

# **Towards greater public confidence**

**A personal review of the current police complaints  
system for England and Wales**

Deborah Glass  
Commissioner  
Independent Police Complaints Commission

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## Foreword

I will soon be stepping down after thirteen years of working within the police complaints system: ten years as a Commissioner of the Independent Police Complaints Commission from its inception and three years before that as a Member of the departing Police Complaints Authority. Ten years into its existence the IPCC is poised to expand its investigative remit to “all serious and sensitive cases”. But is this enough to generate public confidence, or does the system itself need reforming?

Much has been said and written about the police complaints system in England and Wales over many decades – from academic treatises and Parliamentary reports to tirades and blogs. Some speak from direct personal experience – of how their complaint was dealt with, or the investigation into the death of a loved one. Others reflect collected experience, from the point of view of a campaign group, and yet others reflect a personal or political ideology. This paper reflects my own experience. In the past thirteen years I have dealt with complaints ranging from the most serious and substantiated allegations of criminal conduct by police officers, through the many, varied and understandable gripes of people dissatisfied with the police, to the frivolous and occasionally malicious.

From that experience, I have no doubt that, while there have been improvements over the years and some real success stories, the system needs major reform. It has in fact needed it for decades, and has suffered from repeated piecemeal attempts at reform that tighten a bolt in the engine while loosening a few screws in the chassis. This paper seeks to analyse the strengths and weaknesses of the current system both in a historical context and in the context of other systems and countries, and make recommendations for change. While it draws on the experience of the IPCC, the views it expresses are mine alone.

## I. The current system

*Everything has been said before, but since nobody listens we have to keep going back and beginning all over again.*

*André Gide*

### **Background: A Potted History**

Systems for dealing with complaints against the police do not happen by chance, and are rarely created by design. Although as Sir Robert Peel famously said, “The police are the public and the public are the police”, there is a historic lack of enthusiasm by Governments of any stripe to give too much power to independent bodies whose function is to oversee their own law enforcement arm.

The history of police oversight in England and Wales has been much written about, but the background is important context to this paper, and is worth summarising.

For some 150 years, from the creation of the Metropolitan Police in 1829 to the establishment of the Police Complaints Board in 1977, there was no independent oversight of police complaints in the United Kingdom. Although the Royal Commission on the Police that reported in 1962 came about as a result of the widely publicised convictions and/ or dismissals of several Chief Constables and other senior police officers in relation to complaints including corruption, fraud and excessive force, the report kept the handling of complaints firmly within the police themselves:

***The police are [a] disciplined body, and proper leadership requires that the administration of justice should be in the hands of the chief constable. Any whittling down of this responsibility would weaken the chief constable’s command of the force and this, again, would lead to a loss of morale and confidence.<sup>1</sup>***

Although the 1962 Commissioners were “*unanimously of the opinion that the present procedure, amended as we have proposed, will almost always provide for the proper and impartial investigation of complaints*” a minority of Commissioners proposed the appointment of a Commissioner of Rights, who could receive and examine complaints, “*make his own inquiries on the spot*” in complex cases and publish his findings. It took a further 50 years for the power to make independent inquiries to be introduced into law.

This example from an incident in 1961 will seem very familiar to anyone who followed the events of the G20 demonstrations in 2009:

***... Lord Kilbracken.. mentioned that after midnight in the square a large force of constables fell upon the few hundred remaining demonstrators and that they acted in a collective organised way and, therefore, obviously with orders from above.... one reporter was arrested while taking notes in the square, two B.B.C. cameramen and a Granada cameraman were arrested in the square, another reporter was threatened with arrest unless he left the square, and a third who requested re-admission was violently told to leave. ....***

***... We reluctantly accepted an investigation by the Commissioner of Police, hoping that that, at any rate, would clear the air and establish the facts. It has not done so, and, therefore, the case for a full and independent inquiry remains quite convincing, even at this late date.... The object would not be to cover old ground, but to establish the facts, so that justice is seen to be done and the public are satisfied that a proper independent inquiry has been conducted, which is of the greatest importance to all the members of the public ....<sup>2</sup>***

History reveals that this is one of many such incidents that were not regarded as sufficiently serious to justify a legislative solution. Despite the efforts of some MPs and bodies such as the then National Council for Civil Liberties, police violence during public order – such as that illustrated above – was never a catalyst for change.

Thus systems, and the bodies set up to implement them, are almost inevitably a product of their history, a response to some very significant event that damages public confidence in the police. Although the pattern of failure, scandal, inquiry, and reform is a well-known phenomenon both in other countries and other professions, policing reform rarely goes the distance. The first real catalyst for independent oversight was the Metropolitan Police corruption scandal of the 1970s. This led to the creation of the Police Complaints Board in 1977, although the trenchant opposition of the then-Commissioner of the Metropolitan Police and the Police Federation ensured it was born with no power other than to scrutinise a police report and direct disciplinary proceedings to a tribunal composed wholly of police.

This was, inevitably, the subject of further criticism and Parliamentary debate. The following comes from a Commons debate on police complaints in 1981:

***The case for reform has been made before and need be only briefly repeated. First, a complaint against a policeman is***

***dealt with by another policeman, albeit a senior one, and not independently. The Police Complaints Board has no part in the recording or investigation of complaints. Secondly, the report compiled by the senior police officer is not shown to the complainant so that he or she never has a chance to check its accuracy or comprehensiveness, or to reply to any counter-allegations which the policeman concerned may have made. Thirdly, it is on the basis of that secret police report, without any direct interviewing of either the complainant or of the policeman concerned, that the Director of Public Prosecutions decides whether to prosecute. All those three facets of current procedure are wrong and cannot be justified....***

***Because the Police Complaints Board recognised that "unexplained injuries sustained during arrest or while in subsequent police custody ... cause the greatest damage to good relations between the police and the public", it recommended a specialised body of investigating officers recruited by secondment from all police forces. It is a measure of the paralysis of the authorities that the working party set up to examine this modest proposal, composed of seven senior police officers and the Home Office establishment, turned down the recommendation, inadequate though in my view it is.<sup>3</sup>***

The Brixton riots of 1981 and the subsequent Scarman report led to more demands for reform. The Scarman report described "a widespread and dangerous lack of public confidence in the existing police complaints system"<sup>4</sup> and that "if public confidence in the complaints procedure is to be achieved any system falling short of independent investigation...is unlikely to be successful." Lord Scarman also attempted to "introduce simplicity, speed, flexibility and openness into the incredibly cumbersome, highly secretive police complaints procedure"<sup>5</sup>- but the legal framework ultimately adopted introduced little in the way of independence, and nothing in the way of openness.

In 1985 the Board was replaced by the Police Complaints Authority, which could do little more than its predecessor; in addition to the limited powers it inherited, it could only supervise a police investigation, the reports of which were unable to be disclosed. For lower level complaints, the new legislation introduced not the form of conciliation advocated by Scarman but a process called "informal resolution" in which the new Authority had no role.

Inevitably, this failed to live up to public expectations. When the 1999 Macpherson report following the death in 1993 of black teenager Stephen Lawrence recommended a new body with actual investigative powers over the

police, this finally came into being with the Independent Police Complaints Commission in 2004. As former Metropolitan Police Commissioner Lord Condon said at the time:

***I believe that the most important provision in the Bill is the proposed creation of the independent police complaints commission. Many of us have campaigned for such a body for more than a decade. Police officers can intervene in people's lives in a way that alters those lives for ever—for good or for evil. It is vital that the investigation process against police officers enjoys maximum public support and confidence. Nothing short of a completely independent complaints commission will assuage public concern about the integrity and thoroughness of the complaints process.***<sup>6</sup>

Once again, however, there was a mismatch between expectations and reality. Although it was said that the new body would investigate 1,000 complaints in its first year, when it came to writing out the cheque, the IPCC was funded to carry out 30, the vast majority of which involved deaths, rather than complaints. The number of investigations increased slowly from 31 in 2004 to 130 in 2012, but the vast majority of independent investigations are into deaths and other non-complaint cases. They usually arise following a direct referral from forces, who are obliged to refer any case where there is death or serious injury, or an allegation of serious corruption, serious sexual offence, serious assault, or aggravated or relevant criminal offences. The IPCC's role in relation to complaints was and is largely as an appellate body, the appeal function having replaced the PCA's role to carry out a "misconduct review" of all concluded police complaints investigations. In 2012, that meant that the IPCC determined 4,965 appeals, out of the 30,143 complaints against police recorded in England and Wales.<sup>7</sup>

In relation to less serious complaints, the 2000 White Paper on policing reform<sup>8</sup> envisaged restorative justice and mediation as part of a new, strengthened informal resolution process renamed local resolution, limited to allegations which "if proven would not lead to criminal or disciplinary proceedings". Groups such as Liberty and the Police Action Lawyers Group had urged caution in the extension of "informal resolution". They were concerned about the scope for abuse offered by the process and diminution of accountability.<sup>9</sup> The Police Reform Act 2002 (PRA) did however introduce a raft of appeal rights, including against the process (but not outcome) of local resolution, so that the IPCC, unlike the PCA, would have the locus to deal with all parts of the system, not only investigations.

