

CONSULTATION RESPONSE

TO	The Home Office
FROM	The Independent Police Complaints Commission (IPCC)
REGARDING	‘Improving police integrity: reforming the police complaints and disciplinary systems’

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 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 the 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:
 - 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 at the Home Office;
 - the National Crime Agency (NCA), and previously the Serious Organised Crime Agency (SOCA);
 - in London, the Mayor’s Office for Policing and Crime (including the Mayor and any Deputy Mayor for Policing and Crime); and,
 - Police and Crime Commissioners and their deputies.
3. The majority of allegations against the police are dealt with by the relevant police force (or other body) without direct 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 the police, as well as allegations of serious corruption, serious assault, criminal offences or behaviour liable to lead to misconduct proceedings which are aggravated by discrimination, and other serious criminal offences. We then decide whether it is necessary for the matter to be investigated and, if so, what level of involvement we should have. We may choose to conduct our own independent investigation, to manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police without IPCC involvement.

4. The police complaints system entails a number of different types of appeal:
 - about the recording of complaints;
 - about decisions to 'disapply' Schedule 3 of the Police Reform Act 2002 from complaints;
 - about the outcome of the local resolution of complaints;
 - about the outcome of complaints handled otherwise than in accordance with Schedule 3 of the Police Reform Act 2002;
 - about decisions to discontinue the investigation of complaints; and
 - about certain determinations and outcomes relating to a local or supervised investigation into a complaint.
5. The IPCC deals with all appeals about the recording of complaints. We also deal with other types of appeal in relation to complaints:
 - about the conduct of senior officers;
 - where, if proved, the conduct as described in the complaint would either justify criminal or misconduct proceedings or involve the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights;
 - that have been, or must be, referred to the IPCC;
 - that arise from the same incident as a complaint falling within any of the preceding points; or,
 - where part of the complaint falls within any of the preceding points.
6. We have different powers in relation to each type of appeal.
7. 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, at present the relevant police force (or other local policing body) is responsible for carrying out those proceedings and for deciding what sanction, if any, the individual should be given.

8. Aside from our involvement in specific cases, we work under our 'oversight and confidence' strategy to promote public confidence in the system and to use the learning from our cases to drive improvements in complaints handling and policing practice. For example we publish a regular 'Learning the Lessons Bulletin' for the police service. We undertake thematic research and make recommendations, such as our work in relation to the police use of Taser. Our work on police pursuits led to improved guidance to ensure that pursuits across the entire police service were handled safely, and culminated in a Code of Practice requiring all chief officers to have regard to that guidance. We work with our partners, such as HMIC and the College of Policing, to ensure that what we do informs and enhances the work of other agencies. By working to create a virtuous circle through which the complaints system leads to improvements both in complaints handling and policing practice more generally, we enhance the value of the complaints system as a whole.

The Home Office's consultation and proposals

9. The IPCC has long called for reform of the complaints and discipline systems. We have said that the 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. We have also said that the police discipline system is not sufficiently independent or transparent. We have concerns about the quality of decision-making in some cases, and the timeliness with which it operates.
10. We know from our public confidence survey that the complaints system does not always meet the expectations of complainants. Children and young people, and those from minority ethnic communities lack confidence in the system and are less willing to use it.
11. Our most recent public confidence survey also found 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 someone. We know that families and complainants struggle to have confidence in internal and closed disciplinary processes which appear not to support the findings of an independent investigation or reflect the seriousness of the issues involved in a case.

The principles of an ideal system

12. We believe that any approach to reforming the complaints and disciplinary systems must start by identifying the correct principles that the system should embody. We believe that the system should embody four key principles:

- **Accessibility**

The system should be accessible to a member of the public throughout the whole life-cycle of a complaint (not just at the point when a complaint is made). It should be as simple as possible and user-friendly. It should provide appropriate levels of support, recognising the needs of the individuals it serves.

- **Efficiency**

The system should work consistently and to a high quality. It should be responsive, and deliver timely processes and outcomes. It should engage the fewest actors possible, to reduce double-handling and the need to transfer knowledge. It should provide value for money, and enable and promote improvement in policing.

- **People-focus**

The system should always be focused on its users. It should provide appropriate remedies to those who make complaints, including simple explanations of what happened and acknowledgement when something has gone wrong.

- **Fairness**

The system should make objective judgements, which can be independently reviewed or appealed. It should operate openly and transparently. It should also provide for and promote police accountability, in all its forms.

13. It is our view that complaints are an extremely valuable commodity; free advice from the public on the service that the police have provided. They provide invaluable management information: they can be the canary in the mine when something is first starting to go wrong, and can help to improve police practice. This consultation therefore is not only about police integrity, but also about learning, improvement, and ultimately trust and confidence in policing itself.

A complaints handling culture

14. Our own recently published statistics show that complaints about the police are on the increase. We also know however that the way in which those complaints are handled by the police, as evidenced through the appeals that we deal with, is not satisfactory. In 2013/14 we upheld 49% of appeals that we dealt with about the police's decisions whether even to record complaints. We also upheld 44% of the appeals we dealt with from complainants who challenged the way a complaint had been investigated. The difference in outcomes between appeals

that the IPCC handles and appeals that forces handle is also marked – for our 44% of investigation appeals upheld, police forces upheld only 22%.

15. These statistics provide further evidence of findings we have made through our oversight and confidence work: that forces do not sufficiently understand the intricacies of an over-complicated complaints system, and that the way in which the police handle complaints is not sufficiently customer-focused. These statistics show that forces still struggle to get it right first time, and there are now serious questions over whether they get it right the second time either.
16. We are clear that reform to the systems and processes of the complaints and disciplinary systems is necessary. We are also clear that reform of systems and processes will never in itself be sufficient to create a system in which the public can enjoy full confidence. For reform to be effective, it must be backed by the right culture within the police service about how complaints are approached and resolved, and how conclusions are acted on. This means having the right approach by leadership within the service, the right standards, and the right regulation.
17. In a number of ways, the combined effect of the proposals for reform of the complaints and disciplinary systems will lessen the involvement of chief officers and the wider police service in the handling of complaints and in discipline matters. It is clear that a degree of independence and greater transparency are necessary components in both the complaints and disciplinary systems, if they are to work effectively and command public confidence. However, independence, oversight and accountability must be kept in balance with the need for the police to own and take responsibility for the behaviour of their officers and staff, and for complaints about them. This creates a risk that leaders in the police service become too far removed from the issues that complaints and misconduct raise, or lack effective levers to deal with them. Ultimately it is the police service, rather than anyone else, that must be accountable for the service it provides. The balance between ownership and culture within the service, and independent and transparent processes is therefore one that a reformed system as a whole will need to get right.

The process of reform

18. Change of the scale that is clearly envisaged by the Home Office is a very infrequent opportunity. It is also an exceptional challenge. Changes that have been made before to the complaints and disciplinary systems provide us with many examples of piecemeal tinkering with the system that does not get to grips with the problem and which often has unintended consequences. The system's governing legislation is a thicket of amendments both to the Police Reform Act 2002 and the supporting regulations. This contributes to the difficulties of understanding, explaining and operating the system.

19. The complaints and discipline systems are required to deal with a broad range of complex issues. They involve a significant number of people, groups and bodies, with often disparate interests. The full effects of any changes can be challenging to anticipate and may take some time to come to light.
20. Furthermore, there is no doubt to us that although sometimes they do and should operate separately, the complaints and discipline systems are inextricably linked. Reform must consider both together, to ensure that any changes will result in a coherent system.
21. We welcome the opportunity for reform of the complaints and discipline systems. We welcome many of the aspects and thrust of the current proposals; however we highlight concerns about some of them, and we make suggestions for how reform can and must go further. The consultation document touches on and attempts to solve a number of specific problems in the complaints system, and proposes changes in who should carry out various roles within it. However, it does not yet provide a 'whole system' approach that joins those processes into a coherent whole, that provides a radically different approach to complaints handling. We believe that what is required next is a wide-ranging, collaborative process that involves officials, stakeholders and learning from other public sector complaints systems, informed by the work done so far. Through this, an end to end system can be built and refined.

Our response to the Home Office's consultation questions

The complaints system

1. Do these proposals strike the right balance between local flexibility and ensuring consistency in how complaints are dealt with throughout England and Wales?

22. The consultation document proposes that Police and Crime Commissioners should take responsibility for:

- receiving and recording complaints about their forces;
- assessing how complaints should be handled, including potentially referring them to the IPCC;
- acting as a single point of contact for complainants;
- resolving complaints that are appropriate for local resolution.

23. However, while Police and Crime Commissioners would have overall responsibility for these functions, they would be able to opt in or out of carrying them out themselves. The consultation document also proposes that Police and Crime Commissioners should become responsible for appeals that are currently dealt with by chief officers.

24. We believe that complaints are a valuable indicator of the public's views on the quality of service being provided by a force. As such, they are an important tool for police leaders and for those who hold them to account. We also believe that complaints should, where possible, be resolved locally to where the complaint arose so that resolution happens swiftly and lessons are quickly applied. It is clear that Police and Crime Commissioners and their offices can add value to the complaints system. We are concerned however in some significant regards about the role that is being proposed for them, both in relation to initial complaints handling and triage, and in relation to their proposed appellate responsibilities.

Inconsistency

25. The short answer to the consultation question is that we believe that the proposals, in seeking to provide greater local flexibility, open the door to too much inconsistency of role, as well as approach.

26. Police and Crime Commissioners will be able to opt in or out of carrying out their responsibilities directly, and, if they decide to opt in, will be able to decide how they carry them out. This raises some fundamental questions:

- How could any simple, universal explanation be provided to the public about how to make a complaint, or how it will be handled? How would this

be done, for example, in complaints after a public order event that may have been policed by many different forces?

