

Guidance for dealing with complaints against Police and Crime Commissioners and/or Deputy Police and Crime Commissioners

1. INTRODUCTION

- 1.1 This guidance deals with complaints about the conduct of the Police and Crime Commissioner for Northumbria (the Commissioner) and the conduct of any person he or she appoints to be the Deputy Police and Crime Commissioner for Northumbria (the Deputy Commissioner).
- 1.2 The Police Reform and Social Responsibility Act 2011 (the Act) enables the Home Secretary to make regulations regarding complaints or other information about the conduct of the Commissioner or Deputy Commissioner. The appropriate regulations are the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (the Regulations) and nothing in this guidance overrules the provisions of those Regulations.
- 1.3 In addition, references in this document to the “relevant office holders”, to the Commissioner and Deputy Commissioner or to “the person complained about”, are to those two persons in their Office for Policing and Crime capacities primarily, although complaints may extend to their conduct in their public and private capacities.
- 1.4 Reference to the “Monitoring Officer” is to the person appointed by the Commissioner as the Monitoring Officer (ie the PCC’s Chief Executive) is the only person to whom the PCC can delegate its functions (Reg.7(i)). The “IPCC” is the Independent Police Complaints Commission.

2. KEY CONCEPTS

- 2.1 The legislation covers potential criminal conduct of the Commissioner and the Deputy Commissioner both where a formal complaint has been made and where the circumstances point to potential criminal behaviour in the absence of a formal complaint (e.g. where information is available from civil legal action). The relevant legislation contains a number of key definitions:
 - a) a “Complaint” means a general complaint about the conduct of the Commissioner and/or the Deputy Commissioner, whether or not that conduct is potentially criminal;
 - b) a “Recorded Complaint” means a Complaint that the Monitoring Officer is obliged under the Regulations to record by entry in the Recorded Complaints and Conduct Matters Register;

- c) a “Conduct Matter” means a matter where there is an indication (whether from the circumstances or otherwise) that the Commissioner and/or Deputy Commissioner may have committed a criminal offence. Conduct Matters can arise without a Complaint being made and must be notified to the IPCC.
- d) A “Serious Complaint” means a Complaint about the conduct of the Commissioner and/or the Deputy Commissioner which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence. Serious Complaints must be notified to the IPCC.

3. EVIDENCE THRESHOLD

3.1 Complaints that are or Serious Complaints or which disclose Conduct Matters must be referred by the Monitoring Officer to the IPCC.

3.2 It is not the Monitoring Officer’s function to investigate or determine whether a crime has been committed: only a court of criminal jurisdiction can definitively rule on the matter. Any investigations related to a potential crime will be undertaken by the IPCC. However, the Monitoring Officer acts as a ‘filter’ and will decide how a Complaint or other information concerning the conduct of relevant office holders should be classified, handled and dealt with under the Regulations.

3.3 In both cases, the Monitoring Officer will consider all the circumstances and relevant information but will make the decision on the basis of evidence that is likely to be substantially below the normal civil law standard of the ‘balance of probabilities’, noting also that:

- a) A Conduct Matter only requires there to be an *indication* that a criminal offence may have been committed. A mere assertion, without more, that a criminal offence has been committed is unlikely to suffice. However, an assertion coupled with a fairly low degree of evidence that enough of the necessary elements required to constitute any particular offence are present is likely to be an adequate *indication* of potential criminal conduct, resulting in the matter being referred to the IPCC as a Conduct Matter; and
- b) A Serious Complaint requires stronger evidence, as the evidence must show that there is conduct that appears to constitute or involve the commission of an offence. Therefore the level of evidence that the necessary elements of a criminal offence are present will be more than for a Conduct Matter but, again, is likely to be much less than required under the normal civil standard.

4. ROLE OF MONITORING OFFICER UNDER THE REGULATIONS

- 4.1 The Northumbria Police and Crime Panel (“the Panel”) is given specific functions under the Regulations as to the handling and determination of Complaints against a relevant office holder. The Regulations permit the Panel to delegate some or all of these functions to the Monitoring Officer.

