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Ask for: Anna Taylor  
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Dear Member

**KENT AND MEDWAY POLICE AND CRIME PANEL - THURSDAY, 29 NOVEMBER 2012**

I am now able to enclose, for consideration at next Thursday, 29 November 2012 meeting of the Kent and Medway Police and Crime Panel, the following report(s) that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>
10	<b><u>Complaints Policy</u> (Pages 1 - 18)</b>

Yours sincerely

**Peter Sass**  
**Head of Democratic Services**

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## **Paper for Kent and Medway Police and Crime Panel- interim complaints policies**

### **Issues and options**

#### **Introduction**

1. Following the brief information outlined Section 3, paragraph 2(b) of Schedule 7 of the Police Reform and Social Responsibility Act 2011, the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012<sup>1</sup> were released.
2. These Regulations and accompanying guidance set out how Police and Crime Panels should consider complaints against Police and Crime Commissioners, and their Deputies. The legislation as it pertains to London and the Mayor's Office for Policing is slightly different, and those sections of the Regulations will not be considered here.
3. The aim of this paper is describe to members of the Panel what will be required of the Panel in terms of handling complaints; the various issues that need to be considered in order that decisions can be made about arrangements for managing complaints; and suggests a complaints process for members.

#### **Complaints in Policing and Local Government**

4. The manner in which complaints are dealt with is governed by a significant amount of legislation in policing: it is a highly prescribed, technical area. However, at the same time, the aim of the complaints system is to deliver resolution as quickly and effectively as possible for the majority of complainants through local resolution.
5. It is also quite a different arrangement to the manner in which complaints against elected members of local authorities are handled. It should be noted that since the introduction of the Localism Act, which has simplified and localised the system in local government, this disparity is even more evident.
6. The 2012 ELPB Regulations are deliberately based upon the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2004<sup>2</sup> as opposed to any piece of Local Government legislation, which may well mean that they feel unfamiliar to local authority colleagues.
7. The introduction of a complaints system that is based on legislation relating to Police Forces, but to be administered by a local government committee, in relation to the holder of a newly-established directly-elected post has the potential to be problematic and confusing. This is true for both the public sector bodies involved and the general public. Therefore close working between the Panel and its administrators and the office of the Kent Police and

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<sup>1</sup> Hereafter ELPB Regulations

<sup>2</sup> Please see section 7.4 of the Explanatory Memorandum to these Regulations

Crime Commissioner (KPCC) is vital, as is making the process as clear as possible, and accessible, to the public.

### **Complaints against the Commissioner: policies**

8. Members will find attached the Policy for the office of the Kent Police and Crime Commissioner, with associated diagram, and a proposal for a policy to be adopted by the Panel, with associated diagram.
9. These are currently separate for two reasons. Firstly, it allows greater clarity and clearly delineates the roles of the two bodies; however, this is based on the proposal that the Panel delegate some of its responsibilities to the Chief Executive of the KPCC, as it is entitled to do under the Regulations. Secondly, the policy for the KPCC is to a larger extent a matter for the KPCC to decide, whereas the method for locally resolving complaints by the Panel is of course a matter for the Panel itself.
10. In relation to the KPCC's policy, members may wish to consider the following issues.
11. Would the Panel wish to delegate responsibility for initial handling to the KPCC's Chief Executive/Monitoring Officer?  
There are several positive issues to consider, namely that the KPCC has the experience and the capacity to do this. It should also be noted that the suggestion from Government (outlined at 7.10 of the Explanatory Memorandum) is that this should take place. However, there is the issue of negative public perception- how would it look to the general public if the Commissioner's own Chief Executive were recording complaints against their 'boss'?  
However, an organisation recording complaints against itself is in fact the norm in both local government and in the Police.
12. If the Chief Executive were to register and formally record complaints, what procedures would the Panel want to put in place to meet its statutory responsibilities and ensure public confidence?  
The Panel is required, under section 34 of the Regulations, to keep a record of everything that is, and is purported to be, a complaint about the conduct of the Deputy or Commissioner. However, if the Chief Executive of the OPCC will receive all of the complaints, and the Panel has the power to delegate all functions (except the resolution of complaints), it may be a practical measure to delegate this function to the Chief Executive as well.  
In that instance, the Panel may, for example, wish for a monthly record of all complaints relating to conduct, or at some other agreed frequency; it may wish to dip sample all records to see which ones were not being recorded or being disappplied, and why; or some other arrangement to be decided upon.
13. In relation to the suggested procedure for the Panel to follow, members may wish to consider the following issues:

