

**Gwent Police
and Crime Panel**

**Panel Heddlu
a Throseddu Gwent**

COMPLAINTS PROCEDURE: GWENT POLICE AND CRIME COMMISSIONER AND GWENT DEPUTY POLICE AND CRIME COMMISSIONER

Introduction

This procedural note details the complaints procedure relating to the Gwent Police and Crime Commissioner (PCC) and Gwent Deputy Police and Crime Commissioner (DPCC). The note is based on the provisions of the Police Reform and Social Responsibility Act 2011, the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011 and the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012.

Role of Gwent Police and Crime Panel

The Gwent Police and Crime Panel ("the Panel") have statutory responsibilities as to the handling and determination of certain complaints made against the PCC and DPCC. The Panel has delegated its functions to the Head of Legal and Governance at Caerphilly County Borough Council (the Gwent Police and Crime Panel's Host Authority) who must consult with the Chair and Vice Chair of the Gwent Police and Crime Panel in determining type of complaints received and the strategy for managing complaints for local resolution and the Panel's final resolution of complaints.

Overview

In practice, it will be the Head of Legal and Governance at Caerphilly County Borough Council who will make decisions about the management and resolution of complaints in consultation with the Chair and Vice Chair of the Gwent Police and Crime Panel. The Chief Executive of the Gwent Police and Crime Commissioner's Office will be consulted on the strategy for determining the whether complaints will be considered by the Panel or referred to the Independent Police Complaints Commission (IPCC) or a third part. The Head of Legal and Governance and Chief Executive of the Gwent Police and Crime Commissioner's Office have developed a protocol (attached as appendix 1) for managing complaints. This will ensure that complaints received are dealt with in a timely fashion, correctly identified as being complaints which fall to the Gwent Police and Crime Panel for action and other complaints, for example, about the PCC's staff or Gwent Police are directed as appropriate.

Types of Complaints

There are 3 different categories of complaints:

A Complaint - a general complaint about the PCC or DPCC that is not a Conduct Matter or a Serious Complaint, or is a complaint that ceases to be investigated by the Independent Police Complaints Commission or a police force. The Panel is responsible for the informal resolution of these complaints.

A Conduct Matter - a matter where there is an indication (whether from the circumstances or otherwise) that the PCC and/or DPCC may have committed a criminal offence. Conduct matters can arise without a Complaint being made (for example, press stories). The Gwent Police and Crime Panel must notify the IPCC of Conduct Matters. The IPCC are responsible for considering all Conduct matters.

A Serious Complaint - a complaint about the conduct of the PCC or DPCC which constitutes or involves, or appears to constitute or involve the commission of a criminal offence. The Gwent Police and Crime Panel must notify the IPCC of Serious Complaints. The IPCC are responsible for considering all Serious Complaints.

Evidence for Conduct Matters and Serious Complaints

The difference between a Conduct Matter and a Serious Complaint is the level of evidence present in the complaint or other circumstances (eg. press reports) as to whether a criminal offence has potentially been committed by the PCC or the DPCC. It is not for the Panel to determine whether a criminal offence has been committed, only to make a judgement as to whether a complaint should be considered a Conduct Matter or Serious Complaint.

A Conduct Matter - Requires evidence to show an indication that a criminal offence may have been committed. A mere assertion without more, that a criminal offence has been committed is unlikely to suffice. However, an assertion coupled with a fairly low degree of evidence is likely to be an adequate sign of potential criminal conduct, resulting in the matter being referred to the IPCC as a Conduct Matter

A Serious Complaint - There must be evidence of conduct that constitutes or appears to constitute or involve the commission of a criminal offence. A Serious Complaint requires stronger evidence, as the evidence must show that there is conduct that appears to constitute or involve the commission of an offence. Therefore, the level of evidence will be more than for a Conduct Matter but is likely to be much less than would be required by a court.

