



Police, Fire and Crime Commissioner for Essex

Complaints and Expression of Dissatisfaction Policy

| | | |
|------------------|-------------------|---------------|
| Version Control | Version 3.0 | February 2020 |
| Reviewed By | D Horsman | November 2019 |
| Policy owner | P Brent-Isherwood | January 2020 |
| First Published | J Drewett | November 2012 |
| Next Review Date | P Brent-Isherwood | February 2022 |

Version history

| Version Number | Date | Reason for review | Comments |
|-----------------------|---------------|--------------------------|---|
| 1.0 | November 2012 | | First publication |
| 2.0 | February 2016 | Policy update | Amendments to reflect the introduction of legally qualified chairs for appeal process. |
| 3.0 | February 2020 | Policy update | Substantial alterations to reflect the changes to the police complaints legislation and the new ECFRS complaints processes. |

1.0 About this Policy

The Police, Fire and Crime Commissioner for Essex (PFCC) is committed to providing the highest professional standards of service to the public. Professional standards are at the core of public service and will undoubtedly impact on both public reassurance and confidence. The Police, Fire and Crime Commissioner and their staff are therefore required to meet and exceed such expectations, to act with honesty, integrity, courtesy and patience at all times.

This policy sets out the duties of the PFCC and their staff in responding to the responsibilities imposed by the following legislation.

- [Police Reform and Social Responsibility Act 2011](#)
- [Policing and Crime Act 2017](#)
- [The Equality Act 2010](#)
- [The Elected Local Policing Bodies \(Specified Information\) Order 2011](#)
- [The Elected Local Policing Bodies \(Specified Information\) \(Amendment\) Order 2012](#)
- [The Elected Local Policing Bodies \(Specified Information\) \(Amendment\) Order 2013](#)
- [The Elected Policing Bodies \(Specified Information\) Order 2011 \(Amendment\) Fire and Rescue Authorities 2017](#)

This policy covers responsibilities for complaints about the Chief Constable (or any Acting Chief Constable) of Essex Police, the PFCC, the Deputy PFCC, the Chief Executive of the Police, Fire and Crime Commissioner's Office, staff and officers of Essex Police, and staff of the Police, Fire and Crime Commissioner's Office.

Essex County Fire and Rescue Service

In Essex, the Police, Fire and Crime Commissioner also has responsibility for governance of Essex County Fire and Rescue Service. They perform this function as the Police, Fire and Crime Commissioner Fire and Rescue Authority (PFCCFRA) which is a separate legal entity.

The PFCCFRA has a full set of policies and procedures setting out how complaints will be dealt with which relate to Essex County Fire and Rescue Service including complaints against the Chief Fire Officer, the PFCC and Deputy PFCC. These policies are summarised in the [Speak Up, Speak Out](#) document.

To make a comment, complaint or compliment or to seek further information on these policies and procedures you can contact the Service via the details below:

Online form: www.essex-fire.gov.uk/contact/

Telephone: 01376 576299

Email: informationgovernance@essex-fire.gov.uk

Post: Performance and Data Department

Kelvedon Park

Rivenhall, Witham

CM8 3HB

2.0 General Principles

Policing and crime reduction relies upon all sections of the community having trust and confidence in the force and those who they elect to oversee and improve it.

The public has a right to expect high standards of behaviour and professionalism at all times.

An effective complaints system is vital to building and maintaining public confidence. The way in which complaints, conduct matters and death and serious injury matters are dealt with has a huge impact on confidence in the police and the PFCC. Where they are dealt with well, it helps to restore trust, bring about improvements in policing and mitigate against something that has gone wrong happening again.

The PFCC and their staff have a responsibility to:

- Ensure that all members of the public can quickly and easily find information about how to make a complaint or expression of dissatisfaction, and what they can and cannot expect from the complaints system.
- Listen and respond to complaints and expressions of dissatisfaction expressed by members of the public.
- Handle all complaints and expressions of dissatisfaction in a reasonable and proportionate way.
- Build a learning culture that:
 - Embraces a culture of continuous improvement and reflection, actively looking for opportunities to develop and improve practice before a weakness, failing or gap is identified.
 - Encourages innovation, and is open to exploring new and different ways of working.
 - Learns from experience, retains a corporate memory of what worked and what did not, is open to learning from others and shares their experience with others.
 - Identifies and shares best practice.
 - Actively seeks feedback from service users and staff at all levels to help improve practice, and tells people how their input was used.