14. How does the Panel wish to organise and administer locally resolving complaints?

- It can be the responsibility of the panel itself;
- It can be the responsibility of a sub committee of the panel, which could take its own decisions or recommend to the main panel;
- **It can be the responsibility of one member of the panel (or several members) who could take their own decisions or make recommendations to the panel; however, there is potential conflict with section 101 of LGA 1972 which prohibits a local authority committee from delegating to a single member.**
- It can be the responsibility of an officer;
- And the complaint can also be referred 'up' or 'down' from the sub committee to the Full Panel and vice versa, as appropriate.

The paper before members suggests that a sub committee of the panel may be the best approach. This is on the grounds that if the full panel were involved, this would delay matters significantly, which would be in opposition to the spirit of local resolution. A sub committee carrying out the consideration of complaints against members or senior officers is also the norm in local authorities and the Police.

15. Given the above, members may also want to give consideration to the suggested timings in the process. The Panel may also wish to consider setting any dates for a sub committee to consider complaints in advance, in line with standard practice for local authority committees and to ensure the swift resolution of complaints.

## Local resolution

**16. The legislation only provides for the Panel to locally resolve a complaint, and specifically rules out any 'investigation' of a complaint. Whilst this was not previously used in local government, many local authorities are adopting streamlined processes which can involve informal resolution without investigation, but it remains a relatively new approach. Local resolution has been used as a central tenet of the Police Complaints process for a significant amount of time.**

17. The ethos of local resolution is that it provides a prompt, effective method of resolving a complaint, which satisfies the individual and ensures that the behaviour (either on an individual or organisational level) is not repeated. There is no prescribed method, as each case is taken on its merits. It is proven that this method- as opposed to becoming involved in the 'full' complaints process- is more likely to lead to a satisfactory resolution for all parties.

18. Whilst there is no set process, the Independent Police Complaints Commission suggest that local resolution could include:

- immediate resolution by providing information face-to-face or by telephone
- a letter explaining what has been done

- communication between the individual and the person the complaint was about
- a meeting with the person working on the complaint and/or the person the complaint was about (but only if this is agreed by all parties).

and that the result could be to:

- give the individual information or an explanation to clear up a misunderstanding
- learn from the complaint, accepting that something could have been handled better and explaining what has been done to stop the same thing happening again
- arrange action by a manager to change the way the person behaves
- apologise on behalf of the person the complaint was about, but only if they agree to this.
- provide training, advice or other support to the person complained about

19. However, this is not a definitive list, and some of the methods (such as immediate resolution) are more suited to complaints made in person at a Police Station, as opposed to ones made against the Commissioner.

#### **Other issues of note**

20. When first considered, it would appear that the process for considering complaints may be rather lengthy. However, members should be aware that the later stages (marked off on the diagram by the dashed line) would, in all likelihood, be very rarely used.
21. Drawing on the Authority's experience in these issues, it is estimated that of all the complaints made against the Commissioner, a significant proportion would not be recordable complaints about a conduct matter which would need to be considered by the Panel. There will be a number which are in fact about the Force, or individual officers.
22. Of the ones that are sent to the Panel, it would be expected (especially given the focus on locally resolving the complaint quickly and effectively) that the majority of complaints would be dealt with by the sub committee of the PCP considering the matter and explaining the issue to the complainant.
23. However, it is necessary to build a process which is capable of considering the more substantial, yet non criminal (and infrequent) complaints against the Commissioner.
- 24. It has been confirmed in a national briefing, that although the DPCC is an employee (Chap 3, para 18 of the PRSRA) they will not be subject to the staff complaints procedure, but this one and this one only. However, given the Commissioner's current view, this is not an issue at the moment.**
- 25. The definition of a serious complaint is one where an allegation is made of conduct which constitutes a criminal offence. These complaints have to be referred to the IPPC.**

26. Members will also note that, unusually, there is no process of appeal. Whilst it has not been made explicit, this would appear to reflect that, save for incidences of criminality, it is for the electors to decide the fate of the Commissioner, and that they should not be tied up with less serious matters.