There have been further reforms since the inception of the IPCC, notably the Taylor reforms of police discipline in 2008, intended to modernise police misconduct procedures, and the Police Reform and Social Responsibility Act

2011 (PRSRSA). The PRSRSA made a number of changes to the broader police accountability landscape with the introduction of elected Police and Crime Commissioners to replace Police Authorities, local bodies which had been operating since the Police Act 1964, charged with “securing efficient and effective policing” of a local force area. Although complaints were not a key part of the PRSRSA reforms, some modest reforms were introduced at the IPCC’s request to reduce some of the bureaucracy inherent in the PRA and make changes to the appeals system. In particular, the IPCC had suggested that it did not need to deal with all appeals, and that appeals in less serious cases could be dealt with by the new Police and Crime Commissioners. The PRSRSA did remove the responsibility for lower level appeals from the IPCC, but gave it to Chief Constables – in effect, creating an internal review mechanism rather than a right of appeal.

The Anti-Social Behaviour, Crime and Policing Act recently approved by Parliament will make further changes to the complaints system and the IPCC's powers. Of most significance is that, for the first time, police forces will be required to formally respond to IPCC recommendations and the IPCC will be given jurisdiction over private contractors delivering policing services.

Thus despite good intentions to reduce bureaucracy and increase accountability, reforms directly affecting the police complaints system have been piecemeal rather than holistic, in practical terms adding further layers of complication to an already complex system.

## **Where are we now?**

Although this paper is intended to address the current police complaints system, the reality is that there are several “systems” at play – dealing not only with complaints against the police, but “conduct” matters, where there is evidence to suggest that a police officer or member of police staff may have committed a criminal or disciplinary offence, as well as deaths and serious injuries following police contact, whether or not a complaint is made. The connections between these situations, and the role of the IPCC in these separate aspects, make “the system” even more complicated.

The system can sometimes defy comprehension: a complaint may be about conduct, for which an officer may be interviewed under criminal or misconduct caution. There are numerous conduct matters, for example those involving corruption, for which there is no complaint. An investigation into a death following police contact may involve conduct or be the subject of a complaint - but not necessarily. Most complaints continue to be dealt with by the police

themselves, but may come to the IPCC on appeal, rather than by direct referral from forces, unless they meet the threshold of seriousness set out in the PRA. Of the matters that are referred by forces, the vast majority of IPCC investigations are carried out into deaths and other incidents that do not start as complaints.

The police complaints system is set out in the PRA, the PRSRA and various supporting regulations. As the IPCC's Statutory Guidance acknowledges: "*The police complaints system is not straightforward or easy to understand, even for practitioners. It is even more difficult for complainants.*" Yet detailed reading of the 135 pages of guidance is a prerequisite for those who wish to understand the system, and that in itself is a sorry indictment of it.

In summary, the current system:

- Requires complaints and conduct matters to be recorded by the police force against which they are made;
- Provides a threshold for complaints and conduct matters of a certain seriousness to be mandatorily referred to the IPCC, but the resources to investigate only a small fraction of that number;
- Provides for four levels of investigation, only one of which is independent of the police;
- Provides five different rights of appeal in relation to complaints, to two different appeal bodies, only one of which is independent of the police;
- Provides for little in the way of outcomes – the only outcome recognized in the legislation is the potential for criminal, misconduct and more recently, unsatisfactory performance proceedings although the IPCC regularly makes learning recommendations either to a particular force or to the service as a whole.

While there has been real change over the decades, including a level of transparency that would have been unthinkable during the Police Complaints Board period of the 1970s, it is still of little surprise that many of those who come into contact with the system are dissatisfied. There are numerous reasons for this; first, the IPCC is simply unable to do what it says on the tin: it is not an independent body investigating police complaints. That is not what the Police Reform Act set up. Relatively few complaints meet the threshold for referral to the IPCC so the police themselves deal with the vast majority of cases. Of the total number of referrals received by the IPCC (this includes complaints but also death and serious injury and conduct matters where no complaint has been made), currently about 94% are in fact referred back to be dealt with by the police themselves, sometimes with a degree of oversight by the IPCC<sup>10</sup>. Although more complaints come to the IPCC on appeal, this is not the case for all appeals, and even when appeals are upheld, more often than



not this will result in the complaint going back to the police who did the original investigation, for further work. While the proposed expansion of the IPCC will undoubtedly change these figures, it will still remain the case that the vast majority of the 30,000 complaints each year are dealt with by police forces themselves.

Second, whether or not the IPCC is involved, the complaints system itself is complicated and, to someone with a grievance, can be impenetrable. If the first-line response to the complaint is poor, the dissatisfaction is likely to be exacerbated. The system is still rooted in the police discipline system, so that complaints have historically been recorded “against” an officer. This almost inevitably triggers a defensive response. It also, almost inevitably, means that, where there is no supporting independent evidence that could underpin disciplinary action, there will be a conclusion of no case to answer. Complainants naturally believe that this implies that they are lying, or that their real distress or anger has not been recognised, and that they will not be believed unless they were fortunate enough to capture the incident on a mobile phone or some other form of independent evidence. This in itself feeds the negative perception, particularly in minority ethnic communities, that without independent evidence, corrupt or racist police officers will be able to act with impunity.<sup>11</sup>

In relation to the vast majority of complaints, not investigated by the IPCC, very little has changed for the better. The following – which I can confirm from my own experience - comes from a 2001 PCA report:

*“At the PCA those 5 or 6 Members dealing with the discipline review of cases spend many hours a week talking to complainants after the outcome of their case has been decided. Sadly, complainants only tend to contact us when they are dissatisfied. Particularly where their complaint has not been substantiated, a common theme to their dissatisfaction is that because their complaint has not been supported we do not believe them and that they are accused of being liars. There is a feeling that the genuinely bad experience that many people have had is being denied, is being invalidated. We try and explain that this is not the case but simply that the current, formal, legal complaints process aimed at establishing blame and delivering punishment, based only on evidence which will stand up in court or at a hearing, does not lend itself to addressing or resolving the issues around the bad experience that they have had.”<sup>12</sup>*

Many “lower-level” complaints today cannot even be appealed to the independent body. The changes in the past 13 years have made few inroads into the “formal, legal complaints process aimed at establishing blame” – which in fact, given the threshold required to put evidence before a court or a hearing, is far more likely to result in a finding of no case to answer.

## **So what are the strengths and weaknesses of the current system?**

Many of the key weaknesses are rooted in the Police Reform Act itself – despite the improvements, the system for dealing with complaints is complicated, bureaucratic, slow, and focused on whether something is, or is not, misconduct rather than on addressing grievances. It is focused on process, not outcome. And too many people do not trust it because it contains a fundamental mismatch of public expectations - either it is still the “police investigating themselves”, or where the complaint could be resolved without investigation, there is insufficient incentive to deal with the root cause of the dissatisfaction. Experience has shown that all too often, local police supervisors are too busy to deal with complaints – it is easier to send a form to the Professional Standards Department than to actively engage with a complainant and attempt to address a grievance.

The fact that the PRA contains four modes of investigation and five rights of appeal to two different bodies is, in my view, a significant weakness. The complexity of processes within the PRA has also resulted in some inexplicable anomalies – for example, the power to direct a misconduct hearing to be held in public is only available when the matter has been subject to an independent investigation by the IPCC.

Lack of adequate investigative resource to do what the public expects is an obvious, although not systemic, weakness.

It is however important not to overlook the strengths alongside the catalogue of weaknesses. The system has improved significantly since I first encountered it in 2001. It is far more transparent – for the most part, as transparent as it is possible to be, bearing in mind the rules relating to inquests and the need to retain confidentiality during a criminal investigation. Complainants now receive a report into their complaint, when before 2004 investigation reports were subject to public interest immunity and indeed were unable to be disclosed without breaching the Act. Typically, a complainant prior to these reforms would receive a letter simply telling them their complaint was not substantiated.

It is also possible for the system to work. It provides for local resolution, which if used effectively, could be capable of addressing complaints in a positive way.