- How therefore could the IPCC meet the reasonable public expectation that we will provide a clear and simple explanation of the important initial stages of the complaints system?
- With such potential for different approaches, how can inconsistent quality of complaint handling and inconsistent outcomes for complainants be avoided?
- Given that a newly elected Police and Crime Commissioner may wish to organise complaints handling differently from their predecessor, how can consistency through time be achieved even in a single force area?
- How would the system operate when forces share a Professional Standards Department (PSD), but each separate Police and Crime Commissioner might want the PSD to take on different responsibilities?
- The IPCC issues statutory guidance to set standards for complaints handling. How will we be able to do this effectively, addressing the potential range of methods and processes for initial complaints handling, without preventing the flexibility that is being offered to Police and Crime Commissioners? Moreover, how does this statutory responsibility for oversight of effective complaints handling sit with the democratic accountability and role of Police and Crime Commissioners?

27. We also recognise that the current provisions of the Police Reform Act can provide too rigid a straitjacket, which prevents effective and early resolution. There can be considerable flexibility in the way that local resolution of complaints is carried out, and there is no single way of achieving a satisfactory outcome. However, there is a risk that too much flexibility could result in radically different ways of dealing with the same behaviour or problem, and therefore we believe that this flexibility should be exercised within some kind of framework and according to a clear set of principles. We also do not believe this flexibility should extend to whether Police and Crime Commissioners or the forces should discharge these responsibilities: in other words, Police and Crime Commissioners should either have a statutory duty to carry out this work themselves, or this should remain with forces, with the Police and Crime Commissioner exercising an oversight function.

Police ownership

28. We have already raised our concern generally with this package of proposals, that it may serve to remove chief officers and other leaders within the police service too far from ownership of the issues complaints raise. There could be benefits in Police and Crime Commissioners receiving and monitoring all complaints, as this would give them an oversight of issues that are arising in relation to members of the public and their interactions with police. However,

this would involve a significant workload, as the new definition will inevitably result in an increase in officially recognised complaints. It also carries the risk of additional bureaucracy and delay. It could frustrate efforts to recover a situation quickly where something has gone wrong, inserting an additional bureaucratic layer by needing to register a matter with the Police and Crime Commissioner's office before remedial action can be taken by the force. We believe that any reform to the system must ensure prompt responses to put right something that has gone wrong.

Responsibility for both complaints handling and appeals

29. Importantly, we do not believe that a responsibility for handling complaints through local resolution can sit together with an appellate responsibility in relation to those same complaints. We will expand on this in our answer to question 2.

Involving the IPCC

30. Point (b) in paragraph 2.28 appears to imply that Police and Crime Commissioners will allocate cases for investigation by the IPCC. There is a similar implication at paragraph 2.34. We expect this means that Police and Crime Commissioners will consider whether a case should be referred to the IPCC, so that we can consider the appropriate level of our involvement. We do not believe that the Home Office intends the IPCC, as an independent body, to relinquish our existing rights to decide which cases we will take on. We would appreciate clarification; if that is the intention we would resist such a proposal.
31. While point (c) in paragraph 2.28 refers to the Police and Crime Commissioner acting as a single point of contact and communication for a complainant during police investigations, paragraph 2.34 appears to extend this role also to IPCC investigations. Our direct role in keeping complainants and interested parties (including for example bereaved families) informed and supported is an important part of our statutory role and independence. On a practical level, we believe it will be a significant challenge for a body that is removed from the investigation to be able to give meaningful updates. Our experience shows that decisions on what can be disclosed can be finely balanced, and only appropriately carried out by the investigating body. Therefore, we believe that the primary responsibility for keeping complainants informed and responding to their needs throughout our independent investigations must remain with ourselves.

Volumes

32. We also believe that further consideration needs to be given to the volume of complaints that some Police and Crime Commissioners would be responsible for. For example, in 2013/14 the Metropolitan Police Service recorded 7,115

complaints, Greater Manchester Police 1,536, and Devon and Cornwall Police 1,364. In combination with the proposals to expand the definition of a complaint and to end decisions not to record complaints, these numbers will almost certainly increase. Many Police and Crime Commissioners would need to equip themselves to receive, triage and potentially deal with complaints in considerable volumes.

Minimum safeguards

33. We recognise that the consultation document reflects considerable public dissatisfaction with the current system, and our own experience that complaints are not well handled locally by police. We have set out some of the concerns that are raised by the current proposals. As a minimum, if implemented, there would need to be:

- a duty for Police and Crime Commissioners to carry out this work, and a clear framework for them to work to;
- a common standard for recording information about complaints so that there can be consistency of information-gathering and learning;
- a clear feedback loop between Police and Crime Commissioners' offices and forces, to ensure that forces can own and act upon the issues and lessons arising from complaints;
- a minimum standard for local accessibility of the complaints system, including a duty for Police and Crime Commissioners to provide and disseminate local information about the arrangements they each put in place for handling complaints; and,
- a clearly established framework for the sharing of information between the IPCC and Police and Crime Commissioners, and clarification of the nature and extent of Police and Crime Commissioners' obligations to provide complainants and interested parties with information at each stage of the process.

2. Do you agree or disagree that Police and Crime Commissioners (PCCs) should be given responsibility to consider appeals on the outcomes of complaints dealt with through local resolution?

34. When the amendments to the police complaints system that were brought about by the Police Reform and Social Responsibility Act 2011 were first being considered, we took the position that appeals on lower-level matters should be dealt with by Police and Crime Commissioners. When responsibility for these appeals was assigned to chief officers we said that such an arrangement did not constitute a true appeal right, but rather an internal review, as there is no institutional separation between first-instance decision makers and those who would consider a complaint on appeal. The most recent complaints statistics, published this week, add to that concern, showing that police forces' rates of

upholding appeals against their own investigation decisions are only half those of the IPCC, when we consider appeals independently.

35. For that reason, we continue to believe that Police and Crime Commissioners can and should have a role as an appellate body for those appeals that no longer come to the IPCC. However, if they are also, as proposed, to be the decision-making body themselves, this raises the same concern about the lack of organisational/institutional separation which is necessary to create a properly independent and effective right of appeal. Moreover, while a system of ethical walls might be implemented in an organisation the size of a police force, the offices of Police and Crime Commissioners will always be smaller and have less scope for such arrangements. While we believe therefore that Police and Crime Commissioners should have an appellate role in relation to certain appeals, we do not believe that that this can sit alongside their proposed role in the substantive handling of complaints through local resolution.
36. Our overall view is that a structure whereby forces retain responsibility for the local resolution and/or investigation of complaints, and then the appeals that no longer come to the IPCC are dealt with by Police and Crime Commissioners would be preferable. This would still offer Police and Crime Commissioners an overview of local resolution, and an opportunity to assist forces in how it is carried out. As stated above, we can see the argument for Police and Crime Commissioners having responsibility for the initial receipt and triage of complaints (although see our comments at question 1).
37. However, as the consultation paper acknowledges, if Police and Crime Commissioners have appellate powers in relation to complaints that have been handled by the police, this could be seen to impinge on the operational independence of chief constables. The consultation document therefore describes a set of powers for Police and Crime Commissioners that is designed to avoid this. This set of powers is weaker and less direct than the powers available to the IPCC or forces themselves in dealing with appeals now. In our response to questions 40 and 41 we explain that even these existing powers are too limited, and argue that there should be enhanced powers to determine and remedy complaints for the IPCC and any other body that deals with appeals.
38. We believe that the set of powers the Home Office has proposed would leave Police and Crime Commissioners, when dealing with appeals about complaints that have been handled by the police, unable to meet the legitimate expectations of appellants. Moreover, we have said that if Police and Crime Commissioners are to hold an appellate role then the local resolution of complaints should sit with police forces. In those circumstances, the problem we are describing here would apply to every appeal dealt with by a Police and Crime Commissioner. We believe the very limited and specific interference with

operational independence that appeal handling requires is less important than ensuring that Police and Crime Commissioners have powers appropriate to their proposed responsibilities.

39. Our concerns over the proposed appellate powers are:

- The proposals that the police should be invited to reconsider their own findings recalls the much-criticised ‘complaints roundabout’ that is a feature of the current system. Moreover, this is a roundabout potentially without end since, if the force reconsiders and reaches the same conclusions, a Police and Crime Commissioner has no apparent leverage to change that outcome, short of calling for an IPCC investigation. As we explain further in our response to questions 40 and 41, we believe it is important for matters to be determined decisively by the appellate body. We believe this to be in the interests of complainants, who should receive a prompt and certain response, and the efficiency of the complaints system as a whole.
- We are also concerned about the proposal that a Police and Crime Commissioner should be able to call upon us to investigate a matter, apparently without discretion to decline, for a number of reasons.
 - The IPCC is being granted additional resources so we can investigate the most serious and sensitive matters involving the police. The matters that Police and Crime Commissioners would call upon us to investigate are, on the whole, unlikely to come into this category. The IPCC’s enhanced capacity, as currently envisaged, would therefore not be sufficient to carry out these additional investigations.
 - To deal with this, it is proposed that investigations would be conducted at a Police and Crime Commissioner’s expense. Yet funding from a Police and Crime Commissioner would not translate immediately into IPCC investigative resource. It appears likely we would need to set aside a contingent resource each year, in order for us to be able to respond to such requests. Unless funded by the Home Office, this would detract from our work on serious and sensitive cases.
 - The requirement to fund an investigation by the IPCC appears to raise a risk that a complainant could be denied the most appropriate handling for their case, owing to the financial implications.
 - This proposal raises questions about the IPCC’s independence. As discussed in our response to question 1, a facet of this is our ability to decide for ourselves which cases require our involvement. Even the Home Secretary cannot require us to carry out an investigation. This discretion will be enhanced further by the proposed power of own initiative. It does not seem consistent or appropriate for a Police and Crime Commissioner, or any other body, to be able to order an IPCC investigation at will.
 - The funding of an IPCC investigation by a Police and Crime Commissioner also raises questions about how much influence a Police

and Crime Commissioner could expect, arguably quite reasonably, over how that investigation is carried out. We believe that the IPCC, as an independent body should be able to determine the scope and nature of any of its investigations.

