

CONSULTATION RESPONSE

TO	Police Integrity and Powers Unit, Home Office
FROM	The Independent Police Complaints Commission (IPCC)
REGARDING	Consultation on changes to the police disciplinary system: holding disciplinary hearings and appeal hearings in public, introducing legally qualified chairs in disciplinary hearings, protecting whistleblowers and changes to chief officer compensation payments

The IPCC and its remit

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, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.

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
- the National Crime Agency (NCA)
- Her Majesty's Revenue and Customs (HMRC)
- certain staff who carry out border and immigration functions who now work within the UK Border Force and the Home Office
- certain non Home Office police forces (including the British Transport Police and the Ministry of Defence Police)

The IPCC is also a prescribed body under the Employment Rights Act 1996 and operates a report line for police whistle-blowers.

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, including when someone has died or been seriously injured following direct or indirect contact with police. 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 oversight.

Following an investigation or appeal, the IPCC may recommend and, if necessary, direct that disciplinary proceedings are brought against a person serving with the police. However, the relevant police force (or other local policing body) is then responsible for bringing those proceedings and for deciding what sanction, if any, the individual should be given. The IPCC is able to make representations to the meeting or hearing, but has no power to present a case.

Current legislation provides the IPCC with a power to direct that a misconduct hearing is held in public. However, it only enables us to do so in very limited circumstances following an independent investigation and after consultation with the relevant police force (or local policing body), the officer concerned, the complainant or interested persons, and any witnesses.

The IPCC's comments on the consultation

The IPCC broadly welcomes the proposals in the consultation document. We have previously expressed concerns about the current police disciplinary system, which in our view is not sufficiently independent or transparent. We therefore support steps such as the introduction of independent legally qualified chairs and a presumption that all misconduct hearings, special case hearings and appeal hearings will be held in public.

We are conscious that the proposals in the consultation document focus on hearings in respect of the most serious cases of alleged misconduct. However, consideration also needs to be given to the efficacy and transparency of the rest of the disciplinary system – including matters that do not reach the threshold of a 'case to answer' for gross misconduct or do not, for whatever reason, proceed to a hearing.

It is important both for public confidence and the integrity of the police service that all issues relating to the conduct or performance of individual officers and members of police staff are dealt with appropriately. The majority of these issues will not involve gross misconduct but still have the potential to undermine confidence in the police service if they are not addressed properly. We highlight this as we also have concerns about the handling of matters at lower levels, including at misconduct meetings.

In this submission we have limited our responses to the immediate and short-term actions proposed in the consultation document. However, we are aware that the Home Office has recently issued a further consultation document which sets out proposals for longer term and more wide-ranging reform of the disciplinary system and the complaints system with which it interlinks, and which includes further proposals in respect of whistle-blowing and the role of the IPCC. We will provide our broader views on reform in our response to that second consultation.

We believe that the proposals in both consultation documents need to be considered together to ensure that any changes to legislation work in harmony and result in a simpler, improved and fully workable system.

Q1. Do you agree that misconduct hearings, special case hearings and Police Appeals Tribunals should be held in public by default?

Yes. In our view the current disciplinary system lacks sufficient transparency. At present the vast majority of disciplinary proceedings are carried out in private within individual police forces. This leads to a perception of 'secret hearings' and seems particularly incongruous when the proceedings follow an investigation by an independent body. As we have highlighted previously, families and complainants struggle to have confidence in an internal process which appears not to support the findings of an independent investigation or to reflect the seriousness of the issue. If the conclusion of the panel is that dismissal is not warranted, for example because of mitigating evidence, it is important that the evidence that supports that conclusion is ventilated in public.

Although the current legislation provides the IPCC with a power to direct that a misconduct hearing is held in public, it only enables us to do so in very limited circumstances and after consultation with the relevant police force (or local policing body), the officer concerned, the complainant or interested persons, and any witnesses. We therefore welcome the proposed change to legislation which would introduce a presumption that hearings will always be held in public unless there is a very good reason not to. Transparency is a key part of accountability and is particularly important where decisions are being reached in respect of police officers who are suspected of the most serious wrongdoing.

Q2. What benefits or costs do you think holding hearings in public will entail?

Holding misconduct hearings, special case hearings and Police Appeal Tribunals in public should help to increase the transparency of proceedings relating to some of the most serious allegations against the police. Where the proceedings are conducted professionally, and well reasoned decisions are reached, this in turn may help to increase public confidence and trust in the disciplinary system. Where proceedings are not conducted well, it may help to ensure that flaws are exposed and addressed. Opening up hearings to greater public scrutiny may also in its own right help to ensure that they are routinely conducted to a high standard and that correct procedures are followed. Overall we believe that the benefits of holding hearings in public would outweigh any potential additional financial cost.

