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Ref: PCP 0039

Police and Crime Commissioner for Surrey

Surrey County Council
Woodhatch Place
11 Cockshot Hill
Reigate
Surrey
RH2 8EF

8 March 2022

Sent via email

Outcome of Complaint – Reference: PCP 0039

Dear Commissioner,

Three complaints against the Surrey Police and Crime Commissioner (PCC) were referred by the Office of the Police and Crime Commissioner for Surrey (OPCC) to the supporting officer of the Surrey Police and Crime Panel between 16th and 20th December 2021.

In accordance with its established practice for multiple complaints regarding the same conduct, the Panel's Complaints Sub-Committee progressed the three complaints collectively.

The Complaints Sub-Committee met on 24th February 2022 to consider the complaints. Whilst the Complaints Sub-Committee normally aims to consider a complaint within four weeks, allowances were made as a result of further legal advice being sought in advance of the Complaints Sub-Committee and due to the administrative complexity of handling multiple complaints.

Remit of a Police and Crime Panel

The Police Reform and Social Responsibility Act 2011 sets out that a Police and Crime Panel is restricted to informal resolution of any non-criminal complaint made against a PCC.

The Police and Crime Panel is responsible for overseeing complaints made about the conduct of the PCC. The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 defines "conduct" as including "acts, omissions, statements and decisions (whether actual, alleged or inferred)". The role of the Police and Crime Panel is to consider the information submitted and determine the most suitable course of action to assist with

informal resolution of the complaint, such as through convening a Complaints Sub-Committee.

The Complaints Sub-Committee has a non-investigatory role and only has the power to consider complaints about the conduct of the Police and Crime Commissioner (and Deputy Police and Crime Commissioner). It may request written comments from complainants and the person complained about and invite the person complained about to make oral representations at its consideration of complaints.

In accordance with the Complaints Protocol in considering the complaint before it 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 identifiable within the Code of Conduct of the Police and Crime Commissioner;
- Whether the complaint related to operational policing matters which the Police and Crime Commissioner has no authority over; and
- The remedies available to it.

The remedies available

In accordance with the Complaints Protocol, the Complaints Sub-Committee is to determine the most suitable course of action to assist informal resolution, which may include:

- Asking the Panel's Support Officer to write an explanatory letter to the complainant on behalf of the Complaints Sub-Committee;
- Requesting that an officer of the PCC's Office write an explanatory letter to the complainant;
- Suggesting a change to the Office of the PCC policy;
- Requesting that an apology be tendered by the person complained about (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).

Guidance issued by the Home Office explains that "informal resolution is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant, without an investigation or formal proceedings. It is not a disciplinary process, and does not involve the imposition of any sanction. It is a flexible process that may be adapted to the needs of the complainant and the individual complaint. It may involve the person complained against explaining their conduct and, if appropriate, apologising for it. This could be done by correspondence or in a face to face meeting. The method of informal

resolution is left up to the individual PCP, provided that it is in accordance with the Regulations and guidance issued by the Secretary of State.”¹

Regarding Police and Crime Panels, there exist no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the officeholder concerned and the remedies set out above; the PCC is held accountable by the ballot box.

The Complaints Sub-Committee’s Considerations

The Complaints Sub-Committee was required to consider three complaints following a tweet made by the PCC on 12th December 2021. The comments made were in the course of an ongoing public debate, which has been referred to elsewhere as the “transgender debate”, with differing views being expressed which have been broadly described as being from a gender critical or gender identification stance.

The debate generates strong feelings and the Complaints Sub-Committee wished to make clear that its role was not to consider or reach any view on the merits of any side of this debate. Its sole responsibility was to consider the conduct raised in the complaints concerning the PCC, the Code of Conduct and other obligations which apply to the office, and if any remedy it was able to recommend could help the informal resolution of the complaints before it.

Any conclusions reached on these questions should not be read as providing support or diminishing the views of either side in that debate. Neither should they be read as categorising the PCC’s views as being on any side of the debate.

The substance of the complaints

The conduct complained about was a tweet published by the Commissioner on 12th December 2021 while ‘quote tweeting’ a tweet by another person.

The Commissioner wrote:

It’s not a niche issue, it’s not ‘hysterical’ of women to be taking to the streets about it. We will not accept this gaslighting from men who keep telling us they are women, or those who enable it. #IStandWithJKRowling.

The tweet the Commissioner was ‘quote tweeting’ read:

War is Peace.

Freedom is Slavery.

Ignorance is Strength.

The Penis Individual Who Raped You Is a Woman.

[link to Sunday Times article]

The article to which the tweets relate (a copy of which was supplied to the Sub-Committee by the Commissioner) was published by *The Sunday Times* on 12th December 2021 and titled ‘Absurdity’ of police logging rapists as women.

¹ Home Office, *Guidance: Police and crime panel handling of complaints and conduct matters about the PCC* (November 2012)

In summary, the three complaints collectively alleged that in publishing her tweet the Commissioner:

- was transphobic and gratuitously offensive;
- undermined trust in policing;
- breached section 149 (the public sector equality duty) of the Equality Act 2010; and
- breached the General Obligations contained in her Code of Conduct.

Having regard to the PCC's Code of Conduct:

The Complaints Sub-Committee focused on the following provisions of the Code of Conduct:

“This code does not apply when I am acting in a purely private capacity.”

“Objectivity - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.”

“Selflessness - Holders of public office should act solely in terms of the public interest.”

“Leadership - Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.”