3. Should the Government consider going further to streamline appeals? For example (i) by removing the need for the Independent Police Complaints Commission (IPCC) to hear appeals on cases that they have referred back to police forces to consider and/ or (ii) handing these appeals from the IPCC to the PCC for misconduct cases that fall below dismissal

40. We understand and support the need to prevent a roundabout of appeals between the IPCC and police forces. Our increasing capacity to investigate cases independently, in combination with our proposals for the determination of complaints (discussed at questions 40 and 41) will help with this.
41. In our view, taking steps to remove further appeals from the IPCC's consideration would not be appropriate. Public confidence is enhanced when serious complaints against the police, including those that involve potential misconduct or criminal behaviour by those serving with the police, are dealt with by a wholly independent national body. We believe this particularly in light of the concerns that we have raised about the framework that has been outlined for Police and Crime Commissioners' appellate role.
42. Moreover, further reductions in the number of appeals that the IPCC deals with could impact adversely on our ability to spot trends and themes from which we are able to derive broader learning for the police service through our oversight and confidence work. Dealing with appeals allows us to discern trends and themes more readily than may be the case through other means (such as our regular collection of data from forces) as we are able to obtain more in-depth qualitative information.

i. Cases referred back

43. We are not clear whether this proposal relates to cases that the IPCC sends back to a force following a direct referral or to cases that we send back for more investigative work as part of our decisions on appeals. We will therefore address both cases.
44. The referral criteria describe types of cases which from the very outset may merit the independent involvement of the IPCC. From among these, we then select the cases to take on ourselves based on their seriousness, sensitivity and the public interest. If we refer a case back for a force to deal with, we are not taking a decision that the case is unimportant, or may not merit any further independent scrutiny. The knowledge that, after the force has dealt with a matter, a complainant could elect to appeal to the IPCC is part of the context in

which we decide to refer a case back to a force. If this was not the case, we would need to reconsider which cases we should become involved in at the referral stage.

45. In the context of appeals, we will send a case back for further investigative work where we decide that the findings of an investigation need to be reconsidered, but further work is necessary for that to be done effectively. We might also require investigative steps to be carried out after considering an appeal about the local resolution of a complaint. It is important that the IPCC should be able to consider any further appeal in such cases, precisely because we have determined that the work done up to that point is deficient. We need to be able to take a view of that work if there is any further appeal, to ensure its quality and maintain the confidence of the complainant.

ii. Misconduct cases that fall below dismissal

46. The IPCC does not believe that the need for independent scrutiny is limited to cases which may lead to the dismissal of an officer. The IPCC currently deals with cases on appeal that do not raise the possibility of dismissal, but which are still in themselves serious matters where it is important for public confidence that they are considered by an independent national appeal body.
47. Moreover, in our experience, behaviour that might justify dismissal is not always immediately apparent. It might only be revealed during an investigation or upon consideration of an appeal, even though the initial misconduct alleged was of a lower level. Since the purpose of an appeal to the IPCC is, in part, independent scrutiny of the decisions that have led to the proposed outcomes in a case, removing appeals apparently involving lower level misconduct from the IPCC's consideration is potentially pre-empting those findings.

4. Should Her Majesty's Inspectorate of Constabulary (HMIC's) remit be extended to include inspection and judgement of the effectiveness of staff working for PCCs responsible for the components of the complaints system set out above in 2.28?

48. We support the ability of HMIC to inspect the efficiency and effectiveness of the complaints system, under the proposed transfer of certain responsibilities from police forces to Police and Crime Commissioners. We referred in our response to question 1 to the need for a framework to govern how Police and Crime Commissioners will discharge their proposed responsibilities for receiving, triaging and handling complaints. We believe that inspection against such a framework could mitigate one of our key concerns: the consistency with which Police and Crime Commissioners would discharge those responsibilities.
49. Although the suggestion is that HMIC should be able to inspect 'staff working for Police and Crime Commissioners', the flexibility being offered to Police and

Crime Commissioners does not appear to preclude them from contracting out services in relation to the complaints system to third party private providers. We believe any extension to HMIC's remit would need to be drawn sufficiently widely to account for this possibility.

5. Should the proposal to extend the definition of a complaint cover the following?

(a) policing practice;

(b) service failure;

(c) both.

50. We believe that the broadest possible definition should be applied to complaints, to avoid public dissatisfaction going unanswered. On that basis, we believe the definition should include dissatisfaction in relation to policing practices and service failure. However, in our view the definition needs to be expressed in the simplest possible way – ideally without reference to either 'policing practice' or 'service failure', which are themselves not particularly accessible terms. We believe there would be merit in a definition as simple as 'any dissatisfaction with the service provided by the police', or even 'any complaint about the police'.

6. Do you agree or disagree with the proposal that all complaints should be recorded?

51. We agree with this proposal. In line with our views on widening the definition of a complaint (question 5), and on deciding to cease handling a complaint (question 7), we believe that every expression of public dissatisfaction deserves an answer – albeit one that is proportionate to the nature and circumstances of the complaint that has been made. The initial recording decision, and the potential for an expression of dissatisfaction to go unrecorded, is an obstacle to this aim and an unnecessary bureaucratic step. We therefore believe that there should be a simple system of registering any expression of dissatisfaction from a member of the public.

52. The decision whether to record a complaint is a point of potential antagonism for members of the public, who are justified in expecting that if they feel dissatisfied they should be able to complain. For the same reason, the possibility that a complaint may not be recorded makes explaining the system to members of the public more difficult.

53. In 2013/14 we upheld 49% of the appeals about recording decisions that we received, which we believe demonstrates further why the recording decision as it stands is not adding sufficient value to the system. We consider that appeal

rights within the complaints system should be simplified and focused on how a complaint is handled, rather than the narrow point of whether or not it is a recordable complaint.

54. There is a possibility that at least some appeals about a decision not to record a complaint will translate into appeals about what is then done next – to a greater or lesser extent, depending on how effectively those matters are handled once they are in the system.
55. There are at present a number of reasons why a complaint may not be recorded. We believe these have implications for how other parts of the system should operate, if the initial recording decision is removed. The following list is not exhaustive, but offers examples of the types of complaints that will need to be considered in further work on this proposal.

Complaints from those who are not involved

56. In order to be a complainant the system currently requires that someone is adversely affected by the conduct complained about, or has witnessed the conduct. A witness means that a person would be a 'competent witness capable of giving admissible evidence in criminal proceedings or has in his or her possession or control anything which would be admissible evidence in criminal proceedings'. Alternatively, a complainant can be someone acting on behalf of a person who falls into those categories. This means for example that someone who has only heard of police conduct at second hand, or witnessed something on television is not eligible to make a complaint.
57. We believe it is appropriate that such complaints are recorded. Complaints of this nature, as much as any other, are expressions of public dissatisfaction with the apparent performance of the police. Registering such dissatisfaction is a part of the broader picture of public perception that we believe the police and those who hold them to account should understand and respond to.
58. We also believe however that this is an example of where the system needs to offer sufficient flexibility to provide a response to the individual raising dissatisfaction, stating what action if any is being taken, but those administering the system should not be drawn into acting on that individual's behalf. They should not, for example, be required to provide ongoing updates or any right of appeal about the outcome of the matter, as is required in the case of a complaint from or on behalf of someone directly involved.

Complaints from people serving with the police

59. The system currently places firm restrictions on people serving with the police becoming complainants. We are strongly of the view that the complaints system should remain a system for the public's use, not for police officers and staff who

may have concerns about the way that the service is being run. Officers and staff are able to raise matters of concern to them both through their own line management, the police service's own internal grievance procedures and proposed strengthened whistle-blowing processes. We therefore believe that restrictions on people serving with the police becoming complainants should remain in place. We can see that there are circumstances in which someone serving with the police is in the same position as a member of the public: for example if they are the direct recipient of what they consider to be poor service. However, to create the possibility of a complaint in those restricted circumstances will inevitably re-introduce the need for decisions as to what is, and is not, a complaint – and potentially for some appeal right. We would therefore prefer a clear, straightforward and simple exclusion.

Complaints which are vexatious, repetitious, an abuse of process or fanciful

60. Currently any of these are reasons why a complaint may not be recorded. It is arguable that requiring such complaints to be recorded can perpetuate them unduly. If the recording of a complaint becomes a simple administrative registration however, this need not be the case. We take the same view of these sorts of complaints as with any other: they should receive an appropriate response rather than be administratively excluded from the system, however unwelcome the terms of that response may be to the complainant. The system must therefore allow this degree of flexibility in how the body receiving the complaint can choose to respond.
61. So for example, a complaint that is vexatious should be recorded, and those handling the complaint should be able to issue a short response explaining why they will take no further action. This will be the outcome of the complaint, and will be appealable. Assuming that the rationale for this decision is correct, the appellate body should be able to deal with such a matter swiftly. In our response to questions 40 and 41 we also outline how stronger powers of determination would assist in dealing with complaints that are vexatious, repetitious or an abuse of process.

7. Should the terms “discontinuance” and “disapplication” be replaced with the decision to end an investigation into a complaint?

62. We agree with the proposal to merge the current separate mechanisms of disapplication and discontinuance. The separation is of little practical relevance, and the need to distinguish between them is an unnecessary bureaucratic step. Moreover, the language of both is inaccessible. We favour the replacement of both with a label that provides a better explanation of what the mechanism does.