**27. However, it should be noted that the Local Government Ombudsman has some involvement in this, but only in relation to allegations of maladministration, as opposed to specific allegations about the conduct of the Commissioner. The LGO also has the ability to take complaints about maladministration in terms of the Police and Crime Panel, and in its handling of complaints. An Assistant Commissioner of the LGO has provided legal advice on this matter, which can be shared with the panel and its administrators.**

28. It should be noted that the Regulations specifically prohibit the Panel from issuing an apology on behalf of the person complained about, unless that individual agrees to do so.

### **Organisational learning and the broader process**

29. As members will be aware, the complaints process should be an integral part of the organisation, and a tool for organisational learning. Members may therefore want to give some consideration to how that will apply in this instance.

30. The Panel may wish, for example, to produce annual reports, or to produce a specific report to the KPCC to highlight areas for organisational or individual learning.

31. However, it should be noted, as at point 7, that this is a new and untested system. Whilst this paper aims to set out the basic issues, and makes some proposals, it is likely that this will evolve over time. The Panel and the office of the KPCC will undoubtedly learn through their experiences, and also be required to respond to changes in the legislation.

### **Decisions to be taken by the Panel**

The Panel is requested to make the following decisions:

- i. **Does the Panel wish to delegate responsibility for initial registration, assessment, recording, and disapplication (where applicable) of complaints to the KPCC's Chief Executive/Monitoring Officer?**
- ii. Does the Panel wish to establish a sub Committee to deal with complaints where local resolution by the PCP is appropriate?
- iii. What arrangements need to be made to revise this interim complaints system after a suitable period of time?

And to offer their views on:

- iv. The proposed policy as laid out for the KPCC;
- v. The proposed policy as laid out for the Panel;
- vi. If the KPCC Chief Executive were to handle complaints initially, as per (i), what oversight and recording procedures would the Panel want to establish?
- vii. How to ensure that the outcomes of the complaints process are used to inform organisational and individual learning and behaviour.



## **Complaints against the Commissioner- KPCC Policy**

This policy is to be read in conjunction with the 'Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012' ('the Regulations') and the associated guidance

Any complaints made about the Police and Crime Commissioner for Kent or the Deputy PCC are to be handled by either the Police and Crime Panel ('the Panel'), or the Independent Police Complaints Commission (IPCC).

### **Making a complaint**

A complaint is defined as "an expression of dissatisfaction by a member of the public." It covers matters of conduct (acts, omissions, statements, decisions), and those issues previously considered direction and control (organisational decisions, policies and procedures, and standards).

1. A complaint does not have to be marked as such to be considered a complaint, nor does it need to be in writing. All complaints, and purported complaints, will be registered
2. Where a complaint against the Commissioner is made, it will be the duty of the recipient to send a copy of that complaint to the Panel/Commissioner's Chief Executive.
3. *Where the Panel has delegated the power of recording complaints about conduct to the Commissioner's Chief Executive, the Chief Executive will make the decision whether to formally record the complaint.*
4. The names and addresses of the people to whom complaints should be directed should be shared between the Panel, the KPCC, and all other bodies who may reasonably be expected to receive a complaint relating to the Commissioner.

### **Recording a complaint**

5. The Panel/Chief Executive will, on receipt of the complaint, register its receipt and details.
6. A decision will be taken whether to record the complaint formally within three working days.
7. Where the complaint is recorded, copies of the record will be provided to the complainant and the person complained about. *If the Chief Executive has the delegated power to record the complaint, he/she will send a copy of the complaint to the named individual supporting the Panel.* The identity of the complainant may be kept anonymous.

8. The Panel/Chief Executive may decide not to supply a copy of the complaint if they feel it would be against the public interest or could prejudice a criminal investigation.
9. However, the Panel/Chief Executive, will not need to record the complaint if:
  - they are satisfied that the matter under consideration is being dealt with by criminal proceedings;
  - the complaint has been withdrawn
10. The Panel/Chief Executive also has the right not to record a complaint, or a part of a complaint, where, in their judgement, the complaint is not about the conduct of the Commissioner.
11. In all cases, the complainant will be notified of the decision, and where the complaint is not being recorded, the grounds for this decision.
12. There is no right of appeal against non-recording.
13. A record will be kept of all complaints against the Commissioner, whether recorded or not.
14. If the individual then chooses to withdraw the complaint, they must do so in writing to the Panel/Chief Executive.
15. The Panel/Chief Executive will then take the steps required under section 16 of the Regulations.

