

Draft Complaints Procedure

Arrangements for Dealing with Complaints about the Wiltshire Police and Crime Commissioner

1 Introduction

- 1.1 These arrangements set out the process for dealing with complaints about the conduct of the Wiltshire Police and Crime Commissioner (PCC) or Deputy Police and Crime Commissioner (DPCC).
- 1.2 The arrangements are made under the Police Reform and Social Responsibility Act 2011, the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 and the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012.
- 1.3 A flow chart providing an overview of the complaints process is attached at Annex 1.

2 Roles and Responsibilities

- 2.1 Police and Crime Panels (PCP) have statutory responsibilities under the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 relating to the recording and determination of complaints.
- 2.2 The Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 enable this function to be delegated to a Sub-Committee of the PCP or to an officer of the local authority in the police area.
- 2.3 The Wiltshire Police and Crime Panel has delegated the implementation of the complaints process to the Monitoring Officer of Wiltshire Council.
- 2.4 The Monitoring Officer is the main point of contact for complaints under these Regulations and is responsible for recording formal decisions.
- 2.5 The PCP will retain the responsibility for the overall effectiveness of this procedure and will monitor on a regular basis its practical implementation.

3 What is covered under the complaints procedure?

- 3.1 A complaint about the conduct of the PCC or the DPCC.

4 What is not covered by the complaints procedure?

- 4.1 Operational policing matters or the conduct of individual police personnel. These complaints will be dealt with by the Chief Constable.
- 4.2 Policing policy matters or complaints relating to the conduct of the Chief Constable. These complaints will be dealt with by the Police and Crime Commissioner under their procedures.
- 4.3 Potential criminal conduct of the PCC and DPCC, both where a formal complaint has been made or where the circumstances point to potential criminal behaviour in the absence of a formal complaint (referred to in the Regulations respectively as serious complaints and conduct matters). Such complaints will be referred by the Monitoring Officer to the Independent Police Complaints Commission (IPCC) for determination.

5 Making a Complaint

- 5.1 If you wish to make a complaint please complete the online complaints form and email it to governance@wiltshire.gov.uk or print it off and post it to:

The Monitoring Officer
Wiltshire Council
Trowbridge
Wiltshire
BA14 8JN

- 5.2 Alternatively you can send a letter or an email to the Monitoring Officer using the above addresses.

6 Assessment of Complaints

- 6.1 Upon receipt of a formal complaint the Monitoring Officer will record the complaint.
- 6.2 The Monitoring Officer is required by the Regulations to maintain a Recorded Complaints and Conduct Matters Register and Section 13 of this procedure provides details of what information will be recorded in the Register. Certain complaints are exempt from the requirement to be entered into the Register (see Section 13.3 of this procedure) however the Monitoring Officer will keep an informal record of all complaints received.
- 6.3 The Monitoring Officer will then establish whether the complaint concerns the conduct of the PCC or the DPCC.

- 6.4 Where the complaint does not relate to the conduct of the PCC or DPCC the complaint will be referred to the appropriate body as set out above in Section 4 and the Monitoring Officer will close the file.
- 6.5 Where the complaint does concern the conduct of the PCC or DPCC the Monitoring Officer will formally record the complaint in the Register (unless one of the exemptions apply) and make an assessment about whether the complaint is 'serious'.
- 6.6 A 'serious complaint' is that which *constitutes or appears to constitute or involve* the commission of a criminal offence. Serious complaints are dealt with by the IPCC to whom the Monitoring Officer will refer the complaint. The Monitoring Officer will inform the parties of his or her decision and close the file.
- 6.7 The Monitoring Officer must also refer a matter to the IPCC where there is an *indication* that the PCC or DPCC may have committed a criminal offence. These are referred to in the legislation as 'conduct matters' and can arise without a formal complaint having been made. Following referral of a conduct matter to the IPCC for investigation, the Monitoring Officer will inform the parties of his or her decision and close the file.
- 6.8 Complaints which are neither 'serious' nor a 'conduct matter' will be dealt with under the following procedures.