Making a Complaint about the Gwent Police and Crime Commissioner or the Gwent Deputy Police and Crime Commissioner

Complaints about the Gwent Police and Crime Commissioner (PCC) or Gwent Deputy Police and Crime Commissioner (DPCC) should be addressed to the Head of Legal and Governance, Caerphilly County Borough Council, Penallta House, Tredomen Park,

Ystrad Mynach, CF82 7PG or using the contact us section of the Panel's website www.GwentPCP.org.uk

Alternatively, complaints can be sent to the PCC, DPCC, Chief Executive to the Office of Gwent Police and Crime Commissioner or Chief Constable. All are contactable at the following address, Gwent Police Headquarters, Croesyceiliog, Cwmbran, NP44 2XJ or email contact@gwent.pnn.police.uk. Finally complaints can be sent directly to the Independent Police Complaints Commission, PO Box 473, Sale, M33 0BW or email enquiries@ipcc.gsi.gov.uk

Receipt of Complaints

Complaints relating to the Gwent PCC and DPCC which are received by the PCC, DPCC, Chief Executive to the Office of Gwent Police and Crime Commissioner or Chief Constable must be sent to the Gwent Police and Crime Panel as soon as practicable.

Upon receipt of a complaint, the Gwent Police and Crime Panel will check that the complaint relates to either the Gwent Police and Crime Commissioner or the Gwent Deputy Police and Crime Commissioner. If the complaint relates to a person other than the PCC or DPCC the complaint will be forwarded to the appropriate office and the complainant informed.

Determining Type of Complaint

The Head of Legal and Governance at Caerphilly County Borough Council will consult the Chief Executive of the Gwent Police and Crime Commissioner's Office and the Chair and Vice Chair of the Gwent Police and Crime Panel to determine the type of complaint; namely, a complaint for local resolution by the Panel or whether the complaint should be considered a 'Conduct Matter' or 'Serious Complaint' and referred to the IPCC for determination.

If the complaint is considered to be a complaint for local resolution (in whole or part) the complainant will be notified of that fact and provided with an explanation of the action the Panel intend to take. The Panel will also inform the Chief Executive of the Gwent Police and Crime Commissioner's Office. Likewise, if the complaint is considered to be a 'Conduct Matter' or 'Serious Complaint' it will be referred to the IPCC for determination and the complainant notified.

The Recorded Complaints and Conduct Matters Register

If the complaint relates to the PCC or DPCC the complaint will be registered in the 'Recorded Complaints and Conduct Matters Register'.

The Recorded Complaints and Conduct Matters Register is used to record the following information; a summary of the complaint, the category of complaint (Complaint, Conduct Matter or Serious Complaint), the date of receipt, an indication of intended action on the Complaint and any other information deemed relevant.

If any of the following exceptions apply, it is not necessary to record a Conduct Matter:

- The matter has already been recorded as a complaint or
- The matter has or is being dealt with by means of criminal proceedings against the PCC or DPCC.

If the IPCC becomes aware of a Conduct Matter that has not been recorded by the Panel, the IPCC may direct the Panel to record the complaint.

If any of the following exceptions apply, it is not necessary to record a Complaint:

- If it has been or is currently being dealt with by criminal proceedings: this will normally be the case where the Police have formally charged the person complained about or information alleging an offence has been laid before a magistrate's court or
- The Complaint has been withdrawn.

If recorded (in whole or part) the Panel will notify the Complainant of that fact and provide information about the next steps to be taken in relation to the Complaint. Likewise, the Complainant will be informed of the decision not to record the Complaint and not to take any further action, the grounds on which that decision was made and whether the decision relates to all or part of the Complaint.

The Panel will also inform the Chief Executive of the Gwent Police and Crime Commissioner's Office.

Requiring More Information Before Recording a Complaint

Where the Head of Legal and Governance considers more information is required in order for a complaint to be considered, he may ask the complainant for additional information.

A decision will then be made whether to record the complaint in the Recorded Complaints and Conduct Matters Register and how the complaint will be progressed.

Complaints Made to the PCC and DPCC and Preservation of Evidence

Where a Complaint is made directly to the PCC and/or DPCC, both are under a statutory duty to take all such steps as appear to them to be appropriate for obtaining and preserving evidence in relation to the complaint in question. In discharging this duty they shall take such steps as a reasonable person would consider appropriate in the circumstances to obtain and preserve evidence, and in any event shall comply with any requests of the Panel.

