

**Performance and Resources Scrutiny Programme 2019****Report to: the Office of the Police, Fire and Crime Commissioner for Essex**

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## Executive Summary

As part of the Improving Police Integrity programme the police complaints and disciplinary systems for policing are currently in the third phase of reform.

Phase 1 related to the misconduct regulations applying to former officers and the introduction of the barred and advisory lists.

Phase 2 related to the transition of the IPCC to the IOPC and the introduction of legislation enabling designated bodies to make super-complaints<sup>1</sup>.

Phase 3 relates to the introduction of the following:

- Police (Conduct) Regulations 2019
- Police (Complaints and Misconduct) Regulations 2019
- Police (Performance) Regulations 2019
- Police Appeal Tribunal Rules 2019

Phase 3 will impact on the way all complaint, misconduct and death or serious injury (DSI) investigations are handled.

The consultation period has now closed in relation to draft regulations and IOPC statutory guidance and these are currently subject of consideration. Following Home Office discussions with the Police Integrity Reform Implementation Governance Group (which includes representatives from key stakeholders including the NPCC, APCC, IOPC, the College of Policing and HMICFRS) it was decided that all delivery partners would need up to 6 months to re-mobilise once assurances around the timeline for laying regulations could be given.

On 31<sup>st</sup> July 2019 the Home Office advised forces that they are now proceeding on the basis that they will be able to lay the regulations in early December 2019, with new legislation and guidance coming into force at the end of January/early February 2020 (exact date to be confirmed).

The regulations and guidance are in the process of being finalised and final drafts are expected to be shared in September 2019. Force have been advised that, for the purposes of preparation, drafts that were widely circulated in 2018 are not expected to change significantly. It is these drafts that forces are currently working from and this paper is published based upon the content of those drafts provided 2018.

This paper aims to update on some of the most significant changes to reforms, the implications of those changes and the current status of force preparations.

## Summary of key changes

The below summarises the most significant changes with tables detail current procedures together with the key changes that are brought about by reforms:

Complaint Recording	Reform
<p>Only schedule 3 complaints are recorded. Complaints must be recorded within 10 days.</p> <p>Where an expression of dissatisfaction can be resolved to the satisfaction of the complainant '<i>there and then</i>' there is no requirement to record.</p>	<p><b>All</b> expressions of dissatisfaction are to be logged on a police system within 2 days.</p>

This is one of the most significant changes to current working practices in relation to complaints. Under new legislation there is a requirement for **all** expressions of dissatisfaction to be logged on a police system within 2 days. An early indication from the Home Office is that following consultation this may be extended to 5 days. This includes all expressions of dissatisfaction raised, not just those received by PSD. This

<sup>1</sup> Organisations can apply to become designated bodies to raise systemic issues in policing where a feature of policing by one or more force is/appears to be significantly harming the interests of the public.

change will have an impact on departments outside of PSD e.g. low levels expressions of dissatisfaction received by the Quality of Service (QoS) Team, and dissatisfaction incidents on STORM.

**Progress Update:** Procedures to ensure all expressions of dissatisfaction coming into force are directed to PSD are now being developed to ensure compliance with assessment, recording and allocation criteria. Whilst this will result in an increased demand within PSD this is considered the most efficient and effective method to achieve compliance whilst maintaining service delivery.

Complaint Handling	Reform
Recorded complaints are allocated to an Investigating Officer (IO) to progress and make contact with complainant	The complainant is to be contacted within 5 days by initial complaint handler to seek views on how complaint should be handled, explain process, and inform them of person handling the complaint
PSD assess whether disapplication, discontinuance or non-recording is appropriate	Disapplication, discontinuance and non-recording decisions will no longer be available
PSD assess whether local resolution (LR) or local investigation (LI) is suitable.	Local resolutions will no longer be available. Schedule 3 complaints must be handled in a reasonable and proportionate manner; - local investigation, - otherwise than by investigation
Finalisation letters are sent once determinations made or LRs finalised which include right of appeal. The Appeal process commences when LR/LI is finalised.	Finalisation letters must be sent within 5 working days of determinations. A Review process then commences.
Complainant provided copy of complaint recorded	Complainant and the person complained about to be provided copy of complaint
Mode of Investigation (MOI) are currently local, supervised, managed and independent	MOI will change to local, directed and independent
Misconduct is defined as breach of the Standards of Professional Behaviour (SoPB)	Misconduct definition is changed to 'Breach of SoPB so serious as to justify disciplinary action' (i.e. written warning and above)
Where complaints are withdrawn the case is updated and filed	Where a complaint is withdrawn the withdrawal is to be confirmed in writing. If not confirmed in writing the AA must write to complainant to determine how they wish to proceed. If complainant replies, or does not reply within 28 days the complaint can be withdrawn. Letter must be sent via recorded delivery

**Progress Update:** These changes will be accommodated by amending the PSD administrative processes. All relevant document to support changes have already been prepared including complaint assessment documentation, complaint forms (including guidance documents) and letters sent to complainants at various stages of the process.