7 Initial Tests

- 7.1 Where the Monitoring Officer determines that a complaint is suitable to be dealt with under this complaints process an acknowledgement will be sent to the complainant. The PCC or DPCC will be notified of the complaint.
- 7.2 The Regulations provide that the Monitoring Officer may decide not to deal with a complaint under the following procedures or to take no further action in respect of a complaint where the Monitoring Officer considers the complaint falls into one of a number of specified categories. These categories are:
- The complaint is by a member of the PCC or DPCC's staff, arising from the staff member's work
 - Where more than twelve months have elapsed since the incident giving rise to the complaint and there is no good reason for the delay, or injustice would be likely to be caused by the delay;
 - 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 for dealing with complaints; or

- The complaint is repetitious. A repetitious complaint is one which is substantially the same as a previous complaint, it concerns substantially the same conduct as a previous conduct matter, it contains no fresh allegations which significantly affect the account of the conduct complained of, no fresh evidence (being evidence which was not reasonably available at the time the previous complaint was made is tendered in support of it) and, in respect of the previous complaint or conduct matter, a determination or withdrawal of complaint has been made).
- 7.3 If the complaint falls into any of the above categories the Monitoring Officer will notify the complainant and PCC or DPCC of the decision in respect of the complaint and close the file.

8 Resolution of Complaints

- 8.1 Where the complaint does not fall within one of the above categories, the Monitoring Officer will invite written comments from the complainant and PCC or DCC as soon as practicable.
- 8.2 The flow chart at Annex 1 sets out the process to be followed.
- 8.3 Any comments received will be considered by the Monitoring Officer in consultation with the Chair/Vice-Chairman of the PCP.
- 8.4 If the complaint can be resolved on the available information, the Monitoring Officer will conduct an informal resolution. This might mean for example that the complaint is resolved by explaining, clearing up or settling the matter direct with the complainant. The Monitoring Officer's decision will be communicated to the parties, the complaint log will be updated and the file closed.
- 8.5 Procedures 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 may be requested.
- 8.6 If the complaint cannot be resolved based on the information available, a Sub-Committee of the PCP will be convened to which the PCC or DPCC will be invited to respond to the allegations in person.
- 8.7 The Sub-Committee of the PCP will consider the written and oral evidence and make an informal resolution. The decision of the Sub-Committee will be communicated to the parties, the complaint log will be updated and the file closed.
- 8.8 Where it appears to the Monitoring Officer or the Sub-Committee of the PCP that a complaint against the PCC and/ or DPCC had in fact already been satisfactorily dealt with at the time it was brought to their notice, they may, subject to any further representations, treat it as having been resolved. The Monitoring Officer or PCP Sub-Committee 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.

- 8.9 Where the person complained against chooses not to comment on a complaint, the Monitoring Officer or Sub-Committee of the PCP shall record this fact in writing.
- 8.10 The Monitoring Officer or Sub-Committee of the PCP may seek informally to resolve a complaint by securing an apology from the PCC or DPCC to the complainant, either directly or indirectly. The PCP shall not, however, tender on behalf of the person complained against an apology for his or her conduct unless the person complained against has agreed to issue the apology.
- 8.11 In exceptional circumstances a complaint may be referred to the PCP as a whole if the Monitoring Officer is of the opinion that this will lead to a more satisfactory resolution of the complaint.

9 Meetings of a Sub-Committee of a PCP

- 9.1 Any meeting of a Sub-Committee of a PCP which is convened to consider a complaint for informal resolution will first need to consider whether to pass a resolution to exclude the press and public from the meeting.
- 9.2 The Sub-Committee will consider whether to agree to exclude the public from the meeting because it is likely that if members of the public were present there would be a disclosure to them of exempt information as defined in Part 1 of Schedule 12A to the Local Government Act 1972 and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.
- 9.3 At the meeting the Monitoring Officer, or his or her representative, will present the available written information to the Sub-Committee.
- 9.4 The subject of the complaint, i.e. the PCC or DPCC, will have the opportunity to attend the meeting to make a statement in support of his or her position and will be expected to answer questions of the Sub-Committee.
- 9.5 The PCC or DPCC may be represented at the meeting by a friend or legal representative if he or she wishes to do so.

