

IPCC RESPONSE TO THE HOME SECRETARY'S PROPOSALS ON POLICE INTEGRITY

Introduction

The IPCC shares the view expressed by the Home Secretary in Parliament and also by the Home Affairs Select Committee (HASC) that it is under-resourced to fulfil the role expected of it. This affects its ability to contribute to public confidence in policing. We welcome the opportunity to extend and strengthen our work. We also believe that this presents an opportunity, which will not swiftly recur, to examine the police complaints system as a whole and to begin a process of wider and sustainable reform.

We believe that this requires the following:

- Ensuring and strengthening our independence, and the perception of our independence
- Ensuring that we have and can use all the powers we need to act independently and robustly
- Having the capacity to undertake more independent investigations into serious and sensitive issues and to carry them out thoroughly and in a timely way
- Having greater capacity to carry out oversight of the police complaints system as a whole in order to help improve the way the majority of complaints are handled
- Being able to feed the lessons learnt from our work into other oversight, accountability and standard-setting bodies to improve practice, standards and training.

We also believe that there are three other elements that need to be in place to complete the picture:

- Police forces themselves need to have the capacity and skills to monitor and act on integrity issues, refer cases to the IPCC and ensure effective local complaints handling
- The complaints system, through incremental changes, has become very complex and bureaucratic. It is in need of more radical reform to take into account changes in the policing landscape
- The current police disciplinary process is slow and not transparent; in order to command greater public confidence, consideration should be given to reforming the system to enhance its independence and openness.

We address these issues in our response to the three questions in the Home Secretary's letter of 12 February 2013. We do so against the following background:

- The IPCC does not currently have the resources to carry out its existing role and work as speedily or thoroughly as it would wish. Like all public bodies, it has been subject to budget cuts, which are planned to continue to bite over the next two years. This is something that the Chair raised with the Home Secretary on her appointment and has been highlighted by HASC
- At the same time, the demands on the IPCC have increased considerably, with a significant number of high profile and demanding cases, including alleged corruption, and a requirement to examine historic cases, which are large and complex
- Given the high profile of the IPCC's work, any perception that we cannot carry it out effectively will dent public confidence not only in us but in policing as a whole
- Responsibility for public confidence does not simply lie with the IPCC. It rests with all the bodies and individuals involved – Police and Crime Commissioners (PCCs), Chief Constables, the College of Policing, HM Inspectorate of Constabulary (HMIC) and the Home Office. All have their distinct but vital roles to play.

1. What is the right threshold for the IPCC independently to investigate the police and how can this be defined and implemented consistently?

What should the IPCC investigate independently?

The IPCC welcomes the proposal to increase its ability to deal with the most serious and sensitive matters. This is consistent with the finding of the Home Affairs Select Committee that we should carry out more independent investigations.

There are some cases which already require independent investigation, for example those which involve a death and engage Article 2 of the European Convention on Human Rights. The need for a body with the power independently to investigate deaths in police custody was a primary reason for the establishment of the IPCC. Investigating deaths has been a major part of our investigations work since our inception.

Nevertheless, the IPCC has sometimes been criticised for the quality of its independent investigations in such cases. Some of this criticism is focussed on things the IPCC does not currently have the powers to do and we welcome Ministers' commitment to legislate to fill some of those gaps. However, other criticisms reflect the fact that the IPCC - with only 100 investigators and increasingly stretched support services – is not adequately resourced to carry out its investigative work to the standard and timeliness which the public and bereaved families expect.

This message is emerging strongly from the review we are currently conducting into our work in cases involving a death, as it did from evidence provided to HASC. This area of our work is critical to public confidence and our statutory obligations, and

lessons learnt from it need to be incorporated into any plans for extension to the IPCC's current role and responsibilities.

Deaths and serious injuries are among those cases that have to be referred directly to the IPCC; as well as cases of alleged serious corruption, assault or aggravated discrimination. In 2011-12, 2,100 such cases were referred to us. We began independent investigations into only 130. The remainder were dealt with through managed, supervised or local investigation. There is clearly scope for the IPCC to investigate more of these cases itself, and we can identify some that, given the resource, we would have wished to take on.

We have examined a sample of five weeks' referrals (175 cases) in the latter half of 2012. Of those, 13 were independently investigated and 12 were supervised. Of the cases we returned to force, we would have preferred to investigate independently many more of the cases that potentially engage Article 3 ECHR (inhuman or degrading treatment) - particularly those alleging use of excessive force, and cases alleging corruption or failure of duty.