*The family of a young black man who had died in mysterious circumstances complained about the police response to his death. The initial police response to the complaint was poor – which exacerbated the family’s sense of grievance, and resulted in a complaint that the police response was motivated by racism. The complaint was eventually referred to the IPCC. The complaint was appropriately recognized as very serious in its potential consequences on public confidence in the police, but it was also apparent that what the family really wanted was a more thorough investigation into the death. The IPCC brought the complaint to the attention of the force’s senior officer with a recommendation that the death be re-investigated and that the force should apologise for its initial response. The force then took the matter seriously, the death was re-investigated and the complaint was locally resolved with an apology.*

It can also deliver accountability. Police officers have been charged, convicted, dismissed or required to resign in numerous instances – some following IPCC investigations, many more following investigations carried out by the police’s own professional standards departments. Despite the frequent criticism of the system of “police investigating police”, the record of many Professional Standards Departments of police forces, staffed by serving police officers, demonstrates that they are capable of doing that. The Metropolitan Police, for example, dismissed 58 police officers in 2013, only 8 of which followed investigations in which the IPCC was involved.<sup>13</sup>

Why do the system’s successes tend to be overlooked? To some degree this is inevitable – confidence and satisfaction do not make headlines or launch campaigns. But there are other reasons. The fact that the public remains resolutely unconvinced that the police are capable of investigating themselves is not only the result of a few high profile cases that the police were perceived to cover up and the smaller number where they indeed did so. There is inevitably a legacy of distrust from the years when police failed to investigate to any meaningful degree and bring their colleagues to book. But the quality of local police investigations remains patchy - as evidenced by the number of appeals upheld by the IPCC. And when the police do dismiss their own officers, they do so in closed misconduct proceedings from which the outcomes are, usually, not publicised.

#### *The problem of local resolution*

In relation to lower level complaints, local resolution has a bad press, with both complainants and police officers, and despite the aspirations of the 2000 White Paper, continues to be a missed opportunity. A recent study<sup>14</sup> confirms that local resolution is all too often not achieving greater public confidence, as

originally envisaged. In relation to numbers, rather than increasing the number of complaints diverted from formal investigation into something intended to be a timely, informal process for complaints that do not concern serious misconduct, rates of local resolution are going down: for example 45% of complaints to the Metropolitan Police Service were finalised by way of local resolution in 2004/5 but just 16% were in 2011/12<sup>15</sup>. The following quotes from an IPCC research study<sup>16</sup>, from a member of the public and police officer respectively, still have resonance:

*“It was a whitewash....they just wrote it down and moved on, red line.*

*“I feel that I’ve been blamed, my point of view is disregarded against the complainant who is assumed to be in the right. You have no recourse against the outcome. You get the Local Resolution but no say in the matter.”*

This is at least historically the result of the way complaints are recorded locally – “against” a police officer whether or not the complaint really involves conduct or simply a grievance about quality of service. It is not surprising that police officers notified of a complaint in this way become defensive and less willing to engage with a genuine resolution of the grievance. But the perceived failings of local resolution also highlight a deeper problem – the culture within which the police service responds to complaints.

#### *The problem of “substantiation”*

It is an oft-quoted statistic of the complaints system that a tiny percentage (on average fewer than 5%) of complaints are substantiated<sup>17</sup>. This number has changed remarkably little over the years and is a reflection of the number of complaints where misconduct has actually been proven to an evidential standard, rather than the number of complaints where the complainant has been found to have a legitimate grievance against the police.

IPCC Statutory Guidance of 2010 attempted to change this by introducing the concept of the “upheld” complaint when there was a legitimate grievance. While this has made a difference, only 12% of complaints are recorded as upheld. What this says to complainants, bluntly, is that 88% of their complaints are not considered to be valid<sup>18</sup>. And while every complaints system attracts complaints that are misplaced, misguided or downright malicious, a system can be fatally undermined if the vast majority of legitimately disgruntled service users find their dissatisfaction is, in effect, being denied.

### *Four modes of investigation*

Some 3% of complaints reach the threshold for mandatory referral, which requires the IPCC to make a “mode of investigation” decision. The PRA provides four possible modes of investigation: independent, managed, supervised and local. If a form of independent oversight is deemed necessary but an independent investigation is not appropriate (or in practical terms, possible), the IPCC can *manage* or *supervise* the police investigation.

The key practical difference between the two is that the IPCC exercises “direction and control” of a managed, but not a supervised, investigation. This concept is not only difficult to explain to the public, it is also difficult in practice, and has frequently shown itself to be ineffective. Practical difficulties can (and do) arise if the police investigator and the IPCC disagree about the level of misconduct, analysis of the evidence or overall findings. Nor is it any surprise that on average they take far longer than an independent investigation— not only is there no incentive for the police investigator to conclude expeditiously, given that the IPCC is ultimately responsible, but the process of review of the report, particularly where there is disagreement, can be lengthy.

Supervised investigations have also been the subject of criticism and much internal discussion within the IPCC about the value, if any, they add, bearing in mind that the IPCC does not exercise “direction and control”. The PRA provides a further complication in that if the supervised matter is a complaint case, the complainant has a right of appeal to the IPCC at the end of the investigation if they are not happy with the outcome. The right of appeal does not apply if the matter being supervised is “recordable conduct” rather than a complaint, which can allow for a higher level of IPCC intrusion into the investigation – but, in this case, the IPCC cannot direct that there should be misconduct proceedings.

I have supervised police investigations intrusively – Operation Elveden is one example where a number of officers have been charged and convicted – and in my view supervision can add value in corruption cases. But it is far more difficult to see the value of supervision in a complaint case where the IPCC can do little more than set the terms of reference and receive the report, bearing in mind that the complainant’s rights effectively come into play at the appeal stage. This in itself is confusing – how can the IPCC deal with an appeal against an investigation it has supervised? As far as complaints are concerned, there is an obvious gulf between the plain meaning of “supervision” and the limited role envisaged by the PRA – which further contributes to the perception problem between the public and the independent body that the latter is not doing its job.

### *Rights of appeal*

The number and type of appeals is itself confusing, as is the fact noted above that a complainant can appeal the outcome of a supervised investigation. Although substantive decisions are made on appeals, appeals can also be upheld for reasons of process – with the result that the complaints process itself is protracted to no great benefit of anyone. The “appeals merry-go-round” has been commented on elsewhere<sup>19</sup> – where the upheld appeal is sent back to the force for further work, which results in a further appeal, and so on.

*I have, over the years, spoken at a large number of training sessions for police officers from Professional Standards Departments. During one such session, on appeals, an investigating officer described the many areas they had been warned to pay attention to, to ensure that any appeals were not upheld by the IPCC. This frequently resulted in lengthy, rather legalistic investigations and outcome letters. I pointed out that if they had put a fraction of the effort made to satisfy the IPCC into seeking to satisfy the complainant, they would be dealing with many fewer appeals.*

### *Misconduct and performance*

The inter-relationship between the complaints and police misconduct systems presents particular challenges. Despite the aspirations of the Taylor reforms in 2008, intended to simplify processes and empower local management to deal with lower-level misconduct and poor performance, the system remains resolutely process-driven and adversarial. It can also be extremely difficult in practice to distinguish between misconduct and performance, particularly in cases where the conduct is not deliberate. Given the requirement to consider early in an investigation whether or not it is subject to “special requirements”, i.e. whether there may be a case to answer for misconduct or gross misconduct – in my experience cautious investigators tend to opt for gross misconduct at the outset. This has several practical consequences – a defensive response on the part of the police officer, and all too often, a mismatch between the assessment and the outcome, which is very difficult for the public to understand or accept.

This can be further exacerbated when the IPCC is involved in the investigation. It is not inherently problematic that a police misconduct tribunal could come to a different conclusion to an IPCC investigator, bearing in mind that the evidence will be tested at a hearing and mitigation put forward. However, I have seen a number of examples of misconduct where the facts

are essentially not in dispute, but where there is a clear difference of view between the IPCC and the police, about the kind of conduct for which dismissal would be justified. And there are other examples, where the police, who are responsible for bringing the proceedings, drag their heels so long that the officers retire, or are allowed to resign.

