



Home Office

Complaints about Police and Crime Commissioners

Public Consultation

December 2015

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Scope of the consultation

Topic of the Consultation: This consultation seeks views on proposed changes to the complaints about the conduct of Police and Crime Commissioners (PCCs).

Scope of the consultation: This consultation focuses on the complaints process for Police and Crime Panels (PCPs) when seeking to resolve non-serious (i.e. non-criminal) complaints made against a PCC. Legislative changes would be required to implement some of the proposals identified below.

Geographical scope: England and Wales.

Financial assessment: Attached at Annex A.

Basic information

To: This consultation is open to the public.

Duration: This consultation closes on 10 March 2016.

Enquiries: PCCComplaintsConsultation@homeoffice.gsi.gov.uk

How to Respond: Information on how to respond to this consultation can be found on www.gov.uk/home-office

Responses can be submitted online through www.gov.uk or by post by sending responses to:

Police and Crime Commissioner Complaints consultation
Home Office
Police Strategy and Reform Unit
6th Floor Fry Building
2 Marsham Street
London
SW1P 4DF

Additional ways to become involved: Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font or audio.

After the consultation: Responses will be analysed and a 'response to consultation' document will be published.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, other Government departments and related agencies for use in connection with this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with applicable access to information frameworks (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want certain information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this you should explain to us why you regard any information you have provided as confidential. If we receive a request for disclosure of the information we will take due account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The department will process your personal data in accordance with the DPA and, in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

Introduction

The Government's response to the consultation on Improving Police Integrity¹ identifies the need to expand PCCs role within the Police complaints system. The Government acknowledges that PCCs, as directly elected individuals, are best placed to respond to the needs of their electorate about the changes they should make to the complaints system. The Government intends to bring forward legislation to enable PCCs to take on responsibility for key parts of the complaints system.

In tandem with the reform to police complaints the Government proposes making changes to the system for complaints made against a PCC, creating a more transparent and easily understood complaints system. These changes would relate to non-serious complaints (i.e. non-criminal), serious complaints (those which relate to, or may relate to, criminal matters) will continue to be considered by the Independent Police Complaints Commission (IPCC), with no changes in that area. The proposed changes will require amendments to the Police Reform and Social Responsibility Act 2011 (PRSR Act 2011), and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.

Scrutiny of PCCs

Police and Crime Panels (PCPs) perform a scrutiny function for PCCs, providing both support and challenge to PCCs on the exercise of their functions, and acting as a critical friend. As set out in the PRSR Act 2011, and further explained in the Policing Protocol Order 2011, the role of the Panel is to provide checks and balances in relation to the performance of the PCC.²

PCPs are currently responsible for handling non-serious complaints made about a PCC, and resolving these through the process for "informal resolution", as set out in the PRSR Act 2011 and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.³

The Government is committed to reforming the police complaints system, making that process more transparent and easier to navigate. The PCC role is also continuing to develop – within the criminal justice system, PCCs have already taken on responsibility for the commissioning of local victims' services, and across the country are working with local partners to bring drive and focus to the delivery of shared agendas to meet local needs and priorities. The Government is committed to building on the success of the PCC model by further strengthening their role; for example, the government is proposing to enable PCCs to take on the governance of fire and rescue services as part of driving greater collaboration between emergency services.⁴ With PCCs taking on a greater role in the

¹ Improving Police Integrity Consultation - reforming the police complaints and disciplinary systems: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/411970/improving_police_integrity_reforming_the_police_complaints_and_disciplinary_systems.pdf

² The Policing Protocol: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117474/policing-protocol-order.pdf

³ Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012, section 28 of Part 4: http://www.legislation.gov.uk/ukssi/2012/62/pdfs/ukssi_20120062_en.pdf

⁴ Consultation on emergency services collaboration: <https://www.gov.uk/government/consultations/enabling-closer-working-between-the-emergency-services>

handling of complaints made against their police force, and with the responsibilities held by a PCC increasing, the time is right to amend the system for complaints made against a PCC. The Government proposes changes in three broad areas:

1. Clarifying, through non-statutory guidance, what constitutes a complaint, ensuring PCPs take forward complaints about a PCC's conduct rather than their policy decisions.
2. Providing PCPs with greater investigatory powers to seek evidence pertinent to a complaint.
3. Clarifying, through non-statutory guidance, the parameters of "informal resolution" and setting out that, where agreement cannot be reached, it is open to PCPs to make recommendations on the expected level of behaviour of a PCC, and that they have powers to require the PCC to respond.

