

## HAMPSHIRE POLICE AND CRIME PANEL

### Report

<b>Date considered:</b>	24 January 2014	<b>Item:</b>	13
<b>Title:</b>	Procedure for dealing with complaints against the Police and Crime Commissioner		
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#### 1. Executive Summary

1.1. The purpose of this paper is to review the protocol agreed by the Police and Crime Panel (hereafter referred to as 'the Panel') at their meeting on 19 October 2012, which set out how the statutory foundation of the Panel's function in dealing with non-criminal complaints against the Police and Crime Commissioner (hereafter referred to as 'the Commissioner') and against the deputy Police and Crime Commissioner (the Deputy Commissioner), as well as criminal complaints or conduct matters that are referred back to the Panel by the Independent Police Complaints Commission (the IPCC), would be discharged.

#### 2. Contextual Information

- 2.1. The Police and Crime Panel (the Panel) has the statutory role of overseeing all complaints against the Commissioner and Deputy Commissioner and informally resolving non-criminal complaints, as well as criminal complaints or conduct matters that are referred back to the Panel by the IPCC.
- 2.2. The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the Regulations) make provision regarding the Panel's powers and duties in regard to complaints made about the conduct of the Commissioner or DPCC (Complaints). The Regulations are very detailed and therefore a summary of them is attached at Appendix 1 (page 10). The Regulations are based upon the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2004. The aim of the complaints system is to deliver resolution as quickly and effectively as possible for the majority of complainants through local resolution.
- 2.3. In accordance with the Regulations, the Panel is required to maintain suitable arrangements for handling Complaints, recording conduct matters where there is an indication that the Commissioner/the Deputy Commissioner may have committed a criminal offence (Conduct Matters) and prescribing the manner in which any complaints alleging conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence (Serious Complaints) and Conduct Matters are handled. The IPCC is

required to secure that the Panel maintains such arrangements and to secure that:

- the arrangements comply with the Regulations, are efficient and effective and manifest an appropriate degree of independence;
- public confidence is established and maintained in the existence, and with the operation, of the arrangements; and
- such arrangements are conducive to, and facilitate, the reporting of misconduct by the Commissioner/the Deputy Commissioner.

2.4. The Panel may delegate all or any of its powers or duties under the Regulations, with the exception of Part 4 (informal resolution of complaints), to the Chief Executive of the Office of the Commissioner for the Hampshire Police Area (the Chief Executive). In relation to Part 4 and the informal resolution procedure, the Panel may deal with the matter itself or by appointing a sub-committee, a single member of the Panel, or a person who is not a member of the Panel (but not the Commissioner or Deputy Commissioner nor the Chief Executive) to secure the informal resolution of the complaint and then report back to the Panel the conclusion of the process.

### **3. Current Arrangements for Handling Complaints**

3.1. The current arrangements for handling complaints were agreed by the Panel on 19 October 2012, details of which can be found from the below link:

[http://www3.hants.gov.uk/procedure\\_of\\_dealing\\_with\\_complaints\\_from\\_the\\_police\\_and\\_crime\\_commissioner.pdf](http://www3.hants.gov.uk/procedure_of_dealing_with_complaints_from_the_police_and_crime_commissioner.pdf)

### **4. Annual Review of the Arrangements for Handling Complaints**

4.1 The Panel currently delegates the resolution of non-serious complaints made against the Commissioner/Deputy Commissioner to the Panel's Complaints Sub-Committee. The Chairman of this Sub-Committee, Mr Bob Purkiss MBE, and the Scrutiny Officer, met to hold an annual review of the complaints process in December.

4.2 The Chairman and Scrutiny Officer agreed that the process had worked successfully in its first year and had achieved the aims set out in paragraph 2.3. The Complaints Sub-Committee had concluded all non-serious complaints received from the delegated officer using the agreed procedure, and there had not been any referrals by complainants to the Local Government Ombudsman.

4.3 The protocol for the informal resolution procedure regarding complaints made against the Commissioner/Deputy Commissioner was reviewed and scope was identified for making the process more efficient.

