



Durham Police and Crime Panel

Procedure for dealing with complaints relating to the Durham Police and Crime Commissioner and Deputy Police and Crime Commissioner (if appointed)

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1 Overview

- 1.1 This procedure deals with complaints about the conduct of the Durham Police, Crime Commissioner (PCC) or Deputy Police, Crime Commissioner (DPCC) (where appointed) (collectively referred to as the Commissioner) in accordance with the requirements of the Police Reform and Social Responsibility Act 2011 (“the Act”) and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (“the Regulations”).
- 1.2 Where this Procedure is inconsistent with the Act or Regulations, the Act or Regulations will take precedence.
- 1.3 There are separate procedures for complaints against the Commissioner’s office and staff, complaints regarding operational policing, the Chief Constable and other police officers.

2 Role and Jurisdiction of the Panel in relation to Complaints

- 2.1 The Durham Police and Crime Panel (“the Panel”) is responsible for overseeing the handling of complaints regarding non-criminal behaviour of the Commissioner, wherever that complaint arises from. Criminal complaints about the Commissioner are dealt with by the Independent Office for Police Conduct (IOPC).
- 2.2 The Panel cannot impose sanctions but may choose to use their powers to require the Commissioner to attend a hearing to answer questions, request information and documents from the Commissioner and publish a report or recommendation.

3 Definitions and Concepts

Complaint - A general complaint about the conduct of the PCC/DPCC

Conduct Matter –where there is an indication that the Commissioner may have committed a criminal offence. This could be, for example, through legal proceedings or media reporting. Conduct Matters can arise without a complaint being made.

Recorded Complaints and Conduct Matters Register – an electronic database which records all key details pertaining to complaints against the Commissioner, including the date received, the complainant, a summary of the complaint, the type of complaint (e.g. conduct matter, serious complaint, general complaint) and intended action.

Serious Complaint - a complaint about the conduct of the Commissioner which constitutes or appears to constitute or involve the commission of a criminal offence.

4 Initial Handling of Complaints

- 4.1 The Panel has delegated responsibility for the initial handling of complaints to the Clerk and Monitoring Officer to the Panel (“the Clerk”).
- 4.2 Complainants can request a complaint form by e-mailing durhampoliceandcrimepanel@durham.gov.uk

Complaints should be submitted to:

The Clerk to the Police and Crime Panel
Durham County Council
County Hall
Durham
DH1 5UL

or by email helen.lynch@durham.gov.uk

- 4.3 Where a complaint is submitted to the Office of the Police and Crime Commissioner or Members of the Panel, they should be referred immediately to the Clerk for review.
- 4.4 Where a complaint is submitted directly to the IOPC, the IOPC will notify the Panel unless the IOPC considers that there are exceptional circumstances to justify the notification not being given.

4.5 On receipt of a complaint

- 4.5.1 On receipt of a complaint, the Clerk will review the complaint and take one of the following actions:
- a) If the complaint relates to an issue about local crime/ Neighbourhood concerns or other operational policing matters rather than the conduct of the Commissioner, it will be referred to Durham Constabulary in accordance with their relevant procedures.
 - b) Conduct matters or Serious complaints will be referred directly to the IOPC as soon as is practicable and in any event not later than the end of the following day when it becomes clear that it should be referred, and provide a copy of the complaint to the Monitoring Officer to the Commissioner within the same timescales.
 - c) General complaints regarding the conduct of the Commissioner or complaints, which have been considered by the IOPC and referred back

to the Panel, will be referred to the Panel for consideration by way of Informal Resolution.

- d) The Clerk, in consultation with the Chair and Vice Chair of the Panel can decide not to refer the complaint for resolution or take no action at all in the following circumstances:
- A complaint by a member of the Commissioner's staff, arising from their work. Such complaints will be referred to the Office for the Police Commissioner to be dealt with in accordance with the relevant employment procedures.
 - 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, trivial or otherwise an abuse of process for dealing with complaints (detailed in Annex 1).
 - A repetitious complaint.

4.5.2 To promote transparency and ensure effective scrutiny, the Clerk will present a report at each regular meeting on complaints which have been subject to initial handling but not referred to the Panel and the reasons for this.