5. THE RECORDED COMPLAINTS AND CONDUCT MATTERS REGISTER

- 5.1 The Monitoring Officer will establish a formal register (“the Recorded Complaints and Conduct Matters Register”) for the purposes of recording Complaints and Conduct Matters under the Regulations. This Register will take the form of an electronic database within which to record all key details pertaining to a Complaint including the date received, the complainant, a summary of the complaint/the category into which it falls (Conduct Matter, Serious Complaint or other Recorded Complaint), the date on which it was recorded, an indication of intended action on the Complaint and any other information deemed relevant. (A Complaint or Conduct Matter entered into the Register is a “Recorded Complaint” or “Recorded Conduct Matter” for the purposes of this Guidance and the Regulations.)

6. CONDUCT MATTERS

- 6.1 For the purposes of the Regulations, a “Conduct Matter” is a matter where there is an indication (whether from the circumstances or otherwise) that a relevant office holder may have committed a criminal offence in England or Wales or, although committed elsewhere, it is an offence triable in England or Wales.
- 6.2 A Complaint does not need to have been made for a Conduct Matter to arise and to be dealt with under the Regulations.
- 6.3 A Conduct Matter must be recorded by the Monitoring Officer, and entered into the Recorded Complaints and Conduct Matters Register, where either:
- a) the Monitoring Officer is notified that civil proceedings against a relevant officer holder have been or are likely to be brought by a member of the public and which appear to involve or would involve a Conduct Matter; or,
 - b) a Conduct Matter comes to the Monitoring Officer’s or the Police and Crime Panel’s attention in any other case.
- 6.4 However, if the Monitoring Officer is satisfied that either of the following exceptions apply it is not necessary to record a Conduct Matter:

- a) the matter has already been recorded as a Complaint under regulation 9(5) of the Regulations (i.e. as a Recorded Complaint); or
- b) the matter has been, or is already being, dealt with by means of criminal proceedings against the relevant office holder: this will normally be the case where the Police have formally charged the person with a criminal offence or an information alleging an offence has been laid before a magistrates' court .

6.5 If the IPCC becomes aware of a Conduct Matter which has not been recorded by the Monitoring Officer on behalf of the Panel then the IPCC may direct the Panel to record the matter and it must do so.

7. CONDUCT MATTERS OCCURRING OUTSIDE ENGLAND AND WALES

7.1 The PCC and/or DPCC are under an individual duty to notify the Monitoring Officer of any allegation, investigation or proceedings in relation to their conduct which would otherwise be a Conduct Matter under the Regulations were it not for the fact that the conduct in question did not occur in England or Wales. If the Monitoring Officer receives such a notification from the PCC and/or DPCC then he or she shall handle it in whatever manner (if any) that the Monitoring Officer thinks fit.

7.2 Accordingly, by no later than the end of the day following the day on which the investigation, allegation or proceedings (as above) comes to their attention, the PCC and/or DPCC shall notify the Monitoring Officer in writing of the matter.

7.3 This obligation applies to conduct within England and Wales that took place before 22 November 2012 or before the person who is the PCC was elected to that office (if after the PCC elections on 15 November 2012) or the person appointed as DPCC was appointed to that office.

8. MAKING OF COMPLAINTS ABOUT THE PCC/DPCC

8.1 A member of the public may complain (make a Complaint) about the conduct of a relevant office holder to the following people or organisations, although, except in the case of alleged criminal conduct, complaints are to be encouraged to be made direct to the PCC's Monitoring Officer:

- a) The PCC's Monitoring Officer;
- b) The Police and Crime Panel;
- c) The Independent Police Complaints Commission (the IPCC);
- d) The Office of the Police and Crime Commissioner (the OPCC);
- e) A Chief Officer of Police;
- f) The relevant office holder: the PCC and/or the DPCC direct.