#### Disapplication of Part 4 of the Regulations

4.4 Only the Complaints Sub-Committee has the power to decide to disapply Part 4 of the Regulations (informal resolution of complaints), for example where a

complaint falls within the specified description of complaints (see paragraphs 3.16 and 3.17 of Appendix 1). If the Sub-Committee determines that a complaint should have Part 4 disapplied, a decision can be made to handle a matter otherwise than in accordance with Part 4 or should take no action in relation to it.

- 4.5 The protocol in its current form does not allow for the Complaints Sub-Committee to determine if a complaint should have Part 4 disapplied without first writing to the complainant and complained against to seek their views, and meeting to determine a way forward.
- 4.6 In some cases the Complaints Sub-Committee would enjoy the flexibility to meet (either in person or electronically) in order to disapply Part 4 of the Regulations without first entering into correspondence with the complainant or complained against. Examples would include if:
- (a) the Complaint is concerned entirely with the conduct of the Commissioner/Deputy Commissioner in relation to a person who was working in his capacity as a member of the Commissioner's/Deputy Commissioner's staff at the time when the conduct is supposed to have taken place (this ground has presumably been included because the complainant has a separate right to raise a grievance under employment legislation);
  - (b) the matter took place more than 12 months ago and no good reason for the delay has been shown or injustice would be likely to be caused by the delay;
  - (c) the matter is already the subject of a complaint;
  - (d) the Complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
  - (e) the Complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints; and/or
  - (f) the Complaint is repetitious (in accordance with the meaning given in regulation 15(4)).
- 4.7 Amending the protocol to enable the action in paragraph 4.6 would not preclude the Complaints Sub-Committee from writing to the complainant and complained against if they felt this would aid their review of the complaint.
- 4.8 Any action taken would continue to be communicated to the complainant and complained against, as per the Regulations.

#### Complaints Made Against the Panel

### **5 Recommendations**

#### **5.1 It is recommended that the Panel:**

**5.1.1 review and agree the changes to the protocol for the informal resolution procedure regarding complaints made against the Commissioner/Deputy Commissioner**

**5.1.2 agree that these arrangements be reviewed in 12 months.**

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
Procedure for dealing with complaints against the Police and Crime Commissioner	<a href="http://www3.hants.gov.uk/procedure_of_dealing_with_complaints_from_the_police_and_crime_commissioner.pdf">http://www3.hants.gov.uk/procedure_of_dealing_with_complaints_from_the_police_and_crime_commissioner.pdf</a>

## **Summary of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012**

1. Schedule 7 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) requires that regulations must provide for allegations of criminal behaviour relating to the Police and Crime Commissioner (the PCC) or the Deputy Police and Crime Commissioner (the DPCC) to be referred to the Independent Police Complaints Commission (the IPCC).
2. The Government has indicated that the main reason for requiring such an allegation to be referred to the IPCC is that, otherwise, the office holder may be (or may be perceived to be) at an advantage in relation to the police investigation because of his or her responsibilities for holding their police force to account. There would also be a potential conflict of interests between the office holder and their local force. Where a complaint doesn’t involve criminal behaviour, Schedule 7 requires the regulations to provide for it to be resolved informally by the Police and Crime Panel (the Panel).
3. Accordingly, the Government has made regulations under Schedule 7 entitled the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the Regulations) which came into force on 16 January 2012 (although, from a practical perspective, they will not impact outside of London until the PCC takes office). The Regulations are closely based on Part 2 of the Police Reform Act 2002 and The Police (Complaints and Misconduct) Regulations 2004 (the Current Legislation). In summary, the Regulations make the following provision:

### General functions of the IPCC in relation to the PCC, the DPCC and the Panel

- 3.1 For the purposes of the Regulations, a “Complaint” means a complaint made about the conduct of the PCC or the DPCC. A “Serious Complaint” means a complaint about conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence by the PCC/DPCC. A “Conduct Matter” means a matter in the case of which there is an indication (whether from the circumstances or otherwise) that the PCC/DPCC may have committed a criminal offence.
- 3.2 The Regulations provide that the IPCC’s functions include securing the maintenance by the PCC and the DPCC, and the Panel, of suitable arrangements for handling Complaints (including Serious Complaints) and recording Conduct Matters. Such arrangements must comply with the Regulations, be efficient and effective and contain and manifest an appropriate degree of independence. Such arrangements must also be conducive to, and facilitate, the reporting of misconduct by the PCC/DPCC.

