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To: Kent and Medway Police and Crime Panel – 2 February 2016

Subject: Complaints against a Police and Crime Commissioner - Government proposed changes to the procedure

1. Introduction

1.1 The Elected Local Policing Bodies (Complaints and Misconduct Regulations) 2012 set out the statutory arrangements for dealing with complaints against Police and Crime Commissioners. Police and Crime Panels bear the statutory responsibility for resolving complaints. The Government is proposing changes to the Regulations and associated guidance and is seeking the views of, amongst others, Police and Crime Panels. This report proposes a response to the consultation. The Government is considering 3 areas for change, each of which is described and commented on below.

2. Clarity on what constitutes a complaint and vexatious complaints

2.1 The Government have received representations that the current Regulations do not make clear whether decisions by a PCC on matters of policy can be challenged through the complaints procedure. The Government propose to make clear that policy matters cannot be the subject of complaint as, in the Government's view, such matters are for the electorate to pass judgment on at an election.

2.2 Some Panels have told the Government that they are spending a disproportionate amount of time on dealing with vexatious complaints and the Government proposes to extend to Panels its recent changes to the rules governing vexatious complaints being handled by Forces.

2.3 In Kent, officers, in making decisions about the admissibility of a complaint, have taken a view that a complaint must relate to actions, omissions or decisions by the PCC personally. General criticisms of the PCC or critical comments about policy matters have not been considered as complaints. It is recommended that the Panel support any changes to Regulations to make this point totally clear.

2.4 In Kent there has not been a particular problem with vexatious complaints as the PCC's Monitoring Officer, with the support of the Panel, has taken the view that there are already provisions within the Regulations to enable them to be disapplied to a vexatious complaint. It is recommended that the Panel note the Government's proposal but point out that there are already adequate provisions that appear to work well.

3. Powers to investigate

- 3.1 At present Panels are expressly prevented from “investigating” a complaint. Some Panels have told the Government they have found that this makes it difficult for them to come to a resolution on complex matters so the Government proposes to amend the Regulations to permit investigations. It also asks for views on whether the PCC’s Monitoring Officer should be empowered to undertake investigations or whether the Monitoring Officer of one of the local authorities in the area covered by the Panel would be a more suitable person to undertake this role.
- 3.2 To date the complaints made against the Kent PCC have been relatively straightforward and the Sub-Panel has been able to reach a conclusion based on the complainant’s evidence, the PCC’s written response and the advice of the officers. However, if there was a more complex complaint the Panel should have the power to arrange for an investigation, although this should be proportionate to the matter being investigated. While it is reasonable (and consistent with Home Office guidance) for the PCC’s Monitoring Officer to undertake the initial role of deciding whether or not the Regulations should be applied to a complaint, it is recommended that the Panel take the view that it does not consider it would be appropriate for him/her to investigate or to commission an investigation. There could be a public perception of a lack of impartiality and the PCC’s Monitoring Officer would be in a very difficult position in investigating his/her PCC while still reporting to him/her. It is recommended that the Panel endorse the proposal that an investigator appointed by the Monitoring Officer in one of the local authorities in the area covered by the Panel would provide the necessary degree of independence.

4. Informal Resolution

- 4.1 Panels only have the power to undertake “informal resolution” of any complaint. The Government say that some Panels have interpreted this to mean that any resolution has to be agreed by both the PCC and the complainant, although the Regulations do not expressly prevent a Panel from making a recommendation. The Government propose to issue guidance to make clear that an agreed outcome is not essential and that Panels can recommend a resolution which they think appropriate, regardless of whether the PCC agrees with it.
- 4.2 It is recommended that the Panel support the idea that, wherever possible, a complaint should be resolved informally in a way that is satisfactory to both the complainant and the PCC. However, when agreed resolution is not possible, it is recommended that the Panel support the existence of clear guidance that a Panel may recommend an outcome and a power to require the PCC to give a written response to the Panel and the complainant if he/she is not prepared to implement the recommendation.

5. Recommendation

- 5.1 It is recommended that the Panel approve the comments in this report as its response to the Government’s consultation on the procedure for complaints against Police and Crime Commissioners.

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