### **Serious complaints and conduct matters, and referral to the Commission**

16. Any conduct matter, or conduct matter arising from civil proceedings brought by a member of the public, must be recorded by the Panel/Chief Executive
17. Where a complaint is made that is deemed to be:
  - 17.1 A serious complaint
  - 17.2 A conduct matter, or conduct matter arising from civil proceedings brought by a member of the public
  - 17.3 Or, where the Commissioner requires it
- 17.4 Then the matter will be referred to the Commission.
18. The presumption shall be made that if there is any doubt about whether the matter should be referred, it shall be.
19. The matter will be referred as soon as is practicable, and within 24 hours in any case.

20. The complainant and the person complained about<sup>1</sup> will be notified if the matter is referred to the Commission.

21. Where a complaint is referred to the Commission, and the Commission determines that it requires an investigation to be carried out, this shall be done in accordance with Part 3, and Part 2, section 8, of the Regulations.

### **Disapplication**

22. Once a complaint about has been formally recorded, the Panel/Chief Executive may under certain circumstances disapply the requirements of the regulations.

23. If a complaint falls under the following categories:

23.1 the complaint concerns the conduct of an elected individual, and is made by someone in their capacity as a member of PCC's staff at the time of the alleged conduct;

23.2 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;

23.3 the matter is already the subject of a complaint;

23.4 the complaint is made anonymously

23.5 the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;

23.6 the complaint is repetitious (please see the section below)

23.7 And the Panel/Chief Executive believes that it would be best to handle the complaint outside of this policy, then they shall do so.

24. Where it is decided that a complaint should be handled otherwise than in accordance with the local resolution procedure as permitted under paragraph 23 above the PCP/CE may decide to take no action in relation to it.

25. The Panel/Chief Executive shall notify the complainant of their decision

26. There is no appeal against the decision to handle the complaints in this manner.

### **Locally resolving the complaint**

27. Where the Panel/Chief Executive has recorded a complaint, the Panel shall make arrangements to locally resolve the complaint (unless disapplication of the regulations has been agreed).

28. This shall be carried out as per the Kent and Medway Police and Crime Panel's Policy.

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<sup>1</sup> The person complained about will not be informed if there is a belief that this may prejudice any possible future investigation

### **Actions when the complaint is resolved**

29. When the complaint is finalised, the Panel will make a record of this. It shall be sent to the person complained about and to the complainant.
30. The findings will only be made public if both parties are given the chance to comment on this proposal, and the Panel feels that it is in the public interest to publish the record.

## **Repetitious complaints**

A complaint is repetitious for the purposes of paragraph (3)(f) if, and only if—

(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 or conduct matter, either—

(i) the Commission took the steps required by regulation 26(2) (action in response to an investigation report);

(ii) the complaint was resolved in accordance with the provisions of Part 4 (resolution of other complaints);

(iii) the complainant gave such notification that he withdrew the complaint as is mentioned in regulation 16; or