The PFCC may delegate their responsibilities in relation to the handling of complaints, but not to:

- A police constable.
- Another local policing body or the Mayor of London.
- Any other person who maintains a police force.
- A member of staff or a person who falls into any of the above criteria.
- A person whose involvement in that role could reasonably give rise to a concern as to whether they could act impartially.

The PFCC has agreed and published an [Ethics and Integrity Framework](#) based on the Nolan principles of public life and the [Police Code of Ethics](#), which will apply to the PFCC, the Deputy PFCC and the Police, Fire and Crime Commissioner's Office (PFCC's Office).

The PFCC's Office will respond to well-founded criticism; challenging improper practice with a willingness to learn and change.

The Police, Fire and Crime Panel has a responsibility to scrutinise the PFCC in their decisions and the performance of their duties.

The PFCC's Monitoring Officer has a responsibility to ensure that all matters of the PFCC's office are conducted lawfully.

3.0 Statement of Policy

The public expects the PFCC, Deputy PFCC and the staff of the PFCC's Office to maintain the highest professional standards. Accordingly, the PFCC will:

- Challenge conduct which falls below the required standard.
- Promote equality, diversity and human rights.
- Develop and maintain positive working relationships with colleagues, partners and other members of the community.

The PFCC will ensure that incidents of public complaint or expressions of dissatisfaction are resolved using the complaints procedure in compliance with the following legislation, regulations and statutory guidance:

- [Police Reform and Social Responsibility Act 2011](#)
- [Policing and Crime Act 2017](#)
- Police Staff Disciplinary Procedure;
- [Police \(Conduct\) Regulations 2020](#);
- [Police \(Performance\) Regulations 2020](#);
- [Police \(Complaints and Misconduct\) Regulations 2020](#);
- [The Police Appeals Tribunal Rules 2020](#);
- IOPC Statutory Guidance 2020;
- Home Office Statutory Guidance 2020;

- [College of Policing Code of Ethics 2014](#)

The Chief Executive will provide advice and support to staff with regard to the implementation of this policy. The intention will be to maintain public confidence through the appropriate management of the complaints procedure.

4.0 Definition of a complaint

A complaint is any expression of dissatisfaction with the Essex Police force, the PFCC or Deputy PFCC, the PFCC's office or member of the PFCC's staff that is expressed by, or on behalf of, a member of the public who has been adversely affected by the matter complained about. If the complaint is about an individual, the complainant must be a member of the public who:

- Claims to be the person in relation to whom the conduct took place,
- Claims to have been adversely affected by the conduct,
- Claims to have witnessed the conduct, or
- Is acting on behalf of someone who satisfies one of the above three criteria.

A person will be considered to have been adversely affected if they have suffered any form of loss, damage, distress or inconvenience as a result of the matter complained about, or if they have been put in danger or otherwise unduly put at risk of being adversely affected. A person will not be considered to have been adversely affected solely by virtue of having seen or heard about the conduct or its effects unless they were physically present and sufficiently nearby when the conduct took place or the effects occurred, and saw or heard the conduct or its effects, or were adversely affected due to the fact that they knew the person directly affected before it happened.

A person can be said to be a witness to the conduct complained about only if they have acquired their knowledge of the conduct in a manner that would make them a competent witness capable of giving admissible evidence of that conduct in criminal proceedings, or they possess or have in their control anything that could be used as admissible evidence in such proceedings.

A complaint that is not about the conduct of individuals may not be made by a person serving with Essex Police unless they are a designated community support volunteer or a police support officer. Similarly, a person may not make a complaint about the conduct of individuals if, at the time of the alleged conduct, they were under the direction and control of the same person whose conduct it was, or they are a person serving with the police, a National Crime Agency officer or a person on relevant service (within the meaning of section 97 (1) (a) or (d) of the Police Act 1996) and were on duty at the time that the conduct took place in relation to them; they were adversely affected by it, or they witnessed it.

There must also be some intention from the complainant to bring their dissatisfaction to the attention of the force or local policing body. A complaint does not have to be made in writing, nor must it explicitly state that it is a complaint for it to be considered as one.

5.0 Accessing the complaints system

The complaints system allows members of the public to raise concerns, understand better why a decision or choice was made and provide an important source of learning to help forces, Commissioners and individuals improve the service they deliver. Easy access to the complaints system is vital to ensuring and demonstrating to the public that the police service, PFCC, Deputy PFCC and PFCC's Office is transparent, accountable and responsive. To assist with this, the PFCC's website will include:

- Relevant contacts details and forms for making complaints and applying for a review of the outcome of a complaint.
- Clear, accurate and up-to-date information about complaint procedures, including a complainant's right to apply for a review of the outcome of their complaint.
- Frequently asked questions (FAQs) relating to common issues, including regarding the roles of the PFCC and Essex Police's Professional Standards Department (PSD).

