

CONSULTATION RESPONSE

TO	Integrity Team, College of Policing
FROM	The Independent Police Complaints Commission (IPCC)
REGARDING	Consultation on draft Code of Ethics

The IPCC and its remit

The IPCC's primary statutory purpose is to secure and maintain public confidence in the police complaints system in England and Wales. We are independent, and make decisions independently of the police, Government and interests groups. We investigate the most serious complaints and incidents involving the police, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.

The IPCC was established by the Police Reform Act 2002 and became operational in April 2004. Since that time our remit has been extended to include:

- Police and Crime Commissioners and their deputies
- the London Mayor's Office for Policing and Crime and his deputy
- the Serious Organised Crime Agency (SOCA) (no longer operational)
- the National Crime Agency (NCA)
- Her Majesty's Revenue and Customs (HMRC)
- staff who carry out border and immigration functions who now work within the UK Border Force and the Home Office
- certain non Home Office police forces (including the British Transport Police and the Ministry of Defence Police)

The majority of complaints against the police are dealt with by the relevant police force (or agency) without IPCC involvement. However, certain types of complaints and incidents must be referred by the police to the IPCC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and criminal offences or behaviour liable to lead to misconduct proceedings which are aggravated by discrimination. We then decide what level of involvement we should have in any investigation of the matter. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police without IPCC oversight.

The IPCC's comments on the consultation

The IPCC welcomes the introduction of a Code of Ethics for police forces in England and Wales. The police are granted exceptional powers to enable them to carry out their role effectively. Any misuse or exploitation of these powers, or perception that they are being misused or exploited, damages public confidence in the police service. This in turn is likely to harm public co-operation with the police service in the prevention and detection of crime.

In many cases that come before the IPCC there has been no wrongdoing by the police. However, there are a significant number of cases where the behaviour of police officers or staff is found to have fallen below the standards required. Each of these cases, whether high profile or little known, contributes to an erosion of public confidence in the police service.

In 2011 and 2012 the IPCC reported on its experience of cases relating to two areas that are particularly relevant to the consideration of ethics in policing: corruption and the abuse of police powers for sexual exploitation. Although we concluded that corruption was not endemic, we found there was a need for:

- greater consistency in the recording and referral of corruption cases to the IPCC
- a clear definition, understood by both the public and the police, of what constitutes police corruption
- a more effective national system for handling allegations against very senior officers
- effective supervision, vetting and information sharing
- police forces to make the prevention, detection and investigation of officers abusing their powers for sexual exploitation a higher priority

We also stated that additional resources and powers (such as powers to investigate private contractors, to gain access to data held by third parties and to require forces to respond formally to IPCC recommendations) would be required to enable the IPCC to conduct the most effective investigations. The Home Secretary has since announced that the IPCC will be given more resources to carry out investigations into serious and sensitive cases, and legislation to grant us the powers mentioned above is currently before Parliament.

However, ethics are not just relevant to cases involving corruption and the misuse of powers, or indeed to matters that may lead to misconduct proceedings. Too often, the system focuses on blame and discipline, and this can lead to a defensive and minimalist approach. Ethical policing is not just about what individuals should not do, but also about what they should do. In some instances, this will require individuals to go beyond the bare minimum required of them by legislation or force policy. For example, if someone has died in police custody, we expect police officers and staff to cooperate fully with our investigation into that person's death and our search for the truth.

Overall we think the draft Code has been written in a clear and succinct way. We welcome its broad application to contractors and volunteers as well as police officers and staff, and the emphasis it places on leaders setting standards and supervisors monitoring compliance and performance. However, we think certain elements of the Code should be strengthened. We have set out specific comments in the table below.

Lastly, we believe the impact of the Code could be undermined if there is not a robust, open and transparent system in place for dealing with matters where individuals' behaviour has fallen below the standards required. We have previously raised concerns about both the current complaints and police disciplinary systems, which in our view are in urgent need of reform.