(iv) the police and crime panel decided to handle

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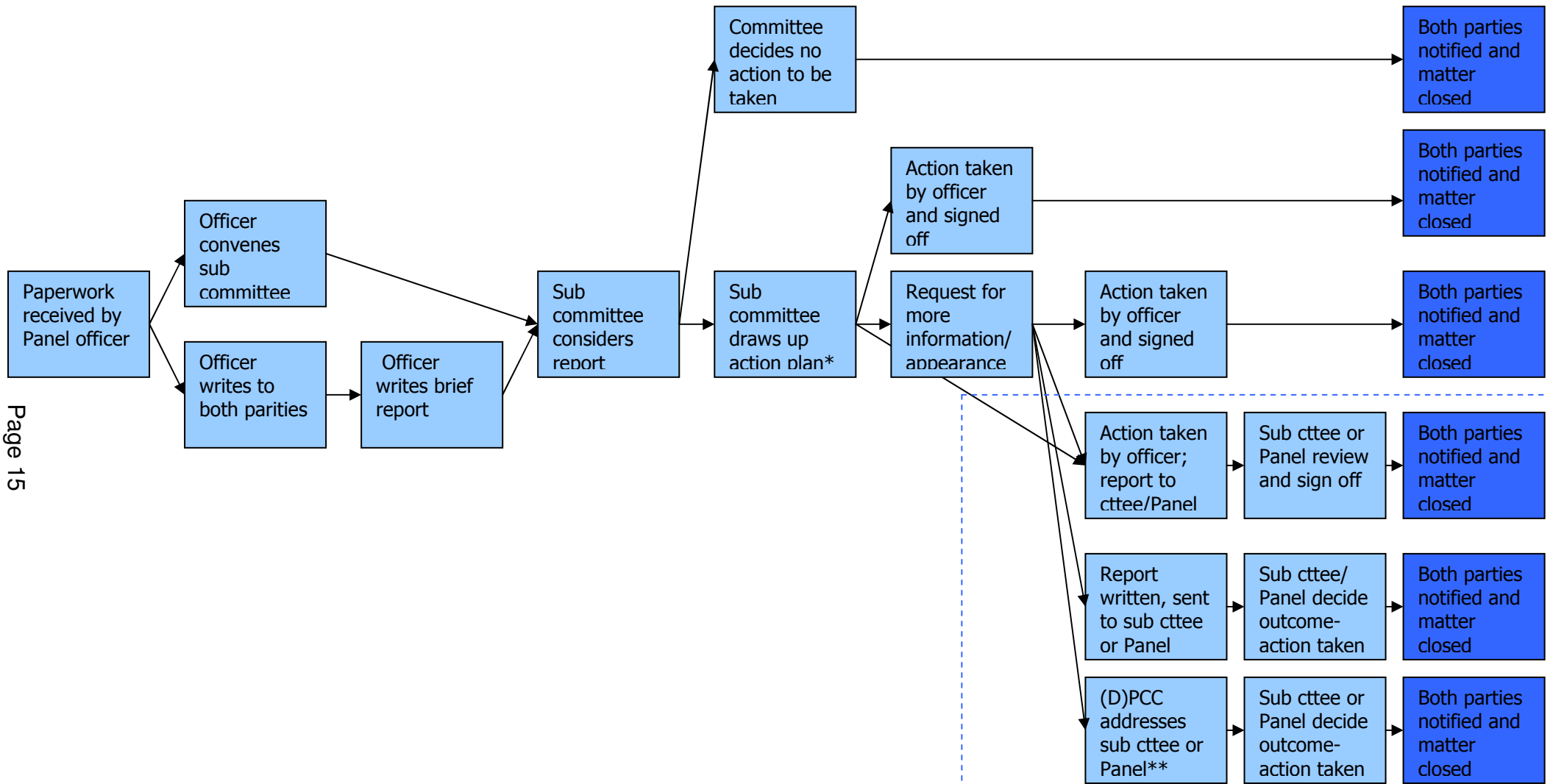
## **Police and Crime Panel- Policy for Handling Complaints Against the Commissioner**

1. When the decision has been made to record a complaint (and there is no decision to disapply), the Chief Executive of the KPCC will:
  - send a record of the complaint to the complainant and will include the contact details of the named individual at KCC;
  - pass the record, and copies of all the associated documentation, to the named individual for the panel. This will be no later than three working days after the complaint has been recorded.
2. On receipt of the complaint, the officer will
  - convene a meeting of the sub committee of the Panel. This will be within four weeks of the Panel receiving the complaint.
  - write to the complainant, setting out timescales, and what they may expect from the process. They will also request that they comment on the matter, and give ten working days to respond.
  - write to the person complained about, and ask them to comment on the matter, giving them ten working days to respond.
3. The officer will compile a brief report for the panel, setting out the pertinent details of complaint, and making suggestions for the next steps.
4. The sub-committee will first consider if any action needs to be taken. If not, it will record its reasons, and the NI will finalise the case, informing all the parties.
5. If, on considering the report, the committee feels that the matter needs to be formally resolved, it will decide its course of action, and will suggest an action plan based on the local resolution procedures. This plan will be drawn up by the NI. It will also include an indicative timeframe.
6. The committee will also decide whether it wishes to
  - reconvene to consider the matter when the action plan has been completed
  - refer the matter to the Panel when the action plan has been completed
  - agree that the named individual, in consultation with the Chair of the sub committee be empowered to sign off the work
  - allow the named individual to sign off the work
7. For less complex complaints, the resolution of the complaint could be reached by the writing of, or commissioning of, an explanatory letter or phone call. After this letter had been sent, the matter would be closed.
8. The plan may include (for example):
  - An explanatory letter being written by an officer of the Panel (or on behalf of the Panel)
  - An explanatory letter being written by an officer of the KPCC
  - A suggested change to KPCC policy
  - A request that an apology is tendered
  - The plan may, in more serious cases, first require more information being collected from the officer of the KPCC or the Commissioner (in addition to the response previously given) or that the Deputy/Commissioner be required to

appear before the sub committee or Panel to provide an explanation and answer questions.

