

22 February 2016

Complaints about Police and Crime Commissioners – draft LGA consultation response

Purpose

For discussion and direction.

Summary

The Home Office is currently consulting on the handling of complaints about Police and Crime Commissioners by Police and Crime Panels. This paper seeks the Boards view on key issues, and on the attached draft response.

Recommendation

The Board are asked to approve the draft response, subject to any necessary amendments.

Action

Officers to take forward as directed.

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Complaints about Police and Crime Commissioners – draft LGA consultation response

Background

1. The Home Office has issued a consultation on Complaints about Police and Crime Commissioners (PCCs). The objective of the consultation is clarify the role and powers of Police and Crime Panels (PCPs) in dealing with complaints about PCCs.
2. Currently, PCPs are responsible for handling non-serious complaints made about a PCC's conduct and for resolving these through the process for informal resolution set out in the Police Reform and Social Responsibility Act 2011 and associated regulations. However, the Act explicitly prohibits PCPs from 'investigating' complaints about PCCs, and PCPs have highlighted that they are unable to collect evidence about a complaint or provide a satisfactory outcome for the complainant and PCC.

Issues

3. The consultation proposes the development of guidance for PCPs on what constitutes a complaint. This will support PCPs in identifying the issues that should and should not be classed as complaints, including when something relates to conduct and when something relates to a policy decision, which would be out of the PCP's remit. It is proposed that the LGA agrees that guidance would be helpful to PCPs.
4. The consultation also seeks views on whether PCCs should be subject to the seven Nolan Principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership – in terms of their conduct. Again, it is proposed that the LGA should support this approach.
5. In its wider work to reform police complaints, government has committed to look into measures that make it easier for forces to handle persistent and vexatious complaints, and the consultation seeks views on whether any such measures should be extended to PCPs. The draft LGA response suggests that this would be appropriate, both to ensure consistency and to ensure PCPs have appropriate flexibility when dealing with these types of complaints.
6. The consultation proposes to amend the Act to remove the restriction on PCPs' ability to investigate complaints. Although Government believes that the majority of complaints can continue to be resolved without an investigation, it is intended that this amendment would remove a restriction that sometimes hinders PCPs when managing complaints.
 - 6.1. Government proposes that powers should be amended to allow PCPs to appoint an independent individual to gather evidence relating to a specific complaint and the conduct of the PCC, and subsequently to present a recommendation report to the PCP.

- 6.2. The consultation seeks views on individuals who could undertake investigations on behalf of the PCP. Although government's preferred approach is for the PCC Monitoring officer (ie, PCC Chief Executive) to fulfil this role, it also proposes that a monitoring officer from one of the local authorities in the relevant police force area could investigate on behalf of the PCP. The costs of the investigation would be borne by either the office of the PCC or the PCP respectively.
7. PCPs have argued that the restriction on investigating complaints is a hindrance to proper complaints handling, and the draft response is therefore supportive of the proposal to remove it.
8. However, the draft response also highlights concern that with limited resources at their disposal, neither PCPs nor PCCs will wish to accept the responsibility of undertaking investigations.
9. That issue notwithstanding, the draft response argues that individual PCPs should be free to determine the appropriate person to investigate on its behalf.
10. We do not necessarily share Government's view that the PCC monitoring officer is the most appropriate person to fulfil this role – the one-to-one relationship between the PCC Chief Executive and the PCC as the person who appointed them creates a potential conflict of interest, and means members of the public may question the impartiality and objectivity of any investigation as compared to when a council monitoring officer is investigating a single member of a council.
11. However, in some areas, PCPs have already made arrangements to delegate complaints to the PCC monitoring officer, and it is important that those areas should be free to continue these arrangements if they wish to. Equally, other PCPs should have the flexibility to appoint a council monitoring officer, or any other person they believe is an appropriate individual to investigate on their behalf (recognising that the cost of doing so may make a third party an unlikely option).
12. An issue on which we would welcome the Board's views is whether it would ever be appropriate for panel members themselves to investigate a complaint. Government is of the view that the investigatory aspects of complaint handling should be separate from the PCP, and most PCPs appear to support this approach. However, there is an alternative view among some panels that this would widen flexibility of approach, and should be available as an option.
13. Finally, the consultation deals with the issue of informal resolution of complaints by PCPs, defined as 'encouraging, facilitating or otherwise assisting in the resolution of the complaint otherwise than by legal proceedings.'
- 13.1. The government believes that there has been confusion among some PCPs as to their ability to resolve complaints as they would have wished, and their options if the PCC / complainant could not agree on a method of informal resolution.
- 13.2. Government proposes to introduce guidance clarifying that informal resolution is not reliant on the agreement of both parties (although that is preferable), and highlighting that PCPs have a free standing power to make recommendations and require a PCC to respond in writing to them. In relation to complaints, any

such recommendations should be related to conduct and based on preventing further complaints arising. This guidance would link to the definition of a complaint, and also to the Nolan Principles.

14. We believe the LGA should support the development of guidance on this point.

Next steps

15. Members are asked to:

- 15.1. Give their views on the issues outlined above, and
- 15.2. Propose any changes to the attached draft response to the consultation.

Financial Implications

16. None.

Annex: Draft LGA response – Complaints about police and crime commissioners consultation

Key messages

- The LGA welcomes Government's efforts to strengthen and clarify the role of Police and Crime Panels (PCPs) in dealing with non-serious complaints about Police and Crime Commissioners (PCCs).
- However, we are concerned that resource pressures may limit the extent to which PCPs ultimately use the proposed power to appoint an individual to investigate complaints on their behalf. The funding available to directly support PCPs is limited, and individual councils in police force areas may be hard pressed to subsidise investigations through use of their monitoring officers.
- Given these resource pressures, and the fact that varying complaint handling arrangements have been established in different areas since 2012, it is important that there is flexibility for PCPs to determine the individuals engaged to investigate complaints on their behalf.

Detailed points

Definition of complaints

- The LGA is supportive of the Government's intention to clarify the role of PCPs in dealing with non-serious complaints about PCCs and remove the barriers preventing them from fulfilling this role satisfactorily.
- We welcome the proposal to develop guidance on what constitutes a complaint, and believe this will help assist PCPs in dealing with complaints effectively. For reasons of consistency and to ensure PCPs have appropriate flexibility when dealing with these types of complaints, we believe that any new measures to assist police forces in dealing with vexatious or persistent complaints should also cover PCPs.

- We are strongly in agreement with the proposition that the Nolan principles should apply to PCCs.

PCP power to investigate

- The LGA agrees that PCPs should be given greater investigatory powers to investigate complaints. If PCPs are to be tasked with dealing with complaints against PCCs, it is vital that they have the right powers to undertake this role properly and thoroughly. The current restriction on investigating complaints is a barrier to doing so.
- ***Comment subject to Board views on whether panel members should be able to conduct investigations themselves.***
- We agree that PCPs should have the power to appoint an independent investigator, and believe that the choice of who that is should fall to PCPs themselves. PCPs should be entitled to appoint either the PCC or a local authority monitoring officer, or any other individual they deem has the skills and independence required for the role.
- We do not share Government's view that the PCC monitoring officer is best placed to perform the role of the independent investigator to establish evidence for a complaint: as a direct appointee of the PCC. There is a risk that public would question the ability of the Chief Executive to act impartially and objectively, due to the potential conflict of interest they would face in investigating their employer.
- However, we are aware that since 2012 a number of PCPs have delegated their complaints handling process to the PCC monitoring officer, and if PCPs are satisfied that these arrangements are operating appropriately, they should be free to continue them.
- Moreover, while some PCPs may wish to appoint a local authority monitoring officer to fulfil undertake investigations, others may be concerned about the potential resource impact, and may also prefer to appoint the PCC monitoring officer.
- As a general point, although supportive of the proposal to appoint independent investigators, we note that they may ultimately be undermined by a lack of resources to support the PCP. While the power to investigate may only be required in relation to a handful of cases, it is likely that such cases will be detailed and complex, and may require a significant amount of time to investigate. Panels do not in themselves have these resources to draw upon, and few councils will be in a position to subsidise the work of the panels by providing their own resources to support investigations.

Informal resolution of complaints

- We believe that as there is clearly uncertainty about the powers that PCPs have to respond to the outcome of a complaint, guidance that clarifies their ability to make recommendations would be extremely helpful.
- We also agree that any such recommendations should be linked to the expected conduct of the PCC and in turn to the Nolan principles.