2. General Obligations: “I agree:-

- a. To treat others with dignity and respect
- b. Not to use bullying behaviour or harass any person
- c. Not to conduct myself in a manner which:
 - i. Is contrary to the policing protocol and/ or
 - ii. Could reasonably be regarded as bringing my office into disrepute”.

Legal advice to the Complaints Sub-Committee

The Complaints Sub-Committee has been advised:

Whether any particular expression of beliefs on either side of a debate amounts to unlawful discrimination or harassment in any given situation will always be a highly fact-sensitive question. But, in general, expressing beliefs as part of a respectful discussion or where relevant to the circumstances, or outside work as part of the public debate about these issues, is likely not to be discriminatory.

That holding and expressing gender critical beliefs does not inherently interfere with the rights of trans people, even though some people may find such beliefs offensive or distressing. This does not mean that people with gender critical views can ‘indiscriminately’ or ‘gratuitously’ refuse to use a trans colleague’s preferred pronouns. To do so may constitute unlawful harassment of that person. But expressing gender critical views, including referring to a trans person’s biological sex, will not necessarily constitute harassment, and whether it does in any given situation is a highly fact-sensitive question.

In the application of these principles to the consideration of the complaints before it, the Complaints Sub-Committee was advised that the PCC is entitled to express her beliefs and views, whatever side they may be on, in the course of public debate, even though some

people might find the views offensive or distressing. The Complaints Sub-Committee needed to consider whether the way in which the views were expressed by the PCC, was indiscriminate, gratuitous, disrespectful or without showing dignity to others, which could be considered a breach of the Code of Conduct.

Regarding the Public Sector Equality Duty (PSED) raised in the complaints, the role of the PCC is subject to the PSED, and the PCC must have due regard to the duties when discharging the functions of the office. The Complaints Sub-Committee has a role to seek to informally resolve complaints concerning conduct, and it is beyond the Committee's remit and procedure to determine whether the PCC had breached statutory duties in the discharge of functions; such findings are made in the courts.

The Complaints Sub-Committee's Findings

The Complaints Sub-Committee carefully considered all the material before it, being the complaints, the representations made by the PCC on the complaints, extracts from Twitter and screenshots, and the Sunday Times article referred to above.

The Sub Committee found as follows:

- The complaints concerned new and different conduct (the tweet) from those previously considered by the Sub-Committee. They were not repeat complaints.
- That the Police and Crime Commissioner was acting in her capacity as Police and Crime Commissioner for Surrey when she published the tweet as her twitter account clearly identified her as the Police and Crime Commissioner for Surrey.
- The Complaints Sub-Committee had a remit to consider the informal resolution of complaints in relation to a breach of the Police and Crime Commissioner's (PCC) Code of Conduct. One complaint referenced discrimination in the context of the PSED. The Sub-Committee was not tasked with, or equipped, to determine if a statutory duty of the PSED had been adhered to; this was a matter for judicial determination.
- The PCC is entitled to express her views on transgender issues in the course of public debate, and the views she expressed did not inherently interfere with the rights of trans people and could not be said to be discriminatory in themselves. This was the case even though the views may cause offence to some.
- In expressing her views, the PCC was subject to an obligation under the Code of Conduct to express those views using language which treated others with dignity and respect.
- The Panel were agreed that the transgender debate was highly sensitive, and if the PCC chose to take part in the debate, she must choose her language carefully if she was to serve the whole community of Surrey.
- The Complaints Sub-Committee was split on whether the section of the tweet "*We will not accept this gaslighting from men who keep telling us they are women, or those who enable it*" failed to treat others with dignity or respect. When read in the context of the Sunday Times article and with the PCC's explanation of her views, some members considered the tweet was not disrespectful. Other members

considered reading the tweet as it appeared, specifically using the words “gaslighting” and “keep”, was disrespectful. Members considered that twitter was not a platform that lent itself to clarity or nuance on complex issues.

- By a majority decision, the Complaints Sub Committee found that the *language* in which the Commissioner chose to communicate her views in the second sentence of her tweet – “We will not accept this gaslighting from men who keep telling us they are women, or those who enable it” – was not dignified or respectful, and thus constitutes a breach of General Obligation 2 (a) contained in the Police and Crime Commissioner’s Code of Conduct: “To treat others with dignity and respect”.

Outcome of the Complaints Sub-Committee

The Panel’s Support Officer will make a record of any informal resolution and will, usually within 5 working days, provide copies to the complainant and the person complained about. (Allowances have been made due to the complexity of handling multiple complaints).

The Complaints Sub-Committee of the Surrey Police and Crime Panel agreed that in publishing your tweet of 12th December 2021, you breached General Obligation 2 (a) of your Code of Conduct, “to treat others with dignity and respect”, through the language you used to express your views.

The Complaints Sub Committee, by a majority decision, agreed to request that you write an explanatory letter to the three complainants to informally resolve the complaints.

If you are not satisfied with the outcome of the Complaints Sub-Committee you can make a complaint to the Local Government and Social Care Ombudsman who will consider the case. Please see the following link to the website: <https://www.lgo.org.uk/make-a-complaint>

The Panel is to consider publishing this letter and invites your views in respect of it doing so. In reaching a decision, the Panel will consider whether publication is in the public interest.

Yours sincerely,

A handwritten signature in black ink. The first part is a large, stylized circle containing the word "David". To its right, the name "Reeve" is written in a cursive script.

Councillor David Reeve
Chairman of the Complaints Sub-Committee