

IPCC oversight and confidence Casework and customer service pilot projects 2013

Direction and control

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Introduction

1. The Independent Police Complaints Commission (IPCC) has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales, under the Police Reform Act 2002 (PRA). The Police Reform and Social Responsibility Act 2011 (PRORA) which came into force in November 2012, changed the way most complaints are handled.
2. Until November 2012, complaints about direction and control matters did not need to be recorded under the Police Reform Act 2002 (PRA). However, those whose complaints were not recorded could appeal to the IPCC. 70 per cent of those appeals were successful, and a significant number were because the complaint had been wrongly categorised as a direction and control, rather than a conduct, matter. Since the coming into force of the PRORA, direction and control matters are now recordable complaints, which is helpful. However, they form a separate category of complaints, with no effective right of appeal – either against the fact that they have been categorised as direction and control, or against the outcome itself.
3. Given that we know that a high proportion of complaints were wrongly categorised under the previous legislation, there is clearly a concern that this will continue to be the case, without any oversight: or, indeed, that forces might be tempted to categorise complaints in this way precisely to avoid appeal rights, or to avoid appropriately enquiring into an officer's conduct.

Aims

4. This project aimed to find out if direction and control was still being wrongly applied to complaints and, if so, why. There are a number of possible reasons, including:
 - a. a lack of understanding about direction and control. In particular, the implications of the *North Yorkshire Police Authority v IPCC (Jordan) 2010*¹ judgement, or
 - b. the possibility that professional standards departments (PSDs) are deliberately using this to avoid proper appeal rights and close complaints without following the proper process, or
 - c. the possibility that PSDs are pre-judging complaints by deciding the officer has done nothing wrong without exploring the facts of the case.

¹ Appendix A – Summary of Jordan judgement

Methodology

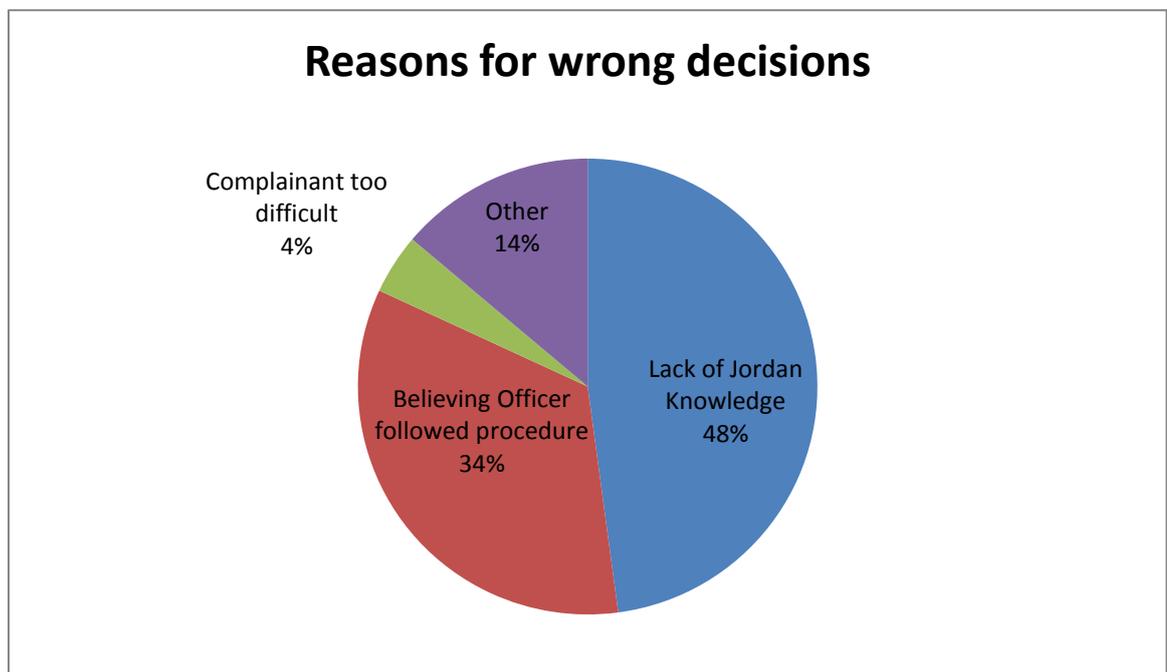
5. We looked at statistical data to find out which police forces had high rates of appeals being upheld for non-recording of complaints under the previous legislation. We also selected forces on the basis of whether they had sufficient numbers of cases to sample. On this basis, we asked six PSDs for further information about the number of direction and control cases they had recorded since 22 November 2012. Four of the six PSDs had sufficient numbers and we arranged file sampling visits with them.
6. Looking at common reasons for the IPCC upholding non-recording appeals under direction and control in the past, we checked to find out if any of these applied to the files sampled here. We entered details from these cases onto a recording sheet for the purposes of analysis. When we visited the forces, we held discussions with recording decision-makers to gather qualitative information, in addition to the quantitative sample, giving a more complete picture. We asked questions to test decision makers' knowledge of relevant case law and the IPCC's Statutory Guidance, as well as to find out what in-house training police forces had in place on the subject. Following the PSD visits, we analysed the data and produced this report.