Appeals	Reform
The Relevant Appeal Body (RAB) for complaints is either the Force or the IOPC	The Relevant Review Body (RRB) will be either the OPFCC or the IOPC

**Progress Update:** All relevant forms have been amended to reflect changes in terminology. PSD and the OPFCC have been working together in support of these changes, with the development of process charts and template documents for the OPFCC use as the new RRB. Training has commenced to support OPFCC staff in handling of reviews, and in particular guidance relating to what is considered to be a 'reasonable and proportionate' investigation. Access to the force complaints system, Centurion, for relevant OPFCC staff has already been provided. Further support, training and guidance will continue to ensure a smooth transition of appeal/review handling following implementation of the legislation.

IOPC Referrals	Reform
Referrals to IOPC are sent in writing via a national form. They are either <i>mandatory</i> , <i>voluntary</i> , or <i>called in</i> by the IOPC	If necessary, referrals can be made via an IOPC on call number. In addition to <i>mandatory</i> , <i>voluntary</i> and <i>call ins</i> , the IOPC will have the power to treat matters as having been referred ( <i>Power of initiative</i> )

**Progress Update:** All referrals by Essex Police will be made in writing. Depending on circumstances, referrals can be made by various staff within PSD. A process map has been developed to ensure a consistent approach.

Available Outcome	Reform
Management action and management advice are available sanctions.	Management action and management advice will no longer be available. Performance Requiring Improvement (PRI) under the Reflective Practice Review Process (RPRP) will be introduced

This is another significant change to the way complaint and misconduct matters are handled and will be used to address matters which do not reach the level of the newly defined 'misconduct', but where practice requires improvement.

The RPRP focuses learning and development, identifying and addressing lessons learnt by the officers involved, their line management, and the force.

RPRP can commence at various stages of the complaints/misconduct process following identification of PRI. RPRP can commence following the outcome of a complaint investigation where no regulations have been served, severity assessment of misconduct, or AA determination.

**Progress Update:** Relevant forms and guidance documents have been developed for RPRP which is supported by a new draft force procedure.

A workshop with HR, PIU and PSD representatives from Essex and Kent has met to explore whether the RPRP could be used for all 'informal' performance matters. At present the proposal is for RPRP to be used for PSD related matters only and not general performance matters identified elsewhere. Consultation with staff associations is now underway.

Following the July 2019 announcement both regional and national working groups looking at RPRP have been introduced to share current implementation plans, identify best practice and to ensure consistency and compliance.

Forces are encouraged to implement changes where appropriate as part of their readiness for change and therefore PSD will introduce RPRP during the late 2019 (anticipated roll out October 2019). RPRP will be used under the heading of 'management action' following severity assessments, AA determinations and formal proceedings. This will provide a structured process for dealing with management action, formalise the process and work to promote the PRI stance force wide prior to legislative changes.

Investigation	Reform
Terms of Reference (ToR) of investigations is not provided as part of an investigation.	ToR to be provided to a complainant, interest parties, and subjects within 5 days of regulations being served
At the conclusion of the investigation the subject officer is not provided copy of IO report	The subject officer will be provided copy of IO report

**Progress Update:** There is no legislation in place to prevent introducing these reforms in advance of the legislative changes therefore new templates and guidance documents have been developed and the sharing IO reports and Terms of Reference went live on 1 June 2019 and 1 August 2019 respectively. These changes have only been implemented for PSD led investigations.

Document and guidance notes have be amended to reflect changes will be rolled out for those investigations owned outside of PSD following implementation of the new legislation.

Sanction Outcome	Reform
Reduction in rank is not an available sanction	Reduction in rank will be an available sanction

**Progress Update:** The College of Policing are developing training material to support changes although there is no current known date for release. Training for AA's and PSD practitioners is taking place in September and October 2019. These training and dates and CoP material will be utilised to inform training plans for locally appointed AA's and those involved in misconduct proceedings. It is currently anticipated that these training dates will be scheduled for January 2020.

Severity Assessment Procedure	Reform
Complaints: AA provides severity assessment advice to IO once IO has made investigation subject to special requirements Recordable conduct: AA completes severity assessment (not compliant with legislation)	Complaints and recordable conduct: IO makes severity assessment decision in consultation with the AA.

