

COMPLAINTS PROCEDURE

A BACKGROUND

1. This Procedure has been adopted by South Yorkshire Police and Crime Panel ('the Panel') to comply with the [Elected Local Policing Bodies \(Complaints and Misconduct\) Regulations 2012](#) ('the Regulations') which are issued under the Police Reform and Social Responsibility Act 2011.
2. The Complaints that the Panel handles are:
 - **All non-criminal complaints directed against the Police and Crime Commissioner** ('the PCC') and if appointed, any Deputy Police and Crime Commissioner¹; and
 - **Criminal complaints and conduct matters that are referred back to the Panel by the Independent Office for Police Conduct Office for Police Conduct (IOCC)** which are then to be treated by the Panel as a non-criminal complaint.
3. The Panel has a general duty to ensure that it is kept informed about complaints and conduct matters against a relevant office holder (i.e. the PCC) for the Panel's police area and what is done under the Regulations to deal with them. The Panel must also ensure that it is kept informed about any obligations to act (or not act) that have arisen under the Regulations and have either not yet been complied with or have been contravened.

B WHAT THIS PROCEDURE DOES NOT COVER

4. This Procedure does not cover:
 - a) Complaints about the merits of a decision, for example where somebody disagrees with a policy the PCC has introduced. The Panel can consider whether a decision was taken properly and in accordance with procedures, but it cannot substitute another view for that of the PCC².
 - b) Complaints made by serving employees of the Office of the Police and Crime Commissioner.
 - c) Complaints made by serving employees of South Yorkshire Police (operational and support staff).
 - d) Complaints about Police and Crime Commissioner Support staff

Both b) and c) will be dealt with through the internal procedures, including 'whistleblowing' (Public Interest Disclosure Procedures).

5. The PCC has to be satisfied that the Chief Constable has in place a system that enables complaints against police officers to be dealt with and it is not part of the Panel's role to look at

¹ where this document refers to the PCC it must be interpreted throughout as to applying also to the DPCC

² This may also exclude PCC decisions more properly challenged by way of judicial review.

individual complaint cases against either police officers or the delivery of operational policing matters.

6. **Complaints involving police officers or police staff** should be directed to:

South Yorkshire Police
Force Professional Standards Department
Unit 20
Sheffield 35A Business Park
Churchill Way
Sheffield
S35 2PY

email: Complaints_and_Discipline@southyorks.pnn.police.uk

Alternatively, you can contact the Independent Office for Police Conduct ('IOPC') directly at:

<https://www.policeconduct.gov.uk/>

Tel: 0300 020 0096

7.. **Complaints involving Police and Crime Commissioner's Support staff** - If your complaint is about an individual member of the Police and Crime Commissioner's support staff, including Independent Custody Visitor and Independent Advisory Group (other than the Chief Executive and Solicitor), please write or e-mail the Chief Executive and Solicitor at:

Chief Executive and Solicitor
The Office of the Police and Crime Commissioner
Carbrook House
Carbrook Hall Road
Sheffield S9 2EH

E-mail: complaints@southyorkshire-pcc.gov.uk
Tel: 0114 296 4150

If your complaint is against the Chief Executive and Solicitor, please write or e-mail the Police and Crime Commissioner at:

Police and Crime Commissioner
The Office of the Police and Crime Commissioner
Carbrook House
Carbrook Hall Road
Sheffield S9 9EH

E-mail: complaints@southyorkshire-pcc.gov.uk
Tel: 0114 296 4150

C. THE AIMS AND OBJECTIVES OF THIS PROCEDURE

8. This procedure aims to:

- Describe the way complaints against the PCC and the Deputy PCC will be handled by the Panel.
- Reassure the public those complaints against the PCC is dealt with fairly and appropriately.
- Reassure the public that any complaint relating to a criminal offence will be referred by the Panel to the IOPC.

D. DEFINITIONS AND INTERPRETATION

9. In these Procedures the following definitions apply:

‘Panel’ means the Complaints Panel appointed by the Police and Crime Panel to handle complaints on its behalf.

