

APCC Response – Home Office Guidance

Introduction

The Association of Police and Crime Commissioners (APCC) is the national body that supports Police and Crime Commissioners (PCCs), and other local policing bodies across England and Wales, to provide national leadership and influence change in the policing and criminal justice landscape.

Please find below the APCC response to the consultation on the Home Office (HO) Guidance in relation to the reforms to the professional standards, integrity and performance system in policing.

Some PCCs may have submitted responses to you directly, but we have received a limited number of responses from our members. These have generally taken the form of brief emails, and we have included most of the points raised in this document. However, Kent OPCC (supported by Thames Valley OPCC) had a number of detailed comments to make and we have therefore included their responses as Annex A to this document. In addition, a number of issues were raised during the recent complaints roadshows and we thought it worth reflecting on these in our response below. This document therefore summarises the key matters and common themes raised by our members.

General Comments

The changes to the misconduct process have been widely welcomed as has the overarching emphasis on reasonable and proportionate handling in the complaints system. There have been a number of comments that the guidance is much clearer than the current guidance, as it generally sets out a clear process to follow in dealing with misconduct, practice requiring improvement, and related matters. However, some sections were highlighted as being more complex and less easy to follow (for instance in relation to 'Whistle-blowing') and there was a suggestion that clarity could be improved if references to legislation were put in footnotes rather than the text.

It has also been flagged that HO and the Independent Office of Police Conduct (IOPC) may not be using the same expressions in referring to specific elements of the complaints process – particularly the references to Schedule 3 complaints and whether this covers both 'formal' investigations relating to serious misconduct, and investigations where the complaint does not require disciplinary action, but where the complainant has nonetheless asked for the matter to be investigated. Can we ensure consistent use of terms and common Glossary in the IOPC and HO guidance?

Common themes

As mentioned above, there were some common themes arising in the responses, both written and as a result of questions raised at the complaints roadshows. The main points were:

1. **Chief Constable complaints:** We suggested in our response to the IOPC guidance that a separate section was needed on Chief Officer complaints and we make a similar suggestion below that the HO guidance would be easier for OPCCs to follow if there was a separate section on handling Chief Constable complaints and conduct matters. Specific queries raised included:
 - I. The HO guidance sets out at page 23-24 two different tests for defining a conduct matter and a recordable conduct matter. However, paragraph 4.19 says that a conduct matter concerning a Chief Constable must be referred to the IOPC, but is silent on a recordable conduct matter.

There is concern that having two different tests is confusing and is likely to create errors but the absence of reference to a recordable conduct matter for Chief Constables at this point is likely to cause real confusion.

- II. In addition, this section is confined to conduct issues and does not touch on complaints arising from an expression of dissatisfaction although these types of complaints sometimes contain conduct allegations of a dubious nature in an effort to add additional weight to the complaint, as we have previously discussed – which gives OPCCs some problems in assessing whether the complaint should be passed to IOPC.
 - III. It is not clear whether a Chief Constable can receive a practice requiring improvement recommendation following an investigation or other resolution and – if so – who will be responsible for administering the recommendation, as technically a Chief Constable does not have a line manager (unlike other force officers). Would this be the PCC to whom the Chief Constable is accountable, or would this not be an appropriate outcome in the case of a Chief Constable? If the latter, does this mean that the DG of the IOPC cannot make a practice requiring improvement determination under para 8.27 in these circumstances?
 - IV. You will be aware that there were a number of comments at the complaints roadshow betraying uncertainty about the criteria for referring chief officer complaints to IOPC or deciding which should be retained for local handling/resolution. It would be helpful to ensure that between the HO and IOPC guidance this is picked up.
 - V. Reduction in rank – 11.121 touches on the possibility a Chief Constable could be reduced in rank – you will know that PCC have real concerns that this cannot be an appropriate sanction for a corporation sole and whilst we acknowledge that the guidance is clear that PCCs can make representations to the panel about why this would not be an appropriate outcome, this simply is not an acceptable path for PCCs to take.
 - VI. The various points raised above suggest it might be helpful to have a separate section for Chief Officers, so that a clear process disentangled from the process for other officers can be followed to try to avoid confusion. It might also be helpful to set out the rationale for why the CC process/criteria is different, where it differs from the process followed in other cases.
2. **Misconduct Panels:** You will be aware that there were a number of comments about this at the complaints roadshows and some of the written responses to us have flagged similar issues:
- I. There is confusion about whether the PCC must appoint the force representative on the panel (or HMCIC/HMI for senior officers) as well as the Legally Qualified Chair (LQC) and the lay person.
 - II. PCCs will also need to appoint an LQC and lay person to misconduct meetings for senior officers – but control of the timetabling for this seems to rest with the force rather than the LQC, so presumably the appointment must be made by the PCC after the date of the meeting is known?
 - III. Although the guidance is clear that administration of misconduct panels remains with the PSD, there is some confusion about how much administration will in practice be done by the OPCC or LQC – and no doubt LQCs will have views on what support/facilities they might need from the force in order to fulfil their enhanced role.

Specific issues

Some specific issues were raised by individual respondents, the most significant of which might be worth noting here:

3. 21.84 seems to imply that the respondent can be represented by the Local Policing Body (LPB). Is this intended to cover cases of chief officer complaints (i.e. where the Chief Constable is the appellant), or does this imply that the LPB can represent the force in other appeals? If so, is this correct or appropriate?
4. Concerns at 3.7 that the terms 'Whistle-blower' had negative connotations and that 'protected disclosure' might be a more positive term. This section was also flagged as being slightly harder to follow than some of the other sections.
5. The 'DSI' table at page 24 refers to 'whether directly or indirectly'. We suspect that the IOPC has removed this from their definition and it might be worth checking this to ensure consistency.

Conclusion

We hope this response is useful and if you have any queries, please get in touch with cat.mcintyre@apccs.police.uk (tel: 07714 399754).