- 3.3 With the Secretary of State's approval, the IPCC may issue guidance to PCCs/DPCCs, Chief Officers of Police and Panels regarding the exercise of any of the functions under the Regulations. Before issuing such guidance, the IPCC must consult such persons as appear to the IPCC to represent the views of the Panel, the PCC/DPCC and Chief Officers of Police. The Secretary of State may also issue guidance (after consultation). There are also provisions for reports to be made by the IPCC to the Secretary of State and the IPCC must maintain a register of information supplied to it under the Regulations.

General duties of the PCC, the DPCC, the Panel and Chief Officers of Police

- 3.4 The Panel's duties include ensuring that it is kept informed, in relation to the PCC/DPCC, about all matters covered by the Regulations, anything which is done under, or for the purposes of, any provision of the Regulations and any obligations to act, or refrain from acting, that have arisen under the Regulations, but have not yet been complied with or have been contravened. The Panel may delegate certain of its functions under the Regulations to the Chief Executive appointed by the PCC. The Panel has duties regarding the preservation of evidence where a Complaint or Conduct Matter relating to the PCC/DPCC comes to its attention. Equally, the PCC/DPCC has duties regarding the preservation of evidence.
- 3.5 The PCC, the DPCC, the Panel and Chief Officers of Police have duties regarding providing assistance, information and access to premises to the IPCC/its appointed investigator. Where a Chief Officer of Police requires another Chief Officer of Police or PCC to provide a person serving with the police for appointment as an investigator of an investigation managed by the IPCC, such a requirement must be complied with.
- 3.6 Once notified by the Panel (as it is required to do), the PCC has a duty to publish (in such manner as specified by the Panel) the name and address of the person to whom Complaints should be addressed.
- 3.7 As with the Current Legislation, there are duties relating to the provision of copies of the Complaint to the parties involved, keeping the complainant and interested persons informed and record keeping.

Notification and recording of Complaints

- 3.7 Except where the subject-matter of a Complaint is being/has been dealt with by means of criminal proceedings, or the Complaint has been withdrawn:
- (a) where the Complaint is made to the IPCC, it must notify the relevant Panel (unless exceptional circumstances justify notification not being given),

(b) where the Complaint is made/notified to the Panel, the Panel must record the Complaint (unless it is not the relevant Panel in which case it must notify the relevant Panel),

(c) where the Complaint is made to the Chief Constable, he/she must notify the Panel; and

(d) where the Complaint is made to the PCC or the DPCC concerning his/her own conduct, he/she must notify the Panel.

3.8 If the Panel/PCC/DPCC/Chief Constable receiving the Complaint decides not to take action to notify or record the Complaint (or any part of it), the complainant must be notified of this decision with reasons.

3.9 As with the Current Legislation, there are provisions for Complaints to be withdrawn, and associated duties of notification by the Panel and the IPCC if both are involved in the matter. Where a Complaint has been withdrawn, the Panel may convert the former Complaint into a Conduct Matter.

#### Notification and recording of Conduct Matters

3.10 Where the Panel becomes aware of a Conduct Matter (whether civil proceedings have been brought, or are likely to be brought, by a member of the public against the PCC/DPCC, or otherwise), the Panel must record it (unless the matter has been recorded as a Complaint, is being/has been dealt with by means of criminal proceedings or it is not the relevant Panel in which case it must notify the relevant Panel).

#### Reference of Serious Complaints and Conduct Matters to the IPCC

3.11 Where the Panel determines that a Complaint is serious, or has recorded a Conduct Matter, or where required to do so by the IPCC, the Panel must refer the Complaint/Conduct Matter to the IPCC and notify the complainant and the person to whose conduct the matter relates (except where it might prejudice a possible future investigation) of the referral.