The costs of this change directly for the IPCC will need to be considered once we have seen the full detail of how it would be implemented. The IPCC will need to be funded in order to meet any such additional costs.

Q3. Do you agree that legally qualified chairs should be introduced to chair the panel in disciplinary and special case hearings?

Yes. We do not believe that the current disciplinary system is sufficiently independent to secure the confidence of complainants and the wider public, or to safeguard against actual or perceived impartiality in decision making. We have also had significant concerns about the quality of proceedings and decision making in some cases.

It is to be expected that the IPCC and those conducting a hearing will not always reach the same view on a matter. However, in some cases it appears that a lack of training has led to serious errors in procedure and decisions by the chair. It is also notable that in cases where the

IPCC has used its power to direct a hearing, and therefore where the force by definition does not accept our findings, dismissal very rarely follows.

The IPCC's 2014 public confidence survey indicated that the majority of the public favour independence from the police when it comes to determining disciplinary outcomes in certain types of cases. It showed, for example, that they felt an organisation other than a police force should be responsible for disciplining officers found to have been involved in serious corruption or to have physically assaulted someone¹.

In our view, the introduction of a legally qualified chair to preside over misconduct hearings would be a welcome step towards increasing the independence of the disciplinary system. We recognise there are arguments that in the case of special case hearings introducing a legally qualified chair would compromise chief officers' ability to take swift action to dismiss a member of their own force. However, on balance we agree that special case hearings, as with misconduct hearings, should be heard by a legally qualified chair. Both types of hearings consider the most serious allegations of misconduct, have the option to impose the highest level of sanction against an officer (i.e. dismissal), and require decision making that is, and is perceived to be, fair, impartial and procedurally correct. We recognise that replacing the chief officer at special case hearings with an independent legally qualified chair could give rise to concerns about a lack of input from someone with operational policing knowledge. It therefore may also be appropriate to consider whether an individual with such knowledge should sit as a second panel member at those hearings.

Q4. What benefits or costs do you think the introduction of legally qualified chairs will entail?

We believe that the introduction of legally qualified chairs will increase independence in proceedings relating to some of the most serious allegations against the police, and will help to ensure that legally sound, fair and objective decisions are made. It may also aid consistency in the treatment of officers across police forces, reduce the risk of procedural flaws and reduce the number of cases being appealed and upheld on technical issues.

Q5. Are there any other factors that would need to be considered by the panel when a decision is being made as to whether all or part of a hearing should be held in private?

We note that the consultation document sets out a number of issues that may need to be taken into account when the chair of a panel is assessing whether the public should be excluded from a hearing or any part of it. We believe that where the IPCC has been involved in dealing with a matter, its views on the benefits and/or risks of holding the hearing in public should also be taken into account.

¹ Harvey, P et al (2014): Public confidence in the police complaints system: research commissioned by the Independent Police Complaints System. Ipsos MORI: London.

Any legislation will need to make clear that the presumption should be that members of the public will not be excluded from a hearing and may only be excluded where a compelling reason exists. To avoid hearings being held in private unnecessarily, and to support and safeguard those involved in proceedings, consideration needs to be given to ensuring the availability of special procedures for vulnerable witnesses. In our view, the chair of the hearing would also need to be able to issue directions regarding anonymity of witnesses and restrictions on reporting, with those directions being enforceable.

The consultation document suggests that the list of factors that need to be considered when deciding whether to hold a hearing in private will also need to be taken into account when deciding whether an officer should be named prior to a hearing when the details of the hearing are published. However, there will be different considerations involved in making each of these decisions.

Q6. How could the police best engage the public and inform them about police disciplinary and appeal hearings, outcomes and processes?

AND

Q7. Are there any issues or practical factors the Government needs to consider regarding the accessibility of hearings to members of the public?

We see that the consultation document states: *“The police force will be responsible for publishing, with sufficient notice, the date, time and place of the hearing in an easily accessible location, together with instructions on how members of the public can attend a hearing and an explanation of any necessary and proportionate rules governing public attendance as specified by the police force. As attendance at police misconduct hearings may involve members of the public being granted access to police premises, it may be appropriate for forces to require attendees to produce valid identification documents.”*

We agree it is important that information about hearings is published with sufficient notice, that it includes practical information to assist members of the public who wish to attend and that any hearings are held in an easily accessible location. However, we query what impact giving police forces responsibility for publishing information about hearings may have on public perceptions of the independence of the proceedings. Similarly, consideration needs to be given to how holding hearings on police premises may impact on perceptions of independence, and how comfortable certain complainants, witnesses or members of the public might feel in attending.