By not later than the end of the day following the day on which the Complaint was made to them, the PCC and/or DPCC must notify the Panel in writing (either by letter or email) of the Complaint (including a copy of the complaint) and provide details of the steps

they have taken to preserve such evidence, including its location and in whose custody it is.

Complaints Made to a Member of the Police and Crime Panel

Any complaint addressed to any Member of the Panel should be immediately directed to the Head of Legal and Governance at Caerphilly County Borough Council, Penallta House, Tredomen Park, Ystrad Mynach, CF82 7PG or email perkid@caerphilly.gov.uk along with any other available information that is relevant to the complaint.

Complaints Made to the Chief Constable of Gwent Police

Where a complaint is made to a Chief Constable of Gwent Police, it is the duty of the Chief Constable to give notification of the complaint to the Panel.

Complaints Made to the Independent Police Complaints Commission (IPCC)

When a complaint is made to the IPCC, it is the duty of the IPCC to notify the Panel, unless the IPCC considers that there are exceptional circumstances to justify the notification not being given.

Conduct Outside England and Wales

The Gwent PCC and DPCC shall inform the Panel of any allegation, investigation or proceedings in relation their conduct which does not amount to a Conduct Matter (as outlined above) only because the conduct in question did not occur in England or Wales. The Panel may deal with any such instances in whatever manner the Panel considers fit.

Conduct Matters Arising from Civil Proceedings

Where the Panel receives notification that civil proceedings involving a conduct matter have been brought against the Gwent PCC or DPCC by a member of the public, or it appears that proceedings are likely to be brought, the Panel shall record the matter and consider it as a complaint.

The Panel's Duty to Obtain and Preserve Evidence

When a complaint comes to the attention of the Panel, it is under a duty to secure that all steps as appropriate are taken for obtaining and preserving evidence in relation to the complaint in question.

No Action on a Recorded Complaint

If the Panel considers that a Recorded Complaint for local resolution is one which requires no action should be taken, or it falls within the circumstances set out below, then the Panel may handle the complaint in whatever manner it thinks fit.

The types of Recorded Complaint that maybe dealt with in this way are:

- Where more than twelve months have elapsed since the incident and there is no reason for the delay, or injustice would be caused by it;
- The matter has already been the subject of a complaint;
- The Complaint is anonymous;
- The Complaint is vexatious, oppressive or otherwise an abuse of the procedures, or
- The Complaint is repetitious. A “repetitious complaint” is one which is the same or substantially the same as a previous complaint, or concerns the same conduct as a previous conduct matter, contains no fresh allegations which affect the account of the conduct complained of, no fresh evidence (being evidence not reasonably available at the time the previous complaint was made and in respect of which a previous determination or withdrawal of complaint has been made).

The Panel must notify the Complainant that it has decided to handle the Recorded Complaint by taking no further action. The Panel will also inform the Chief Executive of the Gwent Police and Crime Commissioner’s Office.

Call in by IPCC

The Panel must refer a Recorded Complaint to the IPCC if it is notified that the IPCC itself requires the complaint to be referred to the IPCC.

Referral of Complaints and Conduct Matters to the IPCC

Where a Recorded Complaint or Recorded Conduct Matter is to be referred to the IPCC then the Panel shall do so as soon as is practicable, and in any event not later than the end of the day following the day on which it becomes clear to the Panel that the Complaint or Conduct Matter is one that should be referred to the IPCC. The details in the Register will be made available to the IPCC together with such other information as the Panel considers appropriate.

On referring a Recorded Complaint to the IPCC, the Panel must notify the Complainant and the person complained about of the referral, unless it appears to the Panel that notifying the PCC or DPCC might prejudice a possible future investigation.

Referral of Complaints and Conduct Matters from the IPCC to the Panel

Where the IPCC determines that it is not necessary for it to investigate a Recorded Serious Complaint, it may refer the Complaint back to the Panel who must deal with the referral in accordance with the Informal Resolution of Complaints procedure outlined below. The IPCC will notify the Complainant and the PCC or DPCC complained against about this decision.

The IPCC, where it determines that it is not necessary for it to investigate a Recorded Conduct Matter, may refer the matter back to the Panel who may deal with it in any matter that the Panel thinks fit. The IPCC will notify the PCC or DPCC complained against about this decision.