63. The consultation document indicates that it will only be possible to stop investigations once started. This implies that the current disapplication mechanism, which can apply before an investigation or local resolution begins, is being removed rather than ‘replaced’ – language that the consultation document also uses. We would ask for clarification of whether this is the intent.
64. We have already outlined in our response to question 6 our belief that every complaint deserves an answer. It follows that a mechanism through which a body can cease to handle a matter is unnecessary. In circumstances in which disapplication or discontinuance would currently apply, this should simply become the outcome of the complaint and the justification for no further action being taken. The emphasis would therefore be what has been done about a complaint, rather than what will not be done. The system should allow for this, and for the decision to be challenged via a standard appeal about the outcome of the matter (i.e. within a local resolution or investigation appeal). This would have the effect of simplifying the system as a whole by removing the need for a separate appeal right about the decision to cease handling. Removing disapplication and discontinuance (or their proposed equivalent) as separate decisions will also speed up the system, and make it simpler to explain and understand.

8. What more can be done to make the system easier for the public to understand?

Simplifying the system

65. One of the best ways of making the system easier for the public to understand is by making the system itself simpler. There are two ways in which we believe this can be done: by further streamlining the system’s processes, and by simplifying the language in which the system is described.
66. Many difficulties in the current system arise from processes which attempt to prescribe what should happen in any given situation, rather than establishing broad parameters and then allowing flexibility of response from those who administer the system. Some of the current proposals, such as broadening the definition of a complaint and ending decisions not to record complaints, are steps in the right direction. In our responses, for example to questions 6, 7 and 9, we have described how this could be taken further by allowing greater flexibility in how complaints are responded to and focusing protection for complainants into a broad right to appeal about the **outcome** of their complaint, rather than its handling or the processes involved.
67. The consultation document recognises that phrases such as ‘disapplication’ and ‘discontinuance’ can be difficult for the public to understand. There are many other examples of technical phrases which add to the difficulty of

understanding and explaining the complaints system; for example 'recording'. We believe that there should be a critical examination of all the statutory definitions and descriptions, with a view to making them more accessible and intelligible to the public.

National standards and approach

68. The IPCC issues statutory guidance on how the police complaints system should operate. As we have discussed already, there would be challenges in how this could be done in future, given some of the changes that have been proposed. Beyond our own guidance however, and particularly in light of these proposals, we believe that it would be valuable to have a national set of standards and an approach not just to the mechanics of the complaints system but also the important skills of customer service and effective complaints resolution. That would also help focus any proposed inspection regime. We see a role for the College of Policing in coordinating and providing this.

Measures to improve and maintain accessibility

69. We believe that forces and Police and Crime Commissioners in particular should have a clearly stated duty to ensure that the complaints system is sufficiently accessible to the public. This should include for example where and how people might complain, the provision of simple and straightforward information for complainants and – as we have already said in describing the principles of a good system – good communication throughout the life of a complaint.
70. Consideration could be given to involving organisations outside policing, such as Citizens Advice or other organisations in the voluntary and community sector, such as those working with minority ethnic communities or people at risk of domestic violence or sexual exploitation. Such organisations could helpfully provide information on the police complaints system, and might also be suitable routes for the public into the system (with an expectation that complaints will be passed on to Police and Crime Commissioners and/or forces).

Advocacy

71. Other complaints systems, for example in the healthcare context, include a professional advocacy service to support complainants in using the system. In our view, this kind of service could have a number of benefits in the context of police complaints. It could assist complainants to navigate the system and so overcome the technicalities and complexities of even a reformed system. It could assist complainants in ensuring that they are able to make themselves heard, and get the best outcome from making a complaint. It could offer those communities and groups that we know are less likely to use the complaints system more confidence to raise their issues through it.

72. We recognise that the proposed role for Police and Crime Commissioners goes some way towards this, in making Police and Crime Commissioners a single point of contact for complainants. We do not believe however that Police and Crime Commissioners, if they are also responsible for administering certain aspects of the complaints system, can assume an advocacy role.
73. We recognise the potential challenges of funding such a service. However, we believe that the creation of an advocacy service, whether a new body or a role assumed by an existing organisation, should be considered.

Application of the complaints system to non-Home Office police forces

74. The police complaints system applies as a matter of course to all of the Home Office forces in England and Wales. However, it only applies to other bodies of constables operating within England and Wales by virtue of agreements under section 26 of the Police Reform Act 2002. It also applies to other specified bodies (the College of Policing and the National Crime Agency) through separate provisions. In relation to some bodies of constables (for example, the British Transport Police) there is a requirement in law to put such an agreement in place. In relation to a number of other policing bodies, however, such agreements are optional for both the IPCC and that policing body to agree and implement.
75. Members of the public do not make a distinction between those serving with the Home Office forces and those serving with other bodies of constables, if they have the same or similar powers and roles. We believe that the public would expect a complaint about anyone who is, from their point of view, 'the police' to be dealt with in essentially the same way (even though technical differences between bodies may mean the mechanisms must be described differently). We believe therefore that consideration should be given to bringing all bodies of constables that operate in England and Wales under the proposed new complaints system as a matter of course.

IPCC jurisdiction over bodies other than the police service

76. The IPCC was created with oversight of policing in England and Wales. Since our creation however we have also been assigned oversight of Her Majesty's Revenue and Customs (HMRC), and staff who carry out certain border and immigration functions at the Home Office. These are responsibilities that fall outside our original role and our focus on complaints against police bodies, and there is often overlap with the responsibilities of other regulators. In practice, they involve very few cases, yet we need to maintain a capability, outside our normal expertise, to deal with them. Therefore, while as above, we would like to ensure that we have a role in all bodies exercising policing functions, we believe that there is an argument for removing our jurisdiction in relation to non-police bodies and assigning it to other independent regulatory bodies. We

would therefore ask that consideration is given to expanding the role of other relevant bodies and removing these matters from our oversight.

77. We also have responsibilities in relation to any allegations of criminality made about Police and Crime Commissioners, their Deputies and their equivalents in London. These allegations can and do include any matters raised in relation to their activities at any time before their role as a Police and Crime Commissioner. This is a role that it is difficult for the IPCC to perform effectively for two reasons. First, in most cases, these allegations are outside our regular experience (for example, allegations of electoral irregularities or expenses fraud). Anyone can lay an allegation, and it is important that it can be dealt with swiftly and effectively, given a Police and Crime Commissioner's unique role and responsibility. However, it is difficult for the IPCC to maintain the capability to do this. Second, if Police and Crime Commissioners are to be given a wider role in the complaints system, and therefore effectively to be partners with us in overseeing the system, this will be more problematic if we are also the body charged with investigating them. This role could be undertaken by a policing body not itself overseen by a Police and Crime Commissioner, for example the National Crime Agency or the City of London Police.

9. What should the Government do to make it easier to determine whether a complaint is persistent or vexatious?

78. The IPCC is alive to the time and effort that can be taken up in responding to a small number of individuals who raise complaints that are repetitive, vexatious or otherwise an abuse of the complaints system. We are conscious too of the damaging effects such complaints can have upon the officers and staff members who become unjustly subject to them. That said, we also believe that every complaint needs to be considered on its own merits. We believe the Home Office has been correct to consider these as issues about complaints rather than about complainants. Just because a complainant has made unmeritorious complaints before, does not necessarily mean that the current complaint is vexatious. Each complaint should be dealt with on its merits.
79. A clearer statutory definition of what constitutes a persistent or vexatious complaint would assist those who administer the complaints system in identifying such cases. We believe that this is also the case in relation to complaints which are an abuse of process. In our view, further work needs to be undertaken to develop and refine such definitions. This could be aided and expedited by considering how other complaints systems deal with such cases, within the UK and internationally.
80. We believe it is important to focus on improving how the complaints system can respond to such cases, and seek to resolve them at an earlier stage. We have already said that the system should allow broadly any complaint to be made,

but should afford greater flexibility in how complaints are responded to – including the prospect of very brief responses explaining why a complaint will not be acted upon further.

81. The consultation document raises the prospect of independent mediation as a means of resolving complaints, and as something to be promoted by Police and Crime Commissioners. We support the use of independent mediation in appropriate cases, but would point out that this requires specialist skills and is not without cost if done properly. It is possible that such methods in some cases could more appropriately address the issues raised by persistent or vexatious complaints than the standard application of the complaints system, by exposing the real issues that lie behind the complaint.
82. In relation to questions 40 and 41 we outline the powers to make determinations and recommend remedies that we believe the IPCC should have under a reformed system. We believe that these powers would offer an opportunity for a decisive resolution to complaints that are repetitive or vexatious.

10. Are any improvements needed to the way in which the police deal with complaints from victims of crime?

83. We believe that there is a need for improvements to be made generally in how complaints about the police are dealt with, and we deal with this throughout our response.

11. Should the Government introduce a system of super-complaints?

12. Is the IPCC the correct body to receive a super-complaint?

84. The IPCC already uses its experience and knowledge of individual cases to identify and respond to broader and thematic issues in policing. We contribute to HMIC's work (for example their regular joint inspection of police custody facilities, their thematic work on police integrity and, in future, the legitimacy strand of their PEEL inspections). Learning from our cases informs the College of Policing's work (for example, their development of Authorised Professional Practice for the police service). We also undertake our own research and make recommendations to the police service on issues of concern – for example our recent report on the police use of Taser, our work on deaths in police custody, and our ongoing study into the use of force by the police.
85. We can see advantages to members of the public and civil society organisations being able to raise concerns, whether about individual circumstances or more thematic issues, and be reassured that these will be considered and acted upon appropriately by those who oversee and regulate policing. We know that some members of the public are less willing to make

complaints about the police, for example young people and those from ethnic minority communities, and we also know that there have been complainants whose voices have not been heard: for example, victims of child sexual exploitation. This proposal is presumably designed to provide a route, independent of the police, through which their concerns could be raised.

