.5.2. a serving senior police officer (ie an officer above the rank of Chief Superintendent);
  - 7.5.3. a lay person, who is defined at paragraph 10(aa) of Schedule 6 to the Police Act 1996. It is a person who is not, and never has been, a member of a police force, or special constable, civilian police staff, local policing body or other policing body as per the Act.
- 7.6. The members of the Tribunal should be chosen on a fair and transparent basis by the PCC. The PCC publishes how the system for selecting a Tribunal works at Appendix B. This statement of approach is one that is adopted by the Eastern Region and is overseen by the Member Misconduct Oversight Panel.
- 7.7. Where the appellant is a senior officer, the tribunal shall consist of:
- 7.7.1. a legally qualified chair taken from the list maintained by the Home Office (as distinct from the legally qualified chairs described in section 5 above);
  - 7.7.2. HM Chief Inspector of Constabulary and Fire and Rescue Services or an Inspector nominated by the Chief Inspector; and
  - 7.7.3. the Permanent Secretary to the Home Office or a Home Office Director nominated by the Permanent Secretary.
- 7.8. In the interests of fairness, an individual should not sit on a Tribunal for any officer if they have already heard the same case at a Misconduct Hearing. It is the responsibility of the PCC to satisfy themselves that the members who are sitting on the Tribunal are sufficiently independent of the matter so as not to give rise to any suggestion of unfairness.
- 7.9. The Regional PCCs have determined that those Independent Members appointed by them, and referred to at section 5 above, will form the body of laypersons from which individuals may be drawn to serve as appropriate upon a Tribunal.

Delegation of Functions regarding Police Appeals Tribunals



- 7.10. The handling of appeals and appointment of members of the Tribunal is provided for in section 8 below and the delegations described therein, and where appointments to the Tribunal may be made by the Chief Executive. All appointments should be documented in writing by an authorised decision-maker and confirmed to the appointee in writing.

## **8. Delegation of Functions and Decision-Making**

- 8.1. Under the Scheme of Governance and Consent, the PCC has delegated the discharge of his statutory functions generally to the Chief Executive to act on his behalf (unless specifically prohibited from doing so). This delegation will include all those functions of a complaints and conduct nature which fall to the PCC, and which thereby enables the Chief Executive to discharge an executive decision-making role in respect of all such complaints and conduct functions.

- 8.2. The Scheme further provides that any member of the PCC's staff who is authorised by the Chief Executive to act, and provided such further delegation and the terms thereof is documented in writing, may act on behalf of the Chief Executive. The delegations by the Chief Executive are set out in the Scheme and are reproduced below including in relation to complaints and misconduct:

- "1 The Head of Commissioning and Governance is authorised to deputise for the Chief Executive as Monitoring Officer as and when required.*
- 2 The Head of Commissioning and Governance is authorised to execute all contracts, agreements and other legal instruments either in writing or by affixing and attesting the Common Seal of the PCC, on behalf of the PCC in accordance with any decisions made by or on behalf of the PCC.*
- 3 The Head of Commissioning and Governance, the Head of Policy and Performance and the Head of Communications and Engagement are authorised to deputise for the Chief Executive in his absence as required.*
- 4 The Correspondence and Support Services Officer, Head of Policy and Performance, and the Legal Clerk are authorised to take all necessary steps to progress and determine reviews arising pursuant to the Police Reform Act 2002, the Policing and Crime Act 2017 and the Police (Complaints and Misconduct) Regulations 2020.*
- 5 The Correspondence and Support Services Officer is authorised to take all necessary actions to progress appeals on behalf of the PCC under the Police Appeals Tribunals Rules 2012 and 2020 whichever is appropriate with the exception of determining Tribunal composition which will be reserved to the Chief Executive (or those authorised to deputise as set out above)."*

- 8.3. The roles described above are set out in the structure chart for the office of the PCC for Suffolk.

