

PFCC Decision Report

Please ensure all sections below are completed

Report reference number: PFCC/010/20

Classification: OFFICIAL

Title of report: Complaints and Expression of Dissatisfaction Policy

Area of County/Stakeholders affected: Countywide

Report by: Darren Horsman – AD Communications and Public Engagement

Date of report: 28th January 2020

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1. Purpose of report

This Decision Report seeks approval for the updated Complaints and Expression of Dissatisfaction Policy, Selection of Misconduct and Police Appeals Tribunal Policy and a revision to the Scheme of Delegation set out in schedule 5 (Part 1) of the Police, Fire and Crime Commissioner's Constitution.

2. Recommendations

- To agree the updated Complaints and Expression of Dissatisfaction Policy as set out in annex 1. Please note that the version attached to this decision report includes highlighted text. This will be removed and replaced with a link through to the relevant statutory guidance once that guidance is published on 1st February.
- To agree the Selection of Misconduct and Police Appeals Tribunal Policy as set out in annex 2.
- To revise the Scheme of Delegation set out in schedule 5 (Part 1) of the Police, Fire and Crime Commissioner's Constitution to add the following wording as paragraph 4.13:
 - *To appoint Legally Qualified Chairs, Independent Members and lay people for the purposes of misconduct hearings and police appeal tribunal hearings as set out in the Selection of Misconduct and Police Appeals Tribunal Policy.*

3. Benefits of Proposal

The proposed recommendations will align the Commissioner's policies with the upcoming legislative and regulatory changes coming into force on 1st February 2020. Agreeing this proposal will ensure the Commissioner's policies are aligned and compliant with their statutory duties in regards to the reformed police complaints system.

The new legislative and regulatory system provides a much more resolution focused approach to handling complaints, helping issues to be identified and resolved at the first possible opportunity while also encouraging learning and performance improvement to be embedded in forces, local policing bodies and the Independent Office of Police Conduct (IOPC).

4. Background and proposal

As part of the Improving Police Integrity programme, the complaints and disciplinary systems for policing are currently being reformed with phase 3 taking legal effect from 1st February 2020.

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 former Independent Police Complaints Commission (IPCC) to the IOPC and the introduction of legislation enabling designated bodies to make super-complaints.

Phase 3 relates to the introduction of the following:

- Police (Conduct) Regulations 2020
- Police (Complaints and Misconduct) Regulations 2020
- Police (Performance) Regulations 2020
- Police Appeal Tribunal Rules 2020

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

To support these new regulations, the Home Office and the Independent Office of Police Conduct have developed their own statutory guidance which will be published on 1st February. In the meantime, given that the Commissioner is required to have arrangements in place to enact the reforms with effect from 1st February, the Complaints and Expressions of Dissatisfaction Policy attached for approval at annex 1 has been developed on the basis of draft guidance already published, which is not expected to alter substantially.

The changes to the regulations make significant alterations to the complaints system which are reflected within the policies. The changes also confer on the Commissioner a number of new responsibilities including undertaking reviews for less serious offences where Essex Police was the Appropriate Authority that considered the initial complaint, and also for appointing Legally Qualified Chairs, Independent Members and lay people for misconduct hearings and police appeal tribunals.

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The way these new responsibilities will be managed are set out within the policies attached.

In accordance with the Selection of Misconduct Panels and Police Appeals Tribunals Policy recommended for approval at annex 2, it is for the Police, Fire and Crime Commissioner to ensure that their formal selection and appointment decisions relating to Legally Qualified Chairs, Independent Members and lay people are made in accordance with their own internal decision-making arrangements. Given the urgency and timescales associated with the facilitation of such panels and tribunals, as well as their volume, it is recommended for expediency that authority to make such selection and appointment decisions is delegated to the Chief Executive and Monitoring Officer, rather than requiring the preparation of a decision report approved by both statutory officers and the PFCC or Deputy PFCC on every occasion.

5. Alternative options considered and rejected

Throughout the government's development process a number of consultations have been undertaken which the Commissioner has contributed to in order to help shape and develop the statutory and regulatory framework.

As this new framework is statutory, the Commissioner is legally obliged to comply with their responsibilities contained therein. As well as aligning our activities to the new framework, the attached policies enact the spirit of the legal changes by providing a much more customer focused approach. This goes beyond the legal obligations and was undertaken to ensure the Commissioner provides the best possible service to all communities in Essex and to help ensure Essex Police is able to learn from complaints. The option of not going further than the statutory requirement was considered but was rejected as it does not help us achieve our strategic objectives and would provide a worse service for the people of Essex.

As set out in the Selection of Misconduct Panels and Police Appeals Tribunals Policy attached for approval at annex 2, the six local policing bodies in the Eastern Region have jointly appointed legally qualified chairs and independent members for the purposes of facilitating misconduct hearings across the Eastern Region. The Commissioner could choose instead to act alone, outside of these regional arrangements. This alternative option is not recommended as it would necessitate a repetition of what has already been a lengthy and complex recruitment process and would place on the Commissioner's office a considerable administrative burden that is currently undertaken by the Cambridgeshire PCC's office on behalf of the entire Eastern Region.

Finally, the Commissioner could choose not to delegate authority for the formal selection and appointment decisions relating to Legally Qualified Chairs, Independent Members and lay people to the Chief Executive and Monitoring Officer and instead discharge this responsibility personally, through the full Decision Report process. This option is not recommended due to the anticipated consequential delays in making such decisions, which would in turn impact adversely on the timeliness of hearings.