4.6 Recording of Complaints

4.6.1 The Clerk will record all complaints on the Recorded Complaints and Conduct Matters Register ("the Register") unless the complaint has already been recorded, it is or has been the subject of criminal proceedings or the complaint is withdrawn.

4.7 Acknowledgement of Complaints

4.7.1 The Clerk will acknowledge receipt of the complaint, confirm that it has been recorded on the Register and whether the complaint has been referred to the IOPC or whether it will be referred to the Panel. Where possible, complaints should be acknowledged within five working days.

4.8 Duty to obtain & preserve evidence

- 4.8.1 When a complaint comes to the attention of the Panel, it is under a duty to secure that all appropriate steps are taken to obtain and preserve evidence in relation to the conduct in question, both initially and from time to time after that.
- 4.8.2 The Clerk, in consultation with the Chair and Vice-Chair of the Panel, will liaise with the IOPC in relation to the obtaining and preservation of evidence.
- 4.8.3 The Panel may make formal requests or take such steps as considered expedient or necessary for obtaining and preserving evidence in relation to the conduct in question. This may include requests concerning the disposition of property and resources in the PCC's office (such as buildings, assets, equipment, supplies, accounts, records, information, electronic data etc.) or to the Commissioner, an employee of the Commissioner or any person or organization having a current or past contractual relationship with the PCCs office, its predecessors or in receipt of grant from such bodies.
- 4.8.4 Any person given a direction by the Panel under this Procedure shall comply with it in full and generally co-operate with the Panel and its authorised Officers in the discharge of their statutory duties under the Regulations.
- 4.8.5 The Panel shall be informed of any instances where there has been complete or partial failure to comply with any request regarding evidence.

5 Complaints to be dealt with by the Panel – Informal Resolution

- 5.1 The Clerk will provide details of the complaint to the Commissioner and invite them to respond to the complaint. The Commissioner will usually be given two weeks in which to provide their response.
- 5.2 The Clerk will prepare a report for the Panel (or if considered appropriate a sub-Committee of the Panel), setting out the pertinent details of the complaint and the Commissioner's response to the complaint. The report will also detail the relevant legislation, regulations and guidance with recommendations on the next steps.

- 5.3 The Clerk will share a copy of the draft report with the Complainant and the Commissioner and offer the opportunity to comment on matters of fact within the draft report. They will also be asked to make representations as to whether the outcome of the complaint should be published. The Complainant and Commissioner will usually be given at least seven days to provide their comments/representations.
- 5.4 The Clerk will finalise the report, including any comments/representations received by the Complainant and/or Commissioner, to be presented at a meeting of the Panel (or a Sub-Committee of it where applicable).
- 5.5 The Panel will consider whether the complaint has been satisfactorily dealt with and, subject to any representations by the complainant, may decide to treat the complaint as having been resolved. In such a case, the Panel's reasons will be recorded and notified to the parties.
- 5.6 If the Panel believes that the matter has not yet been satisfactorily dealt with, it will determine the most suitable course of action to assist informal resolution, taking into account any applicable guidance issued by the Secretary of State and any applicable guidance issued by the IOPC. Any such action plan will include an indicative timeframe.
- 5.7 In determining the most suitable course of action, the Panel may request that the Commissioner provides information or attends before the Panel to answer questions.
- 5.8 The Panel shall have regard to:
- The Code of Conduct of the Commissioner;
 - Whether the complaint discloses a specific conduct failure identifiable with the Code of Conduct of the Commissioner;
 - Whether the complaint related to operational policing matters which the Commissioner has no authority over; and
 - The remedies available to it.
- 5.9 Informal resolution may not involve an investigation and it is not a disciplinary process. The intention is for the procedure to be flexible so it can be adapted to individual circumstances. The aim is to resolve a complaint to the satisfaction of the parties involved. For example, the Commissioner 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.

5.10 In considering the complaint, the Panel will meet in private. The Panel can take any steps that it considers appropriate to resolve the complaint provided that those steps do not amount to a sanction. Such steps may include (but are not limited to):

- Requesting the Clerk to write an explanatory letter to the complainant on behalf of the Panel;
- Requesting that an officer of the PCC's Office write an explanatory letter to the complainant;
- Suggesting a change to the Office of the PCC policy;
- Requesting that the Commissioner apologises in respect of the conduct complained of (no apology may be tendered on behalf of the Commissioner unless they have admitted the alleged conduct and agreed to the apology).

