



Cheshire Police and Crime Complaints Sub Committee Agenda

Date: Friday 4th September 2020
Time: 2.00 pm
Venue: Virtual Meeting

How to Watch the Meeting

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**
2. **Code of Conduct - Declaration of Interests. Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012**

Members are reminded of their responsibility to declare any disclosable pecuniary and non-pecuniary interest which they have in any item of business on the agenda no later than when the item is reached.

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3. **Minutes of the Previous Meeting** (Pages 3 - 6)

To approve the minutes of the previous meeting held on 2 March 2020.

4. **Terms of Reference for a new Complaints Management Sub - Committee**
(Pages 7 - 16)

To consider the proposed terms of reference for a new Complaints Management Sub-Committee together with a revised procedure for managing complaints made against the Police and Crime Commissioner.

THERE ARE NO PART 2 ITEMS

Minutes of a meeting of the
Cheshire Police and Crime Complaints Sub Committee
held on Monday, 2nd March, 2020 at Committee Suite 1, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Cheshire East	Councillor J Paul Findlow
Cheshire West & Chester	Councillor Andrew Dawson
Independent Co-optees:	Mr Evan Morris MBE and Mr Bob Fousert (substituting for Mrs Sally Hardwick).
Officers:	Mr Asif Ibrahim and Mr Martin Smith, (Cheshire East Council, Secretariat)

1 APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Andrew Dawson be appointed as Chairman.

2 APPOINTMENT OF VICE CHAIRMAN

RESOLVED:

That Councillor Paul Findlow be appointed as Vice Chairman.

3 APOLOGIES

Apologies were received from Councillor Brian Maher (Warrington Borough Council) and Mrs Sally Hardwick.

4 CODE OF CONDUCT - DECLARATION OF INTERESTS. RELEVANT AUTHORITIES (DISCLOSABLE PECUNIARY INTERESTS) REGULATIONS 2012

Mr Evan Morris declared an interest, indicating that he had, in the past, before joining the Panel, made a complaint about the Police and Crime Commissioner.

5 TERMS OF REFERENCE

Members of the Sub Committee noted the discussion at the meeting of the Panel held on 15th November 2018 along with the Resolution of the Panel at that meeting which detailed the scope of the Sub Committee's work.

6 COMPLAINTS PROCESS

Mr Asif Ibrahim, Cheshire East Council's Head of Legal Services and Deputy Monitoring Officer outlined the process that was followed when a complaint was received, noting that the process was detailed in the Panel's Procedure Rules which were endorsed each year by the Panel at its annual meeting in June.

Concern was expressed by a number of members of the Sub Committee that Panel members had not always, in the past, been kept informed on the progress of complaints. Mr Ibrahim, noting that he was relatively new to his role and could not comment in detail on previous practices; suggested that Panel members may find it helpful if, in future, an update were provided on a quarterly basis.

Councillor Paul Findlow sought clarification over the legal background, including the Regulations which gave the Panel powers to investigate complaints (The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012). The Sub Committee asked that a report on this issue was made to the next meeting of the Panel.

Mr Evan Morris suggested that the public could find it helpful if the Panel's web page provided more detailed information on the process of making complaints against the Police and Crime Commissioner, noting that other Panels, such as Avon and Somerset's contained such information.

RESOLVED:

- 1 That a report be prepared for a future meeting detailing the provisions of the The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 and any other related Regulations.
- 2 That a report be prepared for the Panel outlining the information that could be made available on the Panel's website on the process of making complaints against the Police and Crime Commissioner.

7 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED:

That the public and press be excluded from the meeting during consideration of the following item on the grounds that if they were present during such consideration it would be likely that there would be disclosure to them of exempt information as defined in Section 100(I) and Schedule 12A of the Local Government Act 1972 relating to any individual and the public interest in maintaining the exemption outweighs the public interest in disclosure.

8 COMPLAINTS

To assist with their understanding of the current process the Panel reviewed a list of complaints that had been received in the period March 2017 to November 2019.

9 FUTURE MEETINGS

The Secretariat were asked to canvass for dates for a future meeting.

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Cheshire Police and Crime Panel

Complaints Sub-committee

Date of meeting: 4 September 2020

Report of: Brian Reed, Head of Democratic Services and Governance

Subject: Terms of Reference for a new Complaints Management Sub – Committee and revised procedure for the management of complaints made against the Police and Crime Commissioner

1. Report Summary

- 1.1 This report outlines the proposed terms of reference for a new Complaints Management Sub-Committee together with a revised procedure for managing complaints made against the Police and Crime Commissioner.

2. Recommendation

2.1 Recommended that:

- (i) The Sub – Committee recommend the Terms of Reference for a new Complaints Management Sub - Committee to the Police and Crime Panel, in accordance with Appendix I
- (ii) The Sub – Committee recommend a revised procedure for the managing of complaints made against the Police and Crime Commissioner to the Police and Crime Panel, in accordance with Appendix II.

3. Background

- 3.1 Since the last meeting of Sub - Committee informal discussions have been held with the Chair of the Complaints Sub - Committee and the Chair and Deputy Chair of the Panel to better understand the changes that Panel members wish to see to the way in which complaints against the Police and Crime Commissioner are managed.
- 3.2 Across the country Police and Crime Panels manage complaints against Police and Crime Commissioners in a number of ways. Some Panels have adopted the system that has operated in Cheshire since 2012 with the host authority's Monitoring Officer undertaking the initial work on complaints. Other

Panels have delegated this work to the Police and Crime Commissioner's Monitoring Officer. A third model is for the Panel to create a Sub – Committee which leads on such issues on behalf of the Panel.

3.3 Appendix I to this report sets out proposed Terms of Reference for a new Complaints Management Sub Committee. Appendix II outlines a possible new complaints procedure. There are a number of issues which this Sub – Committee may wish to consider in its discussions; these include:

- The number of members who should sit on the proposed new Sub-Committee;
- The political proportionality of the Sub – Committee's membership (Panel members are reminded that a report on the issue of proportionality will be considered at the next meeting of the Police and Crime Panel);
- Membership of independent co-opted Panel members on the Sub - Committee;
- The political affiliation of the Chair and Deputy Chair of the Sub – Committee;
- The role of the wider Police and Crime Panel in the management of complaints; and
- The suggested time scales for the management of complaints.

3. Equality Implications

3.1 There are no equality implications.

4. Financial Considerations

4.1 There are no financial implications to report to the Sub Committee in considering to this matter.

5. Contact Information

Contact details for this report are as follows: -

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CHESHIRE POLICE AND CRIME PANEL

COMPLAINTS MANAGEMENT SUB-COMMITTEE

TERMS OF REFERENCE AND PROCEDURE

The role of the Police and Crime Panel's Complaints Management Sub-Committee (hereinafter called the Sub-Committee) is to administer the arrangements for non-criminal complaints made against the Police and Crime Commissioner for Cheshire (and Deputy Commissioner, when appointed); together with other complaints and conduct matters referred to the Panel by the Independent Office for Police Conduct (IOPC).

The Sub - Committee will report on its work to the Police and Crime Panel on a regular basis (minimum twice a year). It has delegated authority from the Panel to undertake all of the Panel's complaint management and resolution roles but may, if the Chair and Deputy Chair or the Sub-Committee so determine, refer matters to the full Police and Crime Panel for resolution.

The Sub-Committee will seek to resolve complaints through informal resolution. This means dealing with a complaint by resolving, explaining, clearing up or settling the matter directly with the complainant and/or the Commissioner, without investigation or formal proceedings. It is a flexible proportionate and fair process that may be adapted to the needs of the complainant and the individual complaint. This may be done, for example by correspondence and/or in a face to face meeting. The Sub - Committee cannot conduct an investigation of a complaint, such as by taking statements or obtaining evidence about it, however, as is to be expected in any fair process, it can invite the complainant and Commissioner to clarify or comment on matters.

The Sub Committee may only consider relevant complaints as defined in the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012. There are separate procedures for complaints about operational policing matters, complaints about the Chief Constable and other police officers and complaints about the Police and Crime Commissioner's staff. The Sub-Committee (and Panel) has no role to play in such complaints.

The Sub - Committee (and Panel) are not an appeals body for complaints against Cheshire Constabulary or the Chief Constable and has no legal power to look into, investigate or order actions to be taken in such cases. Such complaints fall outside of the Sub-Committee's and Panel's jurisdiction.

The Chair and Deputy Chair of the Sub - Committee, advised as necessary by the host authority's Monitoring Officer, will determine whether a complaint can be considered by the Sub Committee.

Complaints about the merits of a decision made by the Police and Crime Commissioner; for example, where somebody disagrees with a policy the Commissioner has introduced, cannot usually be considered by the Sub-Committee, although complaints about whether a decision was taken properly and in accordance with procedures can be considered. The potential remit of the Complaints Sub-Committee necessarily matches the scope and reach of the Commissioner and the Commissioner's office.

Concern from the general public about a particular policy is something the Police and Crime Panel should be aware of, and reflect upon, as it scrutinises the Commissioner's policies. These concerns would not, of themselves be matters to be considered through the Complaints procedure.

The Sub – Committee will endeavour to conduct its work within 40 working days of receiving a complaint. The Panel's Secretariat will keep a complainant updated on progress with a complaint and inform them of any unexpected delays.

The Sub – Committee will comprise of **[a decision needs to be taken on the number of members who will sit on the Sub – Committee]** x Panel Members, appointed by the Police and Crime Panel. Proportionality will be in accordance with the Panel's Procedure Rules as they relate to the constitution of Sub – Committees and Working Groups. The Chair and Deputy Chair of the Sub-Committee will ordinarily be appointed at the Panel's Annual Meeting.

The Sub – Committee will be advised by the Panel's Secretariat and the host authority's Monitoring Officer.

In the interests of transparency, the following conventions have been adopted:

- The Chair and Deputy Chair of the Police and Crime Panel will not be members of the Sub-Committee;
- The Chair and Deputy Chair of the Sub-Committee will not be members of the same political party (if any) as the Commissioner; and
- The Chair and Deputy Chair of the Sub-Committee will not be members of the same political party.

Complaints Procedure

The Cheshire Police and Crime Panel Complaints Procedure has been drafted in accordance with the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012. Where there is any doubt over the application of the Complaints Procedure reference should be made to the Regulations.

1. Introduction

- 1.1 The aim of this procedure is to ensure that complaints made against the Police and Crime Commissioner for Cheshire (and Deputy Commissioner, when appointed); together with other complaints and conduct matters referred to the Panel by the Independent Office for Police Conduct (IOPC) are managed efficiently and transparently.
- 1.2 Details on the operation of the Complaints procedure can be found on the Panel's page of the Cheshire East Council website as can details of how previous complaints have been resolved.
- 1.3 The Complaints Management Sub – Committee will endeavour to conduct its work within 40 working days from receipt of a complaint.

2. Roles and Responsibilities

- 2.1 The Complaints Procedure and the management of complaints is delegated to the Police and Crime Panel's Complaints Management Sub – Committee with the initial filtering and administration performed by the Chair and Deputy Chair of the Sub-Committee acting together.
- 2.2 The Chair and Deputy Chair of the Sub – Committee may in some circumstances determine that a complaint is best managed by the full Police and Crime Panel.
- 2.3 The Chair and Deputy Chair of the Sub – Committee (consulting with Sub - Committee members and the wider Panel as necessary), will decide the most appropriate and proportionate arrangements for managing a complaint. They are not empowered to determine the outcome of complaints other than determining that a matter need not be considered further as one or more of the circumstances set out in Appendix A applies or it is otherwise clear the complaint does not relate to the Police and Crime Commissioner (or Deputy).
- 2.4 The work of the Chair and Deputy Chair and of the Sub – Committee will be supported and advised by the Panel's Secretariat and the host authority's Monitoring Officer.

3. Making a complaint

- 3.1 Wherever possible complaints should be submitted on the prescribed form to **[add address]**. If sufficient information is not provided, further clarification may be sought. Complaints cannot be submitted by social media or by phone.
- 3.2 Complaints will be logged by the Panel's Secretariat and acknowledged by e-mail or letter, within 3 working days.

4. Following receipt of a complaint

- 4.1 Within 4 working days of a complaint being received the information provided to the Secretariat will be shared with the Chair and Deputy Chair of the Sub – Committee for determination as to whether the complaint can be considered by the Sub – Committee (or wider Panel). This decision should be taken expeditiously and ideally within 4 working days.
- 4.2 If it is determined that the matter should be referred to the Independent Office for Police Conduct (IOPC) the complainant will be informed and the IOPC contacted. If the IOPC subsequently refer the matter back to the Panel the complaint will re-enter the Police and Crime Panel's complaints process.
- 4.3 If the Chair and Deputy Chair determine that the complaint cannot be considered by the Sub - Committee because, for example, it relates to an operational police matter, or is a complaint about the Chief Constable or a member of the Commissioner's staff, the complainant will be informed in writing. If deemed appropriate the complainant will be advised as to how best to proceed with their complaint.
- 4.4 If the Chair and Deputy Chair consider that one or more of the circumstances set out in Regulation 15 of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (see Appendix A) apply, and they consider that there are not circumstances justifying the continued consideration of the complaint either in whole or in part, they shall after having given the complainant a reasonable opportunity to provide further information or clarification advise the Sub-Committee of their decision and the reasons for it. Should they choose to do so they can refer this decision to the Sub-Committee as a whole; however, if they do not their decision is final and binding. If a complaint is not considered further on this basis the fact of the complaint and the reasons why it was not considered further shall be recorded in the Register of Complaints and both the complainant and the Commissioner notified.
- 4.5 If the Chair and Deputy Chair consider that the complaint should proceed, details of the complaint will be forwarded to the Commissioner or Deputy Commissioner with confidential information redacted if this is seen as necessary, they will be asked to comment on the complaint within 10 working days.
- 4.6 Whether or not a response has been received from the Commissioner or Deputy Commissioner, details of the complaint, including the form detailing the nature of

the complaint, any supporting documents and any response from the Commissioner or Deputy Commissioner will be forwarded to all Sub – Committee members for initial evaluation. This will be undertaken by them within 5 working days. If the Chair and Deputy Chair determine that the Panel collectively should review a complaint details will be sent to all Panel members.

4.7 The Chair and Deputy Chair; having consulted with other Complaints Management Sub – Committee members, or wider Panel membership, or having held a formal meeting of the Sub – Committee to discuss the complaint and having taken advice from Officers as necessary, will determine how best to administer the complaint. Options open to the Sub – Committee include:

- Asking the complainant and or Commissioner (or Deputy Commissioner) for further written information; giving a clear timescale for its submission;
- After fully evaluating all submitted documentation, providing written feedback to the complainant and the Commissioner; and
- Inviting the complainant and the Commissioner (or Deputy Commissioner), with the Chief Executive, or other member of the Commissioner's staff, to a private meeting to attempt to resolve the complaint by informal resolution. Ten days' notice of such a meeting would normally be given.

4.8 If at any stage a complainant decides that they wish to withdraw their complaint, or that they wish to discontinue it, the Chair and Deputy Chair will be informed, and the Register of Complaints updated. In some circumstances the Chair and Deputy Chair may decide that they wish the Sub – Committee to proceed to consider issues arising from the complaint and should they so decide, the complainant and Commissioner (or Deputy Commissioner) will be informed accordingly.

4.9 If a meeting of the Sub-Committee or Panel is held to discuss an individual complaint and how it should be managed, any confidential or exempt issues will be considered in Part II of the Meeting with the press and public excluded. If allowed by national Regulations and by the Police and Crime Panel's own Procedure Rules, the meeting may be held virtually using a technological platform approved by the host authority's Monitoring Officer.

5. Record keeping

5.1 A record of the outcome of the informal resolution will be made as soon as practicable after the process has been completed. Copies will be sent to the complainant and the Commissioner or Deputy Commissioner

5.2 The record of the outcome of informal resolution will ordinarily be published, with any confidential information such as the name of the complainant being redacted. Before publishing, the Chair of the Complaints Management Sub - Committee

will give the complainant and the Commissioner or Deputy Commissioner the opportunity to make representations in relation to the proposed publication.

- 5.3 In cases where an informal resolution cannot be agreed, the record will detail the reasons given by the parties why the matter could not be resolved.
- 5.4 The Secretariat, on behalf the Sub - Committee will maintain a formal register for the purposes of recording complaints and conduct matters under the Regulations. The Recorded Complaints and Conduct Matters Register will record key details pertaining to a complaint including the date received, the complainant, a summary of the complaint / the category into which it falls, the date on which it was recorded, actions taken on the complaint under the Regulations and any other information deemed relevant. A report detailing the number and nature of complaints will be taken to the Panel's Annual Meeting and the December meeting.

6. Following the consideration of a complaint

- 6.1 There is no appeal regarding the outcome of a complaint once it has been determined.
- 6.2 The Local Government Ombudsman has jurisdiction over the administrative functions of the Police and Crime Panel, and complainants can contact the Ombudsman if they are unhappy with the way that the complaint was handled. The Panel's complaints procedure will need to be followed to its conclusion, before the Local Government Ombudsman will become involved.

7. Fairness, transparency and confidentiality

- 7.1 If a Panel member is approached by either a complainant or a potential complainant, they should take care so as not to discuss the merits of the complaint or otherwise express any views on it. The Panel member should look to confine their involvement in any interchange to explaining the complaints procedure and where the actual or potential complainant can obtain advice or register their complaint. The Panel member so approached must disclose every contact he or she has had with a complainant or potential complainant and describe the extent of their contact or interchange with him or her at the first reasonable opportunity. The Panel member should consider:
 - His or her obligations under the Code of Conduct;
 - Whether the contact should be seen as prejudicing their impartiality, and
 - Whether he or she should withdraw from any further involvement in the matter.
- 7.2 All information sent to Complaints Management Sub-Committee members by the Secretariat containing confidential details of any complaint and all written

communication between Sub - Committee members containing confidential details of any complaint will be sent using secure, encrypted email or by Royal Mail Special Delivery post. No communication will be made by SMS (text), WhatsApp or similar media.

- 7.3 The Secretariat will keep complainants updated on the progress of their complaint.

Appendix A

The circumstances in which a complaint need not be considered further include:

- The complaint has been made by a member of the relevant office holder's staff, arising from the staff member's work as such (see Regulation 15(3)(a)).
- The complaint is more than 12 months old and there is no good reason for the delay, or the delay would be likely to cause injustice (see Regulation 15(3)(b)).
- The complaint is about conduct that is already the subject of another complaint (see Regulation 15(3)(c)).
- The complaint has been made anonymously (see Regulation 15(3)(d)).
- The complaint is deemed to be vexatious, oppressive or otherwise an abuse of process for dealing with complaints (see Regulation 15(3)(e)).
- The complaint is repetitious (see Regulation 15(3)(f), and also Regulation 15(4) for the particular circumstances in which a complaint is deemed to be repetitious).