The issue of who sets *‘any necessary and proportionate rules governing public attendance’* is also an important one. A police force should not be able to put in place unnecessary rules that may prevent or dissuade members of the public from attending. We have particular concerns about the suggestion that forces may be allowed to require attendees to produce identification. We are already aware that some members of the public have concerns about being asked to provide their personal details to the police when they are not suspected of any crime and about how that personal information is then used. Some have expressed concerns that it may be used to run intelligence checks or that their names may be added to a police database.

In our view, it would be preferable for hearings to be held at neutral locations. If hearings are held on police premises under the model proposed in the consultation document, police forces

must ensure that they make public attendance at the proceedings as easy as possible. If identification is requested from members of the public who wish to attend, forces must be prepared to explain why that is necessary and how the information will be used. Reasonable adjustments will also need to be made to ensure that the proceedings are accessible to all.

Q8. Are any safeguards required to mitigate any possible negative implications for whistleblowers or for the police disciplinary process?

We are very conscious of the need to ensure that there are effective procedures in place to safeguard whistle-blowers within the police service. It is in the interests of both the police service and the public that individuals have the confidence to bring issues of concern to the attention of those within the force and appropriate bodies without fear of suffering personal or professional detriment for doing so.

We note that the consultation document suggests that officers investigating a conduct matter, and any subsequent misconduct hearing or meeting, should consider whether the allegations against an officer could be a reprisal for prior whistle-blowing. We support the intent behind this proposal. However, further consideration may need to be given to how it would operate in practice. There would presumably need to be a record of the fact that the individual had been a whistle-blower. How any such records should be held, and who should be able to access them, would need careful consideration. Provision would also need to be made to retain confidentiality where appropriate, while ensuring that the interests of all participants are taken into account and all are able to participate effectively in the process.

Q9. Are there any other changes to police regulations the Government could consider to encourage more police whistleblowers to come forward?

There are no further legislative changes that we wish to suggest at this time.

Q10. What familiarisation costs will there be for police forces? For example the cost of training staff on the new aspect of the system.

We believe others will be better placed to comment on what familiarisation costs there will be for police forces.

Q11. Are you able to provide any data or estimates that would enable the non-monetised costs in the impact assessments to be monetised?

We note that the impact assessment in relation to the whistle-blowing proposals has identified that there could be a cost to the IPCC to carry out additional investigations if a greater proportion of potential whistle-blowers come forward about serious and sensitive matters. Further to the Home Secretary's announcement last year, we are already in discussions with the Home Office about the resources required to enable the IPCC to take on more serious and sensitive cases.

Any likely increase in the number of investigations arising from whistle-blowers is relevant to those discussions. This will need to be considered in light of the proposals for longer term reforms in relation to whistle-blowing, as set out in the Home Office's separate consultation document "Improving police integrity: reforming the police complaints and disciplinary systems".

Q12. Are there any further costs, benefits, or other impacts that should be considered in the impact assessments? Please provide data or estimates of the costs where possible.

We are mindful that the impact assessments relate to the proposals contained within the consultation document, which the Government hopes to introduce in this Parliament. However, we believe that the costs, benefits and impact of the changes also need to be considered in light of the proposals for longer term reforms.

Q13. The Government seeks views on this proposal; specifically the views of respondents are sought on the following questions:

- **Should the power of the panel to alter compensation payments be restricted further to findings of gross misconduct?**
- **Should the power be available to the panel of both a misconduct meeting and misconduct hearing?**
- **Should the power of the panel to alter compensation payments be extended to cases that result in a written warning as an outcome as well as those cases that result in a final written warning?**
- **What impact will this have in terms of financial or other costs or benefits?**

We appreciate that public confidence in the complaints system, and in its ability to deliver just outcomes, could be undermined if chief officers who are found to have behaved badly subsequently receive a payout because their appointment is not extended. We believe it would be appropriate for the power to alter compensation payments to be open to any panel considering the officer's conduct, allowing panels to decide whether such a step is appropriate having heard the full evidence and circumstances of a case.

Independent Police Complaints Commission

December 2014