

CONSULTATION ON THE DRAFT ELECTED LOCAL POLICING BODY (COMPLAINTS AND MISCONDUCT) REGULATIONS

SUMMARY OF CONSULTATION RESPONSES AND GOVERNMENT RESPONSE



OVERVIEW OF CONSULTATION PROCESS

The consultation document was published on 23rd September 2011. It contained draft regulations setting out how complaints against Police and Crime Commissioners (PCCs), the Mayor's Office for Policing and Crime (MOPC) and their deputies will be handled. It set out 5 questions about these regulations and invited responses from anyone who has an interest in policing and community safety. The consultation took place over a four week period.

METHOD FOR THE CONSULTATION

The consultation was made available on the Home Office website as a PDF document. Large print and audio and braille were also made available. Responses to the consultation could be submitted via email.

A total of 31 responses to the consultation were received: 12 from Police Authorities. 7 from Police Forces. 11 from other organisations. 1 from a member of the public. The substantive points made by respondents are set out below together with the Government's response.

The Government would like to thank all those who gave their time to respond and contribute to this consultation process. We have not listed all the individuals who responded to the consultation but a list of organisations who responded is included at the end of this document.

Question 1. Do you have any comments on the regulations which set out the way in which allegations of criminal behaviour will be referred to the Independent Police Complaints Commission (IPCC)?

- Respondents thought that a new regulation should be included which allows the Police and Crime Panel (PCP) to delegate some of its functions for handling complaints to the PCC's monitoring officer or (in the case of the Metropolitan Police Service (MPS) area) the Greater London Authority's (GLA) monitoring officer.

- Respondents questioned whether the draft regulations are sufficiently clear as to what constitutes a complaint and what constitutes a conduct matter. They thought these terms should be more clearly defined in the regulations.
- Respondents noted that the regulations are silent on whether a member of the relevant office holder's office could make a complaint and suggested that it might be useful for the regulations to cover this.
- Several responses to the consultation questioned whether it is necessary or appropriate for the IPCC to have to investigate a situation where the relevant office holder is issued with a road traffic fixed penalty notice. The draft regulations would require such offences to be referred to the IPCC for investigation because they are treated by the regulations as criminal allegations.

THE GOVERNMENT'S RESPONSE

We have taken on board the points about definitions of a criminal complaint and these are reflected in the revised regulations. We have also provided for the PCP to delegate its functions for handling complaints to the PCC's monitoring officer or (in the case of the MPS area) the GLA's monitoring officer.

In terms of whether a member of the relevant office holder's office should be able to use the formal complaint procedure, the Government's view is that complaints by members of the relevant office holder's office are better dealt with by internal grievance procedures. Complaints of this kind are within scope of the regulations, but where the complaint does not make a criminal allegation, the regulations allow the PCP to disapply the requirements of the regulations and refer the matter back to the relevant office holder.

In terms of road traffic fixed penalty notices, the Government's view is that, in the interests of maintaining confidence in the complaints system, it would not be appropriate to restrict the IPCCs ability to investigate any alleged criminal activity. It is anticipated that the IPCC will be able to put in place light-touch handling arrangements for such offences in order to keep bureaucracy associated with investigating such cases to a minimum.

2. Do you have any comments on the regulations which set out the way in which allegations of criminal behaviour against relevant office holders will be investigated by or under the management of the IPCC?

- Respondents raised concerns that the draft regulations are silent on timescales for how long the IPCC will take to conduct an investigation into an allegation of criminal behaviour. It was suggested that the regulations should make clear that any IPCC investigation should be completed in sufficient time to allow any potential criminal charges to be pursued.
- Respondents raised some concerns that the IPCC's powers in relation to conducting investigations should be strengthened. In particular it was suggested that the IPCC should be able to access police premises and that staff of the relevant office holder should be under a duty to assist the IPCC with their investigations.
- Concerns were raised by respondents that the regulations do not include any reference to the position of a PCC while an investigation is ongoing. It was suggested that this should be considered given that the relevant office holder's position may become untenable while an investigation is taking place. It was also suggested that the regulations should set out sanctions available to the PCP following a finding of criminal behaviour or misconduct, including an

option to recommend that the relevant office holder steps down.

THE GOVERNMENT'S RESPONSE

We do not consider that it would be appropriate to set out the timescales for IPCC investigations in the regulations. It is expected that the IPCC will conduct its investigations as quickly as is reasonably possible but timescales will depend on the complexity and seriousness of individual cases.

We have strengthened the IPCC's powers in relation to conducting investigations in the revised regulations so that they can access police premises and so that staff of the relevant office holder are under a duty to assist the IPCC with their investigations.

The issue of sanctions that can be applied to a relevant office holder, either during an investigation or following a finding of criminal behaviour or misconduct, is outside the scope of this consultation. As stated at the bottom of page 4 in the consultation document, the regulations are not able to make provision for a relevant office holder to be removed from office as a result of a finding of criminal behaviour following an investigation. The mechanism for the removal of a relevant office holder is the disqualification provisions set out in Chapter 6 of Part 1 of the Police Reform and Social Responsibility Act 2011. If the relevant office holder is found to have committed any imprisonable offence (whether or not the relevant office holder is actually sentenced to a term of imprisonment), then the relevant office holder will be disqualified from continuing to serve, and will be removed from office. In an appropriate case the IPCC will pass its investigation report to the Director of Public Prosecutions to decide whether criminal proceedings should go ahead. It will be for the public to decide at the ballot box in all other circumstances.

