

## CONSULTATION RESPONSE

<b>TO</b>	<b>The Home Office</b>
<b>FROM</b>	<b>Independent Police Complaints Commission (IPCC)</b>
<b>REGARDING</b>	<b>'Complaints about Police and Crime Commissioners'</b>

### The IPCC and its remit

1. The IPCC's primary statutory purpose is to secure and maintain public confidence in the police complaints system in England and Wales. We are independent, and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police across England and Wales, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.
2. The IPCC was established by the Police Reform Act 2002 and became operational in April 2004. Since that time our remit has been extended to include:
  - Police and Crime Commissioners (PCCs) and their deputies
  - the London Mayor's Office for Policing and Crime and his deputy
  - certain specialist police forces (including the British Transport Police and the Ministry of Defence Police)
  - Her Majesty's Revenue and Customs (HMRC)
  - staff who carry out certain border and immigration functions who now work within the UK Border Force and the Home Office
  - the National Crime Agency (NCA)
3. The majority of complaints made against the police are dealt with by the relevant police force (or agency) without IPCC involvement. However, certain types of complaints and incidents must be referred by the police to the IPCC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and criminal offences or behaviour liable to lead to misconduct proceedings which are aggravated by discrimination. We then decide what level of involvement we should have in any investigation of the matter. We may choose to conduct our own independent investigation,

manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police.

4. The IPCC is responsible for dealing with allegations of criminality made about PCCs, their Deputies and their equivalents in London. Any changes to the PCC complaints system that are likely to impact on this area of our work are therefore relevant to us.

### **Response to consultation**

5. Most of the consultation questions relate to the handling of non-criminal complaints against PCCs. As this is not an area that falls within the IPCC's remit we have limited our comments to matters that are relevant to our work.

### **The role of the IPCC**

6. The consultation document states that the IPCC will retain its existing responsibilities in relation to allegations of criminality made about PCCs, their Deputies and their equivalents in London. Our view, which we have expressed publicly, is that the IPCC should not continue to have this statutory remit. In most cases, allegations involving PCCs fall outside our normal remit and experience (for example, allegations of electoral irregularities or expenses fraud) and would be more appropriately and effectively investigated by other bodies.
7. Moreover, it is inappropriate because we share with PCCs an oversight role in relation to police forces. This will be even more the case when the provisions of the Policing and Crime Bill are enacted, as this will give PCCs a formal role, with us, in the police complaints system, and we will need to work with them to fulfil our statutory purpose of securing confidence in the system. To do so while simultaneously investigating them for an alleged criminal act is unlikely to engender either their confidence or that of the general public. For these reasons, we suggested the role of criminally investigating PCCs should instead be undertaken by a policing body not itself overseen by a PCC.
8. The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 ("the Regulations") state that the IPCC has responsibility for securing "*public confidence in the existence of suitable arrangements*" for all conduct matters and complaints which concern PCCs. This is currently misleading because our involvement is limited to dealing only with allegations of criminality made about PCCs, their Deputies and their equivalents in London. If PCCs gain a role in investigating non-criminal conduct complaints against PCCs, the IPCC would by virtue of this provision also acquire a responsibility to ensure that PCCs have suitable arrangements in place, and that those arrangements have the confidence of the public. For the reasons outlined above, we do not believe this would be practical or desirable. We therefore recommend that the Regulations be amended to more accurately reflect the role that we actually carry out and to ensure we do not take on additional responsibilities in relation to PCC conduct matters.

## The handling of vexatious complaints

9. The consultation document seeks views on whether any measures being developed to make it easier for forces and PCCs to handle vexatious complaints should be extended to Police and Crime Panels (PCP). We appreciate fully the time and effort that can be taken up in responding to a small number of individuals who raise complaints that are repetitive, vexatious or are otherwise an abuse of the complaints system. We are also conscious of the damaging effects such complaints can have on those who become unjustly subject to them.
10. That said, we also believe that every complaint should be considered on its own merits. It is the complaint, not the complainant that is 'vexatious'. Just because a complainant has previously made complaints that lacked merit, it does not necessarily mean that their current complaint, or part of it, is vexatious. However, we do believe that a clearer statutory definition of what constitutes a persistent or vexatious complaint – including the extent to which it is legitimate to take previous behaviour into account – would assist PCPs in identifying such cases, as it would forces and PCCs. There should in any event be consistency in the definitions applied.

## Giving PCPs investigative powers

11. The consultation document seeks views on whether PCPs should be given greater powers to investigate non-criminal complaints made against PCCs. If PCPs do take on more of an investigative role, it will be necessary to consider how it should interface with the IPCC's role in investigating allegations of criminality. In particular we foresee a risk that PCP-led investigations could inadvertently stray into criminal investigation territory if appropriate safeguards are not put in place to prevent this. The safeguard might simply consist of a requirement on the appointed investigator to keep under review whether their investigation uncovers any criminal allegations or evidence that a crime may have been committed, and to notify the PCP of the need to refer the matter to the IPCC in these circumstances.
12. We are also concerned that any proposed change to the current prohibition on PCPs investigating complaints may give rise to an impression that PCPs can, or must, carry out investigations that would comply with the requirements for a PRA conduct investigation. In particular, this would not be consistent with the principle that PCCs are not subject to disciplinary proceedings, as police officers or staff may be. One solution could be to frame any new PCP-led investigative process in similar language to the existing concept of local handling in the Statutory Guidance. Local handling expressly includes the taking of investigative actions such as gathering evidence (section 5.15) but cannot lead to formal disciplinary proceedings.

## Clarity on what constitutes a complaint

13. The consultation document explains that the Government intends to provide PCPs with further guidance on what constitutes a valid conduct complaint as opposed to a complaint about a policy decision taken by a PCC. We

acknowledge that the distinction between the two can sometimes be unclear and therefore we welcome the proposal to bring further clarity to this area. However, it will be important to identify whether a complainant has made a valid allegation of misconduct. A decision not to take a complaint forward should not be made simply because the complaint relates to a policy decision as this would preclude valid complaints about policy decisions, for example a complaint about a corruptly made policy decision.

Independent Police Complaints Commission

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