*A police officer was subject to criticism by a judge in a criminal trial, for his response to a serious domestic violence incident. This was referred to, and investigated by the IPCC. The investigation concluded that the officer had a case to answer for gross misconduct. The force concerned agreed about the seriousness of the conduct but asked that proceedings for “gross incompetence” (the final stage of unsatisfactory performance proceedings, under which an officer can be dismissed) be considered instead. This was agreed. At the proceedings, the officer was legally represented, and the tribunal found he had no case to answer.*

*Following an IPCC investigation into the police response to sexual violence, the force concerned agreed, reluctantly, that three supervisory officers should face proceedings for gross misconduct. During the months that followed, while charges were still being drafted, one of the officers retired. The force then argued (with some justification) that proceedings could not fairly continue against a second officer, whose culpability was closely connected to the first, so that matter was finalised with a written warning. Proceedings continued against the third officer, but further months passed by which time crucial witness evidence was no longer available. The practical reality was that proceedings had to be discontinued.*

Although the police complaints system rightly includes police staff, who are subject to yet another system, this has more rarely been an issue; the bigger issue is the disparity of treatment between police officers and police staff, where the former are subject to the highly complex Police Conduct regulations and the latter to a much simpler local process.

#### *Death and serious injury (DSI) cases*

The strengths and weaknesses of the system, and the IPCC’s involvement, in cases involving a death has been the subject of an extensive review and IPCC consultation, and I will not seek to further analyse it here. But I would observe that the fact that the IPCC is a “complaints” commission, yet devotes the vast bulk of its limited investigative resource to cases involving death, rather than complaints, is another factor in the public confusion about the IPCC’s role. Investigating death following police contact is a necessary and important part of the IPCC’s work. But the IPCC must also be able to deal with a sufficient number of complaints to justify its name and statutory responsibilities, as well as public expectations.

### *An independent investigation is not an outcome*

All too often, reports identify more independent investigations as the key to building public confidence. But independence is only one factor in an investigation – if an investigation is independent but not effective, it will, rightly, fail the public confidence test. But it is possible for an investigation that is both independent and effective, but fails to deliver the result a complainant or family wants, to be regarded as a whitewash. An independent investigation is not an outcome, but will be judged, fairly or unfairly, by the outcome it delivers.

*The IPCC independent investigation into the death of Ian Tomlinson during the G20 protests in 2009 is frequently cited by commentators as a failure of police accountability. Yet the investigation itself provided the evidence for an inquest, criminal trial and misconduct proceedings, which resulted, respectively, in a verdict of unlawful killing, a trial and jury acquittal of an officer for manslaughter, and dismissal of the officer for gross misconduct. The thoroughness of the IPCC investigation was praised by the Coroner presiding over the inquest and the key evidence obtained by the IPCC withstood challenge through all three sets of proceedings. If this investigation was a failure by the IPCC, what would success look like?*

It is also the case that high profile investigations into controversial deaths can be particularly emotive in relation to the meaning of justice. To the family of someone shot dead by a police officer, it is understandable that the only “justice” they may recognise is a prosecution of the police officer for murder – whether the evidence justifies it or not. And to a police officer who has fired a fatal shot, a “just” outcome may be no investigation at all, or a quick exoneration – whether the evidence justifies it or not.

Effective communication and good family liaison are essential in trying to build confidence in an independent investigation. This area has been explored further in the separate review of deaths following contact, which has highlighted many weaknesses in the IPCC’s response including some depressingly poor examples of communication and family liaison. But it is also worth noting that the current system can work – even if such successes are rarely celebrated:



*An independent investigation into the death following police contact of a young man suffering mental health problems was concluded without referral to the CPS and went straight to inquest. The two officers who had come into contact with the young man were very young in service; one had been struck by the young man but immediately sought to give him first aid after his collapse. Both officers gave evidence at the inquest. The young man's parents, attending the inquest, asked me if they could meet the officer who had been with their son when he collapsed. I approached the Federation representative who spoke to the officer. The young man's father shook hands with the officer. The case was concluded from investigation to inquest within a year, and without diminishing the impact of the tragedy, both the family and the police were satisfied with the outcome.*

### *The relationship with civil proceedings*

Another area of confusion stems from the relationship between complaints and civil actions against the police. The complaints system does not provide for compensation, even modest, so complainants have no choice but to seek a civil remedy if they have suffered monetary loss. It is also the case that complainants may recover substantial damages against the police in cases where a formal complaint has not been upheld. This creates, if not the reality, at least the perception that civil action is more effective at holding the police to account than the system put in place to do that.

### *Persistent or vexatious complaints*

Every police force, the IPCC itself, and indeed probably all public services everywhere have a core of persistent and sometimes vexatious complainants, who start with a complaint that is without foundation, upon which they lodge complaints about complaints, until they get the result they are looking for. They exploit complex processes – and any inattention on the part of complaint handlers to the letter of the law - so that their appeals are occasionally upheld, stoking their sense of the rightness of their cause. There are other individuals whose actions are not malicious, but misguided, driven by the trauma of the death of a loved one or affected by mental health. Such complainants take up a disproportionate amount of the limited resource available in the system, to the disadvantage of the vast majority of complaints that are made in good faith.

*A police officer was convicted of a criminal offence and dismissed, following an IPCC supervised investigation. The officer's family made complaints about the investigation, starting with those responsible for the original investigation, then the officers within the force Professional Standards Department, through to IPCC casework staff dealing with appeals, ultimately complaining about the force's and IPCC's senior management as the complaints lower down the "food chain" were dismissed. Although the core of the complaint was a criminal conviction that went unchallenged in the court of appeal, the succession of complaints continued unchecked – and possibly continues to this day.*

A complaints system must be able to deal robustly with such complaints, and close them down firmly before they become an unproductive industry.

*And finally.... The need for something to be recorded*

I have, over the years, been involved in a number of high profile matters involving the police that were either not referred or not referable, but which had a potentially significant impact on public confidence. An obvious example is the Metropolitan Police response to the phone-hacking saga. This did not fall into any of the three categories that give the IPCC jurisdiction – it was not the subject of a complaint, it was not recorded as misconduct, and it did not involve a death or serious injury following police contact. The effect of this is that the independent body looks both reactive and powerless to respond to matters which the public expects it to deal with.

## II. What goes on elsewhere?

### Complaints against the police in other countries

*In practice, liberal democratic governments often starve police oversight bodies of resources and restrict their powers.*

Prof Colleen Lewis  
Monash University<sup>20</sup>

Systems for dealing with complaints against the police are constantly evolving elsewhere although the themes remain constant – to what degree is there independent investigation or oversight, what kind of agency, if any, is set up to carry out that role, and what are the limitations on its scope, powers and resources? Systems elsewhere include “internal affairs” departments, paper-based reviews by civilians of police investigations (the old PCA model) as well as agencies with powers both to conduct their own investigations and to review or supervise a police investigation.

It is not possible in the time available to carry out a full review of police complaints systems in other countries, and this chapter therefore provides an overview, with detail of some systems from which the current system in England and Wales could usefully benefit.

I refer in this section to countries or jurisdictions where the systems of policing are broadly comparable to England and Wales, although vast differences still exist including organizational structures and accountability mechanisms.

#### Europe

Although European bodies such as the Council of Europe, the European Commissioner for Human Rights and the European Court of Human Rights have produced, respectively, a Code of Police Ethics, guidance to member states on principles for effective complaints handling, and ongoing jurisprudence, there is no common approach to dealing with police complaints among member states. The different systems have varying degrees of independent oversight, and more complex differences where Article 2 (right to life) of the European Convention on Human Rights is engaged, with the involvement of such entities as public prosecutors or other government departments or agencies.

No sizeable jurisdiction within Europe has an entirely independent system for investigating complaints against the police although many have oversight bodies with investigative responsibilities. Norway, for example, has an independent body that investigates and prosecutes criminal allegations against police and prosecutors.

The police complaints systems in the United Kingdom (in particular, the Police Ombudsman for Northern Ireland) and more recently, Scotland and the Republic of Ireland, have a relatively high degree of investigative independence compared with other member states. Indeed, the Police Ombudsman for Northern Ireland receives and assesses all complaints against the police, and investigates all those requiring formal investigation.

### **North America**

In the US, police are, in general, accountable to a city mayor or regional body, and as a result oversight systems, where they exist, will vary between cities and states.

Many cities have some form of civilian oversight board with variable powers, resources and expertise. Denver, for example, set up the Office of the Independent Monitor in 2005, to oversee investigations into “use of force incidents” by the Denver Police Department. Its functions include:

- Monitoring investigations, and making recommendations on findings and discipline
- Publicly reporting on patterns of complaints, findings, and discipline;
- Issuing recommendations for improving policy, practices, and training;
- Promoting alternative and innovative means for resolving complaints, such as mediation.