86. However, there is a risk that individual perspectives and liabilities may not be fully addressed if these matters are dealt with as part of a collective concern. In the police complaints context there is unlikely to be a single remedy that would apply to all complainants, since the fact and degree of culpability or remedy often rests on the facts of each case. We therefore think that these concerns can be better dealt with through the IPCC's proposed power of own initiative. This is discussed in more detail in our response to question 39. The key points:
- the power of initiative would enable us to act without being reliant on the police service first to record a matter;
 - it would allow us to look at matters, including systemic concerns disproportionately affecting a group or community within a force area, beyond those which are currently recordable and referrable, wherever police conduct or service failure may be in question.
87. It is entirely conceivable that we would look into a matter using this power of own initiative as a result of concerns raised to us by a civil society or representative organisation, of the kind that it is proposed would be able to make a super-complaint.
88. Importantly this power of own initiative, and hence the cases we would take on under it, would be grounded in issues of police conduct or service failure. We believe this is important to avoid the IPCC being drawn into broader thematic questions of national or multi-force policy and practice which are more properly dealt with by HMIC. Issues raised of this latter kind would therefore be dealt with through an inspection rather than investigation route. Civil society organisations would be able to raise their concerns directly with HMIC, or the Home Secretary (who has the power to order an inspection by HMIC).
89. We have been building our capacity to listen and respond to the concerns of our stakeholders and wider communities through work under our 'oversight and confidence' strategy. We understand that HMIC is also building on this aspect of its work as it develops its PEEL inspection regime.
90. Overall, it appears to us therefore that the mechanisms are already in place, or are being separately proposed, to address the issues that a super-complaints mechanism would seek to address.

13. What additional powers would the IPCC, HMIC and the College of Policing need?

91. Some of the issues that would arise in a super-complaints system are:
- the IPCC already encounters situations where the actions of agencies other than the police are relevant to the circumstances we are investigating. This appears even more likely to arise through concerns raised by super-complaints. Consideration should also therefore be given as to how the actions of other agencies would be investigated;
 - were the IPCC to receive and triage super-complaints, we would need a clear statutory gateway through which we could share information with the organisation that brought the super-complaint;
 - we would need to be clear that our power to acquire information from third parties in relation to independent investigations (including without the consent of the data subject) would be available in these complaints;
 - consideration would need to be given to whether the existing framework for outcomes from IPCC investigations, including our power to issue organisational learning recommendations, would be adequate for the outcomes that are envisaged would arise from super-complaints – for example, recommendations or remedies in relation to non-police bodies, or for forces and bodies that are not the direct subject of the complaint;
 - we would need the ability to decline to proceed with a super-complaint, if for example the matters raised by it had already been recently examined by a different body;
 - if the IPCC were to receive and triage super-complaints, this would be additional new work for us. It would need to be funded appropriately.

Reforming the police disciplinary system

14. What factors should be considered when sanctions are benchmarked:

- (i) seriousness of misconduct;*
- (ii) public interest;*
- (iii) intent on behalf of officer involved;*
- (iv) previous conduct of officer;*
- (v) other (please specify).*

92. We welcome the intent to try to ensure that there is appropriate consistency in the action taken to deal with officers where their behaviour has been found to fall below the standard expected of them. We think it would be helpful for

everyone (including officers, complainants and those operating the police complaints and disciplinary systems) to have a shared understanding of what types of behaviour will usually lead to dismissal. However, we are mindful that it would be difficult to put together a comprehensive list of all the types of behaviour that should lead to dismissal. In addition, a legitimate disciplinary system must be fair and recognise where there are genuine and compelling mitigating circumstances.

93. We believe that it would be beneficial to have guidelines to help those who operate the police complaints and disciplinary systems make judgements about the seriousness of the behaviour and any sanction or other action that should follow. The guidelines could set out a range of suggested sanctions or other outcomes, and provide guidance on what factors decision makers should take into account. We are aware that such guidance exists to help those making decisions in respect of individuals in other professions. For example, indicative sanctions guidance or indicative outcomes guidance exists to aid those considering the conduct of doctors, nurses, midwives, architects, dentists and accountants.
94. There will be numerous factors that affect the seriousness of a matter and that may be relevant when deciding what sanction should be imposed or what other action should be taken. However, one which has not been mentioned in the consultation document, and which we believe is important, is the seniority of the officer. Senior officers have a particular responsibility to uphold standards and set an example to those they lead.

15. To what extent do you agree or disagree that the performance management process should be streamlined, bringing it into line with the process for misconduct?

95. We think that there is a strong argument for streamlining performance management and misconduct processes. Distinguishing between poor performance and a failure to meet the professional standard which requires that “police officers are diligent in the exercise of their duties and responsibilities” is often not easy. To a certain extent, the current system risks arbitrary distinctions being drawn between performance and conduct, and a lack of consistency in how similar allegations of ‘failing to do a good job’ are treated.
96. We would not object to ending the current three-stage process set out under the existing unsatisfactory performance procedures. However, this is not to say that we think that all matters of poor performance should be treated as misconduct. To do so would not be appropriate and would risk focusing the entire system on blame rather than improvement.

97. Our understanding is that any failings by an officer that are so serious as to potentially merit dismissal would be considered at a disciplinary hearing. However, it is not sufficiently clear what procedures are being proposed for dealing with all other matters, including (but not limited to) those that would currently be dealt with at a misconduct meeting.
98. The majority of cases will not involve gross misconduct or gross incompetence, but still have the potential to undermine confidence in the police service if they are not addressed properly. It is therefore important that issues which do not meet the threshold for a disciplinary hearing are dealt with in a fair and objective manner, and importantly that there is sufficient transparency around the processes and decision making in this part of the system.
99. We recognise that lower level performance issues are usually dealt with as an internal matter. However it is important that complainants and families are aware of what action has been taken as a result of a complaint, or any incident that has been investigated by the IPCC, even when it does not result in a disciplinary hearing. We would not want a reformed system to result in any reduction in levels of transparency. At present, for example, the IPCC is able to attend and make representations at misconduct meetings, and complainants and interested persons may observe those proceedings.
100. We would also wish to see any new procedures applying to both senior and junior officers. Current unsatisfactory performance and attendance procedures do not apply to senior officers.

16. To what extent do you agree or disagree that inspector is the appropriate rank at which to take decisions about matters below dismissal?

101. We are unclear what types of decision it is being suggested should be delegated to inspectors under the proposed new system. However it is very important that there is robust training and, where appropriate, accreditation for anyone who has responsibility for making decisions in the disciplinary system.

17. To what extent do you agree that time limits should be considered for disciplinary proceedings?

17(a) If you agree, how long should the time limit be?

102. It is important that disciplinary proceedings are brought and concluded in a timely manner. Lengthy delays can have a significant impact on the viability and eventual outcome of proceedings, and prolong uncertainty for officers, complainants, witnesses and families. It is therefore important to ensure that the system, and any regulations laid under it, seek to minimise unnecessary delay.

103. However we do not think that introducing a statutory time limit for bringing and/or concluding proceedings is the appropriate solution to the issue. It could preclude bringing proceedings in cases where there is a strong public interest for doing so and in cases where there is good reason for delay, such as waiting for expert reports or further disclosure, or for an inquest to take place. There is a risk individuals may seek to delay matters unnecessarily so that proceedings become time-barred.

18. Do you agree or disagree that police disciplinary hearings should be held regionally rather than locally?

104. In our view, any reforms should provide that hearings:

- are capable of reaching good quality decisions;
- are heard by people with sufficient knowledge and training;
- are sufficiently independent;
- can be convened in a timely manner;
- are suitably accessible to the public;
- provide sufficient consistency in decision-making, while recognising the individual circumstances of each case.

105. We believe that regional hearings, together with some of the other reforms being proposed, could help to improve public perceptions of independence from the home force and consistency of decision-making.

106. Wherever hearings are held, regionally or locally, it is important, as noted in our response to the Home Office's previous consultation¹, that no unnecessary restrictions are placed on public attendance.

19. Given the proposed changes to handling mitigations, are there any additional safeguards that would need to be put in place?

20. Are there any consequences for force welfare systems?

107. We recognise that it is important for police forces to be aware of any welfare needs that might affect the performance or behaviour of an officer. However, we are not convinced that this in itself necessitates any procedural changes to the way that mitigation should be considered at disciplinary proceedings. Panels already have the discretion to attach appropriate weight to mitigation, and should do so.

¹ 'Changes to the police disciplinary system', November 2014, <https://www.gov.uk/government/consultations/changes-to-the-police-disciplinary-system>

108. We are also mindful that individuals may not always be conscious that something is already affecting, or may be likely to negatively affect, their performance or behaviour. Similarly, they may not always be conscious that their knowledge or training in a certain area is deficient. As noted earlier in our response, a legitimate disciplinary system must be fair and recognise where there are genuine and compelling mitigating circumstances.

21. Which of these options do you prefer? Please explain your answer.

(i) option one;

(ii) option two.

109. This question seeks views on whether disciplinary appeal hearings should be heard regionally or in one location for the whole of England and Wales. We do not have a strong view on this issue.

22. To what extent do you agree or disagree that the proposed way of appointing lay members is the most effective?

22a. [If you disagree or strongly disagree] What alternative approach should the government consider?

110. We would support the proposal to have a central list of lay members from which individuals can be drawn to sit on appeal hearings, although we would welcome further details on who will maintain this list as this is not specified in the consultation document. The list, as with any lists of those who may be asked to preside over earlier disciplinary hearings, needs to be managed well, be sufficiently inclusive, and regularly refreshed.

23. Are there any practical reasons why dismissal with notice is justified in certain cases?

111. We do not have a view on this issue.

24. For how long should warnings remain on officers' records?

112. In our view the length of time that a warning should remain on an officer's record should depend on the nature and seriousness of the behaviour which has led to it being issued. It is also important that those with management responsibilities are able to identify patterns of behaviour, ideally before they result in serious conduct issues. It may be beneficial to conduct a benchmarking exercise against other professions.

25. Do you agree or disagree with the principle of bringing together the staff and police disciplinary systems into one single system?

25 (a). If you agree, which option do you prefer:

(i) option one: move civilian staff into the regulated police officer system;

(ii) option two: de-regulate the police officer system (wholly or in-part);

26. What issues should the Government consider before deciding whether to implement options one or two?

113. We are conscious that the current system, whereby officers and staff who have been involved in the same incident are dealt with under different procedures, especially where there appear to be differential outcomes, is far from ideal.