3.12 Where the IPCC determines that the matter needs to be investigated, it must comply with the provisions contained in Part 3 of the Regulations. The two forms an investigation can take are: (a) an investigation by a police force, under the management of the IPCC, or (b) an investigation by the IPCC itself. Where the IPCC considers that continuing an investigation or other procedure under the Regulations may prejudice any criminal proceedings, the IPCC may suspend the investigations until the conclusion of criminal proceedings. Otherwise, the Regulations restrict the bringing of criminal proceedings in relation to a matter which is the subject of an investigation in accordance with Part 3 of the Regulations until a report on that investigation has been submitted to the IPCC (except where the DPP

considers there are exceptional circumstances which make it undesirable to delay such the proceedings).

- 3.13 Where the IPCC determines that the matter does not need to be investigated, the IPCC will refer the matter back to the Panel notifying the complainant (if there is one) and the person to whose conduct the matter relates. Conduct Matters referred back to the Panel may be dealt with by the Panel in such manner as it may determine. Serious Complaints referred back to the Panel must be handled in accordance with Part 4 of the Regulations (or however the Panel thinks fit if Part 4 has been disapplied, see below).

The handling by the Panel of Complaints, including Serious Complaints that have been referred back to the Panel by the IPCC

- 3.14 The Regulations provide that where the Panel records a Complaint, or where it is a Serious Complaint that has been referred to the IPCC and then referred back to the Panel by the IPCC, the Panel must handle the Complaint in accordance with Part 4 of the Regulations unless Part 4 has been disapplied. Where it appears to the Panel that the Complaint has already been satisfactorily dealt with, subject to any representation by the complainant, it may treat the matter as having been resolved.
- 3.15 Part 4 of the Regulations requires that the Panel must make arrangements for the Complaint to be subjected to informal resolution. If the IPCC notifies the Panel that it requires the Complaint to be referred to it, the informal resolution must be discontinued. Guidance to be issued by the Secretary of State will approve the procedures available for dealing with Complaints by way of informal resolution. The arrangements made by the Panel may include the appointment of a sub-committee, a single member of the Panel or a person who is not a member of the Panel (not a PCC or DPCC) to secure the informal resolution of the Complaint. The Regulations provide that the Panel must as soon as practicable give the complainant and the person complained about an opportunity to comment on the Complaint (if the latter chooses not to comment, the Panel shall record the fact). In accordance with its powers under the 2011 Act, the Panel may require the person complained against to provide the Panel with information or documents or attend before the Panel to answer questions or give evidence. This will not be deemed to be an investigation. The Panel must as soon as practicable make a record of the outcome of the procedures to be sent to both parties. The Regulations contain provisions regarding the making of apologies and the publication of the record of the outcome of the procedures.

The disapplication of Part 4 of the Regulations

- 3.16 Where the Panel considers that it should handle the Complaint otherwise than in accordance with Part 4 of the Regulations, or should take no action in relation to it, and the Complaint falls within a description specified in the



Regulations, the Panel may handle the Complaint in whatever manner (if any) that it thinks fit. Unlike the Current Legislation in relation to dispensations granted by the IPCC, the new provisions do not require the Panel to seek the agreement of the IPCC. The Panel must notify the complainant of this decision.

3.17 The Complaints in respect of which the Panel can choose to disapply Part 4 of the Regulations are those where the Panel considers that:

(a) the Complaint is concerned entirely with the conduct of the PCC/DPCC in relation to a person who was working in his capacity as a member of the PCC/DPCC's staff at the time when the conduct is supposed to have taken place (this ground has presumably been included because the complainant has a separate right to raise a grievance under employment legislation);

(b) the matter took place more than 12 months ago and no good reason for the delay has been shown or injustice would be likely to be caused by the delay;

(c) the matter is already the subject of a complaint;

(d) the Complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;

(e) the Complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints; and/or

(f) the Complaint is repetitious (in accordance with the meaning given in regulation 15(4)).