However, the sample of referrals also includes many cases which do not, on examination, require independent investigation - for example, cases where a death was not related to any possible police action or failure, but which must mandatorily be referred because police were called to an incident. On the other hand, there are cases that come to us by another route - as appeals against the way complaints were handled locally - which can demonstrate patterns or themes that can seriously undermine public or community confidence in policing. These issues can include, for example, stop and search, the use of force, alleged racism or discrimination or allegations in relation to public order policing. As the allegations about racism in the Metropolitan Police Service showed, they can be extremely damaging to public confidence.

As the HASC report noted in the great majority of cases we return upheld appeals to the force that got it wrong in the first place - a 'complaints roundabout'. We therefore need the capacity, where troubling patterns or issues emerge, to be able independently to investigate individual cases, or kinds of case. This would include the capacity to call in cases in areas of concern, and to undertake more thematic reviews of such cases.

We therefore consider that the definition of 'serious and sensitive' should include some of the types of cases that must be referred to us and arguably that the mandatory referral criteria should be extended to cover Article 3 cases. But the definition should also provide maximum flexibility, in a changing policing environment, to allow us to decide which cases most affect public confidence or cause concern. We also believe that it is essential to consult with the public and stakeholder groups about the scope of the definition and the kind of cases that would most enhance public confidence if we investigated them independently.

Enhanced oversight of the system

Independent investigations are the most visible aspect of our work and they are undoubtedly extremely important in securing public confidence. However, the IPCC is

firmly of the view that simply being equipped to undertake many more investigations will not, by itself, increase public confidence or fully address public concerns.

The IPCC strongly supports the principle that the responsibility for dealing with public dissatisfaction must rest with local police forces. The majority of people who access, or have a need to access, the complaints system raise issues that can and should be dealt with speedily at local level. The vast majority of the 30,000 complaints made annually will therefore continue to be dealt with by forces themselves.

However, for this to be effective and engender public confidence, the IPCC needs to exercise greater oversight of the handling of complaints at a local level. This is evident in the rising number of appeals that we uphold from those whose cases have not been dealt with effectively by forces – 60% of those whose complaints were not even recorded, and 31% of those whose complaints were locally investigated. It is also evident in the wide discrepancies between forces in the number of complaints they record, uphold or lose on appeal.

At present, we lack the research and analytical capacity to be able to analyse and draw out the messages from detailed statistics about the complaints system in order to inform ourselves and others and, where necessary, take a deep dive into particular forces' complaints handling. This would enable us to identify problems, as well as good practice.

It would also allow us to share these issues and concerns, not only with forces themselves, but with PCCs, HMIC and the College of Policing. They are all showing a real appetite to learn from our findings, to disseminate and reinforce good practice, and to feed our findings into policing policies, standards and training. The ability to create this virtuous circle, drawing on and interacting with other parts of the policing landscape is, we believe, crucial to public confidence and improved practice.

Where we have been able to carry out preventive work of this kind, it has helped to make significant changes in policing practice. For example, in developing a statutory code for police pursuits, developing ACPO guidance on safer detention and handling of those in custody, and dealing with police failures in cases of domestic violence and sexual abuse allegations.

During 2013-14, with the aid of a small additional resource from the Home Office, we will be identifying ways of carrying out this enhanced oversight function working closely with PCCs, forces, local communities and interest groups, probably initially in one geographic region. This will provide a platform to demonstrate the importance of the work and extend it in successive years.

2. What is the best model for achieving this including in terms of balance of resources and personnel; logistics; IT and infrastructure; and legal considerations?

We note that the Home Secretary envisages that there will be no additional resources available, but that the enhanced role for the IPCC will be achieved through a reconfiguration of existing resources, identified in the Parliamentary statement as

coming from “individual forces’ professional standards departments and other relevant areas”.

This raises a number of issues of principle and practice. We are firmly of the view that any transfer of resources from the police service to the IPCC should be financial and not a transfer of police personnel.

This is for three reasons. First, the basis of the Home Secretary’s proposal is that independent investigation is crucial to public confidence. Independence necessarily means that the IPCC is able to choose the people it employs through its rigorous assessment process.

Second, there is already public criticism, most recently expressed in the HASC report and the report of the independent panel on the 2011 riots, about the number and proportion of ex-police officers employed in the IPCC. While we have always maintained that former police officers and staff bring valuable skills and expertise, any significant rise in the number or proportion would inevitably diminish, rather than enhance, public confidence in our work.

Third, our mode of operation, derived from statute, means that investigations are carried out by multi-disciplinary teams including lawyers and other experts and crucially are overseen by a Commissioner. The need to strengthen the Commissioner’s role and the perceived independence of experts are messages coming strongly from both the HASC report and our review of deaths investigations.

In addition, it is essential that professional standards departments should continue to have the capacity to deal effectively with issues of integrity and standards within forces. They play an important role in monitoring potential corruption and providing an expert resource both within the force itself and in liaising with and providing leverage for the IPCC. They are responsible for the vast majority of referrals to us. As the vast majority of complaints will continue to be handled locally, their expertise, support and training will also continue to be necessary both for effective complaints handling and in order to ensure that forces learn from our investigations and appeals.