8.2 Any Complaint from a member of the public can be sent to the Monitoring Officer in the following ways:

- a) By email: enquiries@northumbria-pcc.gov.uk
- b) By telephone (at any time): 0191 4332100
- c) By post: Monitoring Officer (PCC/DPCC complaints), Office of the Police and Crime Commissioner for Northumbria, Legal and Corporate Services, Civic Centre, Gateshead, NE8 1HH

9. RECIPIENTS' DUTIES ON RECEIPT OF COMPLAINT

9.1 Direct complaints to the PCC's Monitoring Officer

9.1.1 The Monitoring Officer has a duty to ensure that the Police and Crime Panel is kept informed of matters relating to the conduct of the PCC or DPCC which might give rise to a complaint and to provide the IPCC, its staff or persons appointed by the IPCC under Regulation 19, with all such assistance as it or they reasonably require for the purposes of, or in connection with, an investigation.

9.1.2 Where the Monitoring Officer considers that an oral or written Complaint requires further information or detail in order for him to properly consider it under the Regulations, he may ask the complainant to provide such detail.

9.1.3 The Monitoring Officer will consider the Complaint, and whether to record it and (if so) how the Recorded Complaint is to be dealt with under the Regulations (see below).

9.2 Direct Complaints to the PCC and DPCC and preservation of evidence

9.2.1 Where a Complaint is made directly to the PCC and/or DPCC then both are under a statutory duty to take all such steps as appear to them to be appropriate for obtaining and preserving evidence in relation to the conduct in question, both initially and from time to time after that. (In discharging this duty they shall take such steps as a reasonable person would consider appropriate in the circumstances to obtain and preserve evidence, and in any event shall comply with any requests of the Monitoring Officer.)

9.2.2 By not later than the end of the day following the day on which the Complaint was made to them, the PCC and/or DPCC must notify the Monitoring Officer in writing of the matter of the Complaint and provide details of the steps they have taken to preserve evidence relating to the conduct in question, including its location and in whose custody it is .

9.3 Direct complaints to the Police and Crime Panel

9.3.1 Any Complaint addressed to the Northumbria Police and Crime Panel or any member of it or the Panel's secretariat should be immediately directed by the recipient to the Monitoring Officer, along with any other available information that is relevant to the Complaint, in accordance with the Regulations.

9.4 Direct complaints to the police

9.4.1 Where a Complaint is made to a Chief Officer of Police, it is the duty of the Chief Officer of Police to give notification of the Complaint to the Monitoring Officer.

9.5 Direct complaints to the IPCC

9.5.1 When a Complaint is made to the IPCC, it is the duty of the IPCC to notify the Monitoring Officer, unless the IPCC considers that there are exceptional circumstances to justify the notification not being given.

10. MONITORING OFFICER'S DUTIES TO OBTAIN AND PRESERVE EVIDENCE

10.1 When a Complaint comes to the attention of the Monitoring Officer, the Monitoring Officer is under a duty to secure that all steps as are appropriate are taken for obtaining and preserving evidence in relation to the conduct in question, both initially and from time to time after that. It is not the Monitoring Officer's role to investigate matters and it is likely that before taking steps to obtain or preserve evidence he will normally consult the IPCC. The IPCC may also give the Monitoring Officer and for the relevant officer holder (s) directions for obtaining and preserving evidence.

10.2 Accordingly the Monitoring Officer may make formal requests of any of the following persons to take such steps as the Monitoring Officer considers are expedient or necessary for obtaining and preserving evidence in relation to the conduct in question, both initially and from time to time after that, including requests that steps are taken concerning the disposition of the property and resources of the PCC (such as its buildings, assets, equipment, supplies, accounts, records, information, electronic data etc in their widest sense and whether located at the PCC's office or not) or other persons:

- a) The PCC and/or DPCC;
- b) The Police and Crime Panel;
- c) Any employee of the Office of the Police and Crime Commissioner; and
- d) Any person or organisation having a current or past contractual relationship with the PCC and/or DPCC or in receipt of a grant from either them.

