

CONSULTATION RESPONSE

TO	Home Office
FROM	Independent Police Complaints Commission (IPCC)
REGARDING	Consultation: enabling closer working between the emergency services

The IPCC and its remit

1. The IPCC's primary statutory purpose is to secure and maintain public confidence in the police complaints system in England and Wales. We are independent, and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police across England and Wales, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.
2. The IPCC was established by the Police Reform Act 2002 and became operational in April 2004. Since that time our remit has been extended to include:
 - Police and Crime Commissioners and their deputies
 - the London Mayor's Office for Policing and Crime and his deputy
 - certain specialist police forces (including the British Transport Police and the Ministry of Defence Police)
 - Her Majesty's Revenue and Customs (HMRC)
 - staff who carry out certain border and immigration functions who now work within the UK Border Force and the Home Office
 - the National Crime Agency (NCA)
3. The majority of complaints against the police are dealt with by the relevant police force (or agency) without IPCC involvement. However, certain types of complaints and incidents must be referred by the police to the IPCC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and criminal offences or behaviour liable to lead to misconduct proceedings which are aggravated by discrimination. We then decide what level of involvement we should have in any investigation of the matter. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police without IPCC involvement.

4. Our remit in respect of Police and Crime Commissioners is more limited than our remit in respect of the police and other agencies. It extends only to circumstances where it is alleged or appears that a criminal offence may have been committed. Where a matter relating to a Police and Crime Commissioner is referred to us, and we determine that an investigation is required, we can decide to conduct our own independent investigation or to manage an investigation by a police force of our choosing. At the end of the investigation, we may refer the matter to the Crown Prosecution Service for consideration of criminal charges. We will also submit our investigation report to the relevant Police and Crime Panel. However, we cannot recommend or direct that a Police and Crime Panel brings disciplinary proceedings against a Police and Crime Commissioner.

The scope of the Home Office's consultation

5. The consultation document poses a number of questions around collaboration, operational efficiencies and specific governance arrangements in view of proposals to allow Police and Crime Commissioners to take on responsibility for fire and rescue services. We have not responded to each consultation question individually, as many relate to issues that sit outside our sphere of activity and others will be better placed to provide an informed view. However, the proposals do have significant implications both for the IPCC and the wider police complaints system. We have highlighted these and a number of particular concerns in our response below.

Inconsistency

6. We note that the consultation document sets out no requirement for a Police and Crime Commissioner to adopt any of the proposals it sets out. We understand that the proposals:
 - would enable (but not require) Police and Crime Commissioners to take on the duties and responsibilities of fire and rescue authorities
 - would enable (but not require) Police and Crime Commissioners who take on responsibilities of fire and rescue authorities to create a single employer for police and fire staff
 - would not apply to Wales (unless Wales decided to adopt them)

The consultation document poses a further question around whether, where a Police and Crime Commissioner opts to create a single employer for fire and police staff, fire personnel should fall under the police complaints system.

7. While we appreciate that local areas may wish to tailor arrangements to some degree to take into account local factors, we are concerned that the amount of discretion proposed in the consultation document, and the differing arrangements for England and Wales, may make the complaints system more complex and give rise to significant difficulties. For example:
 - It would be difficult to provide a simple, universal explanation to the public about how to make a complaint, or about how their complaint would be handled.
 - Incidents involving multiple fire and rescue services would be complex and challenging to handle given the potential for different local arrangements.

- Consistent quality of complaints handling and consistent and comparable complaint outcomes would be difficult to achieve.
- Guidance and standards for complaint handling would not only be difficult to effectively set, but would also prove challenging to monitor if such flexibility is being offered to Police and Crime Commissioners.
- It would be hard to achieve consistency in complaints handling over time when newly elected Police and Crime Commissioners may prefer a different arrangement with fire and rescue services to their predecessors.
- There would be significant challenge for any body administering or overseeing a unified complaints system in effectively planning and preparing for additional and changing remit.

The current police complaints system

8. We have long argued that the current police complaints system is extremely complex, bureaucratic and slow, and that it is too focused on blame and individual conduct rather than resolution and systemic issues. Following concerns that we and others have raised, both the police complaints and disciplinary systems are currently undergoing large-scale reform with a view to making them fairer, easier to follow and more transparent.
9. The full details of these reforms are still being worked through by the Home Office. However, it is important that any additional proposals which could impact on the police complaints system, such as those set out in the consultation document, are carefully considered. Particular attention will need to be paid so as not to inadvertently frustrate the intentions of the reforms currently under way – including the aim of making the police complaints system, and the legislative framework on which it is based, simpler and easier to understand.
10. The legislation governing the current police complaints system is fractured and complex. It has been subject to numerous amendments and revisions, and the legislation is, as a result, cumbersome and difficult to navigate. We are mindful that any changes which would see fire and rescue service complaints and conduct matters aligned with the police complaint system would likely require legislative change. We believe it is extremely important that any further legislative change provides a clear and workable framework for all parties.

Complaints and conduct matters

11. The police have unique and extensive powers that have the potential to significantly impact on individuals' rights and freedoms. These include powers to search, arrest and detain members of the public and to use force, including lethal force, where necessary. The police also have responsibility for investigating criminality. It was for these reasons, and due to low levels of confidence in the police and concerns about lack of independence in the investigation of alleged police wrongdoing, that the current police complaints system and the IPCC was established.
12. There is a question around whether a similar system to the police complaints system is appropriate or required in respect of the fire service. While the actions of fire and rescue services clearly do have the ability to impact on the public, unlike the police fire personnel do not have the same extensive powers and are not responsible for investigating criminality, including criminality relating to a member of their own service.

