



DECISION PAPER

DECISION:2019/24	DATE: 6 FEBRUARY 2020
TITLE: POLICE COMPLAINTS REFORM	
REPORT BY: IAN DICKINSON	

Executive Summary

The purpose of the report is to inform the Police and Crime Commissioner of the changes that will be required to the management of police complaints as a result of the Policing and Crime Act 2017. Recommendations are made to the Commissioner regarding decisions that are required in order to meet the requirements of the legislation.

Recommendation

1. Formally reaffirm his intention to adopt model 1.
2. Approve option A as the method to be utilised under the new procedures.
3. Approve the resourcing of option A as set out in the report.
4. Delegate to the director of the Office of the Police and Crime Commissioner the power to undertake reviews in relation to complaints made against police officers under the Policing and Crime Act 2017 and associated regulations.

Signature

Police and Crime Commissioner

Date

7th February 2020.

PART I

1. Background and Advice

1.1. As the Commissioner is aware, the Policing and Crime Act 2017 (The Act), was designed to bring about significant changes to the management of the Police Complaints System.

1.2. In implementing the management of the complaints processes, the Commissioner can consider three models. Model 1 is however, mandatory and has a minimum must be adopted. A flow chart showing the routing of complaints in the new process is attached at Appendix A. The three models are also shown.

1.3. The three models are:

Model 1 – Statutory duty to hold the Chief Constable to account for the exercise of the Chief Constables function in relation to handling complaints.
Hearing appeals that would previously have been the responsibility of the Chief Constable;

Model 2 – Commissioner to take on triage function. Duty to make contact with the complainant to understand how best their issues might be resolved. Ability to resolve complaints outside Schedule 3 of the Police Reform Act 2002;

Model 3 – Commissioner to take responsibility for the whole complaints process. Model 2 above and also responsible for keeping complainant informed throughout process including the outcome of the right for review.

1.4. As the commissioner will recall, he has previously indicated his intention to adopt model 1 to implement the mandatory model only.

1.5. Under the mandatory model, the Commissioner would take over the appeals function, currently carried out by the Professional Standards Department (PSD) for local resolution level complaints. These appeals will, under model 1, be reviewed and be the responsibility of the PCC.

1.6. The PCC has supported the introduction of a more customer focussed approach to lower level complaints through the constabulary's "Service Recovery" team.

1.7. As discussed at the Scrutiny meeting on the 21st November 2019, there continues to be a shared focus on service recovery, which is focussed on resolving issues raised by members of the public prior to escalation into a formal complaint. The workload is split between complaint cases and service recovery activity 50/50.

1.8. Effective and timely communication in dealing with complaints is proving to be important and service recovery activity is reducing the amount of complaints passing through to complaint cases.

- 1.9. The Commissioner is asked to consider reaffirming his previous decision to process with model 1 only.
- 1.10. In considering that affirmation the Commissioner is reminded of that the decision to proceed with these reforms will of course be a matter for the incoming government. Nonetheless, to ensure that proceeding with the timetable we have all been working to remain an option for an incoming government, we shall continue to work on the basis that final regulations will be ready for laying as soon as a government has been formed post-election, should the new government wish to do so. As the regulations require a minimum of 21 days once laid before they can come into force, the regulations can be laid up until the 10th January and still go live on the 1st February as planned.
- 1.11. Further, in respect of models 2 and 3 these roles are currently performed by police staff, in specialist posts situated in the Constabulary's PSD department. The Commissioner could consider taking over the triage function as per model 2, but officers feel that there are no discernible benefits in doing so.
- 1.12. The PCC could decide to take on the whole function, as per model 3. Nationally, this is not being taken up, with the exception of possibly one or two PCCs who are considering it. It is suggested that to take it on would be onerous for the office and have many practical difficulties including resourcing difficulties.
- 1.13. Another consideration for the Commissioner is volumes. In 2019/20 so far there have been 539 complaint allegations recorded and 301 complaint cases. These figures have remained fairly static for some time now. In terms of appeals, so far there have been 12. There has been a reduction in appeals received over the last 12 months with an average of 1.9 appeals per month. As of the 21st November 2019, there were 5 open appeals.
- 1.14. The broadening of the definition of a complaint to "expression of dissatisfaction" could lead to an increased number of recorded complaints, however, thankfully, the IOPC have now decided that passive comments on social media will not be eligible complaints.
- 1.15. The office does not have the relevant expertise to take on the specialisms required for model 2 and 3 and has no appetite for a TUPE approach.
- 1.16. The Commissioner is therefore recommended to reaffirm his previous discussion and for officers to prepare for model 1.

2. Options for Delivery of Model 1

- 2.1. The next part of the report deals with the options open to the Commissioner to implement model 1. If the Commissioner wants to implement model 2 or 3 a further paper will need to be brought forward.

2.2. The options are as follows:

Option A

2.2.1. This is considered to be the optimum option for the office.

2.2.2. Under this option the Commissioner could choose to delegate the appeal function currently carried out by the Head of PSD (note this will be a review function under the new regulations) to the Director of the OPCC, who will then review complaint outcomes and make a written report on Review Determination. The Director would then advise the complainant, the Chief Constable and the PCC of the outcome of the review.

2.2.3. However, in order to prepare the files for review by the Director, a lot of the preparation work needs to take place. The Constabulary currently do not employ an appeals officer, instead capacity is utilized in the reactive complaints team. However, as stated at present there are only 5 existing appeals.

2.2.4. Therefore, it is suggested that a part time role be created in the OPCC for 3 days a week. It is estimated this will be at Grade LC7 so £19, 825 for 3 days (subject to job evaluation). This role would prepare the case files for the Director. In addition to preparation, this role will also be required to input outcomes of reviews into the Centurion system for data returns to the IOPC.

2.2.5. An in house case preparation officer is also the route a number of other Police and crime Commissioners (including Merseyside and North Wales) are to adopt.

Option B

2.2.6. This option envisages deletion of the review function to an external provider who will undertake the reviews on behalf of the PCC and make a written report on Review Determination.

2.2.7. The external market for this service is not very developed and only one commercial company is thought to be the major player. This provider is marketing a service and costs on a cost per view basis on a fixed limit price:

	Up to 100 reviews	Over 100 reviews
Standard Review	£175.00	£160.00
Enhanced review	£195.00	£180.00
Complex review	-	-

2.2.8. If you assume 84 reviews over the year (7 a month) then the cost of standard reviews from an external provider would be £16,500 (circa).

2.2.9. In addition to the cost, there will need to be an ICT solution in place and an additional license cost for Centurion.

2.2.10. In the light of the numbers envisaged it is suggested that it is more cost effective to move to option A.

Option C

2.2.11. Officers are of the view that whilst the Commissioner could consider delegating the review function to a member of the Audit and Ethics Committee. This is not desirable due to the role they undertake as members of the Audit and Ethics Committee. In that role they are there to provide independent assurance and advice and make recommendations to the PCC and the Chief Constable on the adequacy of governance and risk management frameworks, the internal control environment and financial reporting. This is a role that the members are proud to do and therefore the potential for conflict from an oversight dip sampling role and being a reviewer, in addition at present some of the members of the Audit and Ethics Committee are ex police officers and it's suggested this has the potential to challenge and could be misconstrued.

2.2.12. In addition, if the member were effectively to be the reviewer, there is no benefit in this above the Director being in place. Further, a reviewer would still need to be appointed as per Option A.

2.2.13. In terms of resources, the member of the panel would need to be paid, probably by the hour, circa £100 ph.

2.3. In conclusion the Commissioner is recommended to adopt option A as the model for delivery of model 1 and in addition makes a delegation to the Director to undertake the review function on his behalf. Further, the Commissioner is recommended to fund a review handler post up to £20k plus costs and asks the Director to establish the post.

3. Timetable

3.1. The Regulations were laid before parliament on the 10 January 2020 and will commence on the 1st February 2020.

4. Impact on the Police and Crime Panel

4.1. The legislation is clear that complainants will not be entitled to appeal the decision of the PCC in relation to their review to the Police and Crime Panel. This would, in effect, be an appeal of an appeal and would, consequently, be an abuse of the complaints system. This will not prevent people from attempting it, however, and the PCP are prepared for

an uptake in people wishing to appeal a review decision to the PCP. The PCP members and officers will need to be clear and consistent on its approach and explain that it is only able to handle complaints that relate directly to the actions of the Police and Crime Commissioner. Should complainants remain dissatisfied with their review, they will have the module to explore judicial review, in much the same way they have now.

5. Links to the Police and Crime Plan

5.1. Taking on additional responsibilities for dealing with complaints is consistent and supportive of the Commissioner's stated objective to support vulnerable people and victims. It is hoped that the changes will lead to greater public confidence and independence in the complaints system

6. Consultations

6.1. The office has consulted and engaged with PSD and they would support the recommendations set out in this report.

7. Implications:

a. Legal

The Police and Crime Act 2017 sets out the changes and additional responsibilities for Police and Crime Commissioners in dealing with complaints.

b. Financial

The financial implications arising from the Police and Crime Commissioner taking on additional responsibilities relating to complaints are set out in this decision paper as part of the options appraisal.

c. Equality Impact Assessment

There are no identified equality issues relating to this decision.

d. Data Protection Impact Assessment

A Data Protection Impact Assessment has been completed as part of this process.

8. Risk Management

8.1. It is not considered that there are any significant risks to delivery from implementing the changes arising from the Policing and Crime Act 2017.

9. Background Papers

10. Public access to information

Chief Executive Officer (Monitoring Officer)

I have been informed about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Police and Crime Commissioner for Lancashire.

Signature:  Date: 7.2.20