To improve access to the complaints system for communities across Essex and promote quality of access, the PFCC's Office will raise awareness of the complaints system through activities including, but not limited to:

- Inclusion of links and information on social media platforms such as Facebook, Twitter and LinkedIn.
- Regular promotion to diverse communities through Essex Police's Independent Advisory Groups, the Essex Faith Covenant and through the PFCC's regular engagement programme.
- Promotion of quarterly scrutiny reports.
- Information shared through Citizen's Advice Bureaus.

A complaint or statement of dissatisfaction can be made via the post, phone, email, [online forms](#), social media or any other channel as long as it is clearly marked and understood as an expression of dissatisfaction.

To make a complaint or statement of dissatisfaction or to seek further information on these policies and procedures you can contact us via the details below:

Online form: <https://www.essex.pfcc.police.uk/contact-us/>

Telephone: 01245 291600

Email: pfcc@essex.police.uk

Post:

Police, Fire and Crime Commissioner for Essex
Kelvedon Park,
London Road,
Rivenhall,
Witham,
Essex
CM8 3HB

This policy sets out the complaints system and the areas where the PFCC and the Chief Executive of the PFCC's Office are the appropriate authority and should be the first point of contact for complaints. Where complaints are received where other organisations are the appropriate authority such as the Police, Independent Office of Police Conduct or Police, Fire and Crime Panel these complaints will be sent directly to the appropriate authority and the complainant and any person complained against, or to whose conduct the matter relates, advised that this action has been taken (except where it is felt that to do so would risk prejudicing an investigation or possible future investigation into the complaint or conduct matter).

There are situations where it is appropriate to make reasonable adjustments to how complaints are handled to ensure that everybody can understand and access the complaints system. Where this is the case we will work with the complaint or their representative to put these in place. We aim to identify any requirements and put in place suitable adjustments at the earliest possible stage.

This might, for example, include signposting or facilitating access to other support services. This may also include requesting support from a relative, carer or other representative, agreeing to provide information in a different format or language or agreeing a preferred method of communication. A complainant can appoint another person (e.g. a family member, friend, legal representative or other person of their choosing) to act on their behalf when making a complaint by providing them with their written consent, which does not necessarily have to be submitted in English. Provision can also be made for people who wish to make a complaint, or need information about the complaints system, in another language or format (such as audio or easy read).

For people under the age of 18 it may be appropriate for them to be supported by a parent, guardian or other appropriate adult. If a complainant under the age of 18 is not already receiving this support, the PFCC's office will ask if they would like their parent, guardian or another appropriate adult notified and follow their wishes. If the complainant declines such assistance, this will not prevent their complaint from being handled.

The PFCC will accept a complaint from a young person where they have given written permission for a parent, guardian or other nominated adult to submit a complaint on their behalf. Young people aged under 16 should not normally need to give written permission for a parent or guardian to act for them in this manner. If, however, it becomes apparent that the young person's views about the complaint are at odds with their parent's, guardian's or advocate's, the young person's views will be taken into account, paying due regard to their age and maturity.

6.0 Communicating with the complainant and other parties

The person assigned to handle the complaint will contact the complainant to understand how they want the complaint to be handled, the outcome they are seeking, how they would like to be communicated with throughout the handling of their complaint and to gather any further information that they feel might be relevant to the process. As set out above we will also make all reasonable adjustments as set out under the Equality Act 2010.

Throughout the handling process we will keep the complainant and all other interested people (as defined within the Police Reform Act 2002), including the person who the complaint relates to, informed about the progress of the complaint handling through regular updates via their chosen method of communication. Updates will be provided at the beginning of the process and as key decisions are made throughout the process. Information such as the stage the complaint is currently at, what has been done, what remains to be done and, where applicable, a summary of any significant evidence obtained will be included in updates.

For complaints that take longer to deal with, updates will be provided at least every 28 days but often much more frequently as set out in our handling processes.

- [Process for handling complaints against the Chief Constable](#)
- [Process for handling reviews](#)
- [Process for handling complaints against the PFCC and Deputy PFCC](#)
- [Process for handling complaints against the PFCC's staff](#)

There may be occasions where there has been little progress on the handling of the complaint since the last update – for example, because the complaint handler is waiting for information from an external party. In these circumstances, an update must still be provided. For example, the update should explain why there is a delay, and what steps have been taken to mitigate the effect of any delay.

