

Building public confidence in the police complaints system

This is a very apt time for this conference, and this speech.

Today, the Hillsborough inquests open. Over the next months, they will be exploring major concerns, not just about how and why 96 people died, but about the alleged cover-up that followed those deaths. Those inquests are supported by the largest criminal investigations ever carried out in England and Wales – an IPCC independent investigation into the alleged cover-up, and a separate police-led investigation into the cause of deaths, where the IPCC is managing the part that relates to the actions of the police.

Tomorrow will see the start of a new financial year, in which the IPCC's core revenue budget will be increased by over 50% to allow us to start the process of expansion and change that will allow us to deal independently with serious and sensitive cases and exercise better oversight of the whole complaints system.

So, it is a good time to reflect on public confidence in policing, and the police complaints system, and the role of the IPCC in building and sustaining that confidence. We give our police considerable coercive powers, including the power at times to use lethal force, but within a tradition of policing by consent. A robust complaints system, with an independent element, is a crucial part of the public accountability of the police for the way they use those powers, and it is also important that its outcomes feed into policing as a whole.

Hillsborough is, of course, only one of the highly publicised cases that have raised serious questions about police integrity. The Ellison inquiry, now extended, has spread beyond allegations of corrupt links to the failed Stephen Lawrence murder investigation, to allegations of corruption and potential

miscarriages of justice in many other cases involving undercover officers. These are, of course, historic cases that cast a long shadow. But more recently, Plebgate rumbles on, with one officer convicted of fabricating evidence and others dismissed. Weekly – sometimes it seems almost daily – there are press reports of disciplinary hearings following IPCC and internal police investigations into issues such as deaths and serious injuries, the use of Taser, corrupt or even criminal activities and allegations of race discrimination.

I have two reflections on this. First, we need to be very cautious indeed about drawing conclusions about policing as a whole from either historic or current cases. I am old enough to remember policing in the 1970s and 1980s – both at community level in south London, and in relation to the miscarriages of justice we investigated at JUSTICE, often fuelled by so-called ‘noble cause’ corruption. I have no doubt that our current police service is more professional, with more safeguards and less corruption, than a generation ago.

Indeed, we need to bear in mind that the focus on integrity, and the creation of more bodies, both independent and internal, to promote, investigate and monitor it, can create the impression that the police service is getting worse, when in fact some endemic and individual issues are being exposed and dealt with. As an example, in 2012 the IPCC and ACPO jointly produced a report on the abuse of police powers by sexual exploitation – often of vulnerable women. Though rare, when it happens it is corrosive of trust in the police. The report pointed out that this was something which had often been allowed to escalate because obvious signals had been ignored, or because the nature of the victims had meant that they were not believed. Since then, a significant number of the corruption investigations that the IPCC is supervising are into alleged sexual exploitation. I do not believe that this is because it has

suddenly become more prevalent – it is because, rightly, it is being challenged and dealt with.

So we need to be careful that problems of success – robust investigations and a determination to root out unprofessional or even abusive behaviour – do not turn into perceived failures.

But my second point is more critical. I do not think that the current complaints system, or the way in which many complaints are handled, is designed to enhance public confidence. First, it is a very complex and bureaucratic system, which is hard to operate and even harder to access and understand. My first few months at the IPCC were spent drafting new statutory guidance to police forces operating the complaints system. Naively, I asked the drafters to produce a flow-chart of the system – a simple visual representation of how it worked. What came back would have covered six pages and looked like the wiring diagram for the Starship Enterprise. Moreover, it is a system which is overly focused on individual blame, rather than resolution. Sometimes, blame is necessary and right – but very often, a complainant needs either to understand what happened, or to receive an apology for poor service.

Partly, but not solely, because of that, the approach to complaints handling within the police service is too often a defensive one. In a commercial organisation, complaints are gold dust – they tell you what your customers think about you, even when that is perception, rather than reality. In any organisation, they are also the canary in the mine – they tell you what is starting to go wrong, or may be, before that develops into a full-scale scandal or crisis. They allow you to take preventive and advisory action – whether in

relation to systemic issues, such as perverse targets or under-resource, or to issues of individual or collective behaviour or approach.

But when we examine police complaints handling, that is too often not the case. It is worrying, for example, that we are currently upholding nearly half the appeals that come to us from complainants dissatisfied with how the police have investigated their complaint locally. We need to do more work to analyse this, to identify the issues and themes that lie behind that raw statistic. When we have been able to dig more deeply by random sampling, we have found that, particularly when complaint handling is delegated to local command units, there is a lack of understanding of the system, combined with a defensive and over-legalistic approach – which in fact is liable to make legitimate complainants even less confident about policing than they were.

