

Paper for Shadow Panel- complaints

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 2012¹ were released.
2. These Regulations set out how Police and Crime Panels would consider complaints against Police and Crime Commissioners, and their Deputies. The legislation as 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 Shadow 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 2004² 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 political 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 Commissioner (OPCC) is vital, as is making the process as clear as possible, and accessible, to the public.

¹ Hereafter ELPB Regulations

² Please see section 7.4 of the Explanatory Memorandum to these Regulations

Complaints against the Commissioner: policies

8. Members will find attached the Policy for the Office of the 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 OPCC, as it is entitled to do under the Regulations. Secondly, the policy for the OPCC is to a larger extent a matter for the OPCC to decide, whereas the method for locally resolving complaints by the Panel is of course a matter for the Panel itself.
10. There are a significant number of issues to be discussed and decided upon below. Whilst accepting that the Shadow Panel, and the Police Authority cannot tie the hands of the Police and Crime Panel and the Police Commissioner, there must be an effective complaints system in place from day one. It is therefore proposed that the decisions are taken, but a date be agreed when the system can be reviewed and revised in line with the Panel and Commissioner's decisions.
11. In relation to the OPCC's policy, members may wish to consider the following issues.
12. Would the Panel wish to delegate responsibility for initial handling to the OPCC's Chief Executive/Monitoring Officer?
There are several positive issues to consider, namely that the OPCC has the experience and the capacity to do so. 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.
13. If the Chief Executive were to 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 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, 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.

14. In relation to the suggested procedure for the Panel to follow, members may wish to consider the following issues:

15. 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;
- 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.

16. 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

17. The legislation only provides for the Panel to locally resolve a complaint, and specifically rules out any 'investigation' of a complaint. Whilst not used in local government, local resolution is a central tenet of the Police Complaints process.

18. 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.

19. 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
- apologise on behalf of the organisation
- 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

20. 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

21. 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.
22. Drawing on the Kent Police Authority's experience in these issues, it is estimated that of all the complaints made against the Commissioner, a significant proportion would not actually be a complaint that could be recorded under the legislation, and therefore not in fact reach the Panel.
23. Of the ones that do, it would be expected (especially given the focus on locally resolving the complaint quickly and effectively) that the majority would be dealt with by the sub committee considering the matter and explaining the issue to the complainant.
24. However, it is necessary to build a process which is capable of considering the more serious, but infrequent complaints against the Commissioner.
25. The first bullet point under the 'disapplication' section of the policy for the OPCC states that a disapplication is applicable if "*the complaint is concerned entirely with the conduct an elected individual who was working in their capacity as a member of staff at the time of the alleged conduct.*" This is to cover the Deputy Commissioner, as they are both an appointee of the Commissioner and a member of staff. If the complaint concerns any actions by the Deputy when acting in his/her political role, it will be a matter for the Panel; if as a member of staff, for the OPCC. There is the potential for blurred distinctions in this area, and where it is not a clear cut case, it is suggested that the OPCC and officers from the Council discuss the matter.
26. The definition of a serious complaint is one where an allegation is made of conduct which constitutes a criminal offence.

27. 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.
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 OPCC to highlight areas for organisational or individual learning, and request that they be actioned and a response provided.
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 OPCC will undoubtedly learn through their experiences, and also be required to respond to changes in the legislation.

Decisions (or opinions to be given) to be taken by the Shadow Panel

The Panel is requested to make the following decisions:

- i. Does the Panel wish to delegate responsibility for initial handling to the OPCC's Chief Executive/Monitoring Officer?
- ii. What arrangements need to be made to revise the complaints system after a suitable period of time?

And to offer their views on:

- iii. The proposed policy as laid out for the OPCC;
- iv. The proposed policy as laid out for the Panel;
- v. If the OPCC Chief Executive were to record complaints, what, if any, oversight and recording procedures would the Panel want to establish?
- vi. How to ensure that the outcomes of the complaints process is used to inform organisational and individual learning and behaviour.