There are certain exceptions where it is not possible to keep the complainant and interested persons informed. The non-disclosure of information will only apply where necessary:

- to prevent premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings
- in the interest of national security
- for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders
- on proportionality grounds, and/or
- otherwise in the public interest

7.0 Keeping an audit trail

It is important that a clear record is kept of what has been done, including what decisions have been made and why. This includes where a decision has been made not to do something. The complaint handler should be able to demonstrate that they took steps to understand the matter and the views of any complainant or interested person where appropriate.

All documents or evidence seen or created should be collated and preserved so an audit trail is available in relation to every matter, regardless of the complexity. The information will assist if the handling of a complaint is subject to a review, and must be provided to the relevant review body.

8.0 Suspending the handling of a complaint

The power to suspend handling a matter arises only where continuing the investigation or other handling would prejudice a criminal investigation or criminal proceedings. There should be specific, identified prejudice and that prejudice should be significant. In order to determine whether such prejudice arises, it will be necessary to consider:

- the extent to which the matter raises issues that are the same as, or closely connected with, the issues in the ongoing criminal investigation or proceedings, and
- what particular prejudice (if any) would be caused to the ongoing criminal investigation or proceedings by the investigation or any other handling

If the power to suspend arises, the appropriate authority should consider whether it is appropriate to exercise that power, or whether measures can be put in place to reduce or remove the risk of prejudice. In these circumstances the process set out in the **IOPC Statutory Guidance** will be followed.

In any instance where an investigation into or other handling of a complaint is suspended, the complainant will be notified in writing and provided with a rationale for the decision. Where the complainant objects to the suspension,

they will be informed of their right to ask the IOPC to consider whether to direct that the investigation into or other handling of their complaint continue.

9.0 Withdrawn complaints

The complainant, or someone acting on behalf of the complainant, may write to the appropriate authority providing signed notification that the complainant wishes to withdraw their complaint, or does not wish any further steps to be taken in respect of it. The appropriate authority must record this.

Where the complainant has indicated such a wish, but has not provided signed confirmation in writing (either from them or someone acting on their behalf) the appropriate authority must write to the complainant to determine how they wish to proceed. If the complainant replies confirming they wish to withdraw their complaint or do not want any further steps to be taken in respect of it, or if they do not reply within 28 days (starting with the day after the day the appropriate authority wrote to them), the appropriate authority must continue as if it had received signed notification that the complainant wants to withdraw their complaint. The letter to the complainant must be sent in a way that can be audited, such as recorded delivery.

Where the complaint has not been referred to the IOPC (or has been referred and the IOPC has referred it back to the appropriate authority), the appropriate authority must make a decision about whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

Where a decision is taken that the complaint will not be treated as a recordable conduct matter, no further action needs to be taken in respect of the complaint. There will be no right to apply for a review of this decision.

10.0 Where the Police, Fire and Crime Commissioner is the Appropriate Authority

Complaints against the Chief Constable:

The Police, Fire and Crime Commissioner is the appropriate authority for complaints, conduct and expressions of dissatisfaction matters concerning the Chief Constable or any Acting Chief Constable of Essex Police. The PFCC is responsible for dealing with all of these matters against the Chief Constable where the matter could not reasonably result in a criminal investigation or disciplinary action, has not resulted in death or serious injury or falls within the **mandatory referral criteria**. Where complaints do meet one of these criteria the complaint will be referred to the [Independent Office of Police Conduct](#) (IOPC).

Where a complaint or expression of dissatisfaction is received about the Chief Constable but involves a responsibility where authority has been delegated to another senior officer or staff member, the matter should be dealt with by Essex Police's Professional Standards Department as the appropriate authority for that person. In these cases the PFCC will refer the case to the PSD and explain the reason for the referral to the complainant.

The PFCC will deal with all complaints and expressions of dissatisfaction in line with the [IOPC Statutory Guidance](#) and the [Home Office Statutory Guidance](#).

Where the PFCC deals with a complaint or expression of dissatisfaction against the Chief Constable there is a statutory right of review to the IOPC.

The process for how complaints and expressions of dissatisfaction against the Chief Constable will be dealt is available [here](#).

Complaints against the Police, Fire and Crime Commissioner's Office:

The PFCC is the appropriate authority for complaints against the Chief Executive of the PFCC's Office. The Chief Executive is the appropriate authority for complaints against other staff employed in the PFCC's Office except the Deputy PFCC. To see how complaints against staff employed in the PFCC's Office, excluding the Deputy PFCC, are handled please view the process [here](#).