3. Do you have any comments on the regulations which set out the way in which the findings of an investigation by

or under the management of the IPCC into allegations of criminal behaviour against a relevant office holder will be reported?

- Respondents suggested that the IPCC should consult the PCP about timing and format of a publication report given the PCP's key role in the process. It was also suggested that there should be a presumption of publication in every case with limited exception – for example, where it may prejudice a police investigation, in which case it would be delayed until that investigation has concluded.
- It was questioned whether it would always be appropriate for a copy of the report to be sent to the chief officer for the relevant office holder's force given the close working relationship that is likely to exist between the two individuals.

THE GOVERNMENT'S RESPONSE

We do not consider that it would be appropriate for the regulations to set out that the IPCC should consult the PCP about when a report is published. It is important that, in order to maintain public confidence in the complaints system, that there are no restrictions as to when the IPCC can publish its report, however, it is accepted that in practice the IPCC may want to discuss timing issues with the PCP and take these issues into account.

In response to the consultation responses we have removed the requirement for a copy of the IPCC's investigation report to be sent to the chief officer.

4. Do you have any comments on the regulations which set out the way in which complaints against relevant office holders regarding non-criminal behaviour will be resolved by the PCP?

- It was noted that the regulations are silent on what the standards are that relevant office holder's are expected to meet. It

was suggested that these standards should be set out in the regulations.

- Respondents highlighted that the draft regulations currently do not make any mention of the ability to complain to the Local Government Ombudsman (LGO), regarding a PCP's handling of a complaint or any other administrative function. Respondents suggested that PCPs, in developing their own complaints procedures, should be required explicitly to refer complainants to the LGO at the final stage, and this should be made clear in the regulations.
- Respondents raised concerns about the provision in the draft regulations that gives relevant office holders 28 days to informally resolve a non-criminal complaint. It was suggested that regulations should require resolution within a reasonable period of time to allow for each complaint to be dealt with effectively and appropriately.

THE GOVERNMENT'S RESPONSE

We do not think that it is appropriate for the regulations to set out the standards which the relevant office holder should be subject to. The protocol which sets out how PCCs (including the Mayor), chief officers and PCPs will work together already sets out that relevant office holders should be expected to uphold the Nolan principles of public life. If any other standards of conduct are to exist they will need to be agreed on locally.

We do not think it would be appropriate to refer to the role of the LGO in the regulations, but it is anticipated that the LGO's role may be set out in associated guidance. The LGO will be invited to contribute to this guidance.

The regulation requiring the relevant office holder to deal with the complaint within 28 days has been removed from the regulations. In view of the changes that will give the monitoring officer a role in handling

complaints we feel this requirement is no longer necessary. If the monitoring officer decides not to notify or record a complaint the public can also complain directly to the PCP (and this will be made clear on the PCC's website). This will prevent the relevant office holder from failing to deal with a complaint.

5. Are there any particular issues relating to the system for handling complaints against local policing bodies that you would like to see covered by forthcoming guidance?

Respondents said they would welcome guidance on a number of issues. The main issues were as follows;

- What are operational issues complaints, which should lie with the chief constable, compared to those that more naturally rest with the PCP.
- How a situation whereby the complaints system is being used to fulfil a personal or political agenda will be managed.
- Examples of those situations which, it is envisaged, will give rise to an automatic independent investigation by the IPCC, and when such investigations would be likely to be referred to a police force under a managed investigation.
- Expected/allowable timelines throughout an allegation/complaint process.
- When a relevant office holder should be informed, or by whom, of when a complaint/allegation has been made.
- What the relevant office holder's position is during an investigation – i.e. if they are expected to cease all functions until a decision has been reached. The avenues of redress which the PCP can use if the relevant office holder has been found to have acted improperly.
- How the PCP should deal with complaints of a non-criminal nature; the procedures

which should be followed by the PCP in conducting an informal resolution including any assessment criteria which should be applied; the procedures for conducting an investigation and hearing and what is meant by 'satisfactorily resolve'.

- Conditions requiring referral of a matter from the IPCC to the Director of Public Prosecutions.

THE GOVERNMENT'S RESPONSE

The Government is grateful for these suggestions. Some of these issues are covered in legislation, such as the criteria for suspending a PCC, but these suggestions will be considered in due course when developing guidance. Draft guidance will be shared with partners for further comments.

LIST OF RESPONDENTS

NATIONAL ORGANISATIONS

The Association of Council Secretaries and Solicitors

The Association of Police Authorities

The Association of Police Authority Chief Executives

The Independent Police Complaint Commission

Liberty

The London Assembly

The Local Government Group

The Local Government Ombudsman

The Mayor of London

The Metropolitan Police Authority

Police Action Lawyers Group

POLICE AUTHORITIES

Avon and Somerset police authority

Cheshire police authority

Derbyshire police authority

Dorset police authority

Kent police authority

Lancashire police authority

South Wales police authority

Staffordshire police authority

Surrey police authority

Thames Valley police authority

West Midlands police authority

West Yorkshire police authority

POLICE FORCES

Avon and Somerset constabulary

Derbyshire constabulary

Kent constabulary

Northamptonshire constabulary

North Yorkshire constabulary

Sussex constabulary

West Mercia constabulary