Definition of direction and control

7. Direction and control includes the following:
 - a. operational management decisions directed to the police force – including force-wide crime initiatives and the making of general strategic decisions about how certain police powers should be exercised;
 - b. the drafting of operational policing policies and the process leading to their approval;
 - c. organisational decisions – including decisions about the configuration and organisation of policing resources, where officers or police staff should be located, how they should be managed, and what equipment should be procured for them;
 - d. general policing standards. The current IPCC Statutory Guidance provides information about what are actually conduct matters, rather than general policing standards. They include:
 - (1) decisions to (or not to) arrest and prosecute suspects for a certain crime, and
 - (2) the application of force policies; in particular, circumstances where the application of policy involves an officer exercising their discretion.

Findings

8. The number of complaints different PSDs recorded as direction and control varied significantly.
9. 95 of the 120 decisions reviewed incorrectly recorded the complaint as direction and control (80%).
10. PSDs were good at telling complainants *how* their complaint had been recorded, but less so at telling them *why* it was categorised as direction and control.
11. Although recording decisions were wrong, the outcomes – formal decision letters given to complainants in answer to their complaint – were generally appropriate. This suggests that the PSDs sampled aimed to handle complaints properly and did not consider direction and control complaints inferior to conduct complaints.
12. PSDs provided no training support about proper recording of complaints.
13. PSDs were unaware of the *Jordan* case.
14. Two PSDs classified the complaints as organisational rather than direction and control, which widened the scope of what could be included in the definition.
15. There were a small number of cases where it appeared that complaints were wrongly classed as direction and control because they were long complex complaints and/or from difficult complainants.



Evaluation

16. 80% of decisions to classify complaints as direction and control were incorrect. The reasons why are explored below and should lead to all forces reviewing how they categorise complaints. Some examples of complaints incorrectly recorded as direction and control are:
- officers who attended at flat lied about being given permission to enter
 - wrongful arrest and damage to door
 - poor standard of criminal investigation
 - lack of action taken on neighbour dispute
 - failure to investigate a crime reported
 - inappropriate disclosure of information
 - warrant executed at wrong premises

Jordan

17. The Jordan case is the test case that underpins the IPCC Statutory Guidance about direction and control classification. The court concluded that a complaint could not be classed as direction and control if it raised a 'conduct' issue – i.e. misconduct did not specifically have to be mentioned, and a decision confined to a particular subject, such as how a specific crime was investigated, could not be a direction and control matter.
18. It appears that the absence of specific training, coupled with the lack of knowledge of the *Jordan* judgement is the main reason for a high proportion of complaints being incorrectly recorded as direction and control. PSDs recording occurrences or incidents that are specific to a complainant as direction and control complaints shows that they apply the definition of 'general policing standards' too broadly. If an issue is specific to a complainant, it cannot be considered to be about general policing standards. For instance, the poor handling of a criminal investigation concerning an individual person is a separate issue to general policing standards.
19. Some PSDs are using the term 'organisational' complaints rather than 'direction and control'. This encourages the practice of only recognising a complaint as a conduct complaint when a specific officer is complained of. One of the PSDs classified 28.5% of all recorded complaints as organisational, which is high even given the general misunderstanding about what a direction and control complaint is. These complaints were handled well, however, and this spirit should be maintained. One PSD in particular stated that it tends to get more open and honest outcomes from these types of complaints, as there is less fear of blame or misconduct proceedings surrounding them.