‘Legal Adviser’ means the Legal Adviser for the Panel who will be the Monitoring Officer or the appointed officer on behalf of Barnsley MBC (who are the Panel’s host Authority).

‘Complaint’ in this Procedure relates to complaints about the conduct of the PCC.

‘Conduct’ means the way things are or have been done or not done, acts or omissions, statements that are or have been made and the way a decision or decisions have been taken.

10. The Regulations divide complaints into three categories; a complaint, a serious complaint and a conduct matter. These are defined as:

- A ‘complaint’ is any complaint about the conduct of the PCC.
- A ‘serious complaint’ is a complaint which alleges that the PCC has committed a criminal offence.
- A ‘conduct matter’ is where there exists an indication that the PCC may have committed a criminal offence and this comes to light other than by way of complaint.

11. To assist at the end of this document attached to these procedures is a complaint handling flowchart.

E. INITIAL HANDLING OF COMPLAINTS

Submitting a Complaint

12 The Regulations enable a Panel to delegate certain powers and duties and wherever these are delegated, there must be a clear record of that delegation setting out to whom the delegation has been made, when it was made, its basis and any limitations. Upon adoption of this Complaints Procedure the Panel has delegated its authority for the initial handling of complaints, together with other aspects of the process, as set out in these procedures, to the Legal Adviser. Where a complaint has been made directly to the PCC or Chief Constable they must forward it to the Panel’s Legal Adviser.

If you wish to make a complaint against the PCC you will need to contact the Legal Adviser:-

PCP Legal Adviser
Barnsley MBC
Town Hall
Church Street
Barnsley S70 2TA

Email: JAGU@barnsley.gov.uk

13. When submitting a complaint please provide your full postal address and as much background and information as possible, being specific regarding exactly what was allegedly to have been said or done, the date it happened, and whether there were any witnesses.

Timescales

14. Wherever possible complaints will be acknowledged within **five working days**, and concluded within **eight weeks** if dealt with through the informal resolution process (see below). However, these are target times and this procedure is designed to be flexible and accordingly timescales will reflect the nature and complexity of the complaint.

Duty to preserve evidence

15. Where the Panel becomes aware of a complaint or conduct matter about the conduct of the PCC, the Panel must take all appropriate steps to obtain and preserve evidence about the conduct in question. The IOPC may give the Panel directions for obtaining and preserving evidence. The Panel must comply with any such directions
16. It is the duty of the Panel, the PCC and Chief Constable to provide the IOPC with any information, documents, or evidence required by the IOPC for it to carry out its functions in the form, manner and timescale set out by the IOPC.

Notification and recording of complaints

17. If the complaint relates to another PCC and police force area, then the Panel for that area must be notified and the complaint will be passed on to them. If the Panel, PCC or Chief Constable decides not to tell the correct Panel about a complaint, they must tell the complainant about the decision to take no action and the grounds on which the decision was made.
18. If the complaint relates to the South Yorkshire PCC **it will be recorded unless the complaint has been, or is already being, dealt with by criminal proceedings or the complaint falls within one of the exemptions or has been withdrawn.**
19. 'Recording' means that a record is made of the complaint (for example, in a complaints database). This means that it has to be formally handled in accordance with legislation and under the provisions set out in IOPC guidance. Complaints will be recorded in a register which will allow the Panel to track progress of the complaint and report on complaints data.
20. If it is apparent at the time for recording a complaint that one of the exemptions applies to that complaint, (see paragraph 31 below) then the Legal Adviser may decide not to record the complaint. Instead the Legal Adviser will note that the need and option to record the complaint was considered and the reasons why it has not been recorded and any other actions taken.

The complainant will be informed of the decision not to record, accept or to take any action regarding the complaint explaining the reasons and grounds for making that decision within a reasonable time period proportionate to the nature and complexity of the complaint.