**Progress Update:** Severity assessment documents and investigation guidance notes have been amended to be compliant with legislation in readiness for the change.

Timeliness	Reform
There are no specific reporting requirements for when an investigation exceeds 12 months	Where investigation exceeds 12 months the AA must provide IOPC/LPB with a report outlining the investigation and its progression. A copy of the report is to be provided to complainant, interested parties and subjects.

**Progress Update:** There is no legislation in place to prevent introducing this change in advance of the legislative changes therefore procedures have been developed to identify and report on case progression. Draft forms, guidance notes and a process map have been developed and system changes currently underway to present performance data to respective commands. Approved at the last Integrity and Anti-Corruption Board once procedures are in place this change will be introduced with commands reporting on timeliness of cases exceeding 12 months to the Head of PSD.

Determinations	New Process
For managed, supervised, independent investigations, the AA must make their determination and provide response to IOPC within 15 working days. If they disagree the IOPC can instruct the force.	For directed investigations the AA must give their views to the IOPC within 15 working days. The IOPC will then make their determination.

**Progress Update:** This is an administrative change regarding AA determinations and will be introduced once the new legislation is implemented. In simple terms, the AA no longer makes determinations for IOPC led investigations, but provides recommendations for the IOPC to consider.

Appropriate Authorities	New Process
Where IOPC makes recommendations in relation to supervised, managed, independent investigations, or following appeal, the AA must respond to the recommendation within 56 days	Where IOPC makes recommendations in relation to directed, independent investigations, or following review, the AA must respond to the recommendation within 28 days to IOPC, complainant, interested parties, subject
For force appeals the AA determines the outcome of appeal and actions to be taken.	LPB is RRB in place of force. Where recommendations are made the AA must respond within 28 days to LPB, complainant, interested parties, and subject.
IOPC is not currently advised of the outcome of disciplinary proceedings, performance proceedings or management action processes resulting from Schedule 3 investigations	AA must notify the IOPC of outcome of all disciplinary proceedings, performance proceedings and RPRP arising from matters dealt with under Schedule 3, and where the outcome of proceedings are appealed, the fact an appeal has been made and the outcome of that appeal
Delegated AA is to the rank of Chief Inspector/ Police staff equivalent or above	Delegated AA is to the rank of Inspector/Police staff equivalent or above.

**Progress Update:** There are a significant number of AA roles within the complaints and misconduct regime and as a result a scheme of delegation is being developed to detail the rank/role which can process various aspects of force AA responsibilities.

Misconduct Proceedings	New Process
Written notice of misconduct proceedings are served on officers and subject to a number of time constraints.	There are a number of significant time constraints/actions being introduced once an officer is served a notice of misconduct proceedings. These include: <ul style="list-style-type: none"> <li>- Sharing and service of relevant documents</li> <li>- Handling of officers responses</li> <li>- Inclusion of details of meeting/hearing chair</li> <li>- Hearing must take place within 100 working days of notice of misconduct proceedings being served</li> <li>- Chair to decide whether to conduct a misconduct pre-hearing</li> </ul>

**Progress Update:** Whilst the requirement to serve officers conduct notices currently exists, such practice does initiate a number of actions which are subject to time constraints. With the changes to legislation being introduced, this is a good time to review ownership of investigations.

In relation to ownership of investigations, current working practices are that complaints and misconduct matters subject of special requirements are investigated by IOs both within PSD and across other commands, however a majority are investigated within PSD.

To ensure consistency and allow commands to focus on matters requiring learning and development (PRI/UPP), options are being considered for all complaints and recordable conduct matters subject of special procedures (i.e. possible misconduct), and all conduct matters requiring misconduct investigations (whether gross misconduct or misconduct) are investigated within PSD. This may have resource implications within PSD and work is underway to consider this change.

## Training

The College of Policing are leading on development and delivery of a training package for supervisors and officers however the timescales for training remains unclear.

Training for AA's and PSD practitioners is taking place in September and October 2019.

PSD have well established training programmes to support local and College training in complaint and conduct investigations. These training programmes, supported by CoP material will be used to inform future training plans for officers and staff, locally appointed AA's and those involved in misconduct proceedings. It is currently anticipated that training dates will be scheduled for January 2020 onwards.

## Communication

The PSD portal will provide regular updates in relation to the implementation of the Police Integrity Reforms including guidance in relation to complaints/conduct and DSI matters. The content of the portal will be updated to reflect all of the relevant changes.

## Next Steps

In addition to the progress updates outlined within this report, on 3 September 2019 the force appointed a new Head of Professionalism, Chief Superintendent Anslow role who will be responsible for overseeing the implementation of reforms.