9. Once the actions from the plan have been completed, the matter may be referred back to the sub committee or Panel, or signed off by the officer (or Chair).
10. When completed, both parties will be notified and the matter closed.

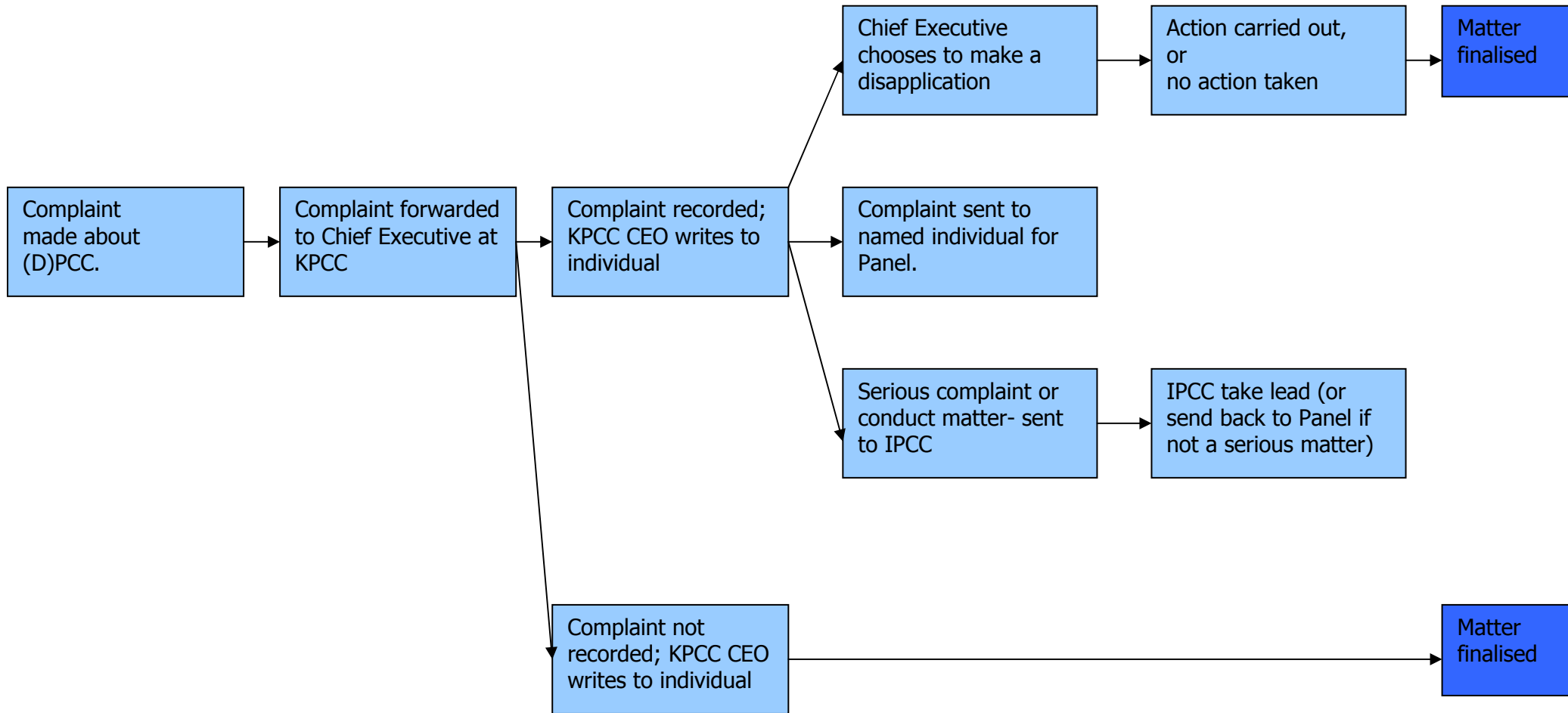




\* At this point, the committee would decide whether any future consideration of the issue would be by the committee or the Full Panel

\*\* An appearance by the Commissioner in front of the Panel/sub committee would most likely be in addition to a request for further information and a report being drawn up.

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