21. If the complaint is recorded, the complainant and the PCC will be provided with a copy of the record of complaint.

However:

- The record may be altered to protect the identity of the complainant or any other person.
- In some cases the Legal Adviser may decide not to provide a copy of the record, if doing so might prejudice any criminal investigation or pending proceedings or would in some other way not be in the public interest. Any decision not to provide the record will be kept under regular review. If a copy of the complaint is given to the PCC, the identity of the complainant or any other person may be kept anonymous.

Options available to the Panel.

22. There are 3 options available to the Panel:

- A 'serious complaint' or 'conduct matter' **will be referred to the IOPC**;
- A complaint can be **referred to the Panel for informal resolution** (see below);
- A decision can be taken to **take no action**.

Notification and recording of conduct matters

23. If an issue arises because of a media report or, for example, by a notification of legal proceedings against the PCC, and it appears that the PCC may have committed a criminal offence, this is referred to as a '**conduct matter**'.
24. A 'conduct matter' is where no formal complaint has been received, but the matter should be treated in the same way as if there was a 'serious complaint'.
25. Such 'conduct matters' will be recorded in the same way as a complaint unless it is satisfied that the matter has already been recorded as a complaint or the subject of past or present criminal proceedings.
26. 'Recording' means that a record is made of the conduct matter in a conduct matter database. This means that it has to be formally handled in accordance with the legislation. Conduct matters will be recorded in the register (which can be readily accessed and examined by the IOPC, if required). This will allow the Panel to track progress of the conduct matter and report on data.
27. A conduct matter must be recorded where either the Panel is told that civil proceedings against the PCC have been or are likely to be brought by a member of the public and which appear to involve or would involve a conduct matter or where a conduct matter comes to the panel's attention in any other case.

28. A conduct matter must be referred to the IOPC. If the IOPC becomes aware of a conduct matter which has not been recorded by the Panel, the IOPC may direct the Panel to record the matter and the Panel must do so.

Reference to the Independent Office for Police Conduct (IOPC)

29. The Panel is not responsible for investigating or determining whether a crime has been committed. The Legal Adviser will decide which complaints may amount to criminal conduct and therefore should be referred to the IOPC. The Legal Adviser may take advice from the IOPC before making the referral.
30. Any ‘conduct matter’ and any ‘serious complaint’ (i.e. a complaint about conduct that constitutes or involves, or appears to, the commission of a criminal offence) **must be reported to the IOPC as soon as possible.**
31. The Panel must refer the following to the IOPC:
- i. all recorded conduct matters
 - ii. all serious complaints (i.e. a complaint which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence)
 - iii. any serious complaint or conduct matter where the IOPC has told the Panel that it requires the matter to be referred
32. In terms of complaints, the Panel will make an initial assessment of the complaint (before making a referral to the IOPC) to decide whether or not it meets the definition of a “serious complaint”. Any information and evidence that is readily available should be obtained to help with the assessment. This initial assessment, and the information and evidence considered in that assessment, should be included in the referral papers. Only complaints that are assessed as “serious complaints” should be referred to the IOPC
33. Referrals should be made as soon as possible and no later than the close of business the working day after the Panel becomes aware that the matter should be referred. The Panel will complete IOPC referral form 7.1 with the details of the complaint or conduct matter it wants to refer in accordance with the IOPC guidance³. It should also include its reasons as to why the matter is a serious complaint, and any supporting documentation.
34. The complainant and the person complained about should be notified, unless doing so might prejudice a future investigation.
35. It is possible for the IOPC to decide not to investigate a matter but to refer any complaint back to the Panel for informal resolution. The IOPC shall notify the complainant and the PCC that the matter has been referred back to the Panel. The complaint is then treated as a non-criminal complaint by the Panel.