In relation to this last function, Denver reportedly has one of the highest mediation rates of any municipality in the country. The Independent Monitor set up a police-community complaint mediation programme in 2005, in which Denver Police Internal Affairs Bureau initially screens complaints with input from the Independent Monitor, who must agree, along with the complainant and the officer, if the case can be diverted to mediation. A recent survey has found that satisfaction levels of those who engaged in mediation are notably higher than for traditional complaint investigation for both complainants and police officers.<sup>21</sup>

Mediation is actively practiced in other major US cities, including New York, Washington and San Francisco.

In Vancouver, the Office of the Police Complaint Commissioner (OPCC) provides civilian oversight of complaints. Registered complaints are reviewed by the OPCC, which screens out, among other things, those that are frivolous, vexatious or filed outside a one-year time limit. Complaints are categorized as either “public trust” complaints about conduct or “service and policy” – the former can be dealt with through informal resolution, mediation, or formal investigation. While the OPCC has no powers of independent investigation, it has a role in each of these including directing investigative steps, and reviewing every investigation and decision. If the Commissioner disagrees with an investigation decision, it can appoint a retired judge to review the final report or the full file and come to a fresh decision, or to act as adjudicator in a public disciplinary hearing.

Alternative dispute resolution is actively promoted on the OPCC website. The OPCC has reported:

*Our experience has shown that there are a large number of complaints that are better suited to informal resolution or mediation than undergoing an extensive investigation and having a third party deliver a decision. By directly participating in the solution to the dispute, the majority of complainants and members come away from the process with a more meaningful and positive level of satisfaction.*

Ontario has, since 2009, had the Office of the Independent Police Review Director (OIPRD), which records and classifies all public complaints. It is however possible for minor complaints to be “locally resolved” without being recorded as public complaints – in such cases the complainant makes their complaint directly to the police, who have 30 days to resolve it. Complainants must be told about the OIPRD and agree to the complaint being locally resolved.

The OIPRD reviews all complaints to determine if they are about policy, service or conduct. It promotes both resolution and mediation – a voluntary process but one that can be actively facilitated by the OIPRD – and has trained both its own staff and police officers in mediation techniques. According to its most recent annual report, of 3,316 complaints filed, 1,703 were screened out (for reasons including that they are frivolous, vexatious, late, not in the public interest, or that it lacks jurisdiction.) Of those screened in, 119 were retained by the OIPRD itself for investigation, while 206 were informally resolved either during or after investigation. The majority of complaints requiring investigation are investigated by the police themselves, with oversight by the OIPRD.

## **Australasia**

Policing in Australia is mostly state-based, and Australian states have among the most powerful police oversight bodies in the world, predominantly as part of a wider public sector anti-corruption remit. Independent oversight of police in Australia has its origins in a number of major corruption scandals subject to public inquiry – most notably, the Fitzgerald Inquiry in Queensland, the report of which was published in 1989. This laid bare a vast web of police and political corruption, and resulted in a new and powerful Criminal Justice Commission (now the Crime and Misconduct Commission) with powers that allowed it, in effect, to operate as a standing Royal Commission.

Most Australian states have at least one external agency (and in many states, two) with the power to investigate, although resources, powers and scope vary between states. Development has been characterized by a shift from reactive review bodies to Commissions with powers to investigate independently, including powers to summon witnesses and give evidence on oath, seize evidence, and initiate “own motion” investigations, which allow them to act without receiving a complaint.

In all of these systems the vast majority of complaints are still dealt with by the police themselves. They recognise customer service complaints, and most have a form of triage for complaint handling, which separates service or minor complaints from serious misconduct. The Criminal Justice Commission in Queensland was, when first created, responsible for receiving, screening and investigating all complaints, although more recently this work has been devolved back to the police for all but the most serious cases.

In another example, while Victoria has a newly established anti-corruption commission with remit over the police, complaints against the Victoria Police are overseen by the police’s own Ethical Standards Department. The police themselves aim to divert suitable complaints to an alternative dispute resolution system, while the Ethical Standards Department limits its involvement to investigating allegations of misconduct warranting dismissal such as criminal or corrupt conduct.

In most Australian states deaths following police contact are also investigated by the police themselves, on behalf of State Coroners, subject to varying degrees of review or oversight by independent bodies.

Australian anti-corruption agencies also have a remit over prevention and education. In Queensland, a Criminal Justice Commission research report in 1995 into ethical conduct and discipline in the Queensland Police led to a

service-wide ethics education programme, followed by the establishment of a new Ethical Standards Command. This was not only good for police/ community relations, it also meant that the independent oversight body was not simply dealing with negative stories about misconduct.

In New Zealand, the Independent Police Conduct Authority receives complaints and carries out independent investigations into the most serious incidents, usually those involving death or serious injury. It also “directs or oversees” police investigations. The majority of complaints are referred to the police for investigation or resolution under the Authority’s oversight. The Authority itself has the powers to summon witnesses and gather evidence but does not have police powers – criminal investigations are carried out by the police, who also have the power to bring charges.

The Authority receives all complaints and categorizes them according to five levels of seriousness, ranging from independent investigation to no further action. For the year to June 2013, the Authority reported that 117 complaints were “category 1”, i.e. independently investigated, out of a total of 1,997 complaints received<sup>22</sup>.

## **Complaints against other public services**

Ombudsmen worldwide have developed numerous guides for good complaint handling. For example, the Commonwealth Ombudsman of Australia *Better Practice Guide to Complaint Handling* describes five elements of effective complaint handling:

- *Culture*. Agencies must value complaints as a means of strengthening their administration and improving their relations with the public;
- *Principles*. An effective complaint handling system must be modelled on the principles of fairness, accessibility, responsiveness, efficiency and integration;
- *People*. Complaint handling staff must be skilled and professional;
- *Process*. The seven stages of complaint handling—acknowledgment, assessment, planning, investigation, response, review, and consideration of systemic issues— should be clearly outlined;
- *Analysis*. Information about complaints should be examined as part of a continuous process of organisational review and improvement.

The Guide notes that:

*A strong complaint handling system is built on all five elements. A good system managed by skilled staff will be less effective if an agency's culture is antagonistic towards complainants. A defective system can hamper the work of a committed agency with skilled staff. Staff who lack the skill and commitment to handle complaints properly can undermine a system that is otherwise ideal.*

These principles are equally relevant to the handling of police complaints, either by the police or an oversight agency. Other professions, including those in the public sector such as doctors, nurses and teachers, also operate complaints handling systems. The following gives some examples.

### **Healthcare Professionals**

The General Medical Council (GMC) is the independent regulator for doctors in the UK. Its ultimate powers are to prevent a doctor from practising medicine. The GMC only investigates complaints that raise questions about a doctor's fitness to practice; other complaints are concluded or referred back to the doctor's employers for local handling. As the GMC says on its website:

*Local procedures are often better placed to provide the explanation, reassurance or apology that a patient may require. Employers are also in a better position to assess whether there are any wider problems that may need to be addressed.*

When the complaint is investigated by the GMC, two GMC case examiners – one medical and one non-medical – will consider the investigation to determine the outcome, which could be a referral to a Fitness to Practice hearing. Fitness to Practice Panels meet in public, except when considering evidence about a doctor's health.

The Nursing and Midwifery Council operates along similar lines to the GMC, investigating and holding hearings into the most serious cases involving fitness to practice. Conduct and competence cases are usually heard in public, and health cases in private.

Complaints more generally are dealt with by local National Health Service employers in accordance with NHS complaints guidelines, which encourage local resolution.



## The Parliamentary and Health Service Ombudsman

The Parliamentary and Health Service Ombudsman deals with complaints against the NHS, when people remain dissatisfied with the NHS response to their complaint. It has published several reports on complaints handling within the NHS, most recently following a workshop in 2013 to understand the strengths and weaknesses of the current system, and to develop a model of good complaints handling. Two of the themes described in that report have particular resonance for police complaints:

- Cultural barriers – the need to shift from a defensive response “*towards a new culture of continuous improvement... where feedback is sought and welcomed*”<sup>23</sup>
- A focus on putting things right immediately, which would reduce the need for formal complaints

NHS complaints departments were criticised for being process-driven, not taking the time to find out precisely what the complainant was seeking to achieve in making a complaint.

The PHSO itself deals with around 10% of formal complaints about the NHS, which come to it after dissatisfaction with the NHS response. Its report for the first quarter of 2013/14 illustrates that it “resolved” 4,400 enquiries, of which it took a “close look” at 1,600, and took on 450 for investigation. Outcomes include working with organisations to apologise, pay compensation, or learn lessons.

