

From: Matthew Scott, Kent Police and Crime Commissioner
To: Kent and Medway Police and Crime Panel
Subject: Police complaints - Update
Date: 17 June 2021



Introduction:

1. The [Policing and Crime Act 2017](#) introduced a significant number of changes to the police complaints system, including a range of requirements for Police and Crime Commissioners (PCCs). The overarching aim was to simplify the complaints and misconduct process and introduce more independence and oversight. However, because of the complexity of the legislation and delays within the Home Office due to the EU Exit, the relevant Regulations were not enacted until early 2020.
2. This paper outlines the relevant changes to the legislation, the impact on the PCC and the Office of the PCC (OPCC), as well as the wider effects on those departments responsible for handling complaints. In order to assist the Police and Crime Panel it also includes metrics for both Kent and other areas.

Legislation:

3. The Policing and Crime Act 2017 introduced:
 - changes to the way in which the Independent Police Complaints Commission (as was) operated and saw its transformation into the Independent Office for Police Conduct (IOPC);
 - changes to the police discipline process; and
 - a new 'super complaint' process.
4. The definition of a complaint was also changed to 'any expression of dissatisfaction with the police service', thereby significantly broadening the scope of the police complaints system.
5. The impact for 'Local Policing Bodies' (i.e. PCCs) was significant. Previously, appeals against the outcome of low-level complaints were handled by the Professional Standards Department (PSD) within the police force itself. Understandably, this gave the perception that the police were 'marking their own homework' and amongst the public engendered the feeling that there was not the required degree of independence.
6. The legislation passed this function to PCCs, but as a consequence it has brought them into the operational sphere of policing. There were three options: to take on responsibility for appeals, now termed 'reviews' (which was mandated); to do this, and also take on the role of updating complainants (optional); and to take on all aspects of lower-level complaint management and interaction with complainants, with the exception of any investigations (optional).

Relevant Review Body:

7. In Kent, similar to approximately 90% of PCCs, Mr Scott decided to only take on responsibility for reviews. This was on the grounds that it would be sensible to take on the mandatory aspects and build them into business as usual, before considering whether it was necessary or appropriate to take on further functions. It should be noted that the IOPC consider Kent Police's PSD to be a high performing department with very few concerns; in addition, taking on further functions would require the transfer and/or hiring of a significant number of additional staff.
8. Owing to both the sudden introduction of the Regulations with only a few weeks' notice - the Home Office had indicated that there would be six months' notice - and the vetting requirements, work on conducting reviews was initially absorbed within the OPCC until the newly appointed Independent Reviewer of Complaints started in September 2020.
9. One notable point is the increase in volume – a theme reflected throughout this paper. It was very difficult to assess how many reviews the OPCC would receive as the complaints legislation had changed significantly, including the definition, and it could not be assumed that the number would be similar to that handled by PSD in the previous year.

10. To offer some comparison, PSD handled circa 80 appeals last year and the OPCC has handled 145 reviews this year; this is despite the fact that for the first few months very few reviews were received as any complaints recorded before the change in legislation were handled under the previous system.
11. Currently the average number of reviews each month is increasing and regional colleagues have experienced a similar trend: Surrey 160 since February 2020; Hampshire and Isle of Wight 172; Essex closer to 200, Sussex 234 and TVP around 300. Most areas report a 5-10% upheld rate.
12. Kent is certainly not alone. The Mayor's Office for Policing and Crime built their Review Team on a predicted increase of around 25%; they have in fact seen an increase of over 60%. Regional colleagues in the South East have seen increases in the number of reviews of 50-150%, creating significant backlogs. In Kent however, the OPCC has managed to keep on top of the numbers with most complainants receiving a response within six weeks.

Volume:

13. All organisations and departments involved in complaints have reported a significant increase in correspondence over the past year. This is down to the change in legislation, the pandemic which has led to numerous complaints and also specific issues such as the response to Black Lives Matters.
14. For Kent's PSD, the average number of complaints in the year before the legislative changes was 191 per month; in the past year it has been 314 with some months as high as 449. As highlighted above, in turn this has led to a significant increase in requests for a review.
15. It is a similar picture for the OPCC. The PCC is the 'Appropriate Authority' for complaints about the Chief Constable. In the year before the changes were brought in there were 11 complaints; in the past year there have been 32. There are also two additional complicating factors:
 - Previously, complaints were only 'referred' to the IOPC where there was an indication of misconduct; now, the test for referral is based on the wording alone. Therefore, any mention of corruption, violence, or misconduct means that the matter must be referred to the IOPC, even where the actual matter under consideration is very minor, such as not replying to a letter, or is demonstrably fantastical. The completion of the forms required adds a further layer of bureaucracy.
 - OPCCs are now also required to use the complaints database Centurion, which is used by nearly every force and OPCC in the country to fulfil the new reporting requirements to the IOPC. This is a complex system and adding all Chief Constable complaints and requests for reviews is yet another demand on OPCC resources.
16. The management of repeat, high volume complainants also creates difficulties. For example, one complainant has contacted the OPCC on several hundred occasions over the past year, regularly making extreme allegations about a wide range of public figures, including the Chief Constable. These all have to be assessed and referred to the IOPC. The OPCC has decided to take a pragmatic approach and to combine these into one referral and one complaint, as well as instigating alternative methods for effectively managing the individual.
17. Correspondence to the OPCC has also increased significantly. In the year before the change in legislation, there were around 400 complaints received, which were handled as appropriate. In the year after the legislative change and covering the period of the pandemic, it was around 1,000. These are individual cases and do not reflect the number of contacts or amount of correspondence received; nor do they reflect issues such as Black Lives Matter, or some animal welfare matters where several hundred individual contacts/pieces of correspondence were logged as one case. A lot of these matters are required, by law, to be passed directly to PSD which is another driver for the increase in numbers.
18. To manage the OPCC increase in correspondence two new Caseworkers have been recruited; they will also provide resilience in the handling of complaints and undertake administrative duties within the office.