The Government's proposed changes for PCC complaints

The proposed changes to the complaints system ensure the fundamental principle of the PCC policy that of accountability to the electorate is not undermined. The proposals will improve the transparency of the complaints procedure and deliver more satisfactory outcomes for complainants.

Clarity on what constitutes a complaint

The Police Reform and Social Responsibility Act 2011 and the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 define that a complaint to be handled by the PCP should relate to the conduct of the PCC. There is some scope for interpretation of this whereby the complaint could be made regarding the conduct of a PCC in making a policy decision. This creates difficulties in determining whether a complaint should or should not be taken forward and regularly results in complaints relating to policy decisions being taken forward.

The Government intends to provide PCPs with further guidance on what constitutes a complaint. This will supplement the regulations and set a clear marker for what should and should not be classed as a complaint. This will ensure complaints about conduct rather than policy decisions are taken forward. The Government believes, as the PCC is a directly elected public office holder, the guidance for conduct should be framed around the Nolan principles.⁵ The seven Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership set the ethical standards expected of public office holders and will robustly tie the procedures of informal resolution as mentioned in the regulations to matters of conduct rather than policy.

The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 also refer to a PCP's handling of vexatious complaints. Those working on complaints have indicated that a disproportionate amount of time can be spent in managing vexatious complaints which will in part be minimised in defining what is meant by a complaint. In the Government's response to its 'Improving Police Integrity' consultation, there was a commitment to look into reforms that would make it easier for forces to handle persistent and vexatious complainants. **We propose to consider whether any measures to make it easier for forces and PCCs to handle vexatious complaints should be extended to PCPs, so as to give PCPs greater flexibility to manage these complaints and to ensure a consistent policy across complaints systems.**

⁵ Nolan Principles - The 7 Principles of Public Life:

<https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

Powers to Investigate

Through the Police Reform and Social Responsibility (PRSR) Act 2011, PCPs are explicitly prohibited from “investigating” complaints. Due to this PCPs may lack the opportunity to gather evidence and facts pertinent to a complaint and provide a satisfactory outcome for the complainant and PCC. In contrast greater investigatory actions may be limited due to the lack of time and resources available to a PCP. **The Government proposes to amend the PRSR Act 2011 to remove the restriction on the PCPs’ ability to investigate.** This will provide PCPs greater flexibility to establish evidence and provide a satisfactory outcome for both the complainant and PCC.

If PCPs intend to use investigatory powers, **the Government proposes to amend the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 to allow for investigation through the appointment (by the PCP) of an independent individual to gather evidence relating to the specific complaint, and the conduct of the PCC, and present a recommendation report to the PCP.**

The Government believes that the majority of complaints should continue to be resolved without independent investigation, but recognises that in some cases this may restrict the PCP to an undesirable extent. It is important to separate the investigatory aspects of complaint handling from the PCP, to ensure that any political differences between the Panel and the PCC are not used as a basis for complaint investigation. The Government recognises the need to restrict the investigations to the terms of the individual complaint to ensure evidence gathering is proportionate and necessary. The guidance, referred to above, should ensure that only complaints regarding the conduct of a PCC could reach the stage of independent investigation. The regulations would include duties for PCPs to ensure proportionality and necessity of evidence gathering.

The Government believes that a monitoring officer would be best placed to perform the role of the independent investigator to establish evidence for a complaint. Under regulation 7 of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012, a PCP may delegate any of its functions (other than arrangements set out in Part 4 of those Regulations; informal resolution and those where it is appropriate to apply the requirements of the regulations) to the chief executive of the PCC. Expanding this role would seem the most natural step, and would fit with the Chief Executive’s monitoring officer responsibilities for ensuring the PCC meets legislative requirements. Having said this, the Government recognises that different opinions exist in this area, with some parties indicating that such a responsibility could place the chief executive in an unenviable position as they would, in effect, be investigating their employer. We therefore propose that it would also be open to the PCP to appoint a monitoring officer from one of the local authorities within the police force area to act as an independent investigator. The costs associated with any investigation would be born, either by the Office of the PCC (in the event of the PCC’s chief executive being appointed), or the PCP if they chose to appoint a monitoring officer from a local authority.