- 10.3 A person given a direction by the Monitoring Officer under this Guidance shall comply with it in full and generally co-operate with the Monitoring Officer in the discharge of his statutory duties under the Regulations.
- 10.4 Such persons shall also permit access to, and render possession of, any evidence relating to the conduct complained about as is in their possession, custody or control to the Monitoring Officer in accordance with his instructions.
- 10.5 The Monitoring Officer shall inform the Panel of any instances where there has been a complete or partial failure by any person or organisation to comply with any request regarding evidence.

11. MONITORING OFFICER'S DUTIES ON NOTIFICATION OF A COMPLAINT

- 11.1 The Monitoring Officer will record a Complaint unless he/she is satisfied that any of the following exceptions apply, in which case it is not necessary to record the Complaint (in whole or in part):
- a) if it has been or is currently being dealt with by criminal proceedings: this will normally be the case where the Police have formally charged the person complained about or an information alleging an offence has been laid before a magistrates' court;
 - b) the Complaint has been withdrawn; or
 - c) if the Monitoring Officer does not consider it to indicate (whether from the circumstances or otherwise) that the PCC or DPCC may have committed a criminal offence.
- 11.2 If not recorded in the Register, the Monitoring Officer will notify the Complainant of the decision not to record the Complaint and, therefore, to take no action upon it, and will explain the grounds on which that decision was made, whether in relation to whole or part of the Complaint.
- 11.3 If recorded (in whole or part) the Monitoring Officer will notify the Complainant of that fact and provide information about the next steps to be taken in relation to the Complaint. The Monitoring Officer will also inform the Office of the Police and Crime Commissioner and, where a Complaint is recorded, provide such details as he/she thinks appropriate of the Recorded Complaint.

12. TAKING NO ACTION ON A RECORDED COMPLAINT

- 12.1 If the Monitoring Officer considers that a Recorded Complaint (which is not one that otherwise must be referred to the IPCC) is one in respect of which no action should be taken, or it falls within the categories set

out below, then the Monitoring Officer may handle the Recorded Complaint in whatever manner he thinks fit.

- 12.2 The types of Recorded Complaint that may be dealt with in this way are:
- a) Where more than twelve months have elapsed since the incident and there is no reason for the delay, or injustice would be caused by it;
 - b) The matter has already been the subject of a Complaint;
 - c) The Complaint is anonymous;
 - d) The Complaint is vexatious, oppressive or otherwise an abuse of the procedures; or
 - e) The Complaint is repetitious.
- 12.3 A “repetitious Complaint” (above) is one which is the same or substantially the same as a previous Complaint, or concerns the same conduct as a previous conduct matter, contains no fresh allegations which affect the account of the conduct complained of, and no fresh evidence (being evidence not reasonably available at the time the previous complaint was made and in respect of which a previous determination or withdrawal of complaint has been made).
- 12.4 The Monitoring Officer must notify the Complainant that he has decided to handle the Recorded Complaint by taking no further action.

13. REFERRAL OF RECORDED COMPLAINTS AND RECORDED CONDUCT MATTERS TO THE IPCC

- 13.1 The Monitoring Officer must refer the following to the IPCC:
- a) All Recorded Conduct Matters;
 - b) All Serious Complaints (i.e. a complaint that constitutes or involves or appears to constitute or involve, the commission of a criminal offence)
 - c) Any Serious Complaint or Recorded Conduct Matter where the IPCC has called it in (see below).

13.2 Call-in by IPCC

- 13.2.1 The Monitoring Officer must refer a Recorded Complaint or Conduct Matter to the IPCC if he is notified that that the IPCC itself requires the Complaint or Conduct Matter to be referred to the IPCC. (In the event that the Police and Crime Panel were to withdraw its delegation to the Monitoring Officer the IPCC can require the Panel, via the Monitoring Officer, to refer a Complaint to it.)

13.3 Referral

- 13.3.1 Where a Recorded Complaint or Recorded Conduct Matter is to be referred to the IPCC then the Monitoring Officer shall do so as soon as

is practicable, and in any event not later than the end of the day following the day on which it becomes clear to the Monitoring Officer that the Complaint or Conduct Matter is one that should be referred to the IPCC. The details in the Register will be made available to the IPCC together with such other information as the Monitoring Officer considers appropriate.

13.3.2 On referring a Recorded Complaint or Conduct Matter to the IPCC, the Monitoring Officer must notify the Complainant and the person complained about of the referral, unless it appears to the Monitoring Officer that notifying the PCC or DPCC might prejudice a possible future investigation.

13.4 **Referral-back**

13.4.1 Where the IPCC determines that it is not necessary for it to investigate a Recorded Complaint, it may refer the Complaint back to the Monitoring Officer who must deal with the referral in accordance with the Resolution of Complaints section below. The IPCC will notify the Complainant and the PCC or DPCC complained against about this decision.

13.4.2 The IPCC, where it determines that it is not necessary for it to investigate a Recorded Conduct Matter, may refer the matter back to the Monitoring Officer who may deal with it in any manner that the Monitoring Officer thinks fit. The IPCC will notify the PCC or DPCC complained against about this decision.

14. **OTHER MATTERS - CIVIL PROCEEDINGS AGAINST THE PCC OR DPCC**

14.1 Civil proceedings brought against the Office of the Police and Crime Commissioner, the PCC and/or DPCC that are notified to the Monitoring Officer, or which he considers are likely to be brought, and which appear to the Monitoring Officer to involve a Conduct Matter as regards that relevant office holder are potentially recordable as a Conduct Matter by the Monitoring Officer under the Regulations. A Conduct Matter will not be recorded if the Monitoring Officer is satisfied that it has already been recorded as a Complaint or has been or is currently being dealt with by criminal proceedings against the person to whose conduct the matter relates.

14.2 Civil proceedings (as above) *involve* a Conduct Matter if they relate to a Conduct Matter or they are proceedings that relate to a matter in relation to which a Conduct Matter, or evidence of a Conduct Matter, is or may be relevant. As mentioned earlier, the Monitoring Officer will consider all the circumstances but may make such a decision as to whether a Conduct Matter is present on the basis of evidence that is below the normal civil standard of proof.

- 14.3 In order to enable the Monitoring Officer to discharge his duties under the Regulations, the PCC, DPCC, the Head of Paid Service, every OPCC employee and any counsel, solicitor or legal or other advisor instructed or retained by them are required, as soon as reasonably practicable, to notify the Monitoring Officer and provide written details of the proceedings in question whenever:
- a) the PCC and/or DPCC is the defendant to or an interested party in legal proceedings; or
 - b) the OPCC is such a defendant or interested party.
- 14.4 Such persons are expected generally to cooperate with the Monitoring Officer in the discharge of his/her statutory duties under the Regulations (Reg. 11) to such extent as is not inconsistent with any legal professional privilege or obligation of confidence.

15. WITHDRAWAL OF COMPLAINTS

- 15.1 If the Monitoring Officer receives a notification that the complainant wishes to withdraw their Complaint, signed either by them or their solicitor or other acting on their behalf, then the Regulations shall cease to apply to the Complaint, subject to the following provisions of this guidance:
- a) If the Recorded Complaint is with the IPCC, the Monitoring Officer must notify the IPCC that he/she has recorded the withdrawal of the complaint; or
 - b) in the case where the IPCC has referred the Recorded Complaint to the Monitoring Officer, the Monitoring Officer must consider whether it is in the public interest for the Complaint to be treated as a conduct matter (notwithstanding the complaint's withdrawal) and shall notify the IPCC accordingly.
- 15.2 In respect of a Recorded Complaint which has not been notified to the IPCC, the Monitoring Officer must determine whether it is the public interest for the Complaint to be treated as a Conduct Matter despite the Complainant's withdrawal of it. The Monitoring Officer shall notify the PCC or DPCC complained about of the recording of a withdrawal of the Recorded Complaint and whether he/she has decided to treat it as a Recorded Conduct Matter notwithstanding, and shall amend the Register accordingly.
- 15.3 The IPCC, on receiving notification of withdrawal from the Monitoring Officer of a Recorded Complaint referred to it, shall determine whether it is in the public interest for the Complaint to be treated as a Recorded Conduct Matter and notify the Monitoring Officer, who shall notify the Complainant and amend the Register accordingly .
- 15.4 The Regulations also contain provisions for contacting the Complainant if they indicate they wish to withdraw their Recorded Complaint, but have not signed the withdrawal request.