The PHSO has recently sought new powers to launch an investigation on its own initiative on public interest grounds in the absence of a complaint – similar to the “own motion” powers of many Australian integrity agencies.<sup>24</sup>

## Teachers

A similar system of registration to that of healthcare professionals operated in England until 2012, when the General Teaching Council was abolished. It was noted at the time that in its nine years of existence, only 78 teachers out of a teaching workforce of 450,000 had appeared before a disciplinary panel, of whom 13 had been struck off.<sup>25</sup> Currently, the governing body of a school is required to have a complaints procedure in place, and complaints against teachers will in the first instance usually be dealt with by the head teacher. Statutory guidance from the Department of Education provides for complaints to be recorded, and regularly reviewed by the school’s governing body. Usual procedure provides for any hearings to be in private.

Scotland still has a General Teaching Council, which operates along similar lines to the GMC, investigating complaints that affect a teacher's fitness to teach. Complaints are considered by an Investigating Panel, the majority of whom are teachers, which can refer the matter to a Fitness to Teach Panel. Hearings are held in private.

## **Observations**

There is no single "model" of complaints handling in other countries or other professions that could simply be adopted in England and Wales. It is beyond the reach of this paper to analyse the different models against their public confidence ratings – to the extent that such ratings even exist. But there are aspects of many systems that are well worth considering.

In particular, many complaints systems in other countries and other professions single out complaints that raise real "fitness to practice" issues from lesser misconduct, performance, or quality of service issues. There is no jurisdiction of significant size where the independent body investigates all complaints against the police. But it is striking that in many of the more recently reformed systems, the independent body receives all complaints and carries out some form of triage before less serious cases are referred back to the agency involved – though it is also true that the volume of complaints is significantly lower than the 30,000+ generated in England and Wales each year.

I have not identified any jurisdiction with an independent oversight body that prohibits or limits the employment of former police officers, nor any in which former police officers do not make up at least a significant percentage of its investigators.

Many complaint systems, involving both police elsewhere and other public services, have a focus on informal, timely methods of addressing grievances, in contrast to complaints in which "fitness to practice" is in issue. The increasing focus on forms of alternative dispute resolution – both in police and non-police complaints systems – is a noticeable characteristic. While this can be resource-intensive, it not only saves money elsewhere within the system by closing complaints down at an early stage through resolution, but also appears to have a real effect on public confidence.

### **III. Towards a more effective police complaints system.... a new framework**

*Your most unhappy customers are your greatest source of learning.*

*Bill Gates*

An effective police complaints system needs to be simple, accessible, and fundamentally fair. It needs to operate within a culture that is not defensive about complaints, but recognizes them as valuable feedback. It must be capable of distinguishing (and dealing with) serious misconduct from the vast number of complaints that deal with quality of service, minor misconduct or poor performance. It should assume that nearly all complaints are made in good faith and seek to address the root cause of public dissatisfaction. But it should recognize that a small minority of complaints are vexatious or malicious and can take up an inordinate amount of time, and be capable of dealing with those robustly.

While individual characteristics of the current police complaints system do some of those things, the system itself does not do so in a coherent, or a fundamentally effective, way. This is inherently damaging to public confidence, not only in the system itself, but in the IPCC – which has the impossible statutory task of securing public confidence in a system over which it has little effective control.

What is needed, therefore, is fundamental change – a new legislative framework setting out a system that people can understand, and in which both the public and the police can have confidence. The framework needs to define the roles of all those involved in dealing with complaints - the police, the IPCC, and others – such as PCCs, who hold the police to account locally. The framework must be accompanied by a commitment to adequately empower and resource all those charged with responsibilities. The IPCC itself must be able not only to deal with those cases that need to be investigated independently. If it is to continue to carry statutory responsibility for public confidence in the system overall – and who, if not the IPCC, could do this? - it must be able to carry out meaningful oversight, research, education and prevention.

Fundamental change of this nature will not only affect the police complaints system, but other parts of the system that intersect with complaints – the

police misconduct system, and the investigation of non-complaint matters, for example alleged misconduct or corruption. The following sets out some of the key issues, options and recommendations, for a more effective system. It does not, and could not, answer all the questions that will inevitably be raised, each of which will require further consideration, but is intended to provoke debate and discussion – and fresh thinking about a crucial area in which reforms have never, yet, gone the distance.

*The importance of independence - how can it operate at a local level?*

In the most trusted police complaints systems elsewhere, all complaints in the first instance go to an independent body – even though this contradicts the normal principles of complaints handling, that bodies need to own and learn from their own complaints. There are notably greater confidence levels in systems when the independent oversight body receives and assesses all complaints, and reviews all cases where a complainant is dissatisfied with the police response, particularly when it has the power to direct a different outcome.

But this would be impractical in England and Wales, both in terms of size and in relation to local accountability. A system that works for up to 3,000 complaints a year will struggle to accommodate ten times that number – and the true number of complaints, if all “direction and control” and “service” complaints were recorded, would very likely be far higher than the present one.

It is therefore important to consider what role local policing bodies – now usually Police and Crime Commissioners, and previously Police Authorities – might have in dealing with complaints, to ensure that independence extends to all parts of the system. A local independent oversight body, whatever mechanism is in place, could, for example, triage all complaints and deal with appeals.

*What level of complaints should the IPCC investigate?*

All complaints are serious to those who make them, but very few complaints about the police actually raise serious concerns about an individual’s fitness to be a police officer. Yet the vast majority of complaint cases are processed as if this question was the only one in issue – to the almost inevitable dissatisfaction of the complainant who is eventually told their complaint is not upheld, and the officer whose conduct may have been lengthily investigated.

There is therefore a strong argument for separating “fitness to do the job” complaints – in current police language, only those raising either gross

misconduct or gross incompetence – from lesser misconduct, performance, or quality of service issues. While other complaints could be dealt with locally, the system must also be able to identify patterns of conduct that could lead to gross misconduct.

In an ideal world, all complaints that call into question a police officer or staff member's fitness to do the job should be investigated by a wholly independent body, with determinations by another equally independent tribunal. The reality will depend on the resources available to the IPCC, bearing in mind the likely volume of such cases – which will be difficult to estimate – and the fact that the IPCC has other investigative commitments, which are not explored here, in relation to deaths and other serious matters such as alleged corruption, which do not originate in complaints. If there are not sufficient resources for the IPCC both to screen and investigate all of these complaints, some form of oversight of a police investigation will be necessary in those cases that are not independently investigated. In this case I recommend a single mode of investigation – neither managed nor supervised, but with some characteristics of both – akin to a form of intrusive supervision – see further below.

*If most complaints continue not to be investigated by the IPCC, how can the police be trusted to deal with them?*

There are important systemic reasons why the police should continue to deal with the majority of complaints themselves, particularly those that do not raise “fitness to do the job” issues. Complaints should be a key driver of better performance, responding positively to feedback and thereby learning from mistakes. It is therefore crucial that complaints handling becomes embedded in front-line policing, not something to be farmed out to another body, and that it fosters better relationships with the communities the police serve.

But if the police are to go on dealing with the significant majority of complaints, they must fundamentally change the way they deal with them. A significant percentage of complaints could and should, with the right approach, be resolved without lengthy and unproductive formal investigation, and in a way that delivers greater public confidence. At the moment they are not. Although pockets of good practice exist, the fact that local resolution has substantially failed to deliver results, either for the public or police officers, demonstrates how much work is still needed. Systems elsewhere highlight that serious investment is needed, in mindset, motivation, and potentially, resources – although training or using good mediators should in principle reduce the need for investigating officers.

Some complaints will still require investigation, and it is a key principle of resolution that it cannot be imposed on unwilling participants. But as noted

earlier, an investigation is not an outcome, and a significant percentage of “investigated” complaints – with their inevitable focus on evidential substantiation – miss the key point that in most cases it is behaviour, rather than misconduct which is the root cause of the grievance. The system therefore needs to shift its focus from ‘conduct’ – unless that is in fact the issue. A simple, straightforward appeal system, as long as it is to an independent body, should provide the necessary checks and balances if the police fail to get it right.

It is also worth considering if there is a role for the IPCC in resolving complaints. Sometimes the IPCC, in assessing a referral, can see that a complaint could be resolved with a suitable apology, or some other form of action other than a formal investigation. If alternative dispute resolution is to be promoted, there may be a role for the IPCC both in recommending it and helping to bring it about.

These questions will be considered further in the context of the different stages of complaint handling, set out below.