Withdrawal of Complaints

If the Panel received a notification that the complainant wishes to withdraw their Complaint, signed either by them or their solicitor or other acting on their behalf, then the complaint shall cease to apply subject to the following:

- If the Recorded Complaint is with the IPCC, the Panel must notify the IPCC that it has recorded the withdrawal of the complaint
- In the case where the IPCC has referred the Recorded Complaint to the Panel, it must consider whether it is in the public interest for the Complaint to be treated as a Conduct Matter (notwithstanding the complaint's withdrawal) and shall notify the IPCC accordingly.

In respect of a Recorded Complaint which has not been notified to the IPCC, the Panel must determine whether it is in the public interest for the Complaint to be treated as a Conduct Matter despite the Complainant's withdrawal of it. The Panel shall notify the PCC or DPCC complained about of the recording of a withdrawal of the Recorded Complaint and whether he/she has decided to treat it as a Recorded Conduct Matter notwithstanding, and shall amend the Register accordingly.

The IPCC, on receiving notification of withdrawal from the Panel of a Recorded Complaint referred to it, shall determine whether it is in the public interest for the Complaint to be treated as a Recorded Conduct Matter and notify the Panel, who shall notify the complainant and amend the Register accordingly.

If the IPCC refers a matter back to the Panel, in the case of a Recorded Complaint it shall be dealt with in accordance with the Informal Resolution procedure outlined below and, in the case of a Recorded Conduct Matter in such manner as the Panel may determine.

Informal Resolution of Complaints by the Panel

A Recorded Complaint against a PCC and/or a DPCC shall be dealt with by the Panel way of informal resolution.

Informal resolution is considered to be encouraging, facilitating, or otherwise assisting in the resolution of the complaint otherwise than by legal proceedings.

Delegation of Informal Resolution Complaints

The Head of Legal and Governance at Caerphilly County Borough Council will be responsible for undertaking the process of informal resolution. In doing so the Chair and Vice Chair of the Gwent Police and Crime Panel must be consulted about the proposed local resolution strategy and the proposed outcome of the complaint.

Invitation for Complainant and Person Complained Against

Upon receipt of a complaint the Panel shall invite the complainant and person complained against an opportunity to comment on the complaint. Should the person complained about chose not to comment the Panel shall record this in writing.

Further Information

The procedure for informal resolution shall not include a formal investigation of the complaint but documents in relation to the complaint and meetings with the person complained against maybe requested.

Resolved Complaints

Where it appears to the Panel that a Recorded Complaint against the PCC and/or DPCC had in fact already been satisfactorily dealt with at the time it was brought to their notice, the Panel may, subject to any further representations, treat it as having been resolved.

Apologies

The Panel may seek informally to resolve a complaint by securing an apology from the PCC or DPCC for the Complainant, either directly or indirectly. The Panel shall not, however, tender on behalf of the person complained against an apology for the conduct unless the person complained against has agreed to issue the apology.

Consultation on Draft Decisions

The Panel shall, prior to making a final decision that a complaint has already been resolved, give the complainant and the person complained against an opportunity to comment on the proposed decision.

Where the person complained against chooses not to comment on the complaint, the Panel shall record this fact in writing.

Final Resolution

Where a Recorded Complaint has been subjected to informal resolution, the Panel shall as soon as practicable make a record of the outcome of the procedure and send a copy of that record to the complainant and the person complained against.

The Panel shall not publish any part of any such record unless it:

- Has given the complainant and the person complained against the opportunity to make representations in relation to the proposed publication, and
- Has considered any such representations, and is of the opinion that publication is in the public interest.

In cases where the Panel upholds a Recorded Complaint, it has no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the office-holder concerned.

Record Keeping and Provision of Information

The Panel shall keep records of every complaint and purported complaint made to him or received by him; every conduct matter recorded by the Panel arising from civil proceedings or otherwise coming to the attention of the Panel and every exercise of a power or performance of a duty under the Regulations.

Annual Reporting of Complaints

The Panel shall receive a report at least annually detailing a summary of each complaint (such as can be reported in public) and the exercise of its functions for monitoring purposes.

