

## CONSULTATION RESPONSE

<b>TO</b>	<b>Ministry of Justice</b>
<b>FROM</b>	<b>Independent Police Complaints Commission</b>
<b>REGARDING</b>	<b>Draft code of practice for victims of crime</b>

### The IPCC and its remit

The IPCC's statutory purposes are set out in s.10 of the Police Reform Act 2002. They include:

- i. to secure the maintenance by the IPCC, local policing bodies and Chief Officers of suitable arrangements for the handling of complaints against police, the recording of police conduct matters and matters from which it appears that a person has died or suffered serious injury following contact with police (a "DSI");
- ii. to make recommendations and to give advice in relation to those arrangements and in relation to police practice which appears to the IPCC to be necessary or desirable; and
- iii. to increase public confidence in the police complaints system in England and Wales.

It is independent, making its decisions independently of the police, Government and interest groups. It investigates 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 (the "PRA") and became operational in April 2004. Since that time its remit has been extended to include:

- Police and Crime Commissioners and their deputies
- the Mayor's Office for Policing and Crime and his deputy
- the National Crime Agency (NCA)
- Her Majesty's Revenue and Customs (HMRC)
- staff who carry out some border and immigration functions in 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 majority of complaints against the police are dealt with by the relevant police force 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. The IPCC will then decide what level of involvement it should have in any investigation of the matter. It may conduct its own independent investigation, manage or supervise a police investigation, or decide the matter can be dealt with locally by the police without IPCC oversight.

## **Response to consultation**

The IPCC broadly welcomes its inclusion as a competent body in the 'Code of practice for victims of crime'. Our operational guidance and practice is guided by the Victims Code and reflects the aspirations and aims contained within the draft code of practice.

In her recent review of complaints and resolution for victims of crime<sup>1</sup>, the Victims' Commissioner, Baroness Newlove commended the IPCC on its adoption of the principles of the victims' code<sup>2</sup> to ensure that victims of crime received a comprehensive response to their complaint.

Our response to the consultation is restricted to those sections within the code that are relevant to service providers; the introduction, chapter 5 and chapter 2, S9.

## **Definition of victim**

Our interpretation of the draft code is that the circumstances where this would apply to the IPCC are very limited. Our understanding is that the obligations to a victim, as outlined within the code, would be confined to circumstances where the IPCC is carrying out a criminal investigation into the actions of a person who falls within our jurisdiction.

**It would greatly assist both victims and the IPCC to have confirmation that our understanding on who would fall within the category of 'victim' during dealings with the IPCC is correct.**

There are also complexities in relation to the police complaints system due to the nature of the police's role. An allegation which would be a criminal investigation from the outset for a member of the public may not be for a police officer. For example, police officers are authorised to use reasonable force, and therefore a complaint about the way in which force has been used would not necessarily be criminal from the start as there may be a valid and necessary reason for the use of force.

It is therefore important that there is a clear understanding as to when the IPCC's obligations as a Service Provider are triggered.

If a matter is referred to the IPCC and the IPCC determines that it is necessary for it to be investigated, the IPCC must determine the form which the investigation should take (paragraph 15 Schedule 3 of the PRA). The investigation may take four forms:

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<sup>1</sup> A review of complaints and resolution for victims of crime – Victim's Commissioner – January 2015

<sup>2</sup> Page 27, para 3.12 – 3.12.1

(i) an investigation by the Appropriate Authority<sup>3</sup> (AA) on its own behalf; (ii) an investigation by the AA under the supervision of the IPCC; (iii) an investigation by the AA under the management of the IPCC; or (iv) an investigation by the IPCC itself.

Our understanding is that the IPCC would be required to fulfil the requirements of the code only if either the IPCC itself is carrying out an investigation into a criminal offence (an independent investigation) or such an investigation is taking place under the management of the IPCC.

In addition to investigating certain complaints, conduct matters, and death or serious injury matters, members of the public will sometimes make a complaint directly to the IPCC. The IPCC is not able to take any action in relation to a complaint unless it has first been recorded by the relevant police force. For this reason, the IPCC simply directs the complaint to the police force for a decision on whether it should be recorded and referred to the IPCC. Some of these complaints may result in a criminal investigation with no further involvement of the IPCC. Our understanding at this stage is that the IPCC would not be required to fulfil the requirements of the code in these cases.

## **Chapter 5 – Duties on other service providers**

We welcome the measures outlined within this chapter and are confident that many of these provisions are already embedded in operational practice. Some of the responsibilities outlined in this chapter fall outside the remit of the IPCC (e.g. responsibility for prosecuting the offence) and so we are not able to comment on these particular elements.

This also highlights the need for data sharing between various strands of the criminal justice system to ensure that victims receive a coherent service.

## **Chapter 2, Section 9**

The IPCC agrees with the process for dealing with complaints against service providers outlined in this chapter. This reflects the process already employed by the IPCC.

We are however concerned that the guidance suggests that a complainant, unhappy with the actions of the police, can appeal to the IPCC and also have a separate means of redress through the Parliamentary and Health Service Ombudsman (PHSO). The guidance also suggests that complaints about the IPCC may also be made to the PHSO.

The PHSO has no jurisdiction over the police or the IPCC and the guidance should be clarified in this respect to avoid duplication or uncertainty about the responsible body for appeals.

## **IPCC July 2015**

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<sup>3</sup> The Appropriate Authority is the body responsible for the organisation or individual whose conduct is subject to complaint