Believing an officer had done nothing wrong

20. The category of 'believing the officer had done nothing wrong' was also a significant area where PSDs were making wrong decisions. In these cases a quick assessment of the merit of the complaint had taken place and, to the PSD

at least, it seemed clear that the officer had done nothing wrong and had followed procedure. If this were the case, however, this would be an outcome to a conduct complaint investigation and not a decision at the outset of the complaint being made.

Difficult complaint/complainant

21. This was used in only four of the cases we sampled. These were generally complainants who wrote long letters of complaint covering many issues or complainants who had longstanding unresolved issues. Outcomes provided to complainants were more inconsistent in this area. Half were poorly handled, which might be considered to show that appeal rights were being deliberately denied. Numbers were too low to be sure that this was the case, however.
22. In one case the complaint was about police involvement in an incident. It appeared the complainant had mental health concerns, but no adjustment was made for him, or offered, and the response failed to offer any substantive review of the situation or issues raised. The response was dismissive of the complainant.

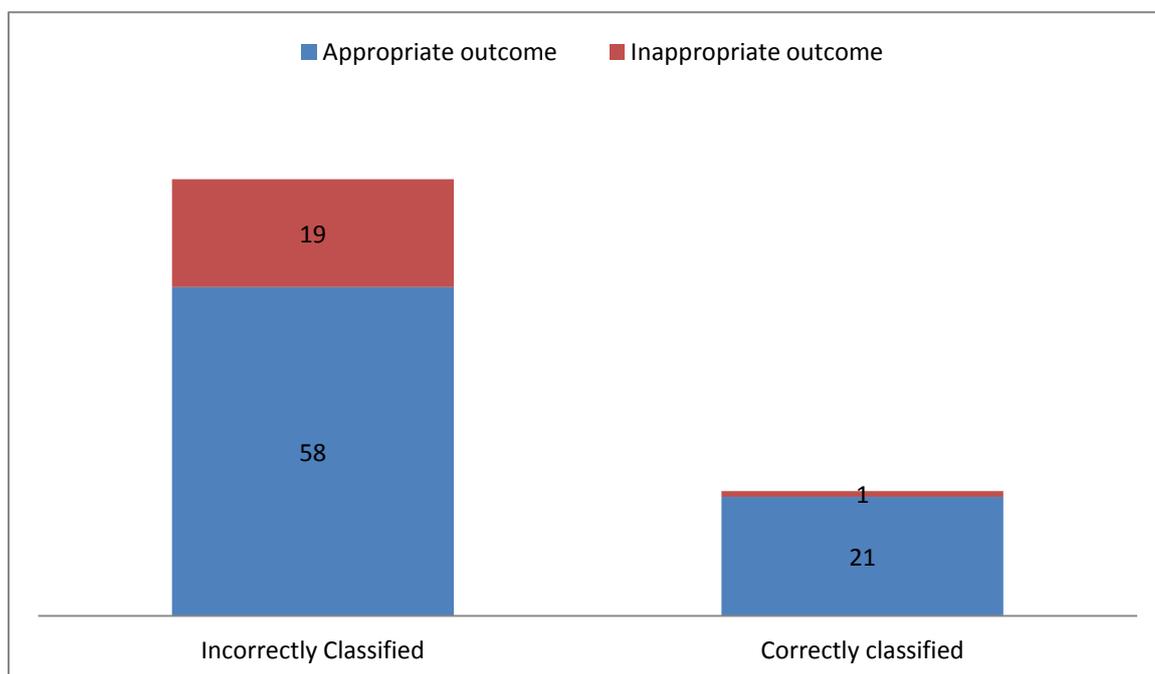
Other

23. This category could be further categorised into three sub-categories. There were five 'complaints' that were actually requests for information or issues outside of the complaints system, such as HR. There were six complaints where the conduct element of the complaint appeared to have been missed, as the majority of the complaint was either a direction and control issue or a civil claim. The final three complaints were very clearly conduct complaints.