Holding to account, training and future plans:

19. There are a number of ways that the Chief Constable/Force are held to account, and more will be developed in the future.
20. A monthly meeting is held between the Head of PSD and the OPCC Head of Standards and Regulation. These are based on the wide range of high level, confidential documentation produced for the Head of PSD, which cover all aspects of the department, from complaints, to vetting, misconduct and counter corruption. They include data on numbers, timeliness and staffing. The fact that these documents are shared with the OPCC demonstrates the openness and transparency of PSD and the strong working relationship that exists.
21. A number of meetings are held with representatives of the IOPC. At the operational level, the Oversight Liaison Manager for the South East attends the bi-monthly Regional OPCCs meeting. This allows the various OPCC Heads of Department to discuss current cases and any matters of concern, both with each other and with the IOPC. The Oversight Liaison Manager also attends a regular meeting in Kent - and in all South East Region areas - with representatives from PSD and the OPCC. At the strategic level, the Regional Director attends a meeting twice a year with the PCC and senior members of staff. This provides the opportunity to discuss issues affecting the OPCC and also the performance of Kent Police's PSD. All these meetings enable the OPCC to get the broadest external assurance as to the Force's performance.
22. There is also an Annual Report on complaints performance - as well as counter corruption, whistleblowing and fraud - to the Joint Kent Police and PCC Audit Committee. This provides further examination and external assurance of performance. In addition, a senior member of OPCC staff continues to attend the Home Office Working Group on complaints, which provides an overview of national performance; allows issues with the complaints system to be explored; and ensures that the OPCC is kept up to date on all new or proposed developments.
23. Further new legislative measures also put in place a framework for performance monitoring and holding the Force to account. Both PSD and the IOPC are required to send formal letters to the PCC when any of their cases reach the 12-month mark. This was instigated to ensure a focus on timeliness; the fact that some cases have taken years to complete has been an issue for many parties involved in complaints and misconduct matters, and the letters enable PCCs to have an effective overview of this issue.
24. The Policing Protocol Order 2011 was amended some years ago to formally state that PCCs have 'the legal power and duty to...monitor all complaints made against officers and staff'. In addition to this, an amendment was made to The Elected Local Policing Bodies (Specified Information) Order ([The Elected Local Policing Bodies \(Specified Information\) \(Amendment\) Order 2021](#)) which was enacted on the 31 May 2021. This states that the PCC must publish:
 - '7C. In relation to complaints
 - a) the most recent-
 - i) quarterly data in relation to that police force;
 - ii) annual statistics report, published by the Independent Office for Police Conduct;
 - b) a report setting out-
 - i) details of how the elected local policing body has fulfilled its duty under—
 - aa) in the case of police and crime commissioners, section 1(8)(ca) of the 2011 Act (police and crime commissioners) to hold the chief constable to account for the exercise of the chief constable's functions under Part 2 of the Police Reform Act 2002(5) in relation to the handling of complaints;
 - ii) an assessment by the elected local policing body of its performance in exercising its functions under paragraph 30(1)(b) of Schedule 3 to the Police Reform Act 2002 (reviews: the relevant review body)'
 25. As this has only just been enacted, and the relevant guidance published on the 31 May, the OPCC is currently considering how best to fulfil this requirement.

26. Looking to the future, a range of other processes are being actively considered to enhance the analysis and hold to account role of the PCC. These include:

- Formal reporting to the PCC's Performance and Delivery Board.
- Re-establishing the monthly audit of complaints and misconduct files (currently suspended due to Covid-19). This would include a focus on complaints relating to discrimination, as per the IOPC's long-standing focus and recently re-iterated in a letter to PCCs.
- Six-monthly analysis of review outcomes, to identify common themes.
- Regular meetings between the Independent Reviewer of Complaints and PSD to track actions in response to OPCC recommendations.
- Analysis of complaints and correspondence received to better inform the PCC of the public's key issues.
- Re-establishing the internal working group, covering the Chief Constable's Office, Legal Services, Mental Health Team, Disclosure Department and the OPCC to better manage shared, repeat complainants.

Recommendation:

27. The Kent and Medway Police and Crime Panel is asked to note this report.