5.11 The Panel will consider whether the outcome of the complaint shall be published. The Panel shall not publish any part of any such record unless the Panel;

- (i) has given the complainant and Commissioner the opportunity to make representations in relation to the proposed publication; and
- (ii) having considered any such representations, is of the opinion that publication is in the public interest.

5.12 If, at any stage, the IOPC informs the Panel that it requires the complaint to be referred to it, or if the Clerk in consultation with the Chair and ViceChair of the Panel decides that the matter has a criminal element and therefore needs to be referred to the IOPC, the informal resolution process will be discontinued.

5.13 Notification of the outcome of complaints

5.13.1 A record of the outcome (decision notice) must be made as soon as practicable after the process is completed. Copies must be provided to the complainant and the person complained against. The Clerk will usually aim to do this within seven days of the Panel meeting.

5.13.2 If applicable, the Clerk will arrange for the outcome of the complaint to be published.

6 Withdrawn Complaints

- 6.1 A complainant can withdraw or discontinue their complaint at any time by notifying the Panel in writing (addressed to the Clerk) and signing the notification. The Clerk will record the complaint as having been withdrawn on the Register.
- 6.2 Where a complaint has been referred to the IOPC, the Clerk will notify the IOPC of the complainant's notification of withdrawal/discontinuance.
- 6.3 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 referred to above. This decision will be made by the Clerk in consultation with the Chair and Vice-Chair of the Panel.
- 6.4 The Clerk will notify the Commissioner that the complainant has withdrawn or discontinued their complaint and if it is a matter that the Panel intends to refer to the IOPC as a Conduct Matter or Serious Complaint.

7 Conduct occurring outside of England and Wales

- 7.1 The Commissioner has a duty to notify the Panel of any allegation, investigation or proceedings in relation to their conduct which would otherwise be a Conduct Matter under the Regulations only by reason of the fact that the conduct in question did not occur in England or Wales.
- 7.2 If the Panel receives such a notification from the Commissioner then they shall handle it in whatever manner (if any) that the Panel thinks fit.
- 7.3 Accordingly, by no later than the end of the working day following the day on which the investigation, allegation or proceedings (as above) comes to their attention, the Commissioner shall notify the Panel via the Clerk in writing of the matter.

8 Record Keeping and Provision of Information

- 8.1 The Register and records relating to complaints against the Commissioner will be retained for 12 months after the Commissioner leaves office.
- 8.2 On receipt of a notification from the IOPC for documents or information from the Panel, the Clerk shall provide all such information, documents and evidence as requested to the IOPC.

9 Appeals

9.1 There is no right of appeal to informal resolution.

9.2 Where all other procedures have been exhausted and the complainant is still not happy about the way their complaint has been handled, they can refer the matter to The Local Government and Social Care Ombudsman. Contact details can be found at

- <http://www.lgo.org.uk/making-a-complaint/>
- Or by telephone: 0300 061 0614

ANNEX 1

HABITUAL OR VEXATIOUS COMPLAINTS CONCERNING POLICE AND CRIME COMMISSIONER AND DEPUTY POLICE AND CRIME COMMISSIONER

1 Introduction

- 1.1 This policy identifies situations where complainants, either individually or as part of a group, or a group of complainants, might be considered to be “habitual or vexatious” and ways of responding to these situations.
- 1.2 In this policy the term habitual means “done repeatedly or as a habit”. The term vexatious is recognised in the dictionary of law and means “an action brought for the purpose of annoying the opponent and with no reasonable prospect of success”. This policy is intended to assist in identifying and managing persons who seek to be disruptive through pursuing an unreasonable course of conduct.
- 1.3 Habitual or vexatious complaints can be a problem for officers and members. The difficulty in handling such complaints is that they are time consuming and wasteful of resources in terms of officer and member time and displace scarce human resources that could otherwise be spent on council priorities. Whilst the Monitoring Officer to the Police and Crime Panel endeavour to process all complaints under procedure there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

2 Habitual or Vexatious Complainants

- 2.1 For the purpose of this policy, the following definition of habitual or vexatious complainants will be used:

The repeated and/or obsessive pursuit of:

- a. unreasonable complaints and/or unrealistic outcomes; and/or
- b. reasonable complaints in an unreasonable manner.