## **REVIEW OF COMPLAINTS**

### **POLICE AND CRIME COMMISSIONER / PROFESSIONAL STANDARDS DEPARTMENT OF SUFFOLK CONSTABULARY PROTOCOL**

#### **Advice of Right of Review**

- PSD will advise the complainant in writing of their right to a review to either the IOPC or the PCC.
- The PCC as a relevant review body, will provide notification on the PCC website of:
  - the PCC's powers in respect of the action it can take on the consideration of a review;
  - the need for the application for review to be made in writing to the PCC. If the application is made in hard copy the address is: Chief Executive, Office of the Police and Crime Commissioner for Suffolk, Police Headquarters, Martlesham Heath IP5 3QS. If the application is made by email the address is: [SuffolkOPCCReview@suffolk.pnn.police.uk](mailto:SuffolkOPCCReview@suffolk.pnn.police.uk)
  - the need for the application to specify the details of the complaint and the reasons a review is being requested;
  - the need for the application to specify the date on which the complaint was made;
  - the need for the application to specify the name of the force whose decision is subject of the application;
  - the need for the application to specify the date on which the complainant was provided with the details about their right of review at the conclusion of the investigation or other handling of their complaint;
  - the fact that applications for reviews must be made within 28 days starting with the day after the complainant was provided with details about their right of review;
  - the fact that there is no further right of review following the end of the review period.

#### **Validity of the Application**

- An officer from the OPCC with appropriate decision-making authority will determine the question of validity.
- Where the review application contains a new complaint not covered by the original investigation the OPCC will refer this back to PSD.

## **Receipt of Application for Review**

- The PCC will notify PSD and the original Investigating Officer as to the receipt of any review application. The PCC will notify the person complained against of the receipt of the review application within 48 hours. The PSD will notify the PCC forthwith as soon as they have notified the person complained against of the receipt of the review application, or that they have not been able to notify within the 48-hour period. If the PSD have been unable to notify the person complained against within 48 hours, the PCC and PSD will then agree how the notification of the receipt of the review application will be progressed.

## **Information**

- Where any officers from the OPCC make a request of the PSD for information which they consider necessary to deal with a review, the PSD shall supply all relevant information or facilitate its supply where such information is held by the PSD or Constabulary respectively as soon as is reasonably practicable.

## **Centurion**

- The OPCC will use the Centurion system in their consideration of and documentation of applications for review.
- Officers of the OPCC will have access to all information relating to an application via Centurion.
- Where information relating to an application is not readily available to officers of the OPCC via Centurion or is contained elsewhere than on the Centurion system the PSD will advise the officers of the OPCC of such and will either provide that information or facilitate access to it.
- If background information or specific information relating to policing law, practice, policy and procedure is required the OPCC will approach the PSD to facilitate access to such information.

## **Authorised OPCC Officers**

- Officers authorised to consider and determine applications in the OPCC are as follows:
  - Chief Executive
  - Head of Policy and Performance
  - Correspondence and Support Services Officer
  - Legal Clerk

or as variously authorised from time to time.

- PSD can expect communications about applications from these officers or alternatively other officers in the OPCC acting on their behalf.
- Unless an officer of the OPCC is already allocated to an application, communication with the OPCC on routine day to day matters relating to reviews should be through the Correspondence and Support Services Officer. On issues other than routine matters, communications should be through the Chief Executive.

### **Responses to Review Outcomes**

- Where a response is required from the Chief Constable, as appropriate authority, to the outcome of a review the OPCC would routinely expect such a response, which must be in writing, to be provided within 28 days and that an extension to be sought in exceptional circumstances only. Where a request for an extension is made, the Chief Constable, as appropriate authority, must provide full reasons for the request.
- The OPCC will make the decision upon a request for an extension as soon as is reasonably practicable and will notify the Chief Constable, as appropriate authority, of the decision upon the extension, and where an extension is granted such notification will advise the length of such extension.

### **Oversight**

- The outcome of reviews and response by the Chief Constable, as appropriate authority, will be reported upon to the Accountability and Performance Panel in a form to be agreed.