³ Operational Advice Note to Police and Crime Panels 2018 - https://policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/complaints_guidance_for_police_and_crime_panels.pdf

Investigations by the IOPC

36. If the IOPC decide to carry out a full investigation, the IOPC become responsible for producing an Investigation Report and for providing that report to the complainant and further, any publication of that report will be a matter for the IOPC. The outcome of an IOPC investigation **is not a matter that can be considered by the Panel.**
37. When a complaint or conduct matter has been referred to the IOPC, the IOPC will decide whether it is necessary for an investigation to take place. If the IOPC decides that an investigation is necessary, it will decide whether it should be a managed investigation or an independent investigation. The IOPC will tell the police and crime panel of its decision.
38. An independent investigation is an investigation which is carried out by the IOPC. In independent investigations, IOPC investigators have the powers of a police constable.
39. A managed investigation is an investigation which is carried out by a police force under the direction and control of the IOPC.
40. Every panel, PCC and chief officer has a duty to provide the IOPC, or in a managed investigation the person appointed to investigate, with any assistance and co-operation that is reasonably required to carry out an investigation under the Regulations.
41. The Panel will not have a role in the decision-making about any discontinuance by the IOPC – this decision is for the IOPC. Where the IOPC decides an investigation should be discontinued, it will tell the Panel.
42. When an investigation is discontinued, the IOPC may make certain directions to the panel. Any direction made will be set out in a letter to the panel. The directions which the IOPC may make to the panel are:
 - to require the chief officer to produce an investigation report on the discontinued investigation and take any other subsequent steps
 - if the investigation related to a complaint, requires the panel to dis-apply the requirements of the regulations, as regards that complaint
 - if the investigation relates to a complaint, requires the panel to handle the complaint by way of resolution as set out in Part 4 of the regulations
 - to require the panel to handle the matter in whatever manner the panel thinks fit

The panel must comply with any directions given to it.

43. If the IOPC's investigation report is referred to the CPS, the IOPC will tell the Panel and any other person entitled to be kept informed of the referral. It will also be the duty of the IOPC to tell the Panel and any other person entitled to be kept informed if the CPS decides to bring criminal proceedings in respect of any matters dealt with in the report.

Circumstances when the Panel does not need to deal with a complaint

44. The Legal Adviser can decide not to refer the complaint for resolution, or to take no action at all, in the following circumstances: -
- A complaint by a member of the PCC's staff, arising from their work
 - A complaint that is more than 12 months old where there is no good reason for the delay or the delay would be likely to cause injustice
 - A complaint about conduct that is already the subject of another complaint
 - An anonymous complaint
 - A complaint which is vexatious, oppressive or otherwise an abuse of process for dealing with complaints
 - A repetitious complaint. For example the complaint is substantially the same as a previous complaint; or it concerns substantially the same conduct; or it contains no fresh allegations or evidence
 - Complaints where further information has been requested from the complainant, and no response has been received for six months after the date of the original submission, will be considered closed.
45. The complainant will be notified if the decision is taken not to deal with his/her complaint.

Withdrawn complaints

46. A complainant or a person acting on his or her behalf can withdraw or discontinue or state that they do not want any further action to be taken in relation to their complaint at any time, by notifying the Panel in writing (addressed to the Legal Adviser) and signing the notification. This withdrawal must be recorded, and if the complaint has been referred to the IOPC they must be updated too.
47. If the complaint in question has been referred to the IOPC and has not been referred back to the Panel (i.e. it is either still under consideration by the IOPC or the IOPC has decided a managed or independent investigation should take place) the Panel must tell the IOPC of the withdrawal of the complaint. The IOPC will then decide whether the withdrawn complaint should be treated as a conduct matter and will tell the panel of the decision.
48. In any other case, the Panel must consider whether the withdrawn complaint relates to conduct which should be treated as a conduct matter (i.e. it constitutes or involves, or appears to constitute or involve, the commission of a criminal offence). If so, it must then be recorded and treated as a conduct matter. If not, no further action needs to be taken under the regulations in relation to the complaint.
49. The Panel may decide not to treat the complaint as withdrawn, but to treat it as a 'conduct matter' and refer it to the IOPC in accordance with the procedure set out in paragraph 31 above.