For example, if an officer disputes a complainant's account, unless a complainant has 'evidence' (for example, mobile phone or CCTV footage) they are likely to be told that their complaint is 'not upheld'. Complainants, understandably, think that they are being accused of lying, when what they want may be an explanation, a discussion of what actually did happen, or an apology. This is particularly problematic in relation to complaints of discrimination, as our recent review of MPS race discrimination complaints has shown – and this seriously affects relationships with communities already disinclined to trust the police. There is in general far too little use of mediation and local resolution, at the very front end, through direct engagement with the complainant. But where that is done well, it reinforces public confidence in the accountability and the integrity of the service.

We have for a long time argued that the complaints system needs a radical overhaul, rather than the regular tinkering it has had over recent years, to

simplify it and bring it in line with modern best practice in complaints handling. Many Police and Crime Commissioners, as well as police professional standards departments, agree. I commend to you a personal review done by Deborah Glass, our recently retired Deputy Chair, which we published last Friday and which argues eloquently for this.

I am afraid that we too often encounter a similar defensive reaction – a circling of the wagons – when we are investigating more serious allegations. Last year, we acquired the power to require police officers who had witnessed an incident to attend for interview. That was because of our frustration that, even when something as serious as a death had occurred, in many cases police officer witnesses refused to be interviewed, and instead provided prepared statements, or offered written answers to written questions. At best, this hugely delayed our investigations – and time is of the essence, both for complainants and bereaved families, and for police under investigation. At worst, it stops us getting to the truth. Famously, after the Mark Duggan shooting, it took almost a year, in a process of backwards and forwards written questions and answers, before we got all the police evidence we could, none of it obtained in face to face questioning where we could actually probe the answers.

So, Parliament agreed to give us the power to require attendance at interview. As soon as we began to implement it, the Police Federation advised its members that they did not need to answer questions when interviewed as witnesses in IPCC investigations, but could continue to rely on written statements. In October 2013, the Metropolitan Police Federation issued a circular to members, which advises officers to take this approach, providing a written statement and responding to any further queries with further written

statements. It stated in terms: 'Questions should not be answered and officers should politely decline to be video or audio recorded'. This means that, in spite of a change in the law, nothing has changed in practice. In effect, it undermines not only our independent investigations, but the intent and effect of the legislation passed by Parliament.

I suggest that, given the current state of public confidence in the police – some of it as I have said unjustified – it is at best unhelpful and at worst positively self-destructive for elements in the police service to be, and to be perceived to be, obstructive and unwilling to take part in the processes of accountability and transparency that Parliament has set out and we are trying to operate. We operate policing by consent – we also need consent to proper processes of accountability.

There are other aspects in relation to our investigations that we are seeking to change. We have just sent out for consultation draft statutory guidance on post-incident procedures, including measures designed to prevent police officers conferring before they provide initial accounts of what happened. This is an issue that has caused concern in many recent inquests, notably that into the death of Mark Duggan. The general public cannot understand why police officers are allowed to confer with one another before providing any proper account of what they saw and did – leaving aside the possibility of collusion, there is also the possibility of individuals' own recollections being affected by a communal view.

There are practical issues about how and when you separate officers, especially when incidents occur in public places and there are a large number of officers involved, but I am clear that we cannot stay where we are – where

police evidence, however accurate and honest it is, is distrusted and taken apart at inquest after inquest, and by commentator after commentator.

For the avoidance of any doubt, let me make clear that we are not 'out to get scalps' as one senior police officer has claimed. We are out to get at the truth – and we will be of no use to the police service if the public perceive that we either don't or can't, for they will not then believe us when we exonerate police officers, or even commend their actions.

I have said something about the complaints and investigation system that we oversee and work within. Let me now go on to say something about the IPCC – its past and its future.

One of the major problems for the IPCC is that of expectation versus reality. The name itself is confusing – we are not the police, and we don't deal directly with complaints. That is not what the statutory structure provides. The great majority of the 32,000 or so complaints against the police every year will be dealt with, quite rightly, by the forces themselves. That is why it is vitally important that professional standards departments are themselves properly resourced and valued. The IPCC comes into play only in two circumstances.

The first is if a complaint, or an issue about potential misconduct, is serious enough to be directly referred to us. That includes any death or serious injury, and any allegation of serious corruption, serious assault, serious sexual offence, aggravated discrimination. This year, we are expecting to receive around 3,500 referrals, which is a significant rise from the 2,300 or so we were receiving only around a year ago. Of those, we currently only have resources to investigate around 130 ourselves. In addition, we supervise a further 260 investigations, and manage around 37 investigations. The remainder are

returned to force, either for no further action or for the force to investigate itself.