114. The current differences in process make the system more complex to operate and difficult for members of the public to understand. Police staff undertake a number of public-facing roles, in custody, in call centres and on the streets; members of the public are unlikely to make any distinction between police officers and police staff. If someone has made a complaint about the police or a member of someone's family has died in police custody, the status of the individuals involved is likely to have no relevance for them. They are simply concerned about what "the police" did.

115. A case can be made that there should be parity in the treatment of those who are being investigated and an equal degree of openness, transparency and independence, irrespective of whose conduct is in question. However, we are also mindful that the nature of police staff roles varies greatly, and some staff work very much in backroom functions rather than what might be considered 'core policing activities'.

116. We do not think that there is an easy solution to this question. It may be sensible to align disciplinary processes for some roles, for example PCSOs and police officers. However, we think that more detailed thought needs to be given to the implications of aligning the processes for officers and staff, and if they are aligned, what model should be used. It is certainly important that the outcomes of the same behaviour should be broadly in line, and the proposed guidelines for disciplinary sanctions should go some way to achieving this. Consideration also needs to be given to what arrangements should be in place for contractors.

117. We are mindful that if other proposals for reform of the disciplinary system for officers go ahead, such as proposals to introduce public hearings and legally qualified chairs, the differences in handling of officers and staff will become

even more marked. However, we would not wish to see any move away from measures to increase transparency and objectivity in the procedures for officers. We see these as making an important contribution to the broader efforts to professionalise the police service.

27. Which option for compelling police officers to answer IPCC questions do you think the Government should pursue?

(i) option one: make it a criminal offence;

(ii) option two: forces apply a specific disciplinary sanction;

(iii) option three: IPCC seeks a disclosure notice.

118. It is extremely important that officers co-operate fully when an investigation is being carried out by the IPCC - in order to ensure that we can carry out an effective investigation, and to promote public confidence both in the police and the police complaints system. The IPCC carries out investigations into the most serious matters, including where someone has died during or following contact with the police.

119. In many cases the IPCC will need to interview officers who have witnessed an incident and ask them questions in order to fully understand and probe what they know. We now have powers to require officers to attend interview, but this has not proved as effective as we would like or as we believe Parliament intended. Some officer witnesses choose to make no comment and in many cases only provide written answers after consultation with lawyers and others. As we have said on a number of occasions, this does not provide best evidence. At best, it can be a protracted process to follow up the supplementary issues raised in those written answers, or those of others; at worst it can leave key questions unanswered. This has the potential both to damage investigations and undermine public confidence in the police.

120. The IPCC has not called for any criminal compulsive powers or for refusal by an officer who is a witness to answer questions at an interview to be made a criminal offence. We do not believe that this would be appropriate or helpful; indeed it could make matters worse, as witnesses would still be able to give 'no comment' interviews, and any evidence obtained under compulsion would be inadmissible against them in future misconduct or criminal proceedings if they later became suspects.

121. We have instead asked that police officers who are witnesses should be under a duty to cooperate, or a duty of candour, and that this should be built into the code of ethics for police officers, and into standards and regulations. This is the situation for other professional bodies, such as health workers and teachers. It

would create a positive obligation for individuals to engage and participate fully in the investigation into any complaint, conduct matter or death and serious injury, in a timely and compliant manner, backed where necessary by disciplinary sanctions. We prefer this to the options set out in the consultation document.

Strengthening protections for police whistle-blowers

122. We recognise that the police service itself can often be best placed to identify wrongdoing and failures in the service that it provides. We therefore believe it is vital that there is an expectation that officers and staff will challenge and report improper behaviour, as articulated most recently by the College of Policing in the Code of Ethics.
123. The ability of individual officers and staff to come forward as whistle-blowers, and the protections such individuals are afforded, is an important part of this. However, whistle-blowing procedures alone are not sufficient to ensure that every instance of wrongdoing or failure is adequately identified and addressed. Effective leadership and management are vital to creating an environment where such issues can be brought forward and are effectively acted upon. Any proposed reforms need to complement, not replace or undermine, the responsibilities of leaders and managers.
124. In 2008 the IPCC set up a confidential report line for members of the police service to report any wrongdoing. Since then, we have been contacted over 700 times and contact has been spread across the majority of police forces. There does not appear to be a lack of awareness in the police service of the report line. However, we estimate that 75% of the reports we have received have related to internal policies and HR issues rather than matters which have an adverse effect upon the public. The consultation document sets out a range of proposals to augment the current arrangements for whistle-blowing within the police. It provides however only very limited evidence of the deficiencies in the current system these proposals are required to solve. This information would help inform comments on the suitability of the proposals.
125. The consultation document suggests that only through these proposed changes will the IPCC be able to implement a recommendation made to us by the Leveson Inquiry, that we should filter reports to ensure they are handled at the right level. However, through our report line we are already implementing this recommendation. Every report that comes to us is assessed to ensure that appropriate action is taken. This may range from arranging a meeting with a person who is making a whistle-blowing report to advising a person who is raising a HR grievance to raise this directly with their force.

28. To what extent do you agree or disagree that the IPCC should have the power to manage the early stages of an investigation brought to their attention directly by a whistleblower before informing the force?

126. The IPCC agrees that it should, where appropriate, be able to begin investigating a report without having to wait for a recording decision and referral from the relevant force or Police and Crime Commissioner. Our views on this are dealt with in our response to question 39, on our proposed power of own initiative.

29. How should cases reported by whistleblowers to the IPCC which fall below serious and sensitive be dealt with?

127. One option would be for the matter to be sent to a designated contact in the Professional Standards Department of the force who is trained in dealing with whistle-blowing and is a 'champion' for the new processes.

30. To what extent do you agree the introduction of sealed investigations will increase the ability of the IPCC to carry out investigations and prevent the possibility of collusion, destruction of evidence or pressure being applied to an investigation?

128. The IPCC welcomes the recognition that sealed investigations will in most cases be unnecessary or impractical, particularly taking into account issues of IPCC capability. However, this proposal suggests that the IPCC is not currently free to set its own investigative strategy, and this is not the case. Neither does the current legislation prevent the IPCC from carrying out investigations where knowledge of the investigation, or the amount of information made available, is restricted. We have carried out certain investigations in this way.

129. Part (a) of the proposal suggests that the IPCC could use non-disclosure agreements to restrict the disclosure of information about the investigation. It is not clear on what basis these agreements would be issued or what sanction there would be for breaching the agreement.

130. There is a strong case for an organisation such as the NCA carrying out covert investigations or employing certain RIPA powers in support of an IPCC investigation where needed. This would overcome some of the issues the IPCC would encounter if it were to carry out such work itself and unaided; as alluded to elsewhere in this response (in relation to supervised and managed investigations), we are not currently set up to carry out this type of work. Provision would need to be made in legislation for how such work would be funded.

31. At what points in the process do you think a whistleblower should have a right to feedback?

131. We agree with the principle that whistle-blowers should be kept informed, in the same way as complainants and interested persons. Requiring whistle-blowers to receive updates at the same stages that a complainant receives updates would provide an appropriate framework. Where a whistle-blower is a witness there would be limits to what could be shared with them, to preserve the integrity of their evidence.

32. For each of the issues set out above, please state whether a whistleblower should, or should not, have a right to be consulted by the IPCC.

132. The IPCC agrees with the principle of taking the whistle-blower's views into account when making investigative decisions, and believes this should also apply to police investigations. However we question to what extent a whistleblower needs more consultation on investigative decisions than complainants or interested parties. We agree that it should be the IPCC (or police) who make the final decision, taking into account the whistle-blower's views. There should be a time limit for the whistle-blower's response, to avoid investigations being unduly delayed.

133. In respect of the specific proposals (a) to (d) in the consultation document:

- a) We agree that the whistle-blower's view should be sought about whether they wish to make their report anonymously, in confidence, or overtly. In cases where a whistle-blower chooses to make their report anonymously, there could still be an opportunity to consult with them further. This decision should be made on a case by case basis.
- b) We agree that the whistle-blower's view should be sought about whether the matter is referred back to the force to be recorded or recorded by the IPCC. There may be reasons that the IPCC is not aware of which could usefully inform this decision but it should be clear that this is a decision for the IPCC.
- c) We agree that the whistle-blower's view should be sought about whether there are any parts of the force that, if involved in the investigation, might compromise its effectiveness or lead to the whistle-blower's identity being exposed for the same reasons as (b) above.
- d) This part of the proposal is unclear. We would need further clarification in order to take a view on whether this would be appropriate. It would be useful for example to have more information in relation to timing, whether the report should be shared with other parties, applying a harm test and any exceptions (for example if the whistle-blower is a witness).

33. To what extent do you agree or disagree with the proposal to give whistleblowers the opportunity to request an independent review of any decision that they have a case to answer regarding their conduct?

134. The IPCC agrees that whistle-blowers should be protected from malicious allegations and reprisals. However, we also believe this proposal needs further consideration of how it would be implemented. There is a risk that this protection could be abused and that a person who is subject to a conduct investigation could seek to avoid or delay that investigation simply by claiming to be a whistle-blower.

135. The proposal does not make clear whether it includes the opportunity to challenge a decision by the IPCC that there was a 'case to answer' for misconduct. The IPCC already takes an independent view of the case. It would appear unnecessary to introduce a further independent review of that decision.

136. We also believe that the timescale needs to be clarified. The proposal states that this protection is available for 12 months but does not state when the 12 months begins. A complex or serious case could quite feasibly take more than 12 months to investigate, but the person who has blown the whistle could be vulnerable for all of the time the investigation is running and some time afterwards.