Christopher Jackson  
Chief Executive  
Office of the Police and Crime Commissioner



**Police & Crime  
Commissioner  
FOR HERTFORDSHIRE**



**PFCC  
POLICE, FIRE AND CRIME  
COMMISSIONER FOR ESSEX**



## SELECTION OF MISCONDUCT PANELS AND POLICE APPEALS TRIBUNALS

### **1 The Appointment of Legally Qualified Persons and Independent Members to Police Misconduct Hearings – The Police (Conduct) (Amendment) Regulations 2024**

- 1.1 Where for the purposes of the Police (Conduct) (Amendment) Regulations 2024 (the 2024 Regulations) a non-senior officer case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons comprising -
- a chair, appointed by the appropriate authority, who must be a senior officer of the police force concerned.
  - a person appointed by the local policing body, who –
    - has qualifications or experience relevant for the purpose of disciplinary proceedings; and
    - is selected on a fair and transparent basis from the list of candidates with such qualifications or experience maintained by the local policing body.
  - a person appointed by the local policing body, who need not have such qualifications or experience, selected on a fair and transparent basis from the list of candidates maintained by the local policing body.
- 1.2 In addition to the appointment of the three persons detailed within paragraph 1.1. A person is to be appointed by the local policing body as an adviser to the chair and panel of persons conducting a misconduct hearing, selected on a fair and transparent basis from a list of legally qualified persons maintained by a local policing body.
- The legally qualified person appointed must provide advice to the panel of persons conducting or to the person chairing a misconduct hearing upon request by the chair in respect of any legal or procedural issues relating to the misconduct proceedings. The panel of persons conducting or the person chairing a misconduct hearing must have regard to any advice given by the legally qualified person.
- 1.3 The six local policing bodies ie Police and Crime Commissioners for each of the six police areas comprising the Eastern Region, namely Bedfordshire, Cambridgeshire, Essex, Hertfordshire, Norfolk and Suffolk as well as the Ministry of Defence Police (MOD), have appointed legally qualified persons to a list of legally qualified persons, and persons to a list of independent panel members for the purposes of misconduct hearings held within the Eastern Region.
- 1.4 Selections of legally qualified persons and independent panel members to particular misconduct hearings are required to be made on a fair and transparent basis.
- 1.5 Statutory Guidance on Professional Standards, Performance and Integrity in policing issued by the Home Office states at paragraph 11.36 et seq:

*11.36 Appointment should be on a fair and transparent basis by the local policing body following a request from the appropriate authority. Fair and transparent will generally mean that a rota system is established (sometimes referred to as 'first cab off the rank system') so the next available person from the pool is chosen for the hearing. It will be good practice for the local policing body to publish how their rota system operates."*

- 1.6 This document sets out how the six Police and Crime Commissioners for the Region and the MOD will select the legally qualified persons and independent panel members referred to above to particular misconduct hearings.
- 1.7 The Hertfordshire Office of the Police and Crime Commissioner (Hertfordshire Office) holds and administers the lists of legally qualified persons and independent panel members on a day-to-day basis. The Hertfordshire Office will construct these lists in a way that allows the number of hearings to be recorded and assigned to each legally qualified person and independent panel member respectively. The list will be established so that the legally qualified persons and independent panel members with the least hearings to their names are at the top of their respective lists. When requests for legally qualified persons and independent panel members are received, the Hertfordshire Office will provide names by working down the list. It is not expected that legally qualified persons and independent panel members will refuse cases for any other reason than availability. If they are not available for a particular hearing, they will not thereby lose their place on the list. If, however they refuse a case for any other reason than availability then, unless there are exceptional circumstances, their name will be moved to the bottom of the list.
- 1.8 At the point an appropriate authority (acting through their relevant Professional Standards Department [PSD]), determines to refer a case to a misconduct hearing they will approach their relevant Police and Crime Commissioner (ie the Police and Crime Commissioner for the police area from where the misconduct hearing originates) for a legally qualified person and independent panel members to be appointed. The PSD will provide as much information as possible to the relevant Police and Crime Commissioner or MOD about the case covering issues such as number and name of officers concerned, estimate of likely length of hearing, provisional timeframes and general subject matter of the case.
- 1.9 The Police and Crime Commissioner or Secretary of State will, acting through staff within their office of the Police and Crime Commissioner or MOD, then approach the Hertfordshire Office to ascertain the next available person from the list of legally qualified persons and independent panel members. The Police and Crime Commissioner or MOD will then establish with that next available legally qualified person and independent panel members as to whether they are able to take the referral of the misconduct hearing. The legally qualified person and independent panel members will be given a reasonable period to check their availability and will be expected to advise within 48 hours whether they can take the case. If they answer in the affirmative the Police and Crime Commissioner or MOD will proceed to appoint the person as legally qualified person or independent panel member for the purposes of the misconduct hearing. They will then advise the Hertfordshire Office as soon as practicably possible of the appointment in order that the list of hearings taken by legally qualified persons and independent panel members can be kept fully up to date and so that it is possible to establish who the "next" available person is to take hearings. This is essentially a cab rank system of making appointments from the list.
- 1.10 If the answer to the question as above is in the negative the relevant Police and Crime Commissioner or MOD must revert to the Hertfordshire Office to advise them of the refusal and the reason therefore, and to seek the name of the next available persons. The process is then repeated as necessary. The fact of the refusal and the reason therefore will be recorded by the Hertfordshire Office on the relevant list.

- 1.11 Whether there is an acceptance or a refusal by a person to serve, they will not be offered another opportunity to take a hearing until the full list of eligible persons has been worked through (unless the reason for refusal is one of availability or other exceptional circumstances).
- 1.12 The operation of the cab rank system requires Police and Crime Commissioners and MOD to keep the Hertfordshire Office updated in a timely way upon both acceptances and refusal of cases. The appropriate authority should be advised of an appointment at the same time as the Hertfordshire Office is advised of the appointment.
- 1.13 It is not expected that the cab rank system of making appointments from the list will be departed from unless there are exceptional circumstances. If for any reason there is a departure the relevant Police and Crime Commissioner or MOD and the Hertfordshire Office must set out the clear reason.
- 1.14 The officer who is subject to the misconduct hearing will be informed as soon as practicable by the appropriate authority of both the legally qualified person and independent panel members appointed in respect of their misconduct hearing and to whom they can object in writing before the end of 3 working days beginning with the first working day after the officer is given notice of the person's name, setting out their grounds for objection. Where the Police and Crime Commissioner or MOD is the relevant body to uphold or reject the objection, they should advise the Hertfordshire Office of any outcome to such objection in order to keep the appointment list up to date.
- 1.15 It is for the relevant Police and Crime Commissioners and MOD to ensure that their formal selection and appointment decisions are made for the purposes of Regulation 28 (4) of the 2019 Regulations in accordance with their own internal decision-making arrangements.
- 1.16 Where the officer subject to the misconduct proceedings is a senior officer the above process should be applied subject to appropriate modification for the purposes of the 2024 Regulations.

## **2 The Appointment of a Police Appeals Tribunal – Schedule 6 of the Police Act 1996**

- 2.3 An officer may appeal from a misconduct hearing held under the Police (Conduct) Regulations 2020 and the Police (Performance) Regulations 2020.
- 2.4 Appeals related to decisions which have been made under the previous versions of these Regulations will be dealt with under the Police Appeals Tribunals Rules 2012.
- 2.5 The Police Appeals Tribunal Rules 2020 and the Home Office – Statutory Guidance on Professional Standards, Performance and Integrity in Policing at Chapter 26 set out clearly the circumstances in which an appeal may be brought and how the appeals should be progressed. A Police and Crime Commissioner has important procedural and administrative functions to discharge to enable the effective and efficient disposal of appeals. In the event of an appeal the Police and Crime Commissioner must ensure that they adhere closely to the legislation and guidance.
- 2.6 The composition of the Police Appeals Tribunals is set out in Schedule 6 to the Police Act 1996 (as amended).
- 2.7 Where the appellant is not a senior officer, the Tribunal shall consist of:
  - 2.5.1 a legally qualified chair taken from the list maintained by the Home Office;
  - 2.5.2 a serving senior police officer; and

2.5.3 a lay person, who is defined at paragraph 10 (aa) of Schedule 6 of the Police Act 1996. It is a person who is not, and never has been, a member of a police force, or special constable, civilian police staff, local policing body or other policing body as per the Act.