50. If a complainant has indicated that he or she wishes to withdraw a complaint but does not provide signed written notification, the Panel must write to the complainant to find out whether he or she wishes to withdraw the complaint. If the complainant responds and indicates that he or she does wish to withdraw the complaint, or if there is no response within 21 days, the complaint should be treated as if a signed written notification of withdrawal had been received. If the complainant responds that he or she does not wish to withdraw the complaint, the complaint must continue to be dealt with under the Regulations.
51. The PCC will be kept informed, unless to do so might prejudice a criminal investigation or pending proceedings, or would in some other way be contrary to the public interest.
52. The Panel must tell the PCC complained against if:
 - the Panel records the withdrawal of a complaint or the fact that the complainant does not want any further action to be taken in relation to his or her complaint
 - the Panel decides that a complaint should be treated as a conduct matter
 - the IOPC decides that a complaint should be treated as a conduct matter
 - the complaint will no longer be dealt with under the Regulations due to the withdrawal

Conduct occurring outside England and Wales

53. The PCC is under a duty to notify the Panel via the Legal Adviser, of any allegation, investigation or proceedings relating to his/her conduct outside England and Wales. The Panel can take whatever action it thinks fit in these circumstances. This decision will be made by the Legal Adviser in consultation with the Chair of the Complaints Panel.

Informal Resolution of Complaints

54. The Complaints Panel will deal with the informal resolution of complaints. The Legal Adviser will decide which complaints should be referred to the Complaints Panel for informal resolution.
55. If a complaint is not referred to the IOPC or has been referred back by the IOPC then unless the complaint falls under paragraph 31 above, it may be dealt with by informal resolution.
56. Informal resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant, without an investigation or formal proceedings taking place. It is not a disciplinary process, and does not involve the imposition of any sanction. It is a flexible process that may be adapted to the needs of the complainant and reflect the individual complaint.
57. If a complaint has already been satisfactorily dealt with by the time it comes to the Panel's attention, the complaint may be considered resolved and no further action taken. The Legal Adviser can take this decision following consultation with the Chair of the Complaints Panel.
58. If action is to be taken the Legal Adviser will make arrangements following consultation with the Chair of the Complaints Panel.
59. The Legal Adviser will write to the complainant, setting out timescales; provide details of the informal resolution procedure; and giving the complainant and the PCC an opportunity to make further written comments in support of the complaint (**allowing two weeks to respond**).

60. Any complaint may be remitted at any time for informal resolution to be undertaken by the Panel itself, if the Legal Adviser, the Chair of the Complaints Panel considers that this may lead to a more satisfactory resolution of the complaint. The complainant or the PCC can also request remittal to the Panel.
61. Informal resolution will be discontinued if the IOPC notifies the Legal Adviser/the Panel that they require the complaint to be referred to them, or if the Legal Adviser decides the complaint should be referred to the IOPC under paragraph 31 above.

Requirements for Informal Resolution by the Panel

62. The intention is for the procedure to be flexible so it can be adapted to individual circumstances.
63. However, there are some formal requirements which are set out below:
 - If a complaint is dealt with by way of informal resolution **the Panel does not investigate the complaint**, and the duty to preserve evidence does not apply once informal resolution is initiated.
 - The Panel has power to require the PCC to provide information and documents to them and to attend to answer questions. **This does not amount to an investigation**. The Panel cannot gather information about or corroborate the complaint by taking statements from witnesses or by seeking documents from other parties.
 - The complainant and the PCC must be given the opportunity to comment in writing on the complaint as soon as is practicable.
 - Any failure by the PCC to comment on the complaint when invited to do so will be noted in the written record.
 - The Legal Adviser shall send to the Panel the relevant papers and pertinent details of the complaint, **5 working days** before the meeting