Date: 6 February 2013

Appendix 1

COMPLAINTS PROTOCOL BETWEEN THE HEAD OF LEGAL AND GOVERNANCE, CAERPHILLY COUNTY BOROUGH COUNCIL AND THE CHIEF EXECUTIVE OF THE OFFICE OF THE GWENT POLICE AND CRIME COMMISSIONER.

The Regulations set out the functions of the Gwent Police and Crime Panel (PCP) in dealing with complaints and conduct matters referred for its attention and which raise allegations against the Gwent PCC and/or DPCC.

The purpose of this protocol is to ensure that complaints and conduct matters which fall within the scope of the regulations are dealt with effectively in adherence with the Regulations in a manner which maintains and improves public confidence in the police complaints system.

Reference within this Protocol to Chief Executive infers the position of Chief Executive to the Office of the Gwent Police and Crime Commissioner. Similarly, reference to the Monitoring Officer infers the position of the Monitoring Officer of the Host Local Authority, Caerphilly County Borough Council.

The responsibility of the PCP to manage the day to day conduct of the operation of the regulations is delegated to the Monitoring Officer in consultation with the Chief Executive.

Whilst complainants will be encouraged in the first instance to forward complaints against the PCC/DPCC for the attention of the Monitoring Officer, it is recognised that such complaints will from time to time be addressed directly to the office of the PCC. It is agreed that in such circumstances, the Chief Executive will retain responsibility to forward such complaints for the attention of the Monitoring Officer at the earliest opportunity, and in any event within five working days of receipt of the complaint. The Chief Executive will further be required to express a view to the Monitoring Officer within five working days as to the process for the handling of the complaint.

It is agreed that the Chief Executive shall be notified with immediate effect of all incoming complaints received by the Police and Crime Panel (PCP) and within five working days of receipt, shall indicate his/her view as to the appropriate handling of the complaint.

It is envisaged that the view expressed by the Chief Executive on any complaint received will be one of the following:

1. The complaint falls within the scope of the Regulations and accordingly requires a recording decision and consideration of referral to the IPCC;
2. The Complaint raises allegations against a member of staff within the office of the PCC and should be referred to the Chief Executive to consider;

3. The Complaint raises allegations against the Chief Constable of the home Police Force and is required to be handled by the PCC in accordance with the provisions of the Police Reform Act 2002;
4. The Complaint relates to a police officer of the home Police Force, below the rank of Chief Constable, and should be referred to the Professional Standards Department as the delegated department to consider such complaints on behalf of the Chief Constable who is the Appropriate Authority;
5. The complaint should be handled otherwise than in accordance with Part 4 of the Regulations (referring to Informal Resolution) in accordance with the grounds for disapplication stipulated within Regulation 15(3).

Where a complaint encompasses allegations against the PCC/DPCC and any other individuals considered within points 2, 3 and/or 4 above, it shall be dealt with in accordance with all applicable procedures and the Chief Executive and the Monitoring Officer shall co-operate in ensuring that action taken in relation to such matters are shared as appropriate.

It shall be the responsibility of the Monitoring Officer to make a recording decision in respect of any complaint or conduct matter received against a PCC or DPCC, and he/she shall do so in accordance with the delegated powers bestowed to him/her by the PCP.

Where a complaint or conduct matter falls within the scope of the Regulations and a recording decision is subsequently required to be made which does not involve referral of the same to the IPCC, the Chief Executive shall, following the recording of the complaint, ensure that the PCC and/or DPCC is advised of the allegations raised within the complaint.

The PCP shall endeavour to facilitate a satisfactory outcome to the complaint with a view to avoiding, if possible, the application of the informal resolution process under Part 4 of the Regulations.

If it is not possible to secure a satisfactory outcome for the complainant the matter shall be referred to the Monitoring Officer who shall invoke the informal resolution process in accordance with any directions and delegations of the PCP.

Where matters are raised to the Monitoring Officer or directly to the Chief Executive, which relate to service delivery rather than conduct of the PCC/DPCC, it shall be the responsibility of the Chief Executive to handle such matters and facilitate a satisfactory outcome.

In such cases, the Chief Executive reserves the right to refer any service delivery matter for the attention of the Monitoring Officer where it becomes apparent during the course of initial enquiries that the matter does in fact require a recording decision to be made and/or requires referral to the IPCC.