2.8 The guidance states at paragraph 26.15 and 26.16:

*“The members of the tribunal should be chosen on a fair and transparent basis by the local policing body [ie PCC]. There is a clear need for flexibility within this process but good practice would be for the local policing body to select chairs and laypersons on a random basis to ensure that all members are given the same opportunity for hearing cases. It is also good practice for the local policing body to publish, or be open to publishing, how their system operates.*

*The method of selection is an important principle of fairness for the officer concerned and ensuring proceedings are conducted in accordance with principles of natural justice in order that the selection itself and any subsequent proceedings cannot be called into question on the basis of any perceived, or actual, unfairness.”*

2.9 Where the appellant is a senior officer, the Tribunal shall consist of:

2.7.1 a legally qualified chair taken from the list maintained by the Home Office;

2.7.2 HM Chief Inspector of Constabulary and Fire and Rescue Services or an Inspector nominated by the Chief Inspector; and

2.7.3 the Permanent Secretary to the Home Office or a Home Office Director nominated by the Permanent Secretary.

2.10 The Guidance also states at paragraph 26.18 and 26.19:

*“In the interests of fairness, an individual should not sit on a tribunal for any officer if they have already heard the same case at a misconduct meeting or misconduct-hearing.*

*It is the responsibility of the local policing body to satisfy itself that the members who are sitting on the tribunal are sufficiently independent of the matter so as not to give rise to any suggestion of unfairness.”*

2.11 This document sets out the approach of the Police and Crime Commissioners within the Eastern Region to selecting, where they have a discretion, the membership of police appeals tribunals.

2.12 The Police and Crime Commissioners will in selecting such membership take full account of their statutory obligations and the guidance.

2.13 The Police and Crime Commissioners will when selecting the legally qualified chairs as referred to in paragraphs 2.5 and 2.7 above, and having full regard to their obligations and guidance, make their selection on a random basis and with a view to ensuring that those on the Home Office list are given equal opportunity to hear cases.

2.14 In selecting lay persons as referred to at paragraph 2.5.3 above, the Police and Crime Commissioners for the Region have determined that those Independent Members appointed by them for the purpose of Misconduct Panels will form the pool of laypersons from which individuals



may be drawn to serve as appropriate upon a Tribunal, and where full regard will be had to the Guidance referred to above.

- 2.15 The process for selecting a lay person will, as appropriate, follow the same process as for selection of Independent Panel Members for Misconduct Panels, and an approach for a layperson to the Hertfordshire Office will follow the same cab rank principle of asking for the name of the next available Independent Panel Member on the list. The appointing Police and Crime Commissioner will confirm any appointment of an Independent Panel Member as a layperson to the Hertfordshire Office to ensure that the records of sittings for the purpose of applying the cab rank principle is kept fully up to date.
- 2.16 No Independent Panel Member will be appointed as a lay person if they have already heard the same case at a misconduct hearing.
- 2.17 It is for the relevant Police and Crime Commissioners to ensure that their formal selection and appointment decisions are made for the purposes of Schedule 6 to the Police Act 1996 and the Police Appeals Tribunals Rules 2020, in accordance with their own internal decision-making arrangements.

### 3 **Publication**

- 3.3 The Police and Crime Commissioners for the region have all agreed to publish this document on their websites so that their approach to appointment of misconduct panels and police appeals tribunals can be seen to be fair and transparent.

7 May 2024