

# Public Document Pack



**Date and Time** Monday, 24th September, 2018 at 11.00 am

**Place** EII Court, Hampshire County Council, Winchester, SO23 8UJ

**Enquiries to** [members.services@hants.gov.uk](mailto:members.services@hants.gov.uk)

## AGENDA

1. **WELCOME AND APOLOGIES FOR ABSENCE**
2. **UPDATE TO GOVERNANCE DOCUMENTS** (Pages 3 - 18)  
  
To consider a report providing suggested revisions to the Panel's Complaints Protocol and the Guidance Note on the management of unreasonable complainant behaviour.
3. **OUTCOMES AND NEXT STEPS**

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## HAMPSHIRE POLICE AND CRIME PANEL

### Report

<b>Date considered:</b>	24 September 2018	<b>Item:</b>	2
<b>Title:</b>	Update to Governance Documents		
<b>Contact:</b>	Democratic Support Officer to the Panel		
<b>Tel:</b>	01962 847483	<b>Email:</b>	<a href="mailto:members.services@hants.gov.uk">members.services@hants.gov.uk</a>

#### 1. Executive Summary

- 1.1 The purpose of this paper is to set out revised governance documents previously adopted by the Hampshire Police and Crime Panel (PCP)

#### 2. Protocol for the Informal Resolution Procedure Regarding Complaints made Against the PCC

- 2.1. The protocol outlines the protocol under which the Complaints Sub-Committee will seek to determine complaints. Revisions have been proposed to enhance the clarity and transparency of the process for determining whether part 4 of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 ("the Regulations").
- 2.2. In order to enable this process to be undertaken efficiently it is recommended that the Sub-Committee delegate their responsibility for the decision to disapply part 4 of the regulations, in respect to all or part of any complaint, to the Panel's Monitoring Officer, in consultation with the Chairman of the Sub-Committee.
- 2.3. A number of other amendments have been suggested, in response to the proposals above and to enhance the accuracy of the document. The proposed updated protocol can be found at appendix one

#### 3. Guidance Note on the management of unreasonable complainant behaviour

- 3.1. The guidance note outlines what the Sub-Committee considers to be unreasonable complainant behaviour, the options available to the Sub-Committee and the possible consequences to the individual.
- 3.2. Where unreasonable complainant behaviour adversely affects the sub-committee's ability to perform their role, or the work of any of the Panel's supporting officers, a decision may need to be reached to restrict the contact that person has with the Sub-Committee. Given the potential impact of such behaviours any such decision may need to be reached within a short timeframe, in order to minimise any ongoing disruption and therefore it is

recommended that the Sub-Committee delegate their responsibility for the application of this guidance note to the Panel's Monitoring Officer, in consultation with the Chairman of the Sub-Committee.

- 3.3. A number of other amendments have been suggested, in response to the proposal above and to enhance the accuracy of the document. The proposed updated protocol can be found at appendix two.
  
4. **That the Sub-Committee agree the updated Protocol for the Informal Resolution Procedure Regarding Complaints made Against the PCC and the updated Guidance Note on the management of unreasonable complainant behaviour and report these updates to the full Panel at their next meeting on 5 October 2018.**

#### **Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
N/A	N/A

Hampshire Police and Crime Panel

Protocol for the Informal Resolution Procedure Regarding Complaints made Against the PCC

Initial recording of complaints received

The Chief Executive of the Office of the PCC will consider whether the complaint is a complaint against the PCC, is a complaint for which the Hampshire PCP is the relevant Police and Crime Panel, is a complaint at all, or is a complaint relating to an operational matter of Hampshire Constabulary (the Constabulary) to be resolved in accordance with the complaints procedures of the Constabulary.

When in accordance with the delegation to the Chief Executive of the Office of the PCC the decision has been made to record a complaint that will not subsequently be referred to the Independent Office for Police Conduct Complaints Commission (the IOPC), the Chief Executive of the Office of the PCC will:

- Record the date of receipt and ensure that the complaint has been made on the Complaints Form at Annex 1
- send a record of the complaint, the Complaints Form, to the complainant and to the person complained about (in the latter case, subject to any decision taken not to supply a copy of the complaint or to supply the complaint in a form which keeps anonymous the identity of the complainant or of any other person) and will include the contact details of the Panel's scrutiny officer; and
- refer the record, the Complaints Forms, and copies of all the associated paperwork, to the Panel's scrutiny officer. This will be no later than two working days after the complaint has been recorded.

Acknowledgement of complaints

On receipt of the complaint, the Panel's scrutiny officer will:

- Assess the complaint to ensure that it is complete, and that it clearly identifies the alleged conduct matter
- Refer incomplete or unclear complaints back to the Chief Executive of the Office of the PCC seeking further information.
- Consider whether the complaint has been satisfactorily dealt with and if so, consulting with the complainant, to treat the complaint as withdrawn.
- write to the complainant, setting out timescales and providing details about the informal resolution procedure; and giving the complainant an opportunity to make further comments in support of his/her complaint (allowing him/her 14 clear calendar days to respond). Where the Panel's scrutiny officer believes that the circumstances of the case are such that the Complaints Sub-Committee may decide to treat the complaint as having been resolved,

he/she will ask the complainant to provide his/her representations in this regard for the Complaints Sub-Committee to take into account; and

- write to the person complained about, setting out timescales and providing details about the informal resolution procedure; and giving him/her an opportunity to make comments in response to the complaint (allowing him/her 14 clear calendar days to respond).

### Disapplication

In appropriate cases, the informal resolution procedure may be- disapplied in respect of a complaint in accordance with Regulation 15 of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 ("the Regulations"). If the Panel's scrutiny officer identifies that a complaint may be suitable for consideration for disapplication of part 4 of the Regulations they will refer it to the Panel's Monitoring Officer.

- The Monitoring Officer, in ~~consider in~~ consultation with the Chair of the Sub-Committee, will consider the suitability of the complaint for disapplication of part 4 of the Regulations.
- In the event that ~~disapplication-a matter~~ is ~~considered~~determined to be suitable for a disapplication of Part 4 of the Regulations appropriate in relations to a complaint, the Monitoring Officer will ~~to write to~~ consult the complainant and the PCC, notifying them of this decision, before determining whether a disapplication is appropriate whereupon the complaint will be recorded as complete.
- In the event that only part of a complaint is determined to be suitable for disapplication, this will be notified to the complainant and the PCC in the notification letter, outlining those parts of the complaint to which disapplication will apply.
- Any decision taken to disapply the informal resolution procedure in respect of a complaint, or part thereof, will be formally reported to the Sub-Committee at the first Sub-Committee Meeting following the date of the determination.

### Meetings of the Sub-Committee

The Panel's Scrutiny Officer will convene a meeting of the Complaints Sub-Committee, normally to be held within 21 clear calendar days ~~after~~ the deadline for receipt of all comments to the complaint. The Panel's scrutiny officer will, taking advice from the legal adviser, compile a brief report for the Complaints Sub-Committee, setting out the pertinent details of complaint, recording any failure by the person complained about to comment on the complaint and making suggestions for the next steps.

- The Complaints Sub-Committee will first consider whether the complaint has been satisfactorily dealt with and, subject to any representations by the complainant, may decide to treat the complaint as having been resolved. In such

a case, the Complaints Sub-Committee's reasons will be recorded and notified to the parties.

- While the Complaints Sub-Committee is prohibited from conducting an open investigation of the complaint, it does have the power to ask, of the person complained against, for documents relating to the matters referred to in the complaint, and may require the OPCC to attend a meeting of the Sub-Committee to answer questions. The Complaints Sub-Committee may also invite the complainant to provide further information for the purpose of clarity. In exercising these powers, the Complaints Sub-Committee will seek to ensure fairness and transparency within its proceedings and, following legal advice, will focus on matters which substantiate or clarify a point relating to the complaint, or response to the complaint.
- The Complaints Sub-Committee shall have regard to:
  - The Code of Conduct of the Police and Crime Commissioner;
  - Whether the complaint discloses a specific conduct failure on the part of the Police and Crime Commissioner, identifiable within the Code of Conduct of the Police and Crime Commissioner, or whether it relates to operational matters of the constabulary, and operational policing matters in which the Police and Crime Commissioner has no authority;
  - The remedies available to it;
  - All other relevant considerations.
- If, on considering the report, the Complaints Sub-Committee feels that the matter needs to be determined under the informal resolution procedure, it will decide its course of action. In considering this action it shall have regard to the limits on investigation, referred to above.
- The Complaints Sub-Committee will consider whether to devise an action plan (to be drawn up by the Panel's scrutiny officer) and in so doing will take into account any applicable guidance issued by the Secretary of State and may also consider any guidance issued by the IOPC pursuant to section 22 of the Police Reform Act 2002 on local resolution. Any such action plan will include an indicative timeframe.
- Any such action plan may include (for example):
  - An explanatory letter being written by an officer of the Panel (or on behalf of the Complaints Sub-Committee),
  - An explanatory letter being written by an officer of the OPCC,
  - A suggested change to OPCC policy; or
  - A request that an apology is tendered (no apology may be tendered on behalf of the person complained against unless that person has admitted the alleged conduct and agreed to the apology).

- The Complaints Sub-Committee will also decide whether it wishes to:
  - reconvene to take any steps identified in the action plan,
  - authorise any named individual (who may not be a PCC, a DPCC or the Chief Executive of the Office of the PCC) to take any steps in accordance with the action plan; or
  - refer the matter to the Panel recommending that the identified action be taken.
- Once the actions from the plan have been completed, the matter may be referred back to the Complaints Sub-Committee or an authorised individual may determine that the matter has been resolved. The Panel's scrutiny officer must make a record of the outcome of the informal resolution as soon as practicable, normally within three clear working days, after the process is completed and provide copies to the complainant and the person complained against. The matter will then be closed.
- No part of the record may be published by the Complaints Sub-Committee, other than that required under the Local Government (Access to Information) Act 1985, unless, having given the parties an opportunity to make representations about the proposed publication and having considered any such representations, the Complaints Sub-Committee considers that publication is in the public interest.
- The Panel's scrutiny officer will prepare an update report to each annual general meeting of the Panel about all complaints considered in the preceding 12 months by the Complaints Sub-Committee, the action taken (including any obligations to act, or refrain from acting, that have arisen under the regulations, but have not yet been complied with or have been contravened) and the outcome of the process.
- If, at any stage, the IOPC informs the Panel that they require the complaint to be referred to them, or if the Complaints Sub-Committee decides that the complaint should be referred to the IOPC, the informal resolution process must be discontinued. The Complaints Sub-Committee should only decide that the complaint should be so referred if matters come to light during the informal resolution process which indicates the commission of a criminal offence, thus leading to the earlier decision as to whether or not the complaint was a serious complaint being reversed.
- At any stage, the Panel's scrutiny officer may seek legal advice from the Panel's legal adviser.



## Guidance Note on the management of unreasonable complainant behaviour

### 1 Introduction

- 1.1 The Hampshire Police and Crime Panel (hereafter referred to as “the Panel”) is committed to providing a high quality service at all times to members of the public when dealing with complaints made against the Police and Crime Commissioner for Hampshire (hereafter referred to as “the Commissioner”).
- 1.2 The Panel has delegated part of its role in handling complaints to a Complaints Sub-Committee (hereafter referred to as ‘the Sub-Committee’), which is made up of Local Authority and Independent Co-opted Panel Members.
- 1.3 The Sub-Committee aims to consider all complaints made against the Commissioner ~~within three weeks of recording in accordance with its Protocol for the Informal Resolution Procedure, and to provide complainants with the opportunity to make further comments in support of their complaint.~~ A flowchart setting out the correct process for making a complaint against the Commissioner can be found at Appendix 1.
- 1.4 The Police Reform and Social Responsibility Act 2011 (and later regulations) set out the powers of the Sub-Committee in resolving or closing complaints made against the Commissioner. The Legislation is clear that consideration of a complaint by the Panel should not amount to an investigation. As such, the Panel is limited in the steps it can take to review a complaint, and the recommendations it can make as a result.
- 1.5 The Sub-Committee may decide to disapply the informal resolution process agreed by the Panel, should the complaint fail to meet certain criteria.
- 1.6 The Sub-Committee recognise that there may be times when a member of the public may not be satisfied with the outcomes reached by the Sub-Committee. The Sub-Committee are committed to dealing with all complaints fully and in a timely manner, but are mindful of the need to stay within legislation. Should any individual not be satisfied with the Sub-Committee’s conduct in relation to a complaint, an option open to them is to refer a case to the Local Government Ombudsman (see section 8 below).

- 1.7 Usually complaints reviewed by the Sub-Committee are subject to a straightforward process, but in a small number of cases complainants may begin to pursue their cases in a way that can get in the way of reviewing the complaint or unfairly take officers supporting the Sub-Committee away from their other duties. Similarly, complainants who have had their complaints resolved by the Sub-Committee may continue to pursue their complaint, or request outcomes to their case that the Sub-Committee is not capable or are is unwilling to grant.
- 1.8 The aim of this guidance is to let complainants know what the Panel-Sub-Committee considers to be unreasonable complainant behaviour, the options available to the Sub-Committee and the possible consequences to the individual.
- 1.9 The Sub-Committee will only invoke this guidance after careful consideration, and in exceptional circumstances. Individuals may have justified complaints but may be pursuing them in an inappropriate way, or they may be intent on pursuing complaints which appear to have no substance or which have already been investigated and determined.
- 1.10 Such complaints may rarely occur, but if a complainant's behaviour adversely affects our ability to do our work, or the work of any of our supporting officers, we may decide to restrict the contact that person has with the Sub-Committee.
- 1.11 If the Sub-Committee decide to invoke this guidance, we will write to the individual concerned to tell them why we believe his or her behaviour falls into that category, what action we are taking and the duration of that action.

## 2 What is meant by “unreasonable complainant behaviour”?

- 2.1 The Sub-Committee have adopted the definition used by the Local Government Ombudsman. Unreasonable complainant behaviour occurs where:
- There is repeated and obsessive pursuit of a complaint which appears to have no substance or which has been investigated and determined.
  - The contact may be amicable but still place very heavy demands on officer or Member time, or may be very emotionally charged and distressing for all involved.
  - There is an escalation of behaviour which is unacceptable, for example abusive, offensive or threatening behaviour.
- 2.2 Examples include the way or frequency that complainants raise their complaint with the Sub-Committee, or how complainants respond when they are told of our decision of their complaint. Appendix 2 lists a range of situations the Sub-Committee may consider to be examples of unreasonable behaviour.

### **3 Considerations to be made before taking action to restrict access**

- 3.1 All complainants have the right to have their complaint considered at an initial stage by the Sub-Committee. The Sub-Committee will ensure that the complaints procedure is exhausted – ended at a point that is appropriate to each case – and the complainant notified as such.
- 3.2 The Sub-Committee will consider and ensure they understand an individual's circumstance, how and why they feel as they do and what it is that would resolve the matter for them. We must be sure that we have given them the right opportunity to express their views and opinions and that we have listened and given appropriate thought and effort to resolving and explaining the position and our actions.
- 3.3 Before deciding whether the guidance should be applied, the Sub-Committee, with legal advice, will consider and satisfy themselves that:
  - The complaint is being or has been reviewed properly, and any decision reached has been found to be appropriate based on the information presented to the Sub-Committee at the time.
  - Communications with the complainant have been adequate and within the Panel's policies.
  - Any decision reached has been reviewed and is found to be appropriate.
  - The complainant is not now providing any significant new information that might affect the Sub-Committee's view on the complaint.
  - There is not another, more specific path for the complainant to follow e.g. an appeal process to be followed when they are complaining about a decision taken.
- 3.4 Some individuals that may be considered to be unreasonable complainants may be behaving this way because of a specific circumstance or difficulty. Where this is indicated the Sub-Committee will take this into account in determining the reasonableness of the complaint made.
- 3.5 Any restrictive actions that may be taken will be tailored based on the circumstances and behaviour of the individual and their complaint.

### **4 Possible Actions**

- 4.1 Actions that could be taken to restrict access and contact:
  - Restricting telephone calls to specified days/times/duration (for example, one call on one specified morning/afternoon of any week);

- Limiting the complainant to one medium of contact (telephone, letter, email etc.) and/or requiring the complainant to communicate only with one named member of staff. If this by email, it will be automatically forwarded to the named single point of contact;
- Placing restrictions on the amount of time the Sub-Committee and their officers will spend reviewing their complaints;
- Letting the complainant know that the Sub-Committee will not reply to or acknowledge any further contact from them on the specific topic of that complaint;
- Refusing to register and process further complaints about the same matter.

4.2 In some circumstances, the Sub-Committee may decide that it is appropriate to severely reduce or completely stop responding to a particular complainant.

## **5 Process for the application of the Guidance Note on the management of unreasonable complainant behaviour**

**5.1** At its meeting, on 24 September 2018 (TBC), Sub-Committee agreed the application of the Guidance Note on the management of unreasonable complainant behaviour be delegated to the Monitoring Officer to the Panel (hereafter referred to as “the Monitoring Officer”), in consultation with the Chair of the Sub-Committee (hereafter referred to as “the Chairman”), as set out in this Guidance Note. This was recommended in order to allow the guidance note to be applied and any restrictions put in place in a shorter timeframe, given the impact unreasonable behaviour may have on both Member and officer time.

**5.2** Delegation of this power to the Monitoring Officer does not preclude a meeting of the Sub-Committee being called to determine a decision in respect of unreasonable complainant behaviour should it be deemed necessary by the Monitoring Officer.

### **First Stage – Notification/Warning**

**4.35.3** The Monitoring Officer will review, in consultation with the Chairman. The Sub-Committee, with legal advice, will confer on why the complainant’s behaviour is causing a concern, giving clear documented evidence to support this and outlining how the behaviour needs to change.

**5.4** The ~~legal advisor~~Monitoring Officer ~~to the Sub-Committee~~ will write to the complainant explaining to them the actions that ~~the Sub-Committee~~ may be taken if their behaviour does not change, along with a copy of this guidance.

### **Second Stage – Application**

5.5 Should the complainant continue to demonstrate unreasonable behaviour, following receipt of the notification, the Monitoring Officer, in consultation with the Chairman will, determine whether to apply the unreasonable complainant policy and what actions will be taken.

4.45.6 If the Monitoring Officer determines to apply the Guidance Note on the management of unreasonable complainant behaviour, the legal adviser to the Panel will write to the complainant explaining to them the actions to be taken. All letters will include:

- Why this decision has been reached~~the Sub-Committee has taken the decision it has~~;
- What specific action ~~it is~~ being taken~~gen~~;
- The duration of that action;
- The date the decision will be reviewed;
- The circumstances that the decision could be reviewed in advance of that date (e.g. new relevant information);
- The right of the complainant to contact the Local Government Ombudsman (LGO) about the fact that they have been treated as unreasonable.

5.7 Any decision taken to apply this guidance note will be formally reported to the Sub-Committee at the first Sub-Committee Meeting following the date of the determination.

4.55.8 A log of the decision made and records of all contacts with the complainant will be kept. This information will be treated as confidential and only shared with those who may be affected by the decision in order them to carry out their role at work

4.65.9 Key information to be recorded includes:

- When a decision is taken not to apply the guidance ~~when a member of staff asks for this to be done~~, or
- When a decision is taken to make an exception to the guidance once it has been applied, or
- When a decision is taken not to put a further complaint from the complainant through the complaints procedure for any reason, and
- When a decision is taken not to respond to further correspondence, make sure any further letters, faxes or emails from the complainant are checked to pick up any significant new information.

4.75.10 Any further contact from the complainant, for example on a new issue, will be treated on its merits.

56 **Who will be informed about restrictions?**

5.46.1 All officers and Members who have experienced unreasonable complainant behaviour relating to the specific complaint will be informed of the decision to impose contact restrictions.

## 67 **Reviewing the decision to restrict access**

6.47.1 When imposing a restriction on access a specified review date is given. Once that date has been reached any restrictions should be lifted and relationships returned to normal unless there are good grounds to extend the restriction.

6.27.2 The Sub-Committee, in conjunction with the Panel's legal advisor, will review the restriction at the agreed time. If the decision is made to lift the restriction the complainant will be informed of that decision. If restriction is to continue, the reasons for the continuation of the restriction will be given to the complainant along with the next review date.

## 78 **Referring complainants to the Local Government Ombudsmen (LGO)**

7.48.1 A complainant who is not satisfied with the outcomes-determinations of the Sub-Committee or its Monitoring Officer may make a complaint to the LGO, who will consider the case. Should they determine that the referral of a complaint warrants further consideration, they will review the process followed by the Sub-Committee or its Monitoring Officer in reaching any such conclusion.

7.28.2 A complainant who has been designated as unreasonable may make a complaint to the Ombudsman about the way in which they have been treated. The Ombudsman is unlikely to be critical of the Sub-Committee and its Monitoring Officer's actions if it can show that it acted proportionately and in accordance with its adopted guidance.

## 89 **Harassment and bullying**

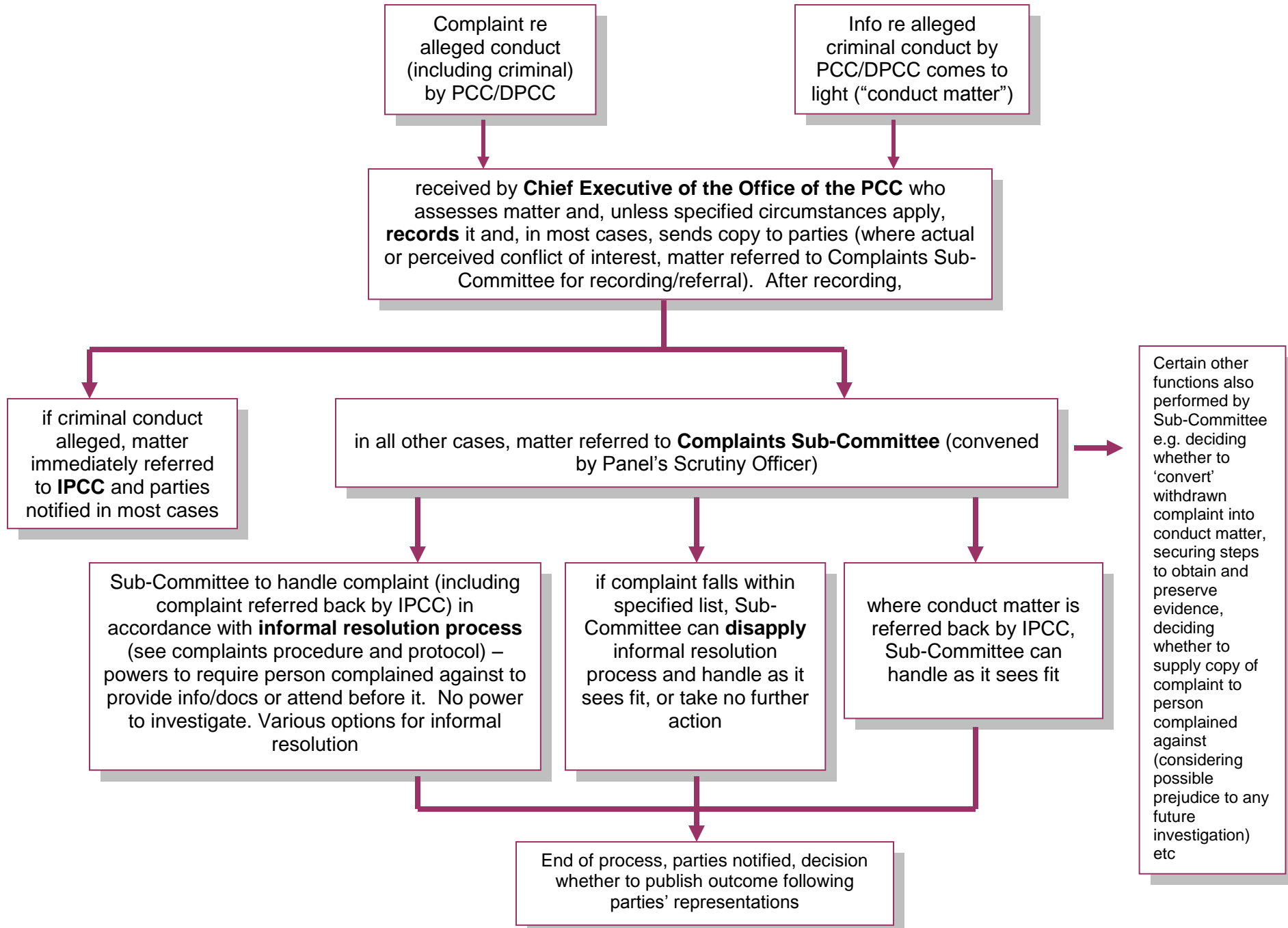
8.49.1 Unreasonable complainant behaviour may amount to bullying or harassment. All Sub-Committee members and officers have the right to be treated with respect and dignity in the workplace. Behaviour by third parties that bullies, harasses or intimidates individuals is unacceptable and will not be tolerated. The Sub-Committee will take all reasonable steps to prevent such behaviour.

## 10 **Contact information**

10.1 For more help or information, the Complaints Sub-Committee can be contacted via [members.services@hants.gov.uk](mailto:members.services@hants.gov.uk)

10.2 More information on complaints can be found at <http://www3.hants.gov.uk/hampshire-pcp/pcc-complaints.htm>

## COMPLAINT HANDLING FLOWCHART – APPENDIX 1





## Appendix 2 - Examples of unreasonable behaviour of complainants

Unreasonable complainant behaviour includes what is listed below. The list is not exhaustive, nor does one single feature on its own necessarily imply that the person will be considered as being in this category. It may include:

- Have insufficient or no grounds for their complaint, or be making the complaint only to annoy (or for reasons that he or she does not admit or make obvious)
- Refuse to specify the grounds of a complaint despite a request to do so
- Refuse to co-operate with the complaints process while still wishing their complaint to be resolved
- Refuse to accept that issues are not within the remit of the complaints policy and procedure despite having been provided with information about the scope of the policy and procedure.
- Refuse to accept that issues are not within the power of the Complaints Sub-Committee to review, change or influence (for example a complaint about something that is the responsibility of another organisation)
- Insist on the complaint being dealt with in ways which are incompatible with the complaints procedure or with good practice (insisting, for instance, that there must not be any written record of the complaint)
- Make what appear to be groundless complaints about the those dealing with the complaints, and seek to have them dismissed or replaced
- Make an unreasonable number of contacts with the Sub-Committee, by any means, in relation to a specific complaint or complaints
- Make persistent and unreasonable demands or expectations of staff and/or the complaints process after the unreasonableness has been explained to the complainant (an example of this could be a complainant who insists on immediate responses to numerous, frequent and/or complex letters, faxes, telephone calls or emails)
- Harass or verbally abuse or otherwise seek to intimidate Members or officers dealing with their complaint, in relation to their complaint by use of foul or inappropriate language or by the use of offensive and racist language
- Raise subsidiary or new issues whilst a complaint is being addressed that were not part of the complaint at the start of the complaint process
- Introduce trivial or irrelevant new information whilst the complaint is being reviewed outside of the period given for additional comments, and expect this to be taken into account and commented on
- Change the substance or basis of the complaint without reasonable justification whilst the complaint is being addressed
- Deny statements he or she made at an earlier stage in the complaint process
- Electronically record conversations without the prior knowledge and consent of the other person/s involved
- Refuse to accept the outcome of the complaint process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given



- Make the same complaint repeatedly, perhaps with minor differences, after the complaints procedure has been concluded, and insist that the minor differences make these 'new' complaints which should be put through the full complaints procedure
- Complain about or challenge an issue based on a historic and irreversible decision or incident
- A combination of some or all of the above features

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