Correctly classified

24. As this report has mostly identified incorrectly classified complaints, it might be useful to highlight examples of complaints correctly classified as direction and control issues:
 - location of speed cameras
 - horse riders' high visibility jackets and their similarity to police jackets
 - the cost of recovering a vehicle
 - police station opening hours are not long enough
 - the procedures used for lost property
25. These were correctly determined as direction and control, as they were solely about these issues with no indication of officer fault or error. It is important to note that a complaint is not direction and control if coupled with a complaint that an officer has interpreted these policies incorrectly, which is a conduct complaint.

Outcomes



26. In general, outcomes for complainants were appropriate. The cases where it was unclear if the outcomes were appropriate were either because the case was still live or the outcome letter was not on the case file.
27. The inappropriate outcomes were mainly where issues had not been addressed or it appeared the complainant had been provided with a superficial or dismissive answer.
28. In one inappropriate response, the complaint expressed dissatisfaction with how the police investigated an allegation of theft. The complaint was incorrectly recorded as a direction and control matter, and the outcome letter did not address the complainant's concerns about failure in duty, as well as incivility of officers.
29. The appropriate outcomes demonstrated a clear understanding of the issues being raised and gave a personal and open response.
30. In one case, a complaint was made that the police had failed to properly investigate a crime the complainant had reported. Although the complaint should not have been classified as direction and control, the outcome letter openly and fully dealt with the issue the complainant raised, reviewed the actions of the police, and the PSD carried out a full investigation into the allegations. This demonstrated a clear understanding of the issues and provided a response that satisfied the complainant.
31. Another case was a complaint about the police closing a road without due consideration or notice to residents. It was incorrectly recorded as a direction and control issue but, again, the response was good. The outcome letter acknowledged that the police could have done more to help in the situation and that if the police officer stationed at the road closure had more local knowledge, the issue could have been resolved there and then. The PSD took on this learning

and the response satisfied the complainant.

32. One correctly classified complaint was about the cost of recovering a vehicle that had been stolen. The letter provided a full response, explaining the reasons for the costs and why they were required, along with further information about the costs of stolen vehicles. This left a positive impression with the complainant who had already indicated that the officers who dealt with him at the time were very helpful and professional.
33. These examples of positive complaint outcomes give some assurance that, where complaints are incorrectly categorised, this is not being done deliberately to avoid due process, appeal rights or proper investigation. We found that 75 per cent of the cases were concluded in a satisfactory way, appropriate to the complaint. Nevertheless, a significant minority were not, and the mis-categorisation deprived those complainants of any appeals rights.

Further work

34. We will be publishing a regular Oversight Digest, to share guidance and advice as a result of our oversight work. The first edition will deal with direction and control.
35. The *North Yorkshire Police Authority v IPCC (Jordan) 2010* judgement has been placed on the agenda of the next meeting with every IPCC PSD meeting.
36. The four PSDs subject to file sampling and analysis have been given individual recommendations.

Appendix A

37. Mr Jordan believed that his mother had not been adequately cared for in a nursing home and that this had contributed to her death. He reported this to North Yorkshire Police (after pursuing the matter through various other bodies who found no wrongdoing). The police declined to start a criminal investigation. Mr Jordan wrote to the Chief Constable, but received a response stating that they would not carry out a criminal investigation. He wrote to the Police Authority, heading his letter “Formal Complaint Against the Chief Constable...in his failure to investigate the death of Mrs W Jordan”. The Police Authority declined to record the complaint, stating that the decision had not been taken by the Chief Constable and was a matter of direction and control. The IPCC upheld Mr Jordan’s non-recording appeal. The Police Authority brought Judicial Review proceedings.
38. The Police Authority tried to argue that a complainant had to allege misconduct before a complaint could be recorded. The Judge rejected this argument, finding that all that had to be alleged was ‘conduct’ – there was no need for the complaint to contain an allegation of bad behaviour.
39. The complaint was not one of direction and control. The judge found that it was difficult to produce a comprehensive and accurate definition of direction and control, but that it was essentially concerned with matters of a general nature, and that “a decision which is made by a chief officer which is confined to a particular subject falls outside the definition of direction and control.” He found that the law should be interpreted in such a way that it is easy for people to apply, and found that the general / particular distinction was the easiest.
40. <http://www.bailii.org/ew/cases/EWHC/Admin/2010/1690.html>