

CONSULTATION RESPONSE

TO	Police Transparency Unit, Home Office
FROM	The Independent Police Complaints Commission (IPCC)
REGARDING	Consultation on proposals for improving the police disciplinary system

The IPCC and its remit

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 interests groups. We investigate the most serious complaints and incidents involving the police, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.

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 and their deputies
- the London Mayor's Office for Policing and Crime and his deputy
- the Serious Organised Crime Agency (SOCA)
- the National Crime Agency (once operational)
- Her Majesty's Revenue and Customs (HMRC)
- staff who carry out border and immigration functions who now work within the UK Border Force and the Home Office
- certain non Home Office police forces (including the British Transport Police and the Ministry of Defence Police)

The majority of complaints 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, including when someone has died or been seriously injured following direct or indirect contact with police. 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 without IPCC oversight.

Following an investigation or appeal, the IPCC may recommend and, if necessary, direct that disciplinary proceedings are brought against a person serving with the police. However, the

relevant police force (or other local policing body) is then responsible for carrying out those proceedings and for deciding what sanction, if any, the individual should be given.

The IPCC's comments on the consultation

The IPCC has significant concerns about the current disciplinary process, which in our view is in urgent need of reform. If public confidence is undermined when the police investigate themselves, it is surely also undermined if they discipline themselves - particularly if appropriate action is not seen to be taken against individuals found to be at fault.

Other organisations and professions operate disciplinary procedures that are independent and transparent. We do not think the IPCC should take on this role, but we believe strongly that the current system does not command public confidence.

In our view, the changes proposed in the consultation document do not go far enough. They would result in only relatively minor tweaks to the margins of a system that we do not think works very well. We would urge Ministers to commission a more wide-ranging review of the disciplinary system to improve public confidence in a system that is not currently seen to be effective, independent or transparent. For example, they may wish to consider:

- introducing a presumption that all gross misconduct hearings will be held in public
- having lay members (who have not been involved in the police service) on misconduct hearing panels or at the Police Appeal Tribunal stage
- having central lists of lay members and policing advisers, held and kept up to date by the College of Policing
- introducing stricter measures to avoid unnecessary or excessive deferment of proceedings
- introducing unsatisfactory performance proceedings for senior officers

At present, apart from proceedings for chief officers, the disciplinary system remains a largely internal process carried out in private within individual forces and the outcomes do not always inspire public confidence or appear to reflect the seriousness of the issue. In a number of cases, there is a disconnect between the IPCC's finding that there is a case to answer for gross misconduct, and the outcome of the misconduct hearing that follows. It is noticeable that in cases where the IPCC has used, or threatened to use, its power to direct a hearing, and therefore where the force by definition does not accept our findings, dismissal never follows.

We are not, and should not be, the decision-maker in these cases, as the panel will have heard all the evidence. But families and complainants struggle to have confidence in an internal process which appears not to support the findings of an independent investigation. In addition, the length of time it takes to bring a matter to a disciplinary hearing is also a considerable source of frustration for the IPCC, families and complainants. Too often there are unacceptable and unnecessary delays in convening a hearing. This can damage the possibility of securing an appropriate outcome.

We have commented below on some of the specific proposals set out in the consultation document.

Proposal A – Restricting legal representation at misconduct hearings and third stage unsatisfactory performance meetings.

Proposed changes:

- Amend regulations to restrict the right to legal representation for officers at misconduct hearings and third stage unsatisfactory performance meetings. The decision as to whether or not to allow lawyers at such proceedings should be given to the independent chair of the hearing according to very tightly defined criteria, for example exceptional cases which turn on particularly complex points of law.
- Amend regulations to remove the option for the IPCC to instruct a lawyer to represent it at a misconduct hearing or third stage unsatisfactory performance meeting
- Amend regulations to specify that a 'police friend' should not be a practising lawyer.

Question(s):

- What other issues does the restriction on legal representation raise that would need to be considered?

We note it is suggested that restricting legal representation will:

- result in cost savings to forces;
- bring arrangements more into line with those for police staff, civil servants and the private sector; and
- reduce the likelihood of hearings and meetings replicating criminal hearings.

Whilst we recognise the need to ensure that there is not an unnecessary financial burden on police forces in the current economic climate, the overriding concern must be to ensure that any proceedings are fair and effective. Proceedings that are not fair and effective are without value and will simply lead to even more expensive court challenges.