NOT PROTECTIVELY MARKED

Paragraph no. or section of draft Code	Comment
Overview and section 3	In our view the Code should be much stronger in what it says about equality and diversity. In particular, it would be helpful for it to set out specifically that individuals must not discriminate against anyone on the basis of the protected characteristics. We also think it needs to articulate far more strongly that leaders in particular have a key role to play in actively promoting equality and diversity, and that everyone has a role to challenge discrimination.
Paragraphs 7 and 9	These paragraphs state that the Code of Ethics applies directly to the police forces maintained for the police areas of England and Wales defined in Section 1 of the Police Act 1996, and that other police forces or agencies in the UK may also wish to adopt the Code. We believe the Code should be adopted by all constabularies in England and Wales.
Paragraph 11	The last bullet point states that chief officers will <i>“be alert to the undermining effects on individuals and organisations of corruption and injustice”</i> . We believe this should be strengthened to emphasise that chief officers do not just need to be “alert” to the effects of corruption and injustice but need to do all they can to ensure both are eliminated. In his last report as Commissioner for Public Standards, Sir Christopher Kelly specifically highlighted the role of leadership in the implementation and embedding of ethical standards.
Paragraph 13	<p>The second bullet point states <i>“Where behaviour appears to have fallen below expectations, supervisors should use their professional judgement to choose the most appropriate action – from informal advice and guidance, to remedial action or referral for formal investigation”</i>.</p> <p>We support the appropriate exercise of professional judgement in the police service. However, we are concerned that this paragraph implies that where an individual’s behaviour appears to have fallen below the standards required, it will be left solely to the discretion of his or her supervisor to decide how it will be dealt with. There are clear requirements set out in legislation as to how complaints, death and serious injury matters, and conduct matters must be handled. Matters must be dealt with in accordance with the legislation and the relevant statutory guidance to ensure there is an appropriate level of consistency.</p>
Paragraph 1.4	We welcome the fact this paragraph states clearly that <i>“Covert tactics must be appropriately authorised and any deployments must be shown to be proportionate, lawful, necessary and ethical.”</i> However, we think it would also be prudent for it to state explicitly that undercover officers must not engage in sexual relationships with members of the public with whom they come into contact as a result of covert operations.

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Paragraph 2.1	The seventh bullet point under this paragraph sets out that individuals should “ <i>ensure [their] behaviour and language could not reasonably be perceived to be abusive, oppressive, harassing, bullying or victimising</i> ”. We believe that “ <i>racist or otherwise discriminatory</i> ” should be added to this list.
Paragraph 2.2	<p>This paragraph states “<i>While you may be legally empowered to do something (e.g. stop and search or use force), you need to be aware that the reasons for your actions may not always be understood by others. You should be prepared to explain the reasons for your decisions as fully as possible.</i>”</p> <p>Good communication between the police and members of the public with whom they come into contact is vitally important. Those working in the police service should be as open and transparent as possible. Officers and staff should not just “be prepared” to explain their decisions, but have a positive obligation to explain to a member of the public why they are doing something which affects him or her. Stop and search is an example of where this is particularly important.</p>
Paragraph 5.5	This paragraph sets out that individuals must “ <i>seek authority for any business interest or additional occupation, i.e. any activity over and above your normal policing duties for which payment in cash or kind is received or expected to be received.</i> ” We think this section should specify that prior authority should be sought (as opposed to it being sought retrospectively).
Section 6	We believe this section should set out a positive obligation for individuals to engage and participate fully in the investigation into any complaint, conduct matter or death and serious injury matter, in a timely and compliant manner. This is extremely important in terms of achieving public confidence in the police and the police complaints system, especially when the investigation concerns the most serious incidents such as when someone has died in police custody.
Paragraph 6.2	The fourth bullet point of this paragraph sets out that individuals are expected to “ <i>exercise reasonable care to prevent loss of life or loss or damage to the property of others (including police property)</i> ”. We think this paragraph should be re-worded, as the reference to taking “reasonable care” to prevent loss of life is too weak and does not reflect the requirements of Article 2 ECHR.
Section 7	At present, this section appears to focus on ensuring individuals do not access and disclose information inappropriately. We agree this should be the focus. However, it would be helpful to highlight that a balance needs to be struck between protecting data and encouraging a culture of openness and transparency within the police service. There will be situations where officers or staff should share information with members of the public and indeed where they are obliged to share information with the other agencies and partners.

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Paragraph 7.1	The second bullet point of this paragraph states that individuals must “ <i>not disclose information to unauthorised recipients – this includes requests from family or friends and approaches by private investigators</i> ”. Given the recent significant concerns that have been raised regarding the police service’s relationship with the media, we think this paragraph should not only refer to private investigators but also to journalists.
Section 8	This section focuses on the individual’s responsibility to ensure he or she is fit for work. It may also be beneficial to set out that senior officers and managers should take reasonable steps to ensure they do not compromise their officers’ or staff members’ fitness for work. The IPCC has previously identified concerns around officers working long shifts with only very short rest breaks and highlighted that this must have an effect on their ability to perform their role.

Independent Police Complaints Commission

29 November 2013