Hampshire Police and Crime Panel  
Protocol for the Informal Resolution Procedure Regarding Complaints made  
Against the PCC

When the decision has been made to record a complaint that will not subsequently be referred to the Independent Police Complaints Commission (the IPCC), the Chief Executive of the Office of the PCC will:

- send a record of the complaint to the complainant and to the person complained about (in the latter case, subject to any decision taken not to supply a copy of the complaint or to supply the complaint in a form which keeps anonymous the identity of the complainant or of any other person) and will include the contact details of the Panel's scrutiny officer; and
- refer the record, and copies of all the associated paperwork, to the Panel's scrutiny officer. This will be no later than two working days after the complaint has been recorded.

On receipt of the complaint, the Panel's scrutiny officer will either:

- consider and advise the Complaints Sub-Committee as to whether Part 4 of the regulations<sup>1</sup> (the regulations) can be disapplied to the complaint. The regulations can be disapplied if:
  - (a) the complaint is concerned entirely with the conduct of the PCC/ DPCC in relation to a person who was working in his capacity as a member of the PCC/DPCC's staff at the time when the conduct is supposed to have taken place;
  - (b) the incident (or the latest incident) giving rise to the complaint took place more than 12 months before the complaint was made and either no good reason for the delay has been shown or injustice would be likely to be caused by the delay;
  - (c) the matter is already the subject of a complaint;
  - (d) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
  - (e) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints; and/or

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<sup>1</sup> The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 and any amending legislation

(f) the complaint is repetitious (in accordance with the meaning given in regulation 15(4)).

- Should it be recommended that the regulations are disapplied to the complaint, the scrutiny officer will compile a brief report for the Complaints Sub-Committee, setting out the pertinent details of complaint and making suggestions for the next steps. The Complaints Sub-Committee will meet, either electronically or in person, in order to confirm the action to be taken.
- In such a case, the Complaints Sub-Committee's reasons will be recorded and notified to the parties.

Or:

- convene a meeting of the Complaints Sub-Committee, normally to be held within three weeks of the referral of the complaint. This meeting may be held electronically or in person,
- write to the complainant, setting out timescales and providing details about the informal resolution procedure; and giving the complainant an opportunity to make further comments in support of his/her complaint (allowing him/her two weeks to respond). Where the Panel's scrutiny officer believes that the circumstances of the case are such that the Complaints Sub-Committee may decide to treat the complaint as having been resolved, he/she will ask the complainant to provide his/her representations in this regard for the Complaints Sub-Committee to take into account; and
- write to the person complained about, setting out timescales and providing details about the informal resolution procedure; and giving him/her an opportunity to make comments in response to the complaint (allowing him/her two weeks to respond).
- The Panel's scrutiny officer will compile a brief report for the Complaints Sub-Committee, setting out the pertinent details of complaint, recording any failure by the person complained about to comment on the complaint and making suggestions for the next steps.
- The Complaints Sub-Committee will first 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 Complaints Sub-Committee's reasons will be recorded and notified to the parties.
- If, on considering the report, the Complaints Sub-Committee feels that the matter needs to be formally resolved, it will decide its course of action. In accordance with the regulations, the Complaints Sub-Committee may not conduct an investigation. The Complaints Sub-Committee may exercise its

delegated powers to require the person complained against to provide information or documents or attend before it to answer questions or give evidence, as this will not be regarded as an investigation. However, any other step intended to gather information about the complaint, other than inviting the comments of the complainant and the person complained against, will be likely to amount to investigation.

- The Complaints Sub-Committee will consider whether to devise an action plan (to be drawn up by the Panel's scrutiny officer) and in so doing will take into account any applicable guidance issued by the Secretary of State and may also consider any guidance issued by the IPCC pursuant to section 22 of the Police Reform Act 2002 on local resolution. Any such action plan will include an indicative timeframe.
- Any such action plan may include (for example):
  - An explanatory letter being written by an officer of the Panel (or on behalf of the Complaints Sub-Committee),
  - An explanatory letter being written by an officer of the OPCC,
  - A suggested change to OPCC policy; or
  - A request that an apology is tendered (no apology may be tendered on behalf of the person complained against unless that person has admitted the alleged conduct and agreed to the apology).
- The Complaints Sub-Committee will also decide whether it wishes to:
  - reconvene to take any steps identified in the action plan,
  - authorise any named individual (who may not be a PCC, a DPCC or the Chief Executive of the Office of the PCC) to take any steps in accordance with the action plan; or
  - refer the matter to the Panel recommending that the identified action be taken.
- Once the actions from the plan have been completed, the matter may be referred back to the Complaints Sub-Committee or an authorised individual may determine that the matter has been resolved. The Panel's scrutiny officer must make a record of the outcome of the informal resolution as soon as practicable, normally within three working days, after the process is completed and provide copies to the complainant and the person complained against. The matter will then be closed.
- No part of the record may be published by the Complaints Sub-Committee unless, having given the parties an opportunity to make representations about the proposed publication and having considered any such