If the complaint made also relates to the conduct of the PFCC or the Deputy PFCC, the Police, Fire and Crime Panel will be notified immediately as the appropriate authority for dealing with complaints against the PFCC or Deputy PFCC which do not involve an allegation of criminal behaviour. This will include any allegation, investigation or proceedings amounting to a complaint or conduct matter which occurs outside of England and Wales.

Where the allegation appears to amount to criminal behaviour, the matter will be referred to the [IOPC](#) or an independent police force to investigate under the direction of the IOPC.

The PFCC and their staff have a clear duty to report any suspected corruption, dishonest or unethical behaviour. The PFCC and Chief Executive will encourage and enable staff to raise such concerns with confidence. The PFCC's staff adhere to Essex Police's Reporting Wrongdoing Procedure and its Grievance Policy, which encourage staff to use internal mechanisms to report wrongdoing or suspected wrongdoing or unethical behaviour with confidence that any such report will be taken seriously and dealt with correctly. Any staff doing so will be fully supported by their colleagues and dealt with in an appropriate and structured manner.

10.0.1 Joint complaints

In the event of a complaint, expression of dissatisfaction or conduct allegation being made regarding the Chief Constable and other individuals, the PFCC will agree with Essex Police and other relevant bodies the arrangements for managing such an investigation.

The investigation in relation to the Chief Constable will be managed as referenced above, however, it may be appropriate to combine the different elements of a response when replying to a complainant.

10.0.2 Monitoring Complaints and Conduct Matters against Essex Police

The PFCC will monitor all complaints, expressions of dissatisfaction, conduct matters and other legal proceedings involving Essex Police officers and staff.

The Professional Standards Department will provide information on a quarterly basis which will be published on the [PFCC's website](#). This report will be used to identify themes, trends and patterns in complaints being handled by Essex Police as the Appropriate Authority. These themes, trends and patterns will be considered in more detail and scrutinised through a regular quarterly scrutiny meeting between the PFCC's Office and the Deputy Chief Constable. PFCC staff will also dip-sample an agreed number of cases completed each quarter which will also form part of the scrutiny programme.

The PFCC or their representative will also attend relevant Essex Police boards and meetings to reassure themselves that the organisation is learning from its complaints, expressions of dissatisfaction and conduct matters.

10.0.3 Powers to Direct

The [Police Reform and Social Responsibility Act](#)¹ empowers the PFCC to direct the Chief Constable to comply with any statutory obligations concerning the management of complaint and misconduct matters. The PFCC may direct the Chief Constable to take appropriate steps, who will comply with any direction given.

10.1 Where the Police, Fire and Crime Panel is the Appropriate Authority

The Police, Fire and Crime Panel (PFCP) is the appropriate authority for complaints, expressions of dissatisfaction and conduct matters made against the PFCC and the Deputy PFCC. It is responsible for the initial recording of an allegation and contact with the complainant.

NOT PROTECTIVELY MARKED

To make a complaint or statement of dissatisfaction or to seek further information on the policies and procedures for the Police, Fire and Crime Panel you can contact them via the details below

Telephone: 0345 743 0430

Email: democratic.services@essex.gov.uk

Post:

Police, Fire and Crime Panel - Monitoring Officer

Corporate and Customer Services

Essex County Council

Chelmsford

Essex

CM1 1QH

Where the allegation appears to amount to a criminal complaint, the matter will be referred to the [IOPC](#) or an independent police force to investigate under the direction of the IOPC.

For all other matters the Police, Fire and Crime Panel (PFCP) will deal with complaints, expressions of dissatisfaction and conduct matters. This will normally be done by the Panel's Monitoring Office on behalf of the PFCP who will conduct an informal resolution of the complaint in accordance with the requirements of the Elected Local Policing Body (Complaints and Misconduct) Regulations 2012.

The Monitoring Officer's duties include:

- Notification and recording of complaints.
- Duties to preserve evidence.
- Ability to refer serious complaints and conduct matters to the [IOPC](#).
- Ability to withdraw or discontinue complaints.

Communication with the Police, Fire and Crime Panel is through the PFCP secretariat.

Further information about the PFCP's process for dealing with complaints about the PFCC and DPFC can be found [here](#) and a process flowchart can be accessed [here](#).

10.2 The Role of the Chief Executive of the Police, Fire and Crime Commissioner's Office

The Chief Executive is the PFCC's Monitoring Officer and is responsible for ensuring lawful and fair decision making. This includes a duty to report on any proposal, decision or omission likely to give rise to unlawfulness or maladministration.

The Chief Executive is responsible for the management of all complaints and conduct matters handled by the PFCC's office, and will have overall responsibility for ensuring that this policy is followed.

The Chief Executive is the appropriate authority for complaints against staff in the Commissioner's Office excluding the Deputy Police, Fire and Crime Commissioner. Complaints against staff will be investigated in accordance with the Essex Police Staff Discipline Procedure which has been adopted by the PFCC's Office. Complaints against the Deputy Police, Fire and Crime Commissioner, Chief Constable and Chief Fire Officer will be managed through separate processes outlined elsewhere in this policy.

The behaviour of staff, whether on or off duty affects public confidence. Conduct which brings or is likely to bring the PFCC into disrepute will be dealt with in accordance with the procedure.

All staff, excluding the Deputy PFCC, in the PFCC's Office are politically restricted and should comply with such restrictions at all times.

10.3 Independent Office for Police Conduct (IOPC)

The Independent Office for Police Conduct (IOPC) oversees the police complaints system in England and Wales. It investigates the most serious matters, including deaths following police contact, and sets the standards by which the police should handle complaints. It is independent, and makes decisions entirely independently of the police and government.

The IOPC is the appropriate authority to decide how the most serious complaints are handled and police forces and Local Policing Bodies such as the Police, Fire and Crime Commissioner are required to refer all serious cases to the IOPC for a handling decision. The IOPC then makes a decision as to whether it will investigate the case, ask the local force or Local Policing Body to investigate while the IOPC maintains oversight or if it is appropriate to refer the complaint back to the force or Local Policing Body for it to handle directly.

The cases that must be referred to the IOPC are set out in the **IOPC Statutory Guidance**.

The IOPC also has a range of other powers, including:

- To initiate its own investigations.
- To re-open cases it has closed where there are compelling reasons to do so, such as new evidence.
- To investigate all disciplinary investigations against chief officers.
- To present cases against officers in the police disciplinary process when the force disagrees with the IOPC's findings.

NOT PROTECTIVELY MARKED

In the case of a serious allegation against the Police, Fire and Crime Commissioner or the Deputy Police, Fire and Crime Commissioner, the Independent Office for Police Conduct will:

- Direct the Police, Fire and Crime Panel to record any complaint or conduct matter against the PFCC or DPFCC where it has not previously done so.
- Call in any complaints and conduct matters against the PFCC or DPFCC not previously referred to them.
- Determine the mode of investigation concerning criminal allegations against the PFCC or DPFCC.
- Refer the matter to the Crown Prosecution Service where there is sufficient evidence relating to criminal behaviour.

The IOPC will not:

- Deal with any complaints, expressions of dissatisfactions or conduct matters that do not involve an allegation of criminal behaviour by the PFCC or DPFCC.
- Have any role in relation to complaints against members of the PFCC's staff other than the Deputy PFCC.

10.4 Reviews

It is important that, wherever possible, complaints and expressions of dissatisfaction are dealt with quickly and to the satisfaction of the complainant with learning being understood and acted on. The majority of complaints or expressions of dissatisfaction can be remedied easily and do not have to be recorded as formal complaints. In these cases there is no right to review.

There is also no right to apply for a review against the outcome of a directed or independent investigation undertaken by the IOPC, or where a complaint has not been logged or recorded because the complainant is not eligible to be a complainant as set out earlier in this policy (in section 4).

However in cases which are not independently investigated or directed by the IOPC and where a complaint is recorded by the police, complainants have the right to apply to have their case reviewed either by the IOPC or the PFCC.

The IOPC is the relevant review body where:

- i. the appropriate authority for the initial complaint was the PFCC
- ii. the complaint is about the conduct of a senior officer (an officer holding a rank above Chief Superintendent)
- iii. the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved)

NOT PROTECTIVELY MARKED

- would not justify the bringing of criminal or disciplinary proceedings or would not involve an infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights
- iv. the complaint has been, or must be, referred to the IOPC
 - v. the IOPC is treating the complaint as having been referred
 - vi. the complaint arises from the same incident as a complaint falling within ii-v
 - vii. any part of the complaint falls within ii-vi

In any other case the relevant review body is the Police, Fire and Crime Commissioner.

Where a complainant has had their complaint or expression of dissatisfaction considered by Essex Police as the appropriate authority, the complainant will receive a letter from Essex Police's Professional Standards Department setting out its findings and final decision. This letter will also include details of the complainant's right of review and who the appropriate review body is. Complainants have 28 days to apply for a review, starting with the day after the complainant was sent the outcome of their complaint and details of how to apply for a review.

Where an application is initially made to the wrong review body, any time elapsing between it being received by that review body and forwarded to the correct review body will not be taken into account when calculating the 28 day period. The period for making an application for a review may be extended if the relevant review body is satisfied that it is just to do so on account of the special circumstances of a case, taking into account (though this is not an exhaustive list):

- Any reasons for the delay – this should include whether the delay is outside the complainant's control; whether they have taken all reasonable steps to submit their review in time, and consideration of any particular vulnerabilities or needs of the complainant. Where an application has been made out of time, the complainant should be asked to provide any reasons for this, where this is not already apparent. Any reasons provided must be taken into account when deciding whether an application for a review should be considered.
- The subject matter of the complaint – whether it is a particularly serious case or one that it would be in the public interest to consider.
- Links to other complaints being handled or reviewed.
- The length of the delay – the test should become more difficult to pass the further beyond 28 days the application is received.
- Fairness – for example, the potential impact on the complainant or any other member of the public and on any person complained about.

For an application for a review to be valid an application should be in writing and wherever possible include:

- the details of the complaint;
- the date on which the complaint was made;
- the name of the force or local policing body whose decision is the subject of the application, and
- the date on which the complainant was provided with the details about their right of review at the conclusion of the investigation or other handling of their complaint.

Where the appropriate review body is the PFCC, once a review is requested the PFCC's Office will assess whether the application for a review is valid and where it is, request the case file from the Professional Standards Department of Essex Police. The case file will normally include representations from the Investigating Officer and / or Essex Police's Professional Standards Department on behalf of the Chief Constable.

The PFCC may delegate their responsibilities for considering reviews but, in doing so, they should bear in mind the need for their arrangements to demonstrate an appropriate degree of independence from the police force they maintain, in order that their review decisions are, and are seen to be, credible. They should not delegate consideration of a review to anyone who:

- was involved in the handling of the complaint, including anyone responsible for deciding if the complaint should be recorded, deciding how the complaint should be handled or providing updates, or
- has a close personal connection to any person whose conduct is complained about, to the complainant or to the incident complained about.

The PFCC or their representative will review the case in line with the **IOPC Statutory Guidance** and consider whether the outcome is reasonable and proportionate.

In coming to this conclusion the reviewer will consider, for example:

- Was the complaint fully understood and were all allegations or concerns addressed?
- Were reasonable lines of enquiries undertaken to be able to provide a reasonable and proportionate outcome?
- Was due regard given to relevant guidance?
- If any aspects of the complaint were not addressed, or any lines of enquiry were not pursued, were there sound reasons for this?
- Was information or evidence weighed appropriately and fairly?
- Do the findings or determinations reached, logically follow from the information or evidence obtained?

NOT PROTECTIVELY MARKED

Any representations made by the complainant, any persons complained about (if any) and the appropriate authority will be given due consideration.

Once the review is complete the PFCC or their representative will provide a written letter (and will also communicate by other means, where appropriate, taking into account any particular needs or requests) setting out the outcome of the review, the reasons for the decision and any recommendations for the force to the appropriate authority, the complainant, any interested person and any person complained against (if any), unless to do so would prejudice and investigation or re-investigation of the complaint (including any criminal investigation). Sufficient information will be provided to enable recipients to understand what decisions and recommendations have been made and why.

The force must respond in writing to these recommendations within 28 days, starting with the day after the recommendations were made. This timescale may be extended by the PFCC. The response must include:

- Whether it accepts the recommendation(s)
- If it does, the steps it proposes to take to give effect to the recommendation(s)
- If it does not, the reasons why

Where the force does not agree with the PFCC's recommendation(s), it must provide a clear rationale for why it will not be followed, and may propose an alternative.

These actions will be discussed at the Commissioner's quarterly scrutiny meeting with the Deputy Chief Constable.

If the application is received out of time and there is no justification to extend the time period, the application will be treated as invalid and will not be considered further. The complainant will be notified of this in writing (and by other means, if there are any particular communication needs or requests) as soon as possible, along with the reasoning for this.

10.5 Misconduct Proceedings

Where a police misconduct case is referred by the appropriate authority, normally the Professional Standards Department acting on behalf of the Chief Constable, to a misconduct hearing, the PFCC is responsible for appointing the Legally Qualified Chair to conduct the proceedings. This will be done in line with the [Legally Qualified Chair and Independent Member Appointment Police](#).

All misconduct hearings will be conducted by the following panel of people:

- a legally qualified chair appointed by the PFCC or their representative, selected on a fair and transparent basis from the list of legally qualified chairs (LQCs) maintained by the PFCC for the purpose of the 2020 Regulations;
- a member of a police force of the rank of Superintendent or above (provided that the member is of a more senior rank than the officer concerned) appointed by the Chief Constable or their representative; and
- a person appointed by the PFCC or their representative, selected on a fair and transparent basis from a list of candidates maintained by the PFCC for the purposes of the 2020 Regulations.

For senior staff members the same membership of the tribunal applies as above, however, instead of a member of a police force of the rank of Superintendent or above it will be Her Majesty's Chief Inspector of Constabulary and Fire and Rescue Services (HMCI-CFRS) or an Inspector nominated by the Chief Inspector.

For further information please refer to the [Home Office Guidance on Conduct, Efficiency and Effectiveness](#).

10.6 Police Appeals Tribunals (PAT) Rules

An officer may appeal the outcome of a misconduct hearing held under the Police (Conduct) Regulations 2020 and the Police (Performance) Regulations 2020. If the appeal by the police officer is granted by a Legally Qualified Chair, the Police Appeals Tribunal (the Tribunal) will consist of three members appointed by the PFCC's Office. The PFCC's Office will also be responsible for facilitating the Tribunal and meeting the costs and expenses of the Appeal.

The three members of the Tribunal will be:

- a legally qualified chair appointed by the PFCC or their representative, selected on a fair and transparent basis from the list maintained by the Home Office;
- a serving senior officer; and
- a lay person who is not, and has never been, a member of a police force, or special constable as set out in Schedule 6 of the Police Act 1996 (as amended).

For senior staff members, the same membership of the tribunal applies as above, however, instead of a serving senior officer it will be Her Majesty's Chief Inspector of Constabulary and Fire and Rescue Services (HMCI-CFRS) or an Inspector nominated by the Chief Inspector. Instead of a lay person it will

be the Permanent Secretary to the Home Office or a Home Office Director nominated by the Permanent Secretary.

Arranging / Facilitation of a Police Appeal Tribunal:

The Police, Fire and Crime Commissioner's Office will be responsible for arranging and facilitating the Tribunal, which will include arranging a venue suitable for a public hearing and publicising the tribunal (if applicable).

11.0 Implications of the Policy

11.1 Financial Implications

The revised policy includes the new Review process as set out in the Policing and Crime Act 2017. This has an additional financial implication in terms of staff requirements.

11.2 Staffing and Training

The PFCC and Chief Executive will ensure that any member of staff considering complaints or applications for reviews receives sufficient training to enable them to discharge these responsibilities confidently and competently.

The Chief Executive will regularly review complaints received against staff and other members of the PFCC's Office to identify and action:

- Common failings
- Shared learning outcomes
- Individual training needs of staff and other members of the PFCC's Office.

11.3 Existing Partnership Agreements

The Police and Crime Commissioner's Office has an agreed protocol with Essex Police and the Crown Prosecution Service concerning the process relating to criminal charges of both police officers and staff, to ensure that confidentiality is maintained as appropriate.

The PFCC's Office works in consultation with all unions, representative bodies and staff associations to ensure that staff are treated in a fair and transparent manner.

12.0 Monitoring / Review

The Chief Executive will formally review this policy and associated procedure on a bi-annual basis from the date of publication, to consider:

- Its effectiveness in the business area concerned

- Any changes to legislation
- Challenges to the procedure
- Any identified concerns in relation to implementation

13.0 Related Policies and Information Sources

13.1 Related Procedures

- [Information Sharing Protocol – Essex Police](#)
- [Information Sharing Protocol – Police and Crime Panel](#)

13.2 Related Policies

- Essex Police – Staff Disciplinary Protocol (As adopted by the Police, Fire and Crime Commissioner’s Office)
- [Police, Fire and Crime Commissioner – Ethics and Integrity Framework](#)
- [Police, Fire and Crime Commissioner Constitution](#)

13.3 Other Source Documents

- [Police Reform Act 2002](#)
- [Police Reform and Social Responsibility Act 2011](#)
- [Policing and Crime Act 2017](#)
- Police Staff Disciplinary Procedure;
- [Police \(Conduct\) Regulations 2020](#);
- [Police \(Performance\) Regulations 2020](#);
- [Police \(Complaints and Misconduct\) Regulations 2020](#);
- [The Police Appeals Tribunal Rules 2020](#)
- [IOPC Statutory Guidance 2020](#);
- [Home Office Statutory Guidance 2020](#)
- [College of Policing Code of Ethics 2014](#)