

Police Action Lawyers Group

Response to the consultation on the draft Elected Local Policing Body (Complaints and Misconduct) Regulations.

The Police Action Lawyers Group [PALG] is comprised of solicitors, barristers and legal executives who represent complainants against the police throughout England and Wales. PALG members are concerned first and foremost with the principle objectives of the complainants we represent: to ensure that the police are held accountable for their conduct through all available avenues, including the police complaints system, judicial review and compensation claims.

We were established in 1991 and meet bi-monthly. We are London based, with a subgroup in South Yorkshire.

Due to our large and varied membership, the collective experience of PALG is considerable. We include lawyers to act on behalf of complainants against virtually every force in England and Wales. Membership is contingent on lawyers only acting for complainants, to ensure we provide a wholly independent space to discuss complainant's concerns.

PALG response

1. Do you have any comments on the regulations which set out the way in which allegations of criminal behaviour will be referred to the IPCC?

- a. Paragraph 14 places the duty to refer a complaint alleging criminal behaviour to the Commission on the police and crime panel. We submit that this same duty should also fall upon a relevant office holder where a complaint is made to him or her about his or her own conduct (see paragraph 10(4)). It should never be appropriate for a relevant office holder not to give notification of a complaint alleging criminal behaviour to the police and crime panel on the basis that s/he has taken reasonable steps to deal with the complaint to the satisfaction of the claimant.

In our submission paragraph 10(4) requires amendments to ensure that any complaint made directly to a relevant office holder about his/her own conduct involving an allegation of criminal behaviour must be notified to the police and crime panel even if the relevant office holder considers the complaint has been resolved to the satisfaction of the complainant.

- b. The Regulations should provide for a complainant to be notified and provided with reasons for the decision, where a police and crime panel decides that a complaint does not require to be referred to the Commission. The Regulations should also provide a right of appeal of the complainant to the Commission on this issue.
- c. In paragraph 15, no guidance at all is given as to how and on what basis the Commission should decide whether a complaint or matter should be investigated (paragraph 15(1)). In our submission any complaint which has been referred to the Commission on the basis that it contains an allegation of criminal behaviour requires to be investigated. It is only after an investigation that the Commission should be in a position to decide whether it considers the allegation is substantiated or not.

Paragraph 15(2)(a) and (b) mean that if the Commission decides that an investigation is not necessary, the only avenue for addressing the complaint is through the informal resolution process. While it is difficult to anticipate precisely

how these Regulations might be used in practice, it is not difficult to envisage that there may be complaints and conduct matters which fall short of allegations of criminal behaviour but are nevertheless of sufficient gravity and/or public interest that accountability requires some form of investigation, akin to a police Department of Professional Services formal investigation. Examples of such complaints may include: Equality Act 2010 implications of funding decisions, defamation and Data Protection Act 1998 breaches.

2. Do you have any comments on the regulations which set out the way in which allegations of criminal behaviour against relevant office holders will be investigated by or under the management of the IPCC?

- a. Draft Regulation 27 states that no criminal proceedings shall be brought in relation to any matter subject of an investigation until the final report has been submitted to the Commission at the conclusion of the investigation (1). Regulation 27(3) provides that these restrictions shall not apply to the bringing of proceedings by the DPP in any case in which there appears to be exceptional circumstance.

We are concerned that there is no requirement on the Commission to complete the investigation within any set timescale or even promptly where as some criminal charges, including assault, do require that proceedings are brought within a specified period of time (6 months for assault).

The Regulations should place the Commission under an obligation to ensure any investigation is completed promptly and in any event in sufficient time to allow all potentially relevant criminal charges to be pursued.

- b. The PCP and IPCC should retain powers to investigate allegations of criminal behaviour that come to light when a person has left a relevant office, to manage the risk that a person holding a relevant officer resigns rather than faces an investigation. It is appropriate that those bodies should conduct such investigations rather than a local force, where a conflict of interest may arise.

3. Do you have any comments on the regulations which set out the way in which the findings of an investigation by or under the management of the IPCC into allegations of criminal behaviour against a relevant office holder will be reported?

- a. We are concerned that there is ambiguity suggesting a possible departure from the “harm test” which is applied to publication of reports and related documentation in other police complaints and which means that disclosure can be prevented only in specific circumstances. We consider that the safeguards provided by the “harm test” (such as preventing disclosure where it could prejudice criminal proceedings or national security) are sufficient to ensure that information is only made available where it is appropriate to do so.

- b. Paragraph 33(1) of the draft regulations includes a similar list of circumstances in which non-disclosure may be appropriate and paragraph 33(2) that non-disclosure will only be appropriate where there is a significant risk of “adverse effect.” The definition of “adverse effect” given at the beginning of the legislation is “any form of loss or damage, distress or inconvenience, [or being put] in danger or ... otherwise unduly put at risk of being adversely affected. This definition of “adverse effect” suggests that the threshold for non-publication in these matters would in fact be

much lower than the “harm test,” allowing, for example, for non-disclosure simply because it put someone at risk of being distressed or embarrassed.

- c. The idea that such factors could be used to prevent publication of reports into matters that touch upon the office holder’s suitability for that role is hugely problematic and conflicts with the idea of accountability to local communities. ch accountability is particularly important given the controversial nature of elected crime commissioners. In order for communities to be able to make an informed decision in voting for these new office holders, , it is strongly in the public interest that they are accountable through public knowledge about their actions
 - d. PALG also has concerns that the PCCs, who may well be elected over large geographical areas, could fail to ensure protection of the rights of ethnic and other minorities. Again this is a factor in favour of disclosure of information wherever this does not conflict with the “harm test”. Any lowered test for preventing disclosure of information carries the danger of becoming a way of silencing criticism and we strongly consider that the public interest in favour of disclosure will outweigh factors such as embarrassment and inconvenience of publication in nearly every case.
 - e. We therefore consider that the Regulations should be clear that publications of investigation findings should be subject to the “harm test” and not to any more lenient test. Furthermore, we consider that there should be a presumption in favour of publishing anything that relates to the relevant office-holder’s fitness for office.
4. Do you have any comments on the regulations which set out the way in which complaints against relevant office holders regarding non-criminal behaviour will be resolved by the PCP?
- a. We do have concerns that there is no provision for independent scrutiny of non-criminal complaints which, coupled with the regulations concerning reporting of complaints, does not fit with the stated goal of maintaining public confidence in policing. There is real potential for a conflict of interest to arise for the individual or sub group appointed to resolve the complaint against a relevant office holder of that same police and crime panel. Paragraph 20(3) states that the arrangements for resolution of a complaint could include appointing a sub committee, a single member of the panel or a person who is not a member of the panel to secure the complaint resolution. We suggest that there should be provision for the arrangements for resolution of all complaints which are likely to be of concern to the wider public to involve some element of independent scrutiny.
 - b. We repeat our concerns about paragraph 10(4) which allows a relevant office holder to attempt to resolve a complaint about him or herself within 28 days and no requirement to report the complaint if it is ‘satisfactorily’ resolved within that timeframe.
 - c. As stated above at paragraph 1(c) of this submission, we do consider that there will be some complaints of sufficient gravity and/or public interest that accountability requires:
 - i. That the complaint should always be reported to the police and crime panel; and;
 - ii. A more formal style of investigation than it appears informal resolution would provide. We submit that the complainant should be consulted on the form

which the resolution of the complaint should take and in some cases should be able to refuse informal resolution and insist upon a more formal style of investigation.

- d. Paragraph 20(3) causes us concern where the only avenue for redress for complaints concerning non-criminal behaviour is informal resolution. Should the consultation take on board our submission that complaints of sufficient gravity and/or public importance should be subject of a more formal style of investigation, then this provision should not apply to those complaints. It is difficult to envisage the exact nature of complaints that may arise but these could potentially include complaints concerning Equality Act 2010 implications of funding decisions, defamation and Data Protection Act 1998 breaches where the evidence gathered in connection with the investigation could assist in facilitating resolution of formal civil disputes. Similarly there may be complaints which initially appear non-criminal but on further consideration become conduct matters and the evidence gathered could be important evidence in a subsequent criminal investigation.

5. Are there any particular issues relating to the system for handling complaints against elected local policing bodies that you would like to see covered by forthcoming guidance?

There are a number of issues relating to the system for handling such complaints that we consider should be addressed by guidance.

- a. Firstly we consider guidance must clearly define how and on what basis the Commission should decide that a conduct matter should be investigated (see paragraph 1(c) above.. It should also define decisions as to whether an allegation involves criminal conduct should be made. We also consider there should be a right of appeal against a decision that an allegation is one of “non-criminal” conduct.
- b. If this consultation takes up our suggestion that there should be provision for a more formal style of investigation of some non criminal complaints then there should be guidance concerning the nature of complaints which would be suitable to be dealt with by this process;
- c. Guidance is required to more clearly define what is expected of the informal resolution process
- d. Guidance on publication of reports would assist decision making surrounding when disclosure is appropriate in the public interest. We consider the guidance on publication should incorporate a presumption in favour of reporting any matter that touches upon the relevant office holder’s fitness for office.
- e. Paragraph 5(4) of the draft Regulations suggest that before issuing guidance to PCCs, relevant office holders and chief officers regarding the exercise and performance of their powers and duties, the Commission shall consult with persons representing the views of police officers, relevant office holders, chief police officers and “such other persons as the Commission thinks fit.” Guidance should more clearly state how “such other persons as the Commission thinks fit” is defined. We are concerned that this does not include any provision for the views of complainants, minority groups and / or the wider community. We would suggest that such groups be expressly referenced within the guidance as it is important that views other than those of police officers and office holders are taken into account.

This will help to ensure a police force that is respectful of human rights, and provide an important check on the powers of the new PCCs and other office holders.