We are firmly of the view that the IPCC must retain the right to observe and make representations at hearings. It is extremely important that we have the opportunity to try to make sure that our independent findings are properly understood and taken into account by those responsible for deciding what action should be taken to address issues with individuals' conduct or performance.

The IPCC has attended and made representations at a number of hearings where preliminary legal arguments have been made by the defence. The power for the IPCC to make representations is particularly important where a chief constable is apparently unwilling or unable to address such defence arguments, as well as in cases where the IPCC has had to direct a force to conduct the proceedings.

It therefore follows that, if parties are legally represented, the IPCC needs to retain the right to be legally represented itself.

Proposal B – Streamlining the composition of PATs and panels conducting misconduct hearings, misconduct meetings (for senior officers only) and third stage unsatisfactory performance meetings.

Proposed changes:

- Amend the Police Act 1996 to reduce the composition of PATs from three members to one, i.e. a legally qualified chair drawn from a list maintained by the Home Office.
- Amend regulations to reduce the size of panels for misconduct and third stage unsatisfactory performance proceedings from three members to two, i.e. a legally qualified chair and an independent member from a list held by the local policing body in the case of a senior officer, or a police officer/member of police staff of appropriate rank and an independent member from a list held by the local policing body in the case of a non-senior officer. In misconduct hearings the chair would be able to appoint a policing adviser if the case hinged on an operational policing issue. There would be no change to the arrangements for misconduct meetings for officers other than senior officers.
- Lower the rank of officer required to chair misconduct hearings for non-senior officers and third stage unsatisfactory performance meetings to Chief Superintendent or police staff equivalent.

Question(s):

- What other issues does reducing the composition of PATs from three members to one raise that would need to be considered?
- What other issues does reducing the composition of panels for misconduct hearings (and misconduct meetings for senior officers) and unsatisfactory performance meetings from three members to two raise that would need to be considered?

We do not have strong views regarding the number of people who should sit on Police Appeal Tribunals (PATs) and the other stated panels. Our primary concern is that any individuals involved in conducting proceedings have up-to-date knowledge and training to enable them to carry out the role to the standard required.

We have had grave concerns about the quality of proceedings and decision making in some cases. This includes cases where it appears that a lack of training has led to serious errors in procedure and decisions by the Chair. Given the serious implications of the decisions being made - for officers, complainants and indeed wider public confidence - we believe those presiding over such matters should be required to undergo training in conducting proceedings and should be assessed for competency in the role. This would also be in line with the Government's wider agenda to professionalise and raise standards across the police service.

While we do not have strong views regarding the number of people who should sit on PATs, we believe the removal of police representatives may help to secure greater public confidence. In any case, it is crucial that individuals who are selected to sit on tribunals are demonstrably impartial.

Proposal C – Providing PATs with the same power as employment tribunals in respect of the remedies they may order when they find in favour of a police officer.

Proposed changes:

- The Police Act 1996 would be amended so that in addition to its current disposals PATs would have the same power as employment tribunals in respect of the remedies they may order when they find in favour of a police officer. For example they could order the payment of financial compensation where they uphold an appeal against a dismissal but consider that reinstatement would not be appropriate.
- In exercising their discretion about whether to order reinstatement or award compensation PATs would need to consider the wishes of both the appropriate authority and the appellant and whether it would be just to make such an order. The compensation would be calculated in the same way as for employment tribunals. It would comprise both a basic award (which is determined according to a statutory formula) and a compensatory award.

Question(s):

- What (if any) other criteria might the PAT need to consider before deciding whether to award compensation rather than reinstate?
- What other issues does providing PATs with the same power as employment tribunals raise that would need to be considered?

In principle we have no objections to PATs having a broader range of options available to them. However, we believe they would need to give very careful consideration to when it would, and would not, be appropriate to order the payment of financial compensation to an officer. Public confidence in the complaints system could be seriously damaged if PATs use this option inappropriately or if large awards are made to officers when an appeal has been upheld on a technical issue.

As we have previously noted, in our view the disciplinary system in place at present does not work well and does not command public confidence. Indeed, we believe it sometimes serves to undermine confidence in the complaints system and the integrity of the police service. In our opinion, making piecemeal changes to the existing system will not be sufficient to address some of the inherent problems with it or secure public confidence. The system needs more radical reform to ensure that it is fair, independent, transparent and effective and that all those involved in conducting proceedings are properly trained and fit to do so.

Independent Police Complaints Commission

22 August 2013