representations, the Complaints Sub-Committee considers that publication is in the public interest.

- The Panel's scrutiny officer will prepare an update report to each quarterly scheduled meeting of the Panel about all complaints considered in the preceding quarter by the Complaints Sub-Committee, the action taken (including any obligations to act, or refrain from acting, that have arisen under the regulations, but have not yet been complied with or have been contravened) and the outcome of the process.
- If, at any stage, the IPCC informs the Panel that they require the complaint to be referred to them, or if the Complaints Sub-Committee decides that the complaint should be referred to the IPCC, the informal resolution process must be discontinued. The Complaints Sub-Committee should only decide that the complaint should be so referred if matters come to light during the informal resolution process which indicate the commission of a criminal offence, thus leading to the earlier decision as to whether or not the complaint was a serious complaint being reversed.
- At any stage, the Panel's scrutiny officer may seek legal advice from the Panel's legal adviser.

## **RULE 34**

### Complaints and Conduct Matters relating to the PCC or the Deputy Police and Crime Commissioner

*\*The Panel's arrangements for handling complaints and a protocol in relation to the informal resolution procedure are available separately*

- (1) The Panel has various powers and duties in relation to the conduct of the PCC and the Deputy Police and Crime Commissioner ("the DPCC"). These are currently prescribed by the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (hereafter referred to as the "Complaints Regulations" which shall include any superseding legislation). Except for its powers and duties conferred by Part 4 of the Complaints Regulations (informal resolution of complaints), the Panel may delegate all or any of its functions under the Complaints Regulations to the Chief Executive appointed by the PCC (unless that person is a PCC/DPCC). The Panel has a duty to ensure that it is kept informed, in relation to the PCC/DPCC, about all matters covered by the Complaints Regulations, anything which is done under, or for the purposes of, them and any obligations to act, or refrain from acting, that have arisen under those regulations, but have not yet been complied with or have been contravened.

#### General Duties

- (2) The Panel has a duty to provide the Independent Police Complaints Commission ("IPCC")/authorised representatives with all such assistance as may be reasonably required for the purposes of, or in connection with, the carrying out of any investigation.
- (3) Where the Panel becomes aware of:-
  - (a) a complaint about the conduct of the PCC or DPCC; or
  - (b) information that indicates that the PCC/DPCC may have committed a criminal offence but no complaint has yet been made (hereafter referred to as a "Conduct Matter"),

the Panel must ensure that all appropriate steps are taken, both initially and from time to time after that, to obtain and preserve evidence relating to the conduct in question.

#### Recording Complaints and Conduct Matters

- (4) Except where the subject-matter of a complaint is being/has been dealt with by means of criminal proceedings, or the complaint has been

withdrawn, where the Panel is notified that a complaint relating to the conduct of the PCC/DPCC has been made and is satisfied that it is the appropriate panel to consider the matter, the Panel must record the complaint.

- (5) If the Panel is not the appropriate panel to consider the complaint, it must give notification of the complaint to the appropriate panel.
- (6) If the Panel decides not to record the complaint (or any part of it) or to give notification under the preceding paragraph, the complainant must be notified of this decision with reasons.
- (7) Where the Panel becomes aware of a Conduct Matter, the Panel must record it unless the matter has been recorded as a complaint, is being/has been dealt with by means of criminal proceedings or it is not the appropriate panel in which case it must notify the appropriate panel.