- 2.2 Prior to considering its implementation, the Monitoring Officer will send a summary of this policy to the complainant to give them prior notification of its possible implementation.

- 2.3 Where complaints continue and have been identified as habitual or vexatious in accordance with the criteria set out in Schedule A the Monitoring Officer will consult with the Chairman or Vice-Chairman of the Police and Crime Panel to seek agreement to treat the complaint as habitual or vexatious and for an appropriate course of action to be taken. Schedule B details the options available for dealing with habitual or vexatious complaints.
- 2.4 The Monitoring Officer will notify complainants, in writing of the reasons why their complaint has been treated as habitual or vexatious and the action that will be taken. The Monitoring Officer will also notify the PCC, and Deputy PCC, as appropriate, that complainant has been designated as a habitual and vexatious complainant to the Police and Crime Panel.
- 2.5 Once a complainant has been determined to be habitual or vexatious, their status will be kept under review after one year and monitored by the Monitoring Officer with reports being taken to Police and Crime Panel as required. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed.

Schedule A - Criteria for determining habitual or vexatious complainants

Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious where previous or current contact with them shows that they meet **one** of the following criteria:

Where complainants:

- 1) persist in pursuing a complaint where the procedure for handling complaints has been fully and properly implemented and exhausted.
- 2) persistently change the substance of a complaint or frequently raise new issues or seek to prolong contact by frequently raising further concerns or questions whilst the complaint is being addressed. (Care must be taken however not to disregard new issues which are significantly different from the original complaint as they need to be addressed as a separate complaint.)
- 3) are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
- 4) repeatedly do not clearly identify the precise issues which they wish to complain about despite reasonable efforts to help them specify their concerns and/or where the concerns identified do not fall within the remit of the Police and Crime Panel.

- 5) regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what a trivial matter is can be subjective and careful judgement will be used in applying this criteria.
- 6) has threatened or used physical violence towards employees at any time. This will itself cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, therefore, only be continued to be written communication. The Council must determine that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.
- 7) have in the course of addressing a complaint to the Monitoring Officer had an excessive number of contacts with the Police and Crime Panel, placing unreasonable demands on officers. A contact may be made in person by telephone, letter, email or fax. Judgment will be used to determine excessive contact taking into account a specific circumstance of each individual case.
- 8) have harassed or been verbally abusive on more than one occasion towards officers dealing with complaints. Officers recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health disability and there is a need to be sensitive in circumstances of that kind.
- 9) are known to have recorded meetings or face to face/telephone conversations without prior knowledge and consent by the parties involved.
- 10) make unreasonable demands on the Council and its employees and fail to accept these may be unreasonable, for example insist on an action being taken by Police and Crime Panel which falls outside of its remit.
- 11) make unreasonable complaints which impose a significant burden on the human resources of the Police and Crime Panel and where the complaint:
 - i. clearly does not have any serious purpose or value; or
 - ii. is designed to cause disruption or annoyance; or
 - iii. has the effect of harassing the Police and Crime Panel; or
 - iv. can otherwise fairly be characterised as obsessive or manifestly unreasonable
- 12) make repetitive complaints and allegations which ignore the replies which the Police and Crime Panel has supplied in previous correspondence

Schedule B - Options for dealing with habitual or vexatious complainants

The options below can be used singularly or in combination depending on the circumstances of the case and whether the complaint is ongoing or completed.

- 1) A letter to the complainant setting out responsibilities for the parties involved if the Monitoring Officer is going to assess the complaint. If terms are contravened, consideration will then be given to implementing other action as indicated below.
- 2) Decline any contact with the complainant, either in person, by telephone, by fax, by letter, by email or any combination of these provided that one form of contact is maintained. This may also mean that only one named officer will be nominated to maintain contact and the complainant is notified of this person.
- 3) Notify the complainant in writing, that the Police and Crime Panel has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, advising the complainant that they are being treated as a habitual or vexatious complainant and as such the Police and Crime Panel does not intend to engage in further correspondence dealing with the complaint.