15.5 If the IPCC refers back to the Monitoring Officer a matter that was referred to the Monitoring Officer under this guidance, it shall be dealt with, in the case of a Recorded Complaint in accordance with the guidance on Resolution of Complaints below, and in the case of a Recorded Conduct Matter in such manner as the Monitoring Officer may determine.

16. RESOLUTION OF COMPLAINTS

16.1 Informal resolution

16.1.1 Informal resolution may include the appointment of a Deputy Monitoring Officer to secure the informal resolution of the Complaint. Procedures for informal resolution shall not include a formal investigation of the Complaint in accordance with the PCC's ethical standards regime but documents in relation to the Complaint and meetings with the person complained against may be requested.

16.2 Generally

16.2.1 In attempting to secure resolution of the Complaint, the Monitoring Officer will consider whether further information/clarification/explanation is required and/or whether any actions are required.

16.2.2 Where it appears to the Monitoring Officer that a Recorded Complaint against the PCC and/or DPCC had in fact already been satisfactorily dealt with at the time it was brought to their notice, the Monitoring Officer may, subject to any further representations, treat it as having been resolved. The Monitoring Officer shall, prior to making a final decision that a Complaint has already been resolved, give the complainant and the person complained against an opportunity to comment on the proposed decision.

16.2.3 Where the person complained against chooses not to comment on the Complaint, the Monitoring Officer shall record this fact in writing.

16.3 Apologies

16.3.1 The Monitoring Officer may seek informally to resolve a complaint by securing an apology from the PCC or DPCC to the Complainant, either directly or indirectly. The Monitoring Officer shall not, however, tender on behalf of the person complained against an apology for his conduct unless the person complained against has agreed to issue the apology.

16.4 Final steps where informal resolution

16.4.1 Where a Recorded Complaint has been subjected to informal resolution, the Monitoring Officer shall as soon as practicable make a

record of the outcome of the procedure and send a copy of that record to the complainant and the person complained against.

16.4.2 A Monitoring Officer shall not publish any part of any such record unless he:

- a) has given the complainant and the person complained against the opportunity to make representations in relation to the proposed publication; and
- b) has considered any such representations, and is of the opinion that publication is in the public interest.

16.4.3 In cases where the Monitoring Officer upholds a Recorded Complaint, he has no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the relevant office holder concerned as compared to the expectations of the PCC's Code of Conduct and/or the associated principles of public life.

16.4.4 There is no right of appeal against the Monitoring Officer's decision on a Complaint following any such investigation, as that decision is final. In these circumstances, you may be able to complain to the Local Government Ombudsman PO Box 4771, Coventry CV4 0EH, Tel: 0300 061 0614

17. RECORD KEEPING AND PROVISION OF INFORMATION

17.1 The Monitoring Officer shall keep records of: every Complaint and purported Complaint made to him or received by him; every conduct matter recorded by him arising from civil proceedings or otherwise coming to his attention or the Panel's; and every exercise of a power or performance of a duty under the Regulations.

17.2 The Monitoring Officer shall report, on a regular basis, the summary details (such as can be reported in public), on the exercise of any and all of these functions to the Police and Crime Panel for monitoring purposes.

17.3 The Monitoring Officer and the Panel shall provide to the IPCC all such information or documents specified and all evidence or other things so specified or described by the IPCC in a notification given by the IPCC to the Monitoring Officer and in a manner and within a time so specified.