#### Referral to the IPCC

- (8) Where the Panel:
  - (a) determines that a complaint is serious (i.e. involving an indication that the PCC/DPCC may have committed a criminal offence);
  - (b) records a Conduct Matter; or
  - (c) is required to do so by the IPCC,

the Panel must refer the matter to the IPCC notifying the complainant, and the person to whose conduct the matter relates (except where it might prejudice a possible future investigation), of the referral. Such a referral must be made as soon as practicable and in any event by the end of the day after the Panel decided that the complaint was serious, recorded the Conduct Matter or was notified to do so by the IPCC. The referral must be in the manner specified by the IPCC.

- (9) Where the IPCC determines that the matter does not need to be investigated, it will refer the matter back to the Panel notifying the complainant (if there is one) and the person to whose conduct the matter relates. Serious complaints which are referred back to the Panel must be handled in accordance with the informal resolution procedure. Conduct Matters which are referred back to the Panel may be handled in such manner as the Panel sees fit.

#### Informal Resolution Procedure

- (10) In respect of a recorded complaint, or a serious complaint that has been referred back to the Panel by the IPCC, the Panel must decide whether the matter falls within the description set out in Rule 34(20) below and, if so,

whether to disapply Part 4 of the Complaints Regulations, and thereby the informal resolution procedure. If it does so, the Panel may handle the matter in whatever manner (if any) that it thinks fit.

- (11) Where it appears to the Panel that the matter has already been satisfactorily dealt with, the Panel may, subject to any representation by the complainant (if any), treat it as having been resolved.
- (12) If, at any time, the IPCC notifies the Panel that it requires the matter to be referred to it, the informal resolution procedure must be discontinued.
- (13) If the matter is to be subject to the informal resolution procedure then the Panel may deal with the matter itself or by appointing:-
  - (a) a Sub-Committee;
  - (b) a single member of the Panel; or
  - (c) a person who is not a member of the Panel (but not a PCC, DPCC or the Chief Executive appointed by the PCC),

to secure the informal resolution of the complaint and then report back to the Panel the conclusion of the informal resolution procedure.

- (14) Where a Sub-Committee or person is so appointed, the matter may be remitted at any time to the Panel where the Panel considers that this will lead to a more satisfactory resolution of the matter.
- (15) The informal resolution procedure must comply with any guidance issued by the Secretary of State under section 22(5) of the Police Reform Act 2002 (as amended by the Complaints Regulations).
- (16) The Panel or appointed Sub-Committee/person must as soon as practicable give the complainant and the person complained about an opportunity to comment on the complaint (if the latter chooses not to comment, this must be recorded in writing).
- (17) The Panel or appointed Sub-Committee/person may require the person complained against to provide information or documents or attend before it or him/her to answer questions or give evidence. This will not be deemed to be an investigation.
- (18) The Panel or appointed Sub-Committee/person must consider the representations made and documentation provided, and reach a determination on the matter. The Panel or appointed Sub-Committee/person must as soon as practicable make a record of the outcome of the procedures to be sent to the parties. The Complaints Regulations contain provisions regarding the making of apologies and the publication of the record of the outcome of the procedures.



Disapplication of the Informal Resolution Procedure in Relation to Complaints

- (19) Where the Panel considers that it should handle the complaint (including serious complaints referred back to the Panel) otherwise than in accordance with Part 4 of the Complaints Regulations, and thereby the informal resolution procedure set out above, or should take no action in relation to it, and the complaint falls within a description specified in the Complaints Regulations (and as set out below), the Panel may handle the complaint in whatever manner (if any) that it thinks fit. The Panel must notify the complainant of this decision.
- (20) The Panel can choose to disapply Part 4 of the Complaints Regulations, and thereby the informal resolution procedure, where:-
- (a) the complaint is concerned entirely with the conduct of the PCC/DPCC in relation to a person who was working in his capacity as a member of the PCC/DPCC's staff at the time when the conduct is supposed to have taken place;
  - (b) the incident (or the latest incident) giving rise to the complaint took place more than 12 months before the complaint was made and either no good reason for the delay has been shown or injustice would be likely to be caused by the delay;
  - (c) the matter is already the subject of a complaint;
  - (d) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
  - (e) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints; and/or
  - (f) the complaint is repetitious (in accordance with the meaning given in regulation 15(4)).