## Principles for a new framework

- A system that distinguishes between complaints that raise questions about a police officer/ police staff member's fitness to do their job, and everything else - the former to be investigated or overseen by the IPCC (in either case with the ability to determine whether there is a case to answer);
- Complaints that do not raise questions about fitness to do the job to be dealt with by the police themselves, using resolution rather than investigation wherever appropriate;
- An appeal to an independent body – either the IPCC or a local accountability body – in the event that a complainant is dissatisfied with the police response;
- A police service that can demonstrate that it is able to deal effectively with complaints at a local level, and to resolve the vast majority of complaints to a complainant's satisfaction;
- A system that captures data from all complaints dealt with locally, and an IPCC research/ intelligence function that allows it to mine the data to identify local themes and issues upon which to exercise an enhanced call-in power.

## **1. Recording of complaints**

There are numerous reasons why complaints need to be recorded – not least the importance of capturing data identifying trends, and publishing statistics. Whether they are about conduct, quality of service, or the “direction and control” of the police, they all express a grievance with the police that needs to be captured.

*Who should receive and record complaints?*

At present, only the police can record complaints, with an appeal to the IPCC available if they fail to do so. Given the volume, and the fact that many complaints are in any event made directly to the police, it is not likely to be feasible for all complaints to be recorded by the IPCC. The main options for a new system are:

1. Police continue to record; IPCC (and other parties who may receive complaints) refer any direct complaints to them, with an appeal for a failure to record (as at present);
2. Police continue to record, but IPCC can direct a police force to record a complaint. This could be exercised at any stage – either on receipt of a direct complaint or following a police force’s refusal or failure to record.

Option 2 has the advantage of reducing the bureaucracy associated with sending complaints to the police, waiting for a recording decision, and requiring an appeal to be filed on what is, in practice, a very narrow point.

Consideration should also be given to whether there should be an exclusion for complaints that are repetitious, vexatious, or otherwise made in bad faith at the recording or the assessment stage.

## **2. Classification and assessment of complaints**

Some form of triage is necessary to determine which route a complaint should follow after recording. The simplest initial assessment would be to classify complaints into two categories by asking the following question:

- *Is the complaint about conduct serious enough to justify dismissal? (i.e. fitness to be a police officer)*



If it is, it should be referred to the IPCC, where it will be assessed, and either investigated, referred back or closed. If not, it should be retained by the police – see further on this below. The key question will be: who carries out this initial assessment?

Options:

1. The complainant's view determines the referral
2. The force's view determines the referral
3. All complaints are referred to and triaged locally by the local policing body (at present usually the PCC).

The advantage of option 1 is that it puts the complainant firmly at the heart of the process. The main disadvantages are that it could create or foster unrealistic expectations about outcomes and potentially, a significant amount of additional work for the IPCC in assessing the referral.

The potential for further work is difficult to estimate - although research shows that most people, when asked, will want their complaint independently investigated, that is not the question being asked here. IPCC research<sup>26</sup> also shows that many complainants are not looking for a disciplinary outcome. In practice, complainants with unrealistic expectations end up complaining to (and about) the IPCC anyway, and early review/ assessment by the IPCC could well reduce further work later in the process. Although the initial referral is determined by the complainant's view, the IPCC's subsequent assessment would amount to an independent triage of all referred complaints.

Option 2 carries the significant disadvantage of a complaint appearing to be compromised by the police view from the outset. I do not recommend it.

Option 3 would create a new role for the local policing body, who in carrying responsibility for local policing, should be in a position to assess the public interest implications of local complaints. While there is the obvious risk of inconsistency in different force areas' referrals to the IPCC, it has the advantage of reflecting a local view in relation to public confidence in policing.

**My own view is that, while Option 3 should be explored as part of a wider role for local policing bodies in the handling of complaints, the complainant should determine the initial route their complaint should take.** Classifying their own complaint would greatly increase the likelihood of eventual satisfaction for the significant majority of complaints that neither involve serious misconduct nor are regarded by the complainant as doing so. While this will, inevitably, result in a number of complaints being referred for investigation that do not justify it, the IPCC would be in a position to assess all

such complaints, and should have the power to close them without investigation or refer them back as appropriate.

### **3. Route A: Local handling**

If the complaint does not call into question an officer's fitness to be a police officer, it should be dealt with at a local level. **I believe that there should be no distinction between complaints about service, complaints about lesser misconduct and complaints about performance short of gross incompetence.**

Whether such a complaint is resolved using dispute resolution techniques or subject to a form of investigation to establish the facts would be at the force's discretion. It would also be essential for forces to have systems in place to track patterns of complaints/ behaviour, to ensure that a pattern of seemingly minor complaints does not mask a greater problem. It is clear that this is not the case at present. This information would also need to be available to and monitored by the IPCC, as part of the intelligence supporting a call-in function.

If this approach is to be successful, forces will need to build a culture of valuing complaints, which cannot be achieved by legislation. It will take leadership, significant investment in alternative dispute resolution, and other measures to strengthen the link between improved complaint handling and greater public confidence. But it should also be the case that where complaints are not treated as being about misconduct, there is a greater likelihood of police officers being willing to engage with the cause of the grievance, rather than provoking a defensive response - to the mutual benefit of the complainant and the police.

There is also much to be learned from programmes both overseas and in other professions, supporting mediation and other forms of alternative dispute resolution. It will require serious investment in training, or the use of outside agencies - specialists skilled in restorative justice/ mediation/ customer service techniques could make a profound difference to how the majority of public complaints are treated, and therefore to public confidence. As suggested earlier, it is also worth exploring whether there is a role for the IPCC in promoting local resolution in appropriate cases.

#### *Outcomes for local complaints*

In relation to conduct, **I believe that there should be a single outcome for any case not serious enough to go to a misconduct hearing – local management action.** Whether this involves training, a verbal or written

warning, a performance improvement plan or some other measure should be a matter for the officer's management.

Where conduct is not an issue, an outcome could be:

- An apology
- A change in policy/ practice to ensure mistakes are not repeated
- An explanation of the law/ police procedure/ why the complainant's expectations of the police are not realistic
- For upheld complaints where loss has been suffered, **the system should allow for the payment of modest compensation without the need to launch civil proceedings**

### *Right of appeal*

**I believe that the system should provide for a single right of appeal.**

An appeal should be any expression of dissatisfaction with the police handling of a complaint – whether that is a decision not to record, the way a complaint is dealt with at a local level, or its outcome. Appeal rates within forces would therefore be a single measure of public dissatisfaction. **They should be regularly published**, so they can be subject to scrutiny by the public, as well as the PCC who should use such statistics to hold the local police to account.

In my view it is essential that appeals be made to an independent entity. While it is right that the IPCC should not need to deal with all appeals, the current system whereby lower-level appeals are made to the Chief Constable is not, for practical purposes, an appeal at all, but a review mechanism with no independent element. Whether appeals are made to the IPCC or to a local policing body will depend on the role ultimately taken by the latter in complaints handling, but it is an option worth exploring. The IPCC's original proposals when Police and Crime Commissioners were established, that they be tasked with dealing with lower-level appeals, should be reconsidered.

### *IPCC Oversight – the importance of research, education and prevention*

One of the crucial checks and balances over a system in which most complaints will still be dealt with by the police themselves is the ability for the IPCC both to capture, and to mine, complaints data, linked to the ability to carry out investigations of its own volition into worrying themes and trends.

This should, for example, expose patterns of complaints that do not in themselves reach a referral threshold, for example, a number of allegations of discrimination, or of inappropriate use of force, which may expose either individual or systemic failings. Both the analytical capacity and the call-in

power would be necessary to ensure that such complaints do not stay below the radar, and that the IPCC is able to reach into all aspects of a system for which it carries responsibility.

Whether or not it deals with appeals, the IPCC should carry a national responsibility (alongside, and feeding into, the existing responsibilities of Her Majesty's Inspector of Constabulary and the College of Policing) for promoting learning arising from complaints, with a strong research and analytical capacity also drawing on complaints data.

The experience of the IPCC and police oversight bodies elsewhere is that operational imperatives take precedence – and research, education and prevention programmes are the first to be cut. Yet where they exist – and preferably are embedded in statute - they can save the system time and money, as well as deliver real improvements and raise public confidence. They also allow the oversight body to develop a relationship with the police that is not solely focused on complaints and misconduct. Resources need to be properly quarantined so that the oversight body can fulfill this function regardless of the operational needs of the organisation. Collecting and analysing complaints data remains a vital, and largely under-utilised, tool for organisational learning.

#### **4. *Route B: Serious misconduct investigations***

Complaints alleging serious misconduct should be referred to and screened by the IPCC, which should have the power to investigate, refer back, or close complaints that do not merit further work (e.g. those made in bad faith).