10 Recording of a Resolution

- 10.1 Where a complaint has been subjected to informal resolution, the Monitoring Officer 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 against whom the complaint has been made.

- 10.2 The Regulations state that the Monitoring Officer 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.
- 10.3 Where a Sub-Committee of the PCP has resolved to exclude the press and public from a meeting at which an informal resolution was determined, the record of the outcome of the complaint will not be published.
- 10.4 Notwithstanding the above, any requests for information received under the Freedom of Information Act 2000 will be considered in line with the requirements of that Act.

11 Sanctions

- 11.1 In cases where the Monitoring Officer or Sub-Committee of a PCP upholds a complaint, there exist no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the office-holder concerned.

12 Timescales

- 12.1 In accordance with Local Government Ombudsman guidance, we aim to deal with all complaints under this procedure, from receipt to resolution, within 12 weeks. There is, however, an element of flexibility depending on the nature and circumstances of each individual complaint.
- 12.2 The following timescales are a general guide:
- Receipt of complaint to acknowledgement and notification of the complaint to the PCC or DPCC – 10 working days
 - Conduct of initial tests and invitation of comments from the PCC/DPCC and complainant – 5 working days
 - Receipt of comments – 10 working days
 - Consideration of comments by Monitoring Officer in consultation with the Chair/Vice-Chair of the PCP – 15 working days
- 12.3 Then:

- Monitoring Officer conducts informal resolution and informs parties – 10 working days; or
- Sub-Committee of PCP is convened to conduct an informal resolution and inform parties – 20 working days.

13 The Recorded Complaints and Conduct Matters Database

- 13.1 The Monitoring Officer will establish a formal register: “the Recorded Complaints and Conduct Matters Register” for the purposes of recording every complaint and purported complaint it receives, every conduct matter it records and every action taken under the Regulations.
- 13.2 This Register will take the form of an electronic database within which to record all key details pertaining to a complaint including the date received, the complainant, a summary of the complaint / the category into which it falls (Conduct Matter, Serious Complaint or other Recorded Complaint), the date on which it was recorded, an indication of intended action, how the matter was subsequently dealt with and any other information deemed relevant.
- 13.3 A complaint will be recorded unless the Monitoring Officer is satisfied that any of the following exceptions apply, in which case it is not necessary to record the complaint, in whole or in part:
- if it has been or is currently being dealt with by criminal proceedings; or
 - the complaint has been withdrawn; or
- in the case of a conduct matter:
- the matter has already been recorded as a complaint, i.e. as a Recorded Complaint; or
 - the matter has been, or is already being, dealt with by means of criminal proceedings against the PCC or DPCC.
- 13.4 If a complaint is not recorded in the Register, the Monitoring Officer will notify the complainant of the decision not to record the complaint and, therefore, to take no action upon it. An explanation will be given of the grounds on which that decision was made, whether in relation to whole or part of the complaint.
- 13.5 If recorded (in whole or part) the Monitoring Officer will notify the complainant of that fact and provide information about the next steps to be taken in relation to the complaint.

14 Withdrawal of complaints

- 14.1 If the Monitoring Officer receives a notification that the complainant wishes to withdraw their complaint, signed either by them or their solicitor or any other person authorised to act on their behalf, then the Regulations shall cease to apply to the complaint, subject to the following provisions.
- 14.2 If the complaint has been referred to the IPCC, the Monitoring Officer will notify the IPCC that it has recorded the withdrawal of the complaint. The IPCC will then consider whether the complaint should be treated as a conduct matter.
- 14.3 In the case where a complaint has not been referred to the IPCC or where it was referred and the IPCC has referred the complaint back to the Monitoring Officer, the Monitoring Officer 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 refer it to the IPCC accordingly.
- 14.4 The Monitoring Officer shall notify the PCC or DPCC complained about of the recording of a withdrawal of the complaint and whether he/she has decided to treat it as a conduct matter or if the Regulations cease to apply, and shall amend the Register accordingly.