13. Were a single employer for fire and police personnel to be put in place, we can see that there would be some arguments for treating complaints and conduct matters concerning fire and police personnel in the same way – for example where there were shared back office functions. However the police complaints system has been designed with the particular needs of independent oversight of the police in mind and it may not be proportionate, necessary or appropriate to try to adopt this model for all fire personnel, even where a single employer is put in place.

Death and serious injury matters

14. In bringing fire and rescue personnel under the police complaints system, consideration would not only need to be given to complaints and conduct matters, but also to matters constituting a death or serious injury (DSI). In the police complaints system, a DSI matter includes any circumstances where a person has died or sustained serious injury and *“at or before the time of death or serious injury the person had contact of any kind – whether direct or indirect – with a person serving with the police who was acting in the execution of his or her duties and there is an indication that the contact may have caused – whether directly or indirectly – or contributed to the death or serious injury.”*¹ All DSI matters must be referred to the IPCC for us to decide whether our involvement in the investigation into that matter is warranted.
15. Given that the fire service, by the very nature of its work, will be called frequently to situations that are life threatening or that may result in injury, consideration should be given to the appropriateness of applying the current DSI criteria to fire incidents, as well as whether the IPCC would be best placed to consider and investigate those matters. An investigation under the Police Reform Act 2002 in every instance involving a death or serious injury would certainly not seem appropriate. In addition, an expansion of our remit to include DSI matters (and complaints and conduct matters) relating to fire personnel, would have significant implications for our resources and the volume and nature of our work.

Contractors

16. Consideration also needs to be given to arrangements in respect of contractors. If fire and rescue contractors entered into contracts directly with either a local policing body (i.e. a Police and Crime Commissioner) or a chief officer, the contractor could fall within the remit of the police complaints system and the IPCC. This could happen whether or not fire and police complaints systems were aligned, but could be particularly anomalous where they were not aligned, as the police complaints system and the IPCC’s jurisdiction could extend to fire and rescue contractors but not fire and rescue service employees.
17. Dealing with complaints against contractors providing fire and rescue services would further extend our remit and, again, would have implications for us in terms of resources and required expertise.

¹ <http://www.ipcc.gov.uk/page/statutory-guidance>

Disciplinary systems

18. The current police disciplinary system is complex. Changes have recently been made to the legislation to increase the transparency and independence of proceedings concerning police officers. These changes mean that there is now a presumption that all misconduct hearings (which, broadly speaking, consider whether an officer has a case to answer for gross misconduct) will be held in public and that, from 1 January 2016, they will be heard by a panel with an independent legally qualified chair. The Home Office has also indicated that it intends to legislate to enable the IPCC to present cases at misconduct hearings in future.
19. However, at present different disciplinary processes exist for police staff. We are aware that the Home Office is considering how the current police officer and staff disciplinary systems could be aligned. If complaints and conduct matters relating to fire personnel were to be dealt with in the same way as complaints and conduct matters relating to the police, consideration would also need to be given to what processes would be used to deal with any disciplinary issues that are identified in respect of fire personnel, particularly if arrangements for police staff become more closely aligned with the current regulated arrangements for police officers.

Complaints and investigations relating to Police and Crime Commissioners

20. As highlighted above, under the current police complaints system the IPCC has jurisdiction over Police and Crime Commissioners where a matter relates to alleged criminality. Where a Police and Crime Commissioner takes on responsibility for fire and rescue services, matters falling within our remit over Police and Crime Commissioners could diversify and include matters pertaining to the fire and rescue service.
21. We have previously raised concerns that the types of matters that we are currently required to consider and investigate in relation to Police and Crime Commissioners tend not to relate to core policing activities and therefore to be quite different from most of the IPCC's core business. We have also noted that the current accountability structures for Police and Crime Commissioners create certain inherent tensions. For example, the IPCC and Police and Crime Commissioners need to maintain an open dialogue and work together in the oversight of a police force. However, at the same time, the IPCC may be conducting a criminal investigation into one of those Police and Crime Commissioners.
22. For both of those reasons, we have argued that the role of investigating alleged criminality of a Police and Crime Commissioner, including fraud, should be dealt with by different body; either the National Crime Agency or the City of London Police, which holds the national fraud reporting responsibility and has no Police and Crime Commissioner or equivalent.

Scale

23. The police complaints system deals with over 37,000² complaints every year, and demand on the system continues to grow. Whilst there may be certain arguments for creating a unified complaints system for police and fire personnel, the addition of the fire

²<http://www.ipcc.gov.uk/page/annual-police-complaints-statistics>

and rescue services to the current police complaints system would create a number of issues.

24. As well as increasing the numbers of complaints, conduct matters and DSI matters that the system would have to handle, creating a unified system would generate additional work through the handling of referrals associated with such matters. Aligning the two systems would also broaden the scope of matters the system could consider and increase the number of people required to effectively run and oversee it. There would also be implications for oversight of the system and a need for statutory guidance to be issued on the effective handling of complaints, conduct matters and DSI matters under a unified system.
25. We currently retain responsibility for many of these functions, and the effective running of the police complaints system as a whole. There would be significant implications for us if we were required to take on responsibility for a unified police and fire complaints system. We believe it is important that careful consideration is given to the scale of the proposals set out in the consultation document and the steps that would need to be taken to ensure that any aligned system, and structures within it, could cope with such a change.

Independent Police Complaints Commission (IPCC)

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