##### *IPCC investigations*

If the complaint is deemed to involve conduct serious enough to justify dismissal, (whether as gross misconduct or gross incompetence) it should be subject to a formal conduct investigation. Subject to adequate resourcing, these investigations should be carried out by the IPCC. Such investigations will need not only the powers available to the IPCC at present, but a duty on police officers and police staff to co-operate with an IPCC investigation.

While this is likely to be more relevant when the IPCC is investigating non-complaint matters, consideration should also be given to whether the IPCC needs further coercive powers in light of the continued unwillingness of some police officers compelled to attend as witnesses for interview to actually provide an account. Such coercive powers exist elsewhere – in most

Australian jurisdictions, for example, police officers can be compelled not only to attend for interview but to answer questions. The safeguard in place is that answers given under compulsion cannot be used for criminal or disciplinary purposes.

### *IPCC oversight*

If the IPCC is not in a position to carry out all such investigations itself, some should be carried out by police professional standards departments, with some form of IPCC oversight. **I believe there should be a single category of oversight that would essentially be a form of intrusive supervision.** There would be no right of appeal where the IPCC is involved in the investigation: the IPCC should be closely involved in setting terms of reference, directing lines of enquiry and if necessary, directing the matter to go to a hearing.

The key difference from the current supervised or managed investigation – in my view an essential ingredient if all investigations are not independent - is that the IPCC should have the power to form its own view of the evidence obtained by the police investigation and make findings about outcome.

### *Misconduct proceedings*

Regardless of whether the investigation was carried out by the IPCC or the police under supervision, the IPCC should have the power to direct that proceedings be brought for any consideration of dismissal (whether for gross misconduct or gross incompetence).

While it is beyond the reach of this paper to carry out an analysis of the weaknesses of the current police discipline system, which are considerable, in my view some key reforms are necessary if it is not to irreparably damage public confidence in the police complaints system, and hence the police more generally. Specifically, I believe that:

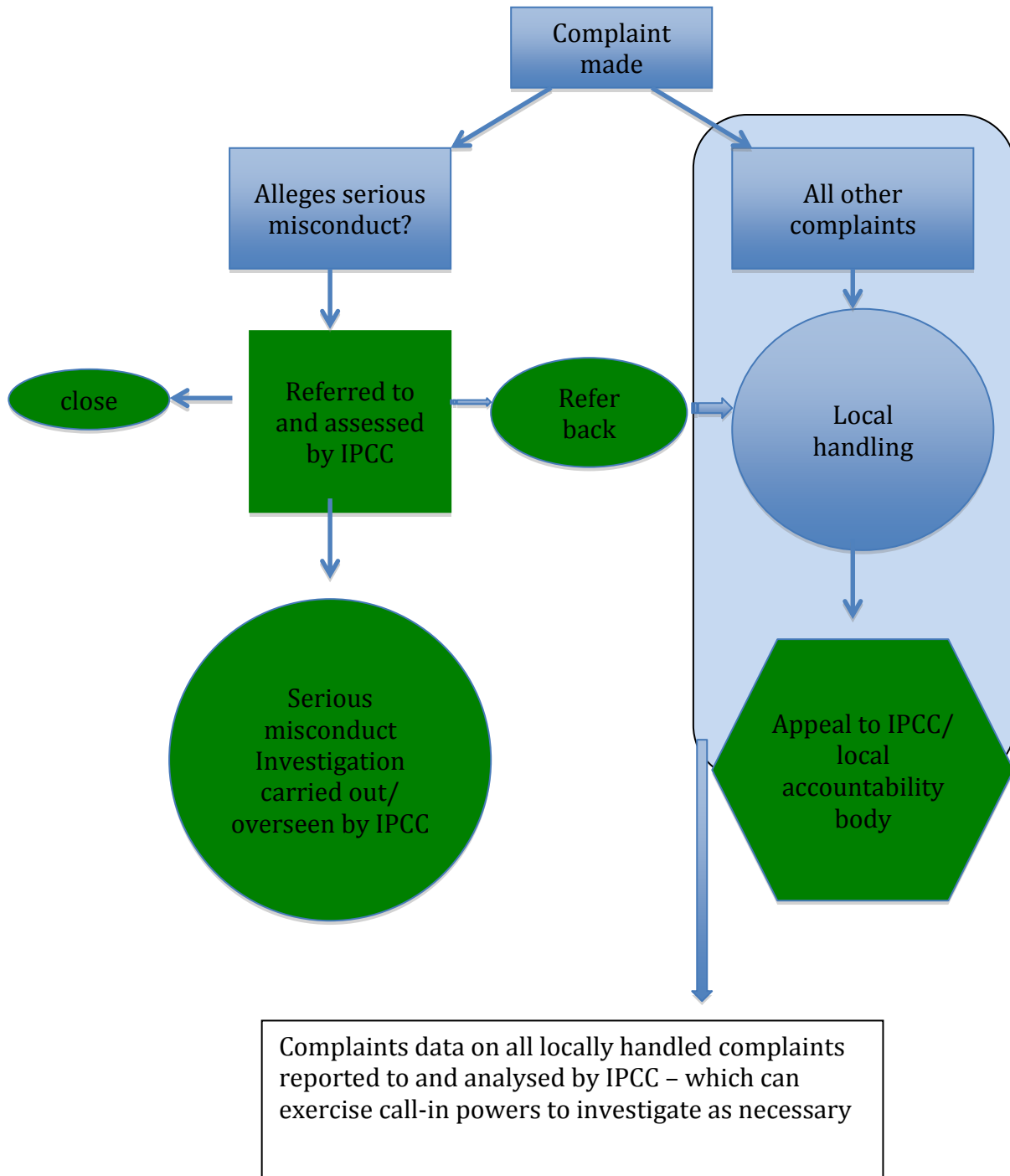
- Proceedings must be brought within a specified time frame after a decision;
- The IPCC should have the power to present the case if it wishes;
- Either the constitution of a tribunal should reflect a majority, rather than a minority, of non-police members in cases in which the IPCC is involved, or the IPCC should be given the power to appeal a disciplinary sanction; and
- The default position for hearings should be that they be held in public.

## **Other matters**

### *Non-complaint cases*

The IPCC should also have the power to launch an investigation into any matter raising serious concerns about the police. The “own motion” powers of Australian anti-corruption agencies – and currently being sought by the PHSO - would be a good model to follow.<sup>27</sup> This is a more significant power than the current “call-in” power, which requires a matter to be either a complaint or recordable conduct.

## Proposed New Framework



## Summary of recommendations for IPCC powers

Adopting these reforms will require, among other things, a complete replacement of Schedule 3 to the Police Reform Act 2002. As a minimum, the following powers would be needed:

At any stage:

- To direct that a complaint be recorded
- To investigate, refer back or close any complaint, whether or not referred

During investigation:

- In addition to existing investigative powers, to compel police witnesses to answer questions
- In supervising a police investigation, to set terms of reference and direct lines of enquiry

Following investigation (independent, supervised or local on appeal)

- To make findings about outcome
- To re-open any investigation if new evidence comes to light
- To present a case for gross misconduct
- To appeal a misconduct tribunal decision (if tribunal is a majority of police officers)

Other:

- To initiate an investigation into any matter involving the police if it is in the public interest to do so
- To promote learning and good practice arising from investigations and patterns of complaints.

### **Afterword**

*“It is a mistake to keep creating new bodies simply to monitor existing ones – a quest that can ultimately never be satisfied. Ultimately, accountability comes down to public transparency and the integration of integrity agencies as permanent features of the political system...”*



## **Acknowledgements**

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## **Terms of reference**

To be set in the context of the expansion and need for changes to the legal framework:

- To review the current police complaints system for England and Wales, including disciplinary processes and identify its strengths and weaknesses based on your experience as a member of the Police Complaints Authority and a Commissioner / Deputy Chair of the IPCC
- To consider models for the handling of complaints, conduct matters and death and serious injury cases in other jurisdictions and identify any best practice which might inform a new system for England and Wales
- To consider best practice models for the handling of complaints and misconduct matters in relation to other professions and identify learning and best practice which might inform a new system for England and Wales
- To consider best practice for complaints handling, which reflect a customer-focused approach and effective methods of providing early resolution
- To produce a report for the Commission containing a critique of the current system and making recommendations for a new system which is fit for purpose and more likely to secure public confidence. This report will in due course be published.

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- <sup>27</sup> See, for example: To conduct an investigation on [own motion] into the conduct of any member of the Victorian Police to ensure, among other things, that the highest ethical and professional standards are maintained in the Victorian Police and that corruption and serious misconduct are detected, investigated and prevented [from Police Integrity Act 2008 Victoria]