6. Police and Crime Plan

The attached policies provide legal alignment with the upcoming changes in the complaints system and help bring the police and the public closer together, a clear aspiration within the Commissioner's Police and Crime Plan.

7. Police Operational Implications

As responsibilities for some reviews are being transferred to the Commissioner, the removal of this responsibility from Essex Police will have a small operational impact on the responsibilities undertaken by Essex Police's Professional Standards Department and a proportionate impact on the workload of the Commissioner's Performance and Scrutiny function. The cost of undertaking this work while it was within PSD was estimated as 0.2 FTE and this financial resource has been transferred from the Essex Police budget to the budget of the Police, Fire and Crime Commissioner to reflect these changes in responsibilities.

The responsibilities to appoint legally qualified chairs, independent members and lay people are also new to the Commissioner however, while responsibility for the decision has moved to the Commissioner's office from the Professional Standards Department of Essex Police, support for the hearings is still being delivered from PSD so there are no significant operational implications.

Beyond these two specific items, the decisions in this report do not have any additional operational policing implications.

8. Financial Implications

As set out above, £16,598 has been transferred from Essex Police's budget to the Commissioner's as part of the 2020/21 budget setting process to reflect the 0.2 FTE worth of workload that has been transferred from Essex Police to the Commissioner.

9. Legal Implications

These policies have been developed specifically to respond to the new legislative and regulatory environment developed as part of the police integrity reforms introduced through the Policing and Crime Act 2017. The majority of the responsibilities set out within the policies are statutory and failure to comply with them would have a significant impact, including placing the Commissioner at risk of legal challenge.

10. Staffing implications

As set out above, funding for 0.2 FTE has been transferred from Essex Police to the Commissioner to resource the staffing implications. The Commissioner's office has adapted an existing role to undertake reviews as part of wider organisational restructuring. This role will not be responsible for managing complaints against the Chief Constable.

11. Equality and Diversity implications

When handling complaints, both Essex Police and the Police, Fire and Crime Commissioner must take into account their obligations under the Equality Act 2010, including ensuring that their actions are not discriminatory. In particular, under section 20 of the Act, there is a statutory duty to make reasonable adjustments to ensure that a disabled person does not suffer any substantial disadvantage when accessing a service. This would include when accessing the complaints system. Essex Police and the Police, Fire and Crime Commissioner must also ensure that their actions reflect the aims of the Public Sector Equality Duty (PSED) and the Code of Practice for Victims of Crime.

Access to the complaints system is a significant feature of the new regulations and there is substantial guidance on promoting access to a varied and diverse community within the IOPC's statutory guidance. In Essex we have identified a number of ways to build awareness of the new complaints processes and these are set out in the Complaints and Expression of Dissatisfaction Policy. The new policy also puts much greater emphasis on ensuring access to the complaints system, including by setting out a clear expectation that a discussion around reasonable adjustments will take place at a much earlier stage of the complaint process going forward.

The recording of diversity data on complainants is also a vital part of monitoring and ensuring the fair and accessible nature of the complaints process. Systems and processes are in place to ensure these are recorded and discussed as part of the oversight and scrutiny of the process.

12. Risks

The final versions of the statutory guidance that informs these policies will only be published on the day they come into law and as such there is a small risk that alterations will have been made which would require these policies to be adapted. However, this is a small risk and would be easily overcome by adapting the policies.

If the policies are inaccurate or misrepresent the statutory position it may open up the decisions of the Commissioner that are taken while implementing the policies to legal challenge. The policies have been reviewed to minimise the risk of this happening.

13. Governance Boards

The changes to the complaints framework have been discussed at the Professional Standards Department Quarterly Meeting, Performance and Resource Board and Strategic Board. The decision of the Commissioner in regards to their evolving role in the complaints system has also been discussed at the Police, Fire and Crime Panel and a full paper is due to go to the panel shortly after the regulations comes into force.

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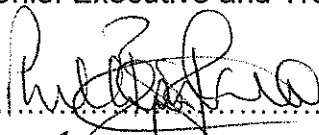
14. Background papers

- Annex 1 – Complaints and Expression of Dissatisfaction Policy
- Annex 2 - Selection of Misconduct and Police Appeals Tribunal Policy

Report Approval

The report will be signed off by the OPFCC Chief Executive and Treasurer, prior to review and sign off by the PFCC / DPFCC .

Chief Executive/M.O

Sign: 

Print: P. Brent-Lewis

Date: 31 January 2020

Chief Financial Officer/Treasurer

Sign: 

Print: Abbey Gough

Date: 31st January 2020

Publication

Is the report for publication?

YES

NO

If 'NO', please give reasons for non-publication (state 'None' if applicable)

.....
..... N/A

If the report is not for publication, the Chief Executive will decide if and how the public can be informed of the decision.

Redaction

If the report is for publication, is redaction required:

1. Of Decision Sheet	YES	<input type="checkbox"/>	2. Of Appendix	YES	<input type="checkbox"/>
	NO	<input checked="" type="checkbox"/>		NO	<input checked="" type="checkbox"/>

If 'YES', please provide details of required redaction:

.....
..... N/A

Date redaction carried out:

Treasurer / Chief Executive Sign Off – for Redactions only

If redaction is required, Treasurer or Chief Executive are to sign off that redaction has been completed.

Sign:

Print:

Chief Executive/Treasurer

Date signed:

Decision and Final Sign Off

I agree the recommendations to this report;

Sign: *R.C. Hirst*

Print: *R.C. HIRST*

PFCC/Deputy PFCC

Date signed: *31/1/20*

I do not agree the recommendations to this report because;

.....
.....
.....

Sign:

Print:

PFCC/Deputy PFCC

Date signed: