



## COMPLAINTS PROCEDURE

### SOUTH WALES POLICE AND CRIME COMMISSIONER AND THE SOUTH WALES DEPUTY POLICE AND CRIME COMMISSIONER

#### Introduction

This procedural note details the complaints procedure relating to the South Wales Police and Crime Commissioner (the Commissioner) and South Wales Deputy Police and Crime Commissioner (the Deputy Commissioner). The note is based on the provisions of the Police Reform and Social Responsibility Act 2011, the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011.

#### Role of the South Wales Police and Crime Panel

The South Wales Police and Crime Panel (“the Panel”) has statutory responsibilities as to the handling and determination of certain complaints made against the Commissioner and Deputy Commissioner. The Panel has delegated its complaint handling functions to the Chair of the Panel (the Chair) who must consult with the Monitoring Officer at Merthyr Tydfil County Borough Council (the Panel’s Host Authority) in determining type of complaints received, the strategy for managing complaints for local resolution and the Panel’s final resolution of complaints. Both Chair of the Panel and the Monitoring Officer will be supported in their handling of complaints by the Senior Solicitor of Merthyr Tydfil County Borough Council.

#### Overview

The Chief of Staff of the Commissioner’s Office may (if appropriate) be consulted on the strategy for determining whether complaints will be considered by the Panel or referred to the Independent Office for Police Conduct (IOPC) or a third party. It is intended that complaints received are dealt with in a timely fashion, correctly identified as being complaints which fall to the Panel for action and other complaints, for example, about the Commissioner’s staff or South Wales Police are directed as appropriate.

#### Types of Complaints

There are 3 different categories of complaints:

1. **A Complaint** - a general complaint about the Commissioner or Deputy Commissioner that is not a Conduct Matter or a Serious Complaint, or is a complaint that ceases to be investigated by the Independent Office for Police Conduct (IOPC) or a police force. The Panel is responsible for the informal resolution of these complaints.
2. **A Conduct Matter** - 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 (for example, press stories). The Panel must notify the IOPC of Conduct Matters. The IOPC are responsible for considering all Conduct matters.

3. **A Serious Complaint** - a complaint about the conduct of the Commissioner or Deputy Commissioner which constitutes or involves, or appears to constitute or involve the commission of a criminal offence. The Panel must notify the IOPC of Serious Complaints. The IOPC are responsible for considering all Serious Complaints.

### **Evidence for Conduct Matters and Serious Complaints**

The difference between a Conduct Matter and a Serious Complaint is the level of evidence present in the complaint or other circumstances (eg. press reports) as to whether a criminal offence has potentially been committed by the Commissioner or Deputy Commissioner. It is not for the Panel to determine whether a criminal offence has been committed, only to make a judgement as to whether a complaint should be considered a Conduct Matter or Serious Complaint.

A Conduct Matter - Requires evidence to show 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 is likely to be an adequate sign of potential criminal conduct, resulting in the matter being referred to the IOPC as a Conduct Matter

A Serious Complaint - There must be evidence of conduct that constitutes or appears to constitute or involve the commission of a criminal offence. 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 will be more than for a Conduct Matter but is likely to be much less than would be required by a court.

### **Making a Complaint about the Commissioner or the Commissioner**

Complaints about the Commissioner and/or Deputy Commissioner should be addressed to the Monitoring Officer, Merthyr Tydfil County Borough Council, Civic Centre, Castle Street, MERTHYR TYDFIL, CF47 8AN.

### **Receipt of Complaints**

Upon receipt of a complaint, the Panel will check that the complaint relates to either the Commissioner or Deputy Commissioner. If the complaint relates to a person other than the Commissioner or Deputy Commissioner the complaint will be forwarded to the appropriate office and the complainant informed.

### **Determining Type of Complaint**

The Monitoring Officer will consult with the Chair to determine the type of complaint; namely, a complaint for local resolution by the Panel or whether the complaint should be considered a 'Conduct Matter' or 'Serious Complaint' and referred to the IOPC for determination.

If the complaint is considered to be a complaint for local resolution (in whole or part) the complainant will be notified of that fact and provided with an explanation of the

action the Panel intends to take. The Panel will also inform the Chief of Staff of the Commissioner's Office. Likewise, if the complaint is considered to be a 'Conduct Matter' or 'Serious Complaint' it will be referred to the IOPC for determination. The complainant and the Commissioner's Chief of Staff will be notified.

### **The Recorded Complaints and Conduct Matters Register**

If the complaint relates to the Commissioner or Deputy Commissioner the complaint will be registered in the 'Recorded Complaints and Conduct Matters Register'.

The Recorded Complaints and Conduct Matters Register is used to record the following information; a summary of the complaint, the category of complaint (Complaint, Conduct Matter or Serious Complaint), the date of receipt, an indication of intended action on the Complaint and any other information deemed relevant.

If any of the following exceptions apply, it is not necessary to record a Conduct Matter:

- The matter has already been recorded as a complaint or
- The matter has or is being dealt with by means of criminal proceedings against the Commissioner or Deputy Commissioner.

If the IOPC becomes aware of a Conduct Matter that has not been recorded by the Panel, the IOPC may direct the Panel to record the complaint.

If any of the following exceptions apply, it is not necessary to record a Complaint:

- 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 information alleging an offence has been laid before a magistrate's court or
- The Complaint has been withdrawn.

If recorded (in whole or part) the Panel will notify the Complainant of that fact and provide information about the next steps to be taken in relation to the Complaint.

Likewise, the Complainant will be informed of the decision not to record the Complaint and not to take any further action, the grounds on which that decision was made and whether the decision relates to all or part of the Complaint. The Panel will also inform the Chief of Staff of the Commissioner's Office of the decision.

### **Requiring More Information before Recording a Complaint**

Where the Monitoring Officer considers more information is required in order for a complaint to be considered, he may ask the complainant for additional information.

A decision will then be made whether to record the complaint in the Recorded Complaints and Conduct Matters Register and how the complaint will be progressed.

### **Complaints Made to the Commissioner and Deputy Commissioner and Preservation of Evidence**

Where a complaint is made directly to the Commissioner and/or Deputy Commissioner, 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 complaint in question. In addition they shall also comply with any requests of the Panel.

By not later than the end of the day following the day on which the Complaint was made to them, the Commissioner and/or Deputy Commissioner must notify the Panel in writing (either by letter or email) of the complaint (including a copy of the complaint) and provide details of the steps they have taken to preserve such evidence, including its location and in whose custody it is.

### **Complaints sent to a Member of the Panel**

Any complaint addressed to any Member of the Panel should be immediately directed to the Monitoring Officer at Merthyr Tydfil County Borough Council, Civic Centre, Castle Street, MERTHYR TYDFIL, CF47 8AN or email [swpcp@merthyr.gov.uk](mailto:swpcp@merthyr.gov.uk) along with any other available information that is relevant to the complaint.

### **Complaints sent to the Chief Constable of South Wales Police**

Where a complaint is sent to a Chief Constable of South Wales Police, it is the duty of the Chief Constable to give notification of the complaint to the Panel.

### **Complaints sent to the Independent Office for Police Conduct (IOPC)**

When a complaint is sent to the IOPC, it is the duty of the IOPC to notify the Panel, unless the IOPC considers that there are exceptional circumstances to justify the notification not being given.

### **Conduct Outside England and Wales**

The Commissioner or Deputy Commissioner shall inform the Panel of any allegation, investigation or proceedings in relation their conduct occurring outside England and Wales. The Panel may deal with any such instances in whatever manner the Panel considers fit.

### **Conduct Matters Arising from Civil Proceedings**

Where the Panel receives notification that civil proceedings involving a conduct matter have been brought against the Commissioner or Deputy Commissioner by a member of the public, or it appears that proceedings are likely to be brought, the Panel shall record the matter.

### **The Panel's Duty to Obtain and Preserve Evidence**

When a complaint comes to the attention of the Panel, it is under a duty to secure that all steps as appropriate are taken for obtaining and preserving evidence in relation to the complaint in question.

### **No Action on a Recorded Complaint**

If the Panel considers that a Recorded Complaint for local resolution is one which requires no action should be taken, or it falls within the circumstances set out

below, then the Panel may handle the complaint in whatever manner it thinks fit.

The types of Recorded Complaint that may be dealt with in this way are

- 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;
- The matter has already been the subject of a complaint;
- The complaint is anonymous;
- The complaint is vexatious, oppressive or otherwise an abuse of the procedures, or
- The complaint is repetitious. A “repetitious complaint” 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, 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).

The Panel must notify the complainant that it has decided to handle the Recorded Complaint by taking no further action. The Panel will also inform the Chief of Staff of the Commissioner’s Office.

### **Call in by IOPC**

The Panel must refer a Recorded Complaint to the IOPC if it is notified that the IOPC itself requires the complaint to be referred to the IOPC.

### **Referral of Complaints and Conduct Matters to the IOPC**

Where a Recorded Complaint or Recorded Conduct Matter is to be referred to the IOPC then the Panel 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 Panel that the Complaint or Conduct Matter is one that should be referred to the IOPC. The details in the Register will be made available to the IOPC together with such other information as the Panel considers appropriate.

On referring a Recorded Complaint to the IOPC, the Panel must notify the Complainant and the person complained about of the referral, unless it appears to the Panel that notifying the Commissioner or Deputy Commissioner might prejudice a possible future investigation.

### **Referral of Complaints and Conduct Matters from the IOPC to the Panel**

Where the IOPC determines that it is not necessary for it to investigate a Recorded Serious Complaint, it may refer the complaint back to the Panel who must deal with the referral in accordance with the Informal Resolution of complaints procedure outlined below. The IOPC will notify the complainant and the Commissioner or Deputy Commissioner complained against about this decision.

The IOPC, where it determines that it is not necessary for it to investigate a Recorded Conduct Matter, may refer the matter back to the Panel who may deal with it in any matter that the Panel thinks fit. The IOPC will notify the Commissioner or Deputy Commissioner complained against about this decision.

### **Withdrawal of Complaints**

If the Panel received a notification that the complainant wishes to withdraw their Complaint, signed either by them or someone authorised to act on their behalf, then the complaint shall cease to apply subject to the following:

- If the Recorded Complaint is with the IOPC, the Panel must notify the IOPC that it has recorded the withdrawal of the complaint
- In the case where the IOPC has referred the Recorded Complaint to the Panel, it 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 IOPC accordingly.

In respect of a Recorded Complaint which has not been notified to the IOPC, the Panel must determine whether it is in the public interest for the complaint to be treated as a Conduct Matter despite the Complainant's withdrawal of it. The Panel shall notify the Commissioner or Deputy Commissioner 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.

The IOPC, on receiving notification of withdrawal from the Panel 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 Panel, who shall notify the complainant and amend the Register accordingly.

If the IOPC refers a matter back to the Panel, in the case of a Recorded Complaint it shall be dealt with in accordance with the Informal Resolution procedure outlined below and, in the case of a Recorded Conduct Matter in such manner as the Panel may determine.

### **Informal Resolution of Complaints by the Panel**

A Recorded Complaint against the Commissioner and/or Deputy Commissioner may be dealt with by the Panel way of informal resolution.

Informal resolution is considered to be encouraging, facilitating, or otherwise assisting in the resolution of the complaint otherwise than by legal proceedings.

### **Delegation of Informal Resolution Complaints**

The Commissioners Chief of Staff will be responsible for undertaking the process of informal resolution. Upon the conclusion of his/her investigations, the Chief of Staff will prepare and submit a report to the Chair of the Panel. The Chair and the Monitoring Officer will then consider the report together with any other matter they consider relevant before coming to a decision with regard to the outcome of the complaint

### **Further Information**

The procedure for informal resolution shall not include a formal investigation of the

complaint but documents in relation to the complaint and meetings with the person complained against maybe requested.

### **Resolved Complaints**

Where it appears to the Panel that a Recorded Complaint against the Commissioner and/or Deputy Commissioner had in fact already been satisfactorily dealt with at the time it was brought to their notice, the Panel may, subject to any further representations, treat it as having been resolved.

### **Apologies**

The Panel may seek informally to resolve a complaint by securing an apology from the Commissioner or Deputy Commissioner for the complainant, either directly or indirectly. The Panel shall not, however, tender on behalf of the person complained against an apology for the conduct unless the person complained against has agreed to issue the apology.

### **Final Resolution**

Where a Recorded Complaint has been subjected to informal resolution, the Panel 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.

In cases where the Panel upholds a Recorded Complaint, it has no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the office- holder concerned.

### **Complaints sub-committee**

Should the Chair and the Monitoring Officer consider it appropriate at any stage during the informal resolution process they may determine that a non-criminal complaint in relation to the Commissioner be considered by way of a Panel hearing. This would be by way of a complaints sub-committee following the procedure set out in paragraph 9 of the Panels Rules of Procedure.

### **Record Keeping and Provision of Information**

The Panel shall keep records of every complaint and purported complaint made to him or received by him; every conduct matter recorded by the Panel arising from civil proceedings or otherwise coming to the attention of the Panel and every exercise of a power or performance of a duty under the Regulations.

### **Annual Reporting of Complaints**

The Panel shall receive a report at least annually detailing a summary of each complaint (such as can be reported in public) and the exercise of its functions for monitoring purposes.

Date: 14<sup>th</sup> March 2018