Added to that, investigations will continue to require resources that are not available within the IPCC and that it would be implausible or inefficient for the IPCC to acquire on a permanent basis, including a range of specialist skills and resources. Investigations may include a great deal of covert intelligence-gathering, such as surveillance specialists, undercover investigators, specialist technical equipment (e.g. for monitoring phone calls) and covert human intelligence sources (CHIS). This would require a considerable infrastructure, which it would not make sense for the IPCC to acquire on a permanent in-house basis given that it would be required only occasionally. It would therefore need to be bought in.

3. What is the best approach to transition from the current position to this model?

We begin from two principles. First the proposals, while cost-neutral once they are up and running, will necessarily require additional resources in the transitional

period. Second, in light of the funding proposal above, the current demands on the IPCC and the extent of the proposed change, this will require a gradual process.

The IPCC will need additional resources to scope and develop an operational model for what is a fundamental change and recalibration of the relationship between us and the police service. As already stated, it will involve identifying the different kinds of resource needed for the enhanced role of Commissioners, staff and support services across the organisation.

It will also involve considering the infrastructure that is required to support the new ways of operating, for example premises and IT systems. PSDs have a local presence in most of the 43 different police forces, whereas the IPCC is currently based in four locations, one in Wales, one in London and two in the north of England.

There will also need to be a properly resourced change management team, to support the transition. Without that, the IPCC will be unable to carry out its very demanding current statutory responsibilities, and the extremely complex Hillsborough investigation. There are considerable risks to a small and demand-led organisation in trying to carry out its core role at the same time as a major expansion project, and a dedicated resource for the latter is essential to mitigate that risk.

For that reason also, the transition needs to be carefully planned over a period of time, so that new work can be taken on in stages, as resources are released and new capacity made available. If the proposed changes rely on a transfer of money, we understand that any additional resource from police budgets would not be available until April 2014 at the earliest. We could use 2013-14 to develop methodologies and scope and plan the transition, as described above.

4. Further proposals to enhance confidence

The IPCC believes that the proposals outlined above will go some way towards enhancing public confidence in policing and the complaints system. However they will not, on their own, address all the issues that affect public confidence. We believe that the Home Secretary's statement provides an opportunity for a more radical examination and reform of the system overall.

We recognise that this could not be a quick exercise, and would require a great deal of consultation. However, our experience over nine years leads us strongly to believe that the time is ripe for a more fundamental re-appraisal of a complaints system which has been subject to incremental change over many years.

Essentially, the current complaints system is the product of a number of legislative and administrative changes which have been bolted on to previous or existing systems. As a result, it is extremely complex, bureaucratic and slow, both for police to administer and for complainants to access. Complainants find it difficult to understand and the police and even the IPCC find it difficult to explain. It affects both the outcomes for complainants and their confidence in the system, especially in those communities that are known to have less confidence in policing.

The current system does not fit within the principles and recognised best practice for complaints handling which starts from the proposition that most people who make complaints want an apology, the problem to be put right and changes to be made so that the same thing does not happen again. The system is focused on blame rather than resolution and on the conduct of individual police officers and staff rather than systemic issues. For those reasons, we believe that the current proposals should feed into consideration of a more fundamental reform to create a system that is easier to use and in which the public can have greater confidence.

We also believe that the time is ripe to re-examine the police disciplinary system, which follows investigations into individual culpability. That too has been the subject of incremental change, and is a lengthy, complex and less than transparent process. Apart from proceedings for chief officers, it 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. Where individual officers are found to be responsible for serious failings, the public rightly expects that those officers are properly held to account and that appropriate action is taken against them.

At present, 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, for example, 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.

The IPCC believes that a reform of the disciplinary system, to make it more transparent and introduce a greater element of independence, would significantly enhance public confidence. It would also support the vision of the police service as a professional body. Other professional bodies have independent disciplinary systems. This is not a role for the IPCC, but there are a number of models available and we recommend that the College of Policing, as part of its role in stimulating best professional practice, should be charged with examining them and proposing alternatives. Once again, this would require time and consultation.

Conclusion

We welcome the move to transfer resources to the IPCC to enable us to increase the number of independent investigations we can undertake. We believe that this should be part of a wider and more fundamental programme of reform to bring the complaints system, and its outcomes, firmly into the 21st century.

In order to contribute to public confidence in policing, the current proposals also need to ensure that the IPCC can contribute fully to the new policing landscape.

Learning from complaints and investigations must feed into inspections, standard-setting, training and oversight. In other words, it must create a virtuous circle so that identified failings feed into better practice and result in more effective policing.

IPCC

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