34. To what extent do you agree or disagree that the identity of a police whistleblower should be protected by law?

137. The proposal puts forward a "guarantee of anonymity". This sets a very high expectation, which has both practical and public interest issues. At present it is for a court or other tribunal to decide on anonymity, balancing the right to a fair trial against the need to protect vulnerable witnesses on a case by case basis. It is difficult to see how a guarantee could be made from the outset.

138. Considerable safeguards are necessary to ensure that anyone accused could properly answer any charges made (including being able to comment on the credibility of their accuser). We also see a risk that blanket anonymity could result in malicious allegations being made without foundation.

139. In our view, the need to take reasonable steps to protect the identity of a police whistle-blower should be considered on a case by case basis and be subject to review. In relation to any investigation that the IPCC carries out, this decision should be ours. Further consideration would need to be given to who should be responsible for this decision in a case where the IPCC is not involved.

35. Are there circumstances where the Crown Prosecution Service should consider immunity from prosecution for police whistleblowers with information about serious criminality in their force?

140. Any decision to offer immunity should take into account the need to maintain public confidence in the police service.

Other issues

How whistle-blowing is to be defined

141. The consultation document says that whistle-blowing will be defined based on the definition of a “protected disclosure” in Part IVA of the Employment Rights Act 1996. The Act protects disclosure of only certain types of information, including information that someone has committed a criminal offence or failed to comply with a legal obligation. It is not clear whether all forms of misconduct and poor practice, as alluded to in paragraphs 4.4 of 4.5 of the consultation document, would be caught by that definition. It is also a requirement of the Employment Rights Act that the disclosure is made in the public interest, which usually excludes a broad range of disclosures from the ambit of protection. However, it is arguable that a greater number of disclosures made about serving police officers would be in the public interest. We believe therefore this definition will need to be adapted to avoid a significant number of issues raised by officers being inappropriately treated as whistle-blowing. The expectation should remain that concerns are raised through management channels, and that whistle-blowing should only occur in exceptional circumstances.

Reporting

142. The consultation document states that from April 2015 the Home Office will collect and publish information about the number of conduct matters reported to police Professional Standards Departments by police officers and staff, and the action taken as a result. This will complement information the IPCC already publishes about the numbers of recorded complaints. We see two issues:

- this will leave a gap in reported information – conduct matters which come to a force’s attention by other means than reports from staff and officers;
- we believe the Home Office will need to take steps to ensure the quality and consistency of the information from which it produces its reports, as the IPCC currently does for the complaints information we publish.

Funding

143. Various aspects of these proposals change the requirements for IPCC investigations and other work involving whistle-blowers. Some reflect our current practice. Others however are sufficiently different or new that they are

likely to carry additional funding implications that will need to be further assessed and addressed if they are implemented.

144. It is difficult to assess the funding implications that these proposals taken as a whole may have for the IPCC – particularly the increase in use of our report line and the new demand for IPCC investigations. The consultation document provides only anecdotal evidence of some police officers and staff being reluctant to report wrongdoing; this does not provide a firm basis for predicting the additional work that may be generated,

The IPCC

36. Are further changes needed to strengthen or clarify the mandatory referral criteria?

145. At present, forces and Police and Crime Commissioners must refer to the IPCC any death or serious injury matter, any complaint alleging conduct which has resulted in death or serious injury, and any recordable conduct matter relating to any circumstances in or in consequence of which a person has died or suffered serious injury. Forces and Police and Crime Commissioners must also refer any complaint or recordable matter which falls within mandatory referral criteria. These are allegations of:

- a serious assault;
- a serious sexual offence;
- serious corruption;
- a criminal offence or behaviour which is liable to lead to misconduct proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a persons race or belief, sex or sexual orientation, religion, age, disability, gender reassignment, marriage or civil partnership, or, pregnancy or maternity;
- a ‘relevant offence’; or
- complaints or conduct matters which are alleged to have arisen from the same incident as anything falling within these criteria.

146. Where there is already a complaint alleging conduct that resulted in a death or serious injury, forces and Police and Crime Commissioners must also refer any additional complaints arising from the same incident.

147. We recognise that certain current developments, including the proposal that the IPCC deal with all ‘disciplinary cases’ involving chief officers, and the new offence of police corruption which is part of the Criminal Justice and Courts Bill currently before Parliament, may mean that the mandatory referral criteria will be extended. Our view at present, however, is that the current mandatory referral criteria are sufficient, provided they are:

- a) applied rigorously by the police service and, particularly in light of the proposals contained in this consultation, by Police and Crime Commissioners;
- b) backed by a flexible power to consider taking up cases on our own initiative, as is proposed in this consultation.

148. Many of the cases which we take on as investigations arise not from individual complaints, but from conduct or death or serious injury matters, referred to us directly by the police service. We recognise that the police service itself can often be best placed to identify wrongdoing, and failures in the service that it provides.

149. However, we have some concerns about the extent to which such matters, including those which must be referred to the IPCC, are being identified. For example, in November 2013 we wrote to chief officers to reinforce how Statutory Serious Case Reviews, Domestic Homicide Reviews and other serious case reviews undertaken by the police will often include matters which must be referred to us. We cited instances where there had been a failure to refer such matters and we had used our 'call in' powers to ensure that these cases are then recorded and referred by the relevant police force, so that they can be appropriately investigated.

150. We can only use our call in powers where such cases become known to us. We believe that the police need further support (for example through the oversight and confidence work that we undertake) to ensure that the full range of referable matters is consistently identified, particularly those which are the most serious.

37. What are the practical implications of removing the option to conduct managed or supervised investigations?

151. The IPCC has previously decided, as a matter of policy, to limit the number of supervised investigations that are carried out. We do not believe that they provide us with effective control over the manner and substance of the investigation, though they create a public perception that this is the case. We therefore favour their removal.

152. Conversely however, we believe that a continuing ability to undertake managed investigations assists the IPCC in being able to respond appropriately in some cases.

- Some cases that the IPCC has dealt with involve possible criminal behaviour by people who are not part of the police. Operation Resolve, the investigation that the IPCC is managing alongside our own independent inquiry into the Hillsborough tragedy, is such a case. IPCC investigators have the powers of a constable when conducting an independent

investigation, but can investigate the actions of those not serving with the police only in limited circumstances. Managed investigations are necessary to ensure that there can be a single investigation, where it involves allegations against police and non-police actors.

- Managed investigations provide us with a means by which we can access certain specialist capabilities (for example, gathering covert intelligence) that would not be cost-effective for the IPCC to develop and maintain in-house.
- Managed investigations are also a way in which very large scale enquiries can be carried out. Such cases would otherwise have a disproportionate impact on the IPCC's ability to carry out its core business.
- The consultation document recognises that the police could be called upon to conduct parts of an independent investigation, to address issues of capability and scale. It also recognises the impact such support could have on the independence of the IPCC's investigations. We believe that being able to solve issues of capacity and capability through ordering a managed investigation provides greater clarity for the public as to the extent and nature of our role. We also believe that being able to order a managed investigation better distinguishes and preserves the independence of the investigations we take on ourselves.

153. We have previously put forward a proposal for separate funding for very large-scale investigations, on the model of the Hillsborough investigation. This could be an additional alternative to a managed investigation. We also have some concerns about our ability under current legislation to exercise effective direction and control over managed investigations and to ensure that they are begun and concluded in a timely fashion. If they are to be retained we believe that there need to be provisions to ensure that our direction and control can be effective, for example:

- to clarify the respective roles of the IPCC and the appointed police force investigator;
- to clarify our ability to set the terms of reference for an investigation;
- to clarify the responsibility for resourcing a managed investigation;
- to clarify accountability for the timeliness and quality of the investigation.

154. We would want to discuss these options further.

38. In what circumstances should the IPCC be able to seek police support to assist them in their investigations?

155. The IPCC is currently able to require chief officers to assist us with the independent investigations that we undertake. We agree that, particularly in order to preserve the independence of our investigations, such requests for assistance should be exceptional. We believe however that we are, case by

case, best placed to determine operational need and to balance this against the requirements of independence. We believe therefore that we should retain our current broad discretion to obtain assistance, rather than having the circumstances in which we can do so set out for us.

39. To what extent do you agree or disagree with the proposal to give the IPCC a power of initiative?

156. Under the existing complaints and conduct system a matter (whether a complaint, a conduct matter or a death or serious injury) must first be recorded before the IPCC can commence an investigation. This means that in the majority of cases the IPCC cannot begin to act until a police force has taken the first step. The IPCC has an existing power to direct that a conduct matter be recorded by a force. However, that still requires a force to be identified and for them to assess the matters, complete necessary paperwork and then formally refer the matter back to the IPCC before investigative work, including potentially, securing evidence, can begin. A number of IPCC investigations into matters of significant public concern have begun only after considerable delay and iteration between the IPCC and the force, in order to establish whether there is a matter that can or should be recorded, which individuals are involved, and whether they are the appropriate force to record that matter. This can be exacerbated if multiple forces or officers, or agencies other than the police, are involved, if the issues giving concern are historic, or if there is disagreement between the force and the IPCC about the extent of investigation required.
157. Even more importantly, we do not think it is right that the IPCC as an independent body should rely on the organisations we oversee to enable us to look into matters that are of concern.
158. Taken as a whole, we do not believe that current provisions are sufficient to ensure public confidence in our independence, or in our ability to open investigations promptly where necessary. We therefore support having a power to take on cases on our own initiative. This would enable us to look into matters that have not otherwise been recorded, in order to establish whether we need to investigate them further. This should not necessarily require the IPCC immediately to declare an independent investigation.
159. We have already said in this response that we believe assigning the IPCC a power of own initiative is a better alternative than creating a system of super-complaints. A power of own initiative should be drawn sufficiently widely for us to respond to matters that might otherwise arise through a super-complaint mechanism where the same misconduct or issue affects many people in the same way.
160. A power of own initiative should be limited to circumstances that raise potential issues of police conduct as opposed to, for example, matters that are purely of

policy, structure or resourcing. While these matters can affect many people, they are better suited to inspection, or action by a Police and Crime Commissioner.