The second route to the IPCC is through an appeal. If a complainant is dissatisfied with the outcome of a local investigation, and if the outcome of that investigation could have been either misconduct or criminality, then they can appeal to us. But, since 2012, other appeals on lesser matters are now heard within the force itself – which is in truth not an appeal but an internal review. We argued, and continue to argue, that those appeals that do not come to us should go to another independent body, such as the Police and Crime Commissioner. We have been dealing with around 6,000 appeals a year, though this is now decreasing, as not all appeals now come to us..

The mismatch between expectation and reality has always been a problem for the IPCC and is exacerbated by the limited resources that have been available to us – fewer, as I have said on other occasions, than the MPS' Directorate of Professional Standards. In addition, we have pointed to the need for greater powers, and the Anti-Social Behaviour and Social Responsibility Act, just passed, does for the first time give us powers over private contractors, and to require information held by third parties.

However, we have taken seriously the concerns of those who believe that we have not always used our powers and resources to best effect – and those critics have been within as well as outside the police service. There have been criticisms in particular about both the quality and the timeliness of our work, and our expertise in matters such as scene management and associated issues like mental health and discrimination. In our recently-published review of the way we investigate deaths, there are 61 recommendations for change, some of which are already being implemented, and others which form part of the new

structure and approach we are putting in place. We are very aware that we will increasingly need to show that we can provide quality, value for money and a customer focus.

So, what will we be able to deliver and when? That has been a difficult question to answer, because the critical question – the amount of funding available – is still not entirely clear. We only heard in December last year that we would be receiving an additional £18m in revenue funding for 2014-15, and we still do not know what the settlement will be in the succeeding years.

What we have made clear is that the kind of expansion envisaged by the Home Secretary will involve a three-year programme of incremental, but extensive, growth. We have also made clear that there are two key parts to expansion. One is to be able to deliver, to quality and in time, a much larger number of independent investigations; but the other is to make sure that our work feeds back into policing, and influences better policing practice and standards. Without that, we will diminish, rather than increase, public confidence in policing.

This year, we will largely be putting in place the foundations – people, offices, training and support systems – that will support a significant expansion of work. We will be opening two new offices – one in Birmingham and another yet to be determined – as well as expanding our Wakefield office, so that we will then have a presence in seven different locations. We will be recruiting at least 250 new staff.

But this is emphatically not simply an extension of business as usual. As I have just said, we know that there are aspects of the way that we work that needed to change in any event, and the change programme we are now engaged in

gives us an opportunity to embed that in a totally new operating model and organisational structure.

For example, we will be creating a dedicated assessment function. This will be the single point of entry into the IPCC and provide a vital triage function for all our operational work. It will assess all referrals, make decisions on whether we take the case ourselves, grade our investigations according to complexity and seriousness and identify the resources, skills and expertise needed for the investigation. There will no longer be a division between casework and investigations staff. Instead, they will come together in one operational function, which will be overseen by a Chief Operating Officer. We will need to put in place an extensive programme of training and development, for all our staff, both new and existing, so that this new model, and the quality and performance systems that underpin it, is implemented.

We aim to be ready to take on the first tranche of additional independent investigations at the end of 2014 and will then continue to gear up to operate at full strength from 2017. That needs to be a gradual process. We have to ensure that we get it right – that we have the space and time to recruit the right staff, and train and support all our staff, existing and new, in the new ways of working and new types of work we will be taking on. Like the police service, we know only too well that mistakes made years ago cast very long shadows. And we know that we need to do the work to better quality than police forces are currently able to – we cannot afford to get it wrong half the time.

So, what new cases will we be taking on? The Home Secretary referred to ‘serious and sensitive’ cases. Under the first heading, we will be able to take on far more – but by no means all – the cases referred to us, which include

serious cases involving use of force, discrimination, alleged corruption and alleged failures to investigate cases where there are vulnerable victims, such as domestic violence, rape or child exploitation. We currently supervise some of those cases, but that is a very unsatisfactory compromise, as we have no powers of direction and control over those investigations or their findings. We will also be able ourselves to investigate some of the appeals we uphold, rather than, as at present, sending them back to the force that got it wrong in the first place – and sometimes getting them back again in a revolving door.

Under the heading of sensitive cases, we include those cases that may not individually be serious, but which collectively can undermine confidence in policing. This might be a national issue, or an issue in a particular area or force, or for a particular community. For example, we know that stop and search can have a damaging effect on relationships between young people and the police. We will want to consult on what those themes might be.

We cannot yet put a number on the cases we will be investigating independently – not least because we do not yet know what our end-state budget will be, and because next year we will be focusing on setting up systems and staff. We know that we will be held to account to provide value for money, but we must ensure that we do this without compromising quality.

There is, though, another really important aspect of our expanding work, which I have mentioned many times in speeches and which is touched on in Lord Stevens' report. The IPCC is only part of the landscape of confidence-building. Contrary to some popular belief, we are therefore not responsible for everything that does or does not happen in the whole of the criminal justice system – from police disciplinary processes, to CPS decisions or criminal trials. But we are a vital part of the policing oversight landscape, and we need

to ensure that our work feeds into and enhances the role that others play, both within and outside policing. That includes, crucially, the work of professional standards departments within forces.

One of the casualties of our recent budget cuts was a significant diminution of our analytical and research capacity. We have an immense amount of information that no other organisation holds. That includes all the statistics on police complaints handling within forces, as well as our own ten-year experience of dealing with appeals and carrying out investigations.

We must be able to use that information to help improve policing, and drive up standards. We have for some time produced 'Learning the Lessons' bulletins, which have been well received. More recently, we have begun to pilot dip sampling of police complaints handling in certain key areas, such as discrimination and local resolution, and to feed back the results to forces – who have asked for, and will now get, more regular and tailored guidance. Our relationship with forces, and now with PCCs, is critical to improving and instilling greater confidence in complaints handling.

But it goes wider than that. This year, we will be given the power to require chief officers to respond formally to our recommendations, and say what action they are proposing to take. But of course we will not be able to check whether that has actually happened – unless it has not, and a similar failing recurs. That kind of 'electric fence' learning is profoundly unhelpful. We will be ensuring that PCCs, as well as chief officers and PSDs, are aware of our recommendations, so they can be alert to their effective implementation. Crucially, we will also need to work co-operatively with HMIC, which will now be doing routine force inspections, so that our work can inform those inspections and vice versa. Our investigations also help to stimulate thematic

work - one example of that process is the recent HMIC inspection of domestic violence investigations, following some of the poor practice we have found recurring in relation to our investigations into tragic deaths.

An equally important partnership is with the College of Policing, which will be setting standards, in authorised professional practice, and promulgating a code of ethics. It is important that our work feeds into standard-setting, and that best practice evidence-based standards inform our work. It is no accident, for example, that deaths in police custody have more than halved since the IPCC was set up, because our investigations have fed into and influenced safer detention guidelines. Equally, we have for some time been urging the College to issue APP on routine monitoring of use of force, so that any worrying patterns and themes can be identified before they lead to abuse – and it appears that this will now happen.

I have referred to this on several occasions as a ‘virtuous circle’. We need to strengthen our own capacity to work with HMIC and the College - and of course with forces and PCCs - to embed and sustain good practice in policing. In order to clarify and strengthen relationships between the separate oversight bodies, we have been working on a revised Concordat between ourselves, HMIC and the College, to set out our joint and specific responsibilities. The question that the Stevens report poses is whether this should go further, by way of the creation of a new body to encompass and add to what we and HMIC currently do.

A similar question was asked when I was Chief Inspector of Prisons – whether a rounded and holistic approach to criminal justice inspection would not be better achieved by a single criminal justice inspectorate, encompassing prisons, probation, police, courts and the CPS. In the end, Parliament decided

that this was not the right approach, for it would lose the specific and targeted focus that the separate inspectorates brought – though they were and are required to act collectively as well as individually, in joint inspections that cross over boundaries. There must be very similar questions about combining the very different functions of inspection (essentially systemic and preventive), investigation (which is individually case-driven and reactive), and standard-setting (which must belong to and be owned by the service itself) .

As in my previous role, we will be bound by whatever Parliament decides. But I would urge caution in believing that re-structuring solves systemic or endemic problems, rather than simply re-arranging them – and, given the crucial issue of public confidence that this conference is addressing, whether now is the time to devote resource and energy to that, with the possibility of taking our eyes off the ball of independently holding the police to account. I am, however, absolutely sure that we need to have and use the powers that we need and to strengthen, resource and support the kind of joint and cooperative working I have just described. I would want to be able to discuss the best way of doing that with this or any other elected government.

I do not believe that the IPCC has failed, but I believe that it has struggled under a triple whammy: doing something no-one had ever done before (independently investigating the police), with some considerable resistance from the police and with inadequate resources. And, as I have indicated, there are strong arguments for renaming it so that the label more accurately reflects the contents. I am encouraged by the progress and the response to our huge Hillsborough investigation, which shows what can be done with proper resources and focus, engaging with and involving families and communities.

I am very aware that we now have a real challenge, as well as a huge opportunity – but I am equally encouraged by the response of our staff, who, when asked what they wanted to be the outcome of a very demanding and somewhat daunting period of change, said that they wanted to be part of an organisation that was trusted to hold the police to account. That, I believe, is well worth working for and preserving.