F. THE PANEL MEETING PROCEDURE

64. The complainant and the PCC, the Chief Executive or a member of staff from the OPCC *may*, in the absolute discretion of the Panel, be invited to the meeting. However, neither the complainant nor the PCC is entitled to speak in respect of the complaint at that meeting. However, they *may* be invited to speak at the discretion of the Chair.
65. The Panel will normally meet within **six weeks** of a complaint being made to decide upon an informal resolution.
66. The matter will be considered by the Panel in private - which means that the public and press will be excluded from this part of the meeting when considering the informal resolution in accordance with the rules on access to information as set out by the Local Government Act 1972 as amended.
67. The Panel will **first** consider whether the complaint has been dealt with satisfactorily and, subject to any written representations by the complainant, may decide to treat the complaint as having been resolved. In such a case, the reasons of the Panel will be recorded and notified to the parties in writing.

68. If the Panel considers the complaint has not been dealt with satisfactorily, the Panel will decide what course of action may assist in resolving the complaint, and any recommendations it may wish to make in this respect. This may include:-
- a) An explanatory letter to the complainant written by the Chair or an officer of the Panel (on behalf of the Panel);
 - b) An explanatory letter being written by the Legal Adviser;
 - c) Requesting that the PCC or one of his or her staff write a letter of explanation to the complainant
 - d) A suggested change to the PCC's policy; or
 - e) Requesting the PCC issue an apology to the complainant. This could be face to face or in writing. No apology can be tendered on behalf of the PCC unless the PCC has admitted the alleged conduct and has agreed to the apology.
69. The decision of the Panel will be recorded as soon as practicable, normally within **five working days** after the process is completed.
70. The outcome of the meeting will be notified to the complainant, the PCC, the PCC's Chief Executive and the Police and Crime Panel. The matter will then be closed.

The outcome of informal resolution

71. Informal resolution is **not a disciplinary process**, and does not involve the imposition of any sanction; ultimately the PCC is held accountable by the ballot box. However the Panel *may* in its absolute discretion publish a report or recommendation.
72. The aim of the informal resolution process is to **resolve the complaint to the satisfaction of the parties involved**. For example, the person complained against may agree that an apology would be appropriate, an explanation might resolve the concern, or an agreement on how to move forward may be reached following mediation.

Publishing the outcome of informal resolution

73. A record of the outcome of the informal resolution must be made as soon as practicable after the process is completed. Copies must be provided to the complainant and the person complained against.
74. The record of the outcome of informal resolution can be published if it is considered to be in the public interest. This decision rests with the Legal Adviser in consultation with the Chair of the Panel. Before doing so the complainant and the person complained against will be invited to comment, and their views will be considered.

Keeping records

75. The Panel will keep a record of
- every complaint received, regardless of whether the complaint is recorded;

- every conduct matter it has recorded; and
- every exercise of a power or performance of a duty under the Regulations

Complaints records will be kept until 12 months after the PCC and/or Deputy PCC leave office. The record will include the name of the complainant, details of the complaint and how the matter has been dealt with.

76. Summary reports regarding complaints dealt with under this procedure will be submitted to the Panel on a regular basis and the Panel will also assist the IOPC where they adhered to the guidance set out in the IOPC's statutory guidance on data collection and monitoring in respect of matters dealt with under the Regulations.
77. In order to comply with the GDPR requirements the Panel will only retain the name and address of the complainant for a period of 6 years after which the complaint file will be destroyed (though a record of the type of complaint may be retained if required).

Appeals

78. There is no right of appeal to an informal resolution. However, a complaint can be made about the way the matter was handled (but not the outcome), for example if it was unjustifiably delayed or if there was a failure to record a complaint. In the first instance the issues relating to the alleged failure of process should be addressed to the Chair of the Panel:

The Chair of the Police and Crime Panel

Email: PCP@syjs.gov.uk

79. The Chair with the assistance of the Legal Adviser will respond to that complaint normally **within four weeks**. Again, this is a target date which may vary to reflect the complexity of the matter.
80. If the complainant is still dissatisfied and if there has been a clear administrative error then the matter can be referred to the **Local Government and Social Care Ombudsman** at:
- <http://www.lgo.org.uk>