40. To what extent do you agree or disagree with the proposal to clarify the IPCC's ability to determine complaints effectively?

41. To what extent do you agree or disagree with the proposal to strengthen the IPCC's powers of remedy?

161. The IPCC believes that there should be a clear outcome to every complaint, so that each complainant knows whether their complaint is justified and if so what action is to be taken. This is necessary to ensure that the complaints system is sufficiently customer-focused.

162. The legal framework of the complaints system does not enable this for every complaint. Complaint investigations can lead to decisions about whether an individual's behaviour should be referred to the Crown Prosecution Service for them to consider bringing criminal proceedings; about whether an individual has a case to answer for misconduct; and about whether an individual has performed unsatisfactorily. Complaints which allege behaviour which would justify disciplinary proceedings or a criminal offence may therefore lead to formal proceedings which achieve some resolution. However, when a complaint uncovers issues of a different nature (service failure for example), there is no legal requirement for a decision on the complaint's merits.

163. Through its statutory guidance the IPCC created the concept of upholding or not upholding a complaint at the conclusion of any complaint investigation (whether carried out by the IPCC or the police). This was aimed at providing a simple answer to complainants, in a straightforward and readily comprehensible way.

164. The court judgment to which the consultation document refers confirmed that at the end of an IPCC investigation, no determination should be made on complaints relating to misconduct or criminality. The IPCC should restrict itself to deciding whether there is a case to answer, as the final decision will be made by other bodies. However, the same judgment also highlighted that there is no statutory basis for the concept of upholding or not upholding complaints, either at the end of an investigation or on an appeal. This calls into question our ability (and that of police forces) to make decisions about the many other complaints which do not allege misconduct or crime.

165. We believe there is a need for urgent legislative change to put the upholding of complaints on a statutory footing. We view this as a matter of urgency, to enable the IPCC (on appeal or in our investigations) and the police service to address the merits of complaints.

166. In the longer term, however, we believe that merely being able to ‘uphold’ complaints is not sufficient. The consultation document asks about the IPCC’s ability to ‘determine’ complaints effectively. In our view, this requires a different approach. Complainants rightly expect a determination and where appropriate a remedy for their complaint. This is not what the current system provides. The IPCC’s appellate role is a limited one.
167. In many respects it focuses too much on questions of process – for example whether adequate information about the findings of an investigation was provided to a complainant. In many cases, where we decide that the findings of the original investigation are deficient, there is insufficient evidence for us to change those findings. From April to December 2014, more than 40% of the appeals about police investigations that we upheld meant we had to send the case back for reinvestigation, with very limited or no supervision from us. Those cases can then return on a further appeal (the so-called complaints roundabout). This is frustrating for us and for complainants. In addition, we are constrained by the specific issues the complainant has raised, though there may be other issues that require resolution. We have no power to prevent an individual from making the same complaint again, addressed this time to a different, probably more senior officer. This all defeats the purpose of an effective complaints system, which is to provide resolution both for the complainant and the service.
168. At the end of all this, our powers of remedy are also limited. We can recommend or in some cases direct disciplinary proceedings, and make recommendations for improved practice. But we do not have the power to recommend any other remedies, such as an apology, compensation or restitution.
169. The limitations of our appellate powers have direct consequences for complainants, and for confidence in the complaints system. We have dealt with cases that, in tragic circumstances, have required multiple reinvestigations and appeals in order for a complainant’s issues to be addressed. We should not underestimate the potential impact on someone who has been through a traumatic event, and who must then go through prolonged, complex complaints processes in order to seek redress. The inability for a single body decisively to deal with a matter on appeal can deter complainants, or add to, rather than resolve, their grievance and dissatisfaction.
170. For that reason, we would support an Ombudsman-like role, with the ability to make determinations and recommend remedies, in place of our existing appellate function. This would play an important part in simplifying the complaints system and directing it towards resolution and remedy. It would give us the power to undertake further enquiries, without moving to a full independent investigation where necessary, in order to reach a conclusion.

171. It would allow complaints to be dealt with just once, comprehensively and decisively. Unless matters need to go to disciplinary or criminal proceedings we would be able to make a final determination, communicate it to the complainant and recommend any appropriate remedy. It could also prevent repetitive complaints, whereby an unsuccessful complainant raises precisely the same matter again and again, each time directing their complaint against a different, usually more senior, officer.
172. This would entail an expansion of the IPCC's current abilities to make recommendations, focused on resolution as well as on process. It is important for confidence in the overall police complaints system that, wherever possible, it is able to provide timely practical remedies. We believe that this ability to recommend a remedy should be framed broadly so as to allow flexibility case by case. However, there are certain specific measures which we believe this could entail:
- an apology or explanation by a force;
 - the payment by a force of modest financial remedy (in line with HM Treasury Guidelines on managing public money);
 - that a complaint be referred to formal mediation;
 - that evidence of learning / service improvement be shared with a complainant.
173. In our response to question 2 we indicated that not only the IPCC, but any other body exercising an appellate role, such as Police and Crime Commissioners, should have the enhanced powers that we have just described, in the interests of swiftly and adequately resolving complaints. Indeed this approach is arguably even more necessary for Police and Crime Commissioners, since the complaints they are likely to deal with are more likely to be resolved through, for example, timely apology and modest financial remedy than the graver matters that the IPCC would be responsible for.
174. Further consideration needs to be given to the cost implications of moving to this model. It appears to us however that:
- in some cases brought to us for a determination we would undertake more work than currently;
 - however, that work would be offset by savings to the police, since we would not be asking them to undertake it;
 - there is a further saving in that there is no handover back and forth between the police and IPCC over multiple appeals on the same matter;
 - the ability to make a final, decisive determination would have the effect of reducing repeated complaints on the same or similar matters.

42. To what extent do you agree or disagree with the proposal to give the IPCC the power to present cases at disciplinary hearings?

175. We agree that the IPCC should be given the power to present a case at a disciplinary hearing where it has had to direct a force to bring the hearing, and therefore where the force clearly does not accept our findings.
176. Recently, in a case where we had to direct a force to bring proceedings (in this instance a misconduct meeting), the force informed us that they intended to present the case at the meeting as 'no case to answer' and produced their own report to that effect. In our view, such actions go against the intent of the legislation and undermine the credibility of the complaints and disciplinary system.
177. While we support the introduction of this power, we also believe that the IPCC must be resourced in order to make effective use of it. The costs to the IPCC of developing and maintaining the ability to present cases will need to be assessed, and funded appropriately.

43. What changes to the organisational structure of the IPCC would support the IPCC to increase its caseload and public confidence in the complaints system?

178. The IPCC was set up, like other similar organisations, on a Commission model. It is governed by Commissioners, ten of whom also have operational responsibilities for oversight of independent investigations and external liaison. Alongside that, there is a Chief Executive, who is also the accounting officer, and, through four Directors, is responsible for line management of IPCC staff. Some decisions in investigations belong to investigators, either by statute or delegation; others belong to Commissioners.
179. The consultation makes specific reference to the role of operational Commissioners. We believe that it is essential to recognise the value that our operational Commissioners bring, and therefore our ability to drive public confidence in the complaints system. Operational Commissioners, who by statute can never have worked for the police, bring important life experience, gravitas and different and diverse perspectives to their role. This includes the oversight of our most serious and sensitive investigations, bringing to bear a public interest perspective; as well as the ability to engage with powerful and influential external stakeholders, and with families and communities in often very difficult and challenging circumstances.
180. The IPCC is already making changes to its governance and operational models to support an increased number of investigations, which have already doubled and are set to increase even more sharply over the next two years. We need to

create, and are in the process of creating, an organisation and organisational structure that:

- has clearer lines of accountability for organisational and operational decisions;
- retains a strong sense of, and reputation for, visible independence;
- preserves the key benefits of the current operating model, whilst making organisational changes to ensure that IPCC can run an increased number of independent investigations in a timely manner and of the quality that our service users would expect;
- has the correct control structures, data and performance reporting to enable monitoring and ensure delivery against expectation;
- has a range of effective processes for its operations with the appropriate input from experts, and a clear means to make decisions on which process to employ for which investigations.

181. We have already put in a number of changes that are enabling us to increase the volume of independent investigations that we run:

- we have increased the number of investigators in the organisation and expanded our geographical footprint;
- we are putting in place processes to delegate some of our less serious and complex investigations, so that they can be completed without Commissioner input;
- we have reshaped the Executive Management Team structure: bringing in a new Chief Executive; establishing a Chief Operating Officer who now has an oversight and grip on all operational performance; establishing a Director of Strategy and Impact whose directorate brings together all strategy, policy, analysis and communications functions; and employing a Director of Change in a short-term role to oversee and drive the implementation of the organisational changes required to enable us to operate effectively with an increased caseload;
- we are developing a Target Operating Model, which will ensure that we can carry out a greatly increased volume of investigations consistently and to high levels of quality and timeliness.

182. We are also changing our top level governance model by:

- creating or developing three Commission Committees, chaired by non-executive Commissioners, to oversee key areas of work: Audit and Risk, Strategy and Impact, and People and HR;
- agreeing a scheme of delegation, which clarifies those corporate matters that are delegated to the executive team;
- ensuring that Commission has sight of, and can monitor, effective performance measures;

- setting up an Operations Board, chaired by the Chief Operating Officer, with Commissioner input, to provide oversight of our expanding operational work.

183. These are changes that can be made within the current statutory framework to support an expanding organisation. We are however aware that, within that framework, the lines of governance, accountability and decision-making are not as clear as we would like or as are needed within a considerably larger organisation. We have already proposed Ombudsman-like determination powers, and this also suggests a different kind of structure. However, it is vital that we do not lose the strengths and benefits of the current Commission model, or destabilise the organisation at a time of unprecedented growth and change. We would therefore welcome further discussion, informed by the experience of other complaints and investigative bodies, in order to develop options and a timescale for any further structural change.

February 2015