Informal Resolution

Through Schedule 7, paragraph 3(2) of the Police Reform and Social Responsibility Act 2011 a PCP is restricted to informal resolution of any non-serious complaint made against a PCC. Paragraph 3(5) of Schedule 7 defines informal resolution as “encouraging, facilitating, or otherwise assisting in, the resolution of the complaint otherwise than by legal proceedings...”

The Government understands that some aspects of the informal resolution procedure, when considering the PRSR Act 2011 alongside the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012, have been misinterpreted, and that on some occasions PCPs have felt that the regulations have restricted them from resolving complaints as they would have wished. In particular some PCPs have expressed the belief that their options were restricted if the PCC and the complainant could not agree on a method of informal resolution.

The Government proposes introducing non-statutory guidance clarifying that informal resolution is not reliant on the agreement of both parties, though this should remain the preferred outcome. Where a PCP is unable to reach an informal resolution which is agreeable to both parties it remains open to PCPs to use their powers as set out in sections 28(6) and 29(3) of the PRSR Act 2011, which set out that PCPs have a free standing power to make recommendations and may require a PCC to respond in writing to any recommendations made by them. The guidance will make clear that in relation to complaints any recommendations should be based on the conduct of the PCC and aimed at preventing future complaints from arising, there is an obvious link here to the definition of what constitutes a complaint. Recommendations on conduct should be based on the Nolan principles.

The Government believes that the ability to make recommendations, rather than impose sanctions, is an appropriate power for PCPs as, ultimately, the accountability of the PCC lies with the public, and not with the PCP.

Consultation questions

Complaint definition and guidance

1. To what extent do you agree or disagree that the seven Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership should frame the concept of conduct of a PCC:

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

2. To what extent do you agree or disagree that the Government should extend **measures being developed to make it easier for forces and PCCs to handle vexatious complaints to PCPs:**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Complaint investigation

3. **Question for PCPs only:**

How many complaints about a PCC did you receive in the financial year 2014-15?

- 0 – 10
- 11 – 20
- 21 – 50
- 50 - 100
- 100 +

4. **Question for PCPs only:**

Of those complaints, how many have you considered where you would have benefited from the ability to investigate the complaint?

5. **Question for PCPs and PCC Chief Executives only:**

How much investigation, in terms of hours worked, would you expect it to take to investigate a complaint?

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6. To what extent do you agree or disagree that PCPs should be given greater investigatory powers to investigate a complaint (either directly or through the appointment of an independent investigator)?
 - Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
7. To what extent do you agree or disagree that PCPs should be given the power to investigate complaints themselves, rather than appoint someone to do it?
 - Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
8. Please explain your answer to question 7.
9. What do you think the benefits are of PCPs investigating complaints themselves, rather than appointing someone else to do it?
10. What do you think the disadvantages are of PCPs investigating complaints themselves, rather than appointing someone to do it?
11. To what extent do you agree or disagree that PCPs should be able to appoint an independent investigator?
 - Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
12. To what extent do you agree or disagree that the choice of monitoring officer (either from a local authority, or from the Office of the PCC) should fall to the Panel?
 - Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
13. To what extent do you agree or disagree that the monitoring officer for the investigation of a complaint should be appointed from the Local Authority?
 - Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree

14. To what extent do you agree or disagree that the monitoring officer for the investigation of a complaint should be the chief executive of the PCCs office?
- Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
15. Do you feel that the role of independent investigator should be fulfilled by someone other than the PCC's monitoring officer, or a monitoring officer from a local authority within the police force area? If so please indicate who you think should perform this role:

Informal resolution guidance

16. To what extent do you agree or disagree that PCPs' existing powers to make recommendations on the expected level of behaviour of a PCC are sufficient?
- Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
17. To what extent do you agree that, when making recommendations as part of the informal resolution of a complaint, PCPs should tie these recommendations to the expected level of conduct based on the seven Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership?
- Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree