

NORTH YORKSHIRE POLICE AND CRIME PANEL

The Panel's Complaints Sub-Committee met on 19th September 2018 to review a complaint lodged against the Police and Crime Commissioner ("the PCC"). This report sets out the conclusions reached by the Sub-Committee and their recommendations to the PCC on this matter. It also highlights the legal remit for the Panel in considering complaints and the methodology applied in considering this matter.

1. The Panel's role in complaints about the PCC

The North Yorkshire Police and Crime Panel is responsible for dealing with (non-criminal) complaints about the conduct of the PCC.

The Complaints Sub-Committee has responsibility for considering the handling of complaints by informal resolution. Informal resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant, without investigation or formal proceedings. The Panel has appointed a sub-committee of three members of the Panel to carry out this responsibility, in line with the Panel's formal complaints handling protocol. Those present and attending the meeting on 19th September 2018 were as follows:

Present: Cllr Peter Wilkinson (Chair), Santokh Singh Sidhu and Paula Stott.

In attendance: Barry Khan (Legal Advisor to the Panel), Neil Irving (Lead Officer to the Panel) and Diane Parsons (Panel Secretariat).

2. Summary of complaint

The Panel received a complaint lodged by an individual who, in the interests of ensuring confidentiality, shall be referred to as "AB" for the purposes of this report. AB's complaint alleged that in the course of their employment with the PCC, AB had been subjected to bullying behaviour by the PCC, which had impacted considerably on AB's confidence, health and wellbeing. AB also provided supporting statements from three other individuals who similarly alleged that they had been subjected to bullying behaviour by the PCC.

The allegations around bullying behaviour against the PCC as put forward by AB may be summarised as follows:

- a) Demonstrating consistent disrespect, for example by making negative – sometimes humiliating – comments about AB's work, both to AB directly and in front of colleagues;
- b) Ignoring AB's views and opinions, for example by consistently refusing to make eye contact and preventing AB from finishing speaking in meetings;

- c) Withholding information which would have better enabled AB to perform effectively within the role; failing to provide clear guidance on pieces of work;
- d) Undermining AB with constant criticism and abusing power or position through an overbearing approach;
- e) Lack of constructive feedback or guidance from the PCC – including the lack of a performance review – to enable AB to develop within the role.

Elements of the above behaviours were highlighted and exemplified within the allegations provided by the supporting statements; in particular a), d) and e).

It is noted that this complaint is purely regarding staff and the Panel were not presented with complaints from the wider public. In this regard it is noted that the PCC had invited the Panel to:

"consider the specific provisions of Regulation 15(3(a) [of the legislation which governs how Panels deal with complaints] which clearly envisages matters arising entirely in the course of the employment of the person making a complaint and which goes on to allow for the prompt resolution of complaints made in such circumstances in whatever manner the Panel thinks fit. As the complainant is a member of my staff the relevant internal grievance policy and procedure apply to this case and, in my respectful submission, offer the most efficient and effective route for prompt determination of the relevant matters."

The Panel consider that due to the significance of the contentions made and the fact that there are multiple accounts presented from individuals, the Panel should rightly consider this complaint through the informal resolution process and not disapply the Regulations.¹ It is recognised that the Panel does not have the full rights to investigate complaints as those undertaken for example by an internal investigation or an employment tribunal in dealing with staff complaints. However, it is considered appropriate for the Panel to review the alleged behaviour of the PCC in light of the complaint presented to it.

The Panel considered this complaint outside of any internal 'whistle blowing' procedures the PCC may have, albeit that the Panel would be interested to see copies of this procedure.

¹ The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.

3. Methodology

Given the gravity and implications of the allegations made, the Sub-Committee has been acutely aware during this process of the need to ensure as thorough and fair a process as possible to both the complainant and the PCC.

However, under the regulations which govern how Panels may handle complaints, the Sub-Committee is prohibited from undertaking any investigation into the accounts provided by the PCC or the complainant.² A sounding was sought from the Home Office around the principles of investigatory powers for Panels. While the Home Office are considering implementing further powers for Panels in this respect at some future point, this is not currently the case. The Sub-Committee will be writing to the Home Office to set out its concerns on the limitations for Panels in dealing judiciously with such complaints in the absence of investigatory powers (see section 7 - Recommendations / Further action for the Panel).

As such, the Sub-Committee's review of the evidence has been confined to making an assessment based on the complaint (and supporting statements), the PCC's response to this and any further clarification sought by the Sub-Committee on the information provided.

To assist the Sub-Committee in making a reasoned assessment about the allegations made and the response to these, details were sought from the Office of the PCC ("OPCC") of the employer guidance on bullying (as adopted by the OPCC from the North Yorkshire Police employer guidance) and the OPCC's performance management policy, in order to better understand the framework and definitions applied within the OPCC. The Sub-Committee also determined that it was important to have regard to:

- Guidance on an employer's duty of care (available via ACAS) - see <http://www.acas.org.uk/index.aspx?articleid=3751>.
- The Police Federation's guidance on harassment and bullying (see <http://www.polfed.org/documents/Harrassment%20and%20Bullying%20%20July%202017%20v3.pdf>) as this highlights the psychological impact of bullying on an individual's welfare.

Drawing on these employer protocols and guidance, the Sub-Committee examined the complaint in relation to the following key points:

- Whether the PCC had properly fulfilled her duty of care to the complainant (and those providing supporting statements); and

² ibid – para 28(7).

- Whether the PCC had demonstrated bullying behaviour.

The Sub-Committee has set out its findings and the reasoning for these within the context of these documents and governing protocols, below.

4. Sub-Committee's key findings and comments

a) Performance management framework

The PCC and senior colleagues commented in some detail in responding to the complaint that there were performance issues surrounding the complainant's discharge of their role. Examples were provided of where it was felt that expectations of the complainant's performance had not been met over a period of time. Similarly, it was contended that performance issues had been identified for two of the three individuals who had provided supporting statements to the Panel. This was cited to the Sub-Committee in the context that a complaint had been raised following concerns having been legitimately raised around a member of staff who had been under-performing in their role. Additionally, it was cited that adequate support had been provided to AB by the PCC and others in her office.

In considering this the Sub-Committee were at the outset alive to the potential for a complaint to have been raised which, in effect, may be designed to divert from legitimate concerns about performance and, in some cases, may be brought about to prevent a formal or disciplinary process. However, having reviewed and cross-referenced in detail the material provided by both parties, along with the OPCC performance management framework, the Sub-Committee consider that if performance had been a significant issue, there appears to have been a substantial lack of rigour and consistency in applying the appropriate performance management framework in this case.

While the Sub-Committee were advised that performance issues with AB had surfaced as early as a few weeks into AB's appointment, there seems to only have been a so-called "semi-formal process" undertaken to attempt to support and monitor AB some six months later. Indeed, even at this stage in the chronology of events, the Sub-Committee were advised by the OPCC that "no detailed performance plan [is] available" nor formal records of agreements reached around improvement planning in spite of seemingly a number of meetings being held between the complainant, the PCC and senior colleagues to discuss this. The complainant has also contended that no formal performance review or support plan was ever offered and that, in AB's view, a lack of proper guidance and support in the role resulted in repeated criticism from the PCC and AB feeling undermined.

As such, while the PCC contends that she tried on many occasions to support AB in the role, this is significantly undermined by the absence of any due performance management process. If applied appropriately this would have provided both parties

with clearly defined objectives and targets, clear development planning and ensured a pathway for regular monitoring of the same over a defined period. The inconsistency in approach is particularly striking as it is clear that a more formalised performance management process had been put in place for another member of staff towards the end of their probation period. However, AB was left unclear at the end of their probationary period as to whether this had been satisfactorily completed or not and whether the lack of clarity was because of performance concerns. This in itself may have been an administrative oversight but one which compounded the stress AB increasingly felt in the role.

The Sub-Committee therefore consider that evidence of proper performance management was fundamentally inadequate in the case of AB.

b) PCC's management approach and OPCC organisational culture

The PCC has been clear in expressing that her approach towards AB and handling of what she saw as performance-related issues does not constitute 'bullying' but rather a need for frankness resulting from frustration that she felt she wasn't getting the support required from AB. However, there are multiple examples given within the complaint statements of the PCC reacting irascibly towards various staff in the office, particularly at stressful points or when the PCC felt her expectations hadn't been met. The Sub-Committee are concerned that more than one individual also gave an account of senior staff within the PCC's office apologising privately for the PCC's apparently inappropriate or disproportionate behaviour, or attempting to justify it. The Sub-Committee considers it concerning that such behaviour has been as such acknowledged within the wider working environment and been unchallenged, and further that AB has suggested staff were anxious about raising difficult issues with the PCC. This is suggestive, in the Sub-Committee's view, of an endemic problem at the OPCC where staff do not feel they can appropriately challenge or raise concerns about the PCC's behaviour towards them.

The PCC has reflected in her statement that she can be "challenging and difficult" in her approach to the role at times but considers that this is part and parcel of being able to survive and thrive in the 'male-dominated' arena in which she works and to try and deliver the best service for the public. The Sub-Committee consider that the PCC's view on leadership cultures is highly stereotypical in approach, based on assumptions around behaviours which she perceives to be demonstrated by successful senior male leaders in public office.

The PCC has referenced a combination of factors which led to a particularly stressful and difficult point for her during the period in which AB was employed by the PCC and which the PCC is conscious will also have had an impact on the wider office. She has also, however, suggested that the working environment at the OPCC is a high-performing one where staff need to be able to demonstrate that they are resilient to

difficulties. However, the Sub-Committee consider that the ability to demonstrate a calm, centred resilience and leadership in the face of difficulty are essential qualities for the office of PCC and in leading by example; this would help support staff to be able to adapt to fluctuating pressures and circumstances themselves.

No evidence was provided either within the complaint or by the PCC herself to suggest that the PCC had reflected on her personal approach to staff, or apologised directly thereafter, after having vocalised her anger or frustration towards the staff involved. This is a cause for considerable concern. However, the Sub-Committee welcome that, as result of the complaint lodged, the PCC has committed to reflecting on the complaints and to also ensure that staff feel confident enough to talk about work-related concerns. In the Panel's capacity of providing support as well as challenge to the PCC, the Sub-Committee feel that, from the information in the complaint, the PCC would benefit from further support to develop her approach to leading staff and some recommendations have been outlined at the end of this report on that basis.

c) Bullying behaviour

The key contention of the complaint is that the PCC used bullying behaviour towards AB. The Sub-Committee has undertaken careful examination of all the material provided by AB and the PCC, cross-referenced against the OPCC guidance on bullying and harassment. This guidance highlights that bullying "may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient". Bullying may be single or repeated incidents and is not necessarily face-to-face. In addition, the Sub-Committee also feel the following statement from the guidance to be critical:

"Bullying...is unwanted behaviour that makes someone feel intimidated, degraded, humiliated or offended".

The Sub-Committee consider it key to place how the complainant felt about the behaviour at the centre of this assessment.

The guidance further highlights that examples of bullying include but are not limited to:

- Spreading malicious rumours, or insulting someone;
- Ridiculing or demeaning someone - picking on them or setting them up to fail;
- Exclusion or victimisation ;
- Overbearing supervision or other misuse of power or position;
- Deliberately undermining a competent worker by overloading and constant criticism;
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.

The Sub-Committee examined all of the material provided against these examples and consider that there is no evidence of harassment on the part of the PCC. However, based on the information available, the Sub-Committee considers that there is evidence that AB (and those providing supporting statements) had experienced bullying behaviour from the PCC across a number of the exemplifying areas highlighted. Specifically these are:

- **Ridiculing or demeaning someone – picking on someone or setting them up to fail.**

AB provided particular examples where it was perceived that the PCC had acted inappropriately in her handling of direct feedback to AB, including leaving AB feeling humiliated in front of other colleagues. This was also corroborated by separate examples from those providing supporting statements. Further comment from the Sub-Committee on organisational culture has been provided in section 4(b), above.

The Sub-Committee consider that while there is no evidence that the PCC deliberately set up AB to fail in the role undertaken, the repeated incidents cited where the PCC did not provide the information necessary for AB to effectively discharge the role means that it was perceived that the PCC's expectations were at times unreasonable. The Sub-Committee also has concerns, as outlined above, about the absence of a formal performance management process in supporting and monitoring AB's work where there are performance concerns.

- **Exclusion and victimisation**

The Sub-Committee wishes to make it clear that no evidence was found of victimisation on the part of the PCC. However, the accounts of AB and two of the other individuals corroborate the feeling of being "ignored" by the PCC unless a stressful situation had arisen for the PCC or unless negative feedback was being given to them. For AB this included the added sense of the PCC refusing to make eye contact and talking over AB in a team meeting, which was corroborated by one of the other statements made.

- **Overbearing supervision or other misuse of power or position**

The Sub-Committee considers that the multiple accounts of staff perceiving themselves to be subjected to frequently irascible and intimidating behaviour by the PCC is sufficient to demonstrate a misuse of power or position and an overbearing approach to supervision of staff. The PCC has reflected on the statements presented and indicated that where she may have intervened around AB's role and work in a way which has been perceived by AB to be undermining, for the PCC this was born of frustration that AB was not providing the support required or expected. The PCC has clearly expressed that this does not constitute 'bullying'. However, the Sub-Committee are concerned at the manner in which potential frustrations appear to have

been handled at times by the PCC, including towards those individuals who provided supporting statements.

- **Deliberately undermining a competent worker by overloading and constant criticism**

The Sub-Committee consider that while the PCC has not deliberately set about trying to undermine staff by overloading and constant criticism there is sufficient evidence from the four statements to suggest that the perception of constant criticism formed a key feature of the working environment for these individuals. The PCC has challenged the competency of the complainant and two of the other individuals providing supporting statements. However, the Sub-Committee consider this is undermined by the lack of evidence of rigour and consistency in applying the performance management policy, as outlined above in section 4(a).

The Sub-Committee is keenly aware of the significance and implications of considering someone to be "a bully". They are keen to delineate between a deliberate intent to bully others and someone who has demonstrated behaviours which are perceived to be 'bullying' in nature. The Sub-Committee consider there is sufficient exemplification for them to be concerned that the PCC's conduct as evidenced in the statements has fallen within the latter category, although this does not mean this is less significant for the individuals involved. Of particular significance to the Sub-Committee in reaching this deliberation is the fact that the statements provided were not collusive; AB had not worked at the OPCC at the same time as two of the individuals who provided supporting information. The statements provided also give accounts of repeated incidents; these are not isolated examples. On the basis of the evidence presented to the Sub-Committee, it is recommended that actions should be taken for the PCC to help develop a more appropriate and supportive culture within the OPCC.

5. Duty of care and the impact on employees' health and wellbeing

In addition to reflecting on the above examples from the OPCC guidance, the Sub-Committee felt that the wider personal impact of bullying for the complainant and others needed to be particularly recognised. The Sub-Committee felt that this is described to best effect within the Police Federation's guidance on bullying:

*"[Bullying] can affect an officer's professional performance and psychological welfare and can be so destructive that the effects continue after work, devastating personal lives as well as careers."*³

The accounts provided to the Sub-Committee detailed the impact of the individuals' experiences of working for the PCC on their broader health and wellbeing; both inside and outside of the workplace.

As an employer, the PCC has a basic legal duty to ensure the health and safety at work of her employees. The Sub-Committee consider this duty of care to take on the more extensive obligation of "a moral and ethical duty not to cause, or fail to prevent, physical or psychological injury",⁴ as highlighted in the guidance available via ACAS.

Requirements under an employer's duty of care are wide-ranging and may manifest themselves in many different ways, such as:

- Clearly defining jobs and undertaking risk assessments
- Ensuring a safe work environment
- Providing adequate training and feedback on performance
- Ensuring that staff do not work excessive hours
- Providing areas for rest and relaxation
- Protecting staff from bullying or harassment, either from colleagues or third parties
- Protecting staff from discrimination
- Providing communication channels for employees to raise concerns
- Consulting employees on issues which concern them.

The Sub-Committee has concerns regarding the duty of care given to the complainant and those individuals who provided supporting statements on the basis of what they stated. Three of the individuals have outlined for the Sub-Committee the damaging impact upon them as a result of working for the PCC. The Sub-Committee also consider more roundly that the very fact of AB's preparedness to pursue a complaint through the Panel – fully aware of both the public implications and limitations of the Panel's process – demonstrated that the strength of feeling that the complainant had in raising this issue extended far beyond AB's own personal circumstances.

³ Police Federation: Policy Document – Harassment and Bullying:
<http://www.polfed.org/documents/Harrassment%20and%20Bullying%20%20July%202017%20v3.pdf>

⁴ "Defining an employer's duty of care" – guidance available via ACAS at
<http://www.acas.org.uk/index.aspx?articleid=3751>.

Having considered the material provided against the duty of care guidance, the Sub-Committee consider that there was not enough evidence presented to the Sub-Committee that the PCC had:

- Clearly defined jobs and undertaken risk assessments;
- Provided adequate training and feedback on performance; and
- Protected staff from bullying or harassment, either from colleagues or third parties.

The Sub-Committee is concerned that the obligations around this legal, moral and ethical duty for the PCC are fully addressed by her as a matter of priority. It is noted that this is an important consideration as the PCC is likely to soon be taking on responsibility for the welfare of a much wider staff base through the transfer of governance of the Fire and Rescue Service.

6. Conclusions

1. The process of informal resolution for the Panel would normally involve consideration of whether and how the Panel may be able to assist in helping to clear up, explain or resolve a situation between the PCC and a complainant. However, there is a difference in opinion between the individuals who have submitted statements in terms of the actual behaviour in question and the impact of that behaviour on them, and the PCC's statement on events, which makes it difficult to adequately resolve the dispute through informal resolution. It should also be noted that the statutory procedure that has to be followed does not allow the evidence to be tested through a full investigation process, nor through cross-examination and therefore the process makes it difficult to make findings of fact. Instead the Sub-Committee have had to take into account individual's perceptions of the behaviour they experienced.

2. While the PCC may not have deliberately set out to bully the complainant, the behaviours as perceived both by AB and the supporting individuals exemplify characteristics of bullying behaviour as set out in the OPCC's own guidance on bullying.

3. The fact that there are multiple accounts gives cause for concern that there is – or has been - an endemic issue around the perception of bullying within the organisational culture, which needs to be addressed.

4. The accounts presented suggest that the perceived behaviour experienced by these individuals was below the standard that should be expected and therefore the Panel wishes to make recommendations to receive assurances of how this standard is being met.

5. The OPCC's framework sets out clear guidance for staff and managers on when and how the performance management framework should be applied. There was a

lack of evidence submitted to the Panel about how this was duly applied in the case of the complainant.

7. Recommendations

Legal Framework

Schedule 7, paragraph 3(2) of the Police Reform and Social Responsibility Act 2011 provides that the Panel is restricted to informal resolution of any non-serious complaint made against a PCC. Paragraph 3(5) of Schedule 7 defines informal resolution as “encouraging, facilitating, or otherwise assisting in, the resolution of the complaint, otherwise by legal proceedings...”

As stated earlier in this report, it is not considered that agreement can be reached by the parties in this matter as there is a differing opinion of the actual behaviour in question and the impact of that behaviour. The complainant feels aggrieved by the PCC’s alleged behaviour and the PCC has not offered an apology or redress. In these circumstances, the Sub-Committee is unable to reach an informal resolution which is agreeable to both parties. The Panel therefore have the power under Sections 28(6) and 29(3) of the Police Reform and Social Responsibility Act 2011 to make recommendations regarding conduct matters and require a PCC to respond in writing to any recommendations made by the Panel.

These recommendations have been made by being mindful of the need to ensure proportionality and to seek to prevent future complaints from arising. In addition, it is noted that the role of the Panel is to both support and challenge the PCC. As part of discharging these responsibilities we would like to recommend the following actions for the PCC to consider; to both help ensure the findings of this report are addressed and to also support the PCC as a leader in a pressurised environment going forward:

The Sub-Committee recommends on behalf of the Panel, that:

Recommendation 1. The PCC commissions a baseline survey of staff – via an independent body – to be carried out within the context of the findings of this report, including staff perceptions of experiencing or seeing bullying in the workplace. This survey would benefit from being repeated at regular intervals thereafter with staff. The Sub-Committee would further recommend that the terms of reference for this survey are agreed through the Panel.

Recommendation 2. The findings of the staff survey would further be shared with the Panel, along with any action plan agreed by the PCC as a result. The Panel would welcome the opportunity to review progress against the actions after six and twelve months.

Recommendation 3. The PCC is advised to reflect upon the complaints and to undertake a management and leadership development programme, which includes

emphasis on understanding the implications of Duty of Care in a senior leadership role. Such a development programme can be aimed at supporting the PCC to deal appropriately with stressful situations and ensuring her desire for improving public services is met.

Recommendation 4. The PCC is advised to draw on the support of a mentor – a colleague in either a similar role or another senior managerial position – to help assist her in what is a challenging and difficult role.

Recommendation 5. In further discharging the support and challenge role, it is recommended that the PCC updates the Panel on a six-monthly basis on progress and development in the context of the recommendations set out in this report.

Recommendation 6. Under section 29(3) of the Police Reform and Social Responsibility Act 2011, the Sub-Committee requests that the PCC respond in writing within 21 days to the recommendations made by the Sub-Committee.

Further action for the Panel

As a result of the difficulties inherent for the Sub-Committee in reviewing and deliberating on such a complex case without recourse to investigatory powers, the Panel will be writing to the Home Office to highlight its concerns regarding these legal limitations and their implications for this and other serious cases to be heard where opposing evidence is presented.



Cllr Peter Wilkinson

Complaints Sub-Committee Chair

24th October 2018