

Evaluation of impact: 2013 oversight projects

Direction and control Access to the police complaints system

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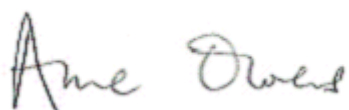
Foreword

One of the IPCC's important statutory roles is to exercise oversight of the police complaints system as a whole. In 2013, we examined how a number of forces dealt with some parts of the system that we knew had caused problems. That included looking at how four forces categorised complaints as 'direction and control', which reduces complainants' appeal rights. We also looked at how nine forces applied the statutory exemptions that stop people from having access to the complaints system at all. Following those reports, we did further work with the forces concerned, and also issued specific guidance on these points for all forces in our *Focus* publications.

This report evaluates progress made by September 2014 in the original forces sampled. It shows that our work has had a significant and positive effect on the quality of initial handling and decision-making, particularly about direction and control decisions. Overall, incorrect decisions dropped from 80 per cent to 57 per cent and progress was particularly marked in two forces, with 100 per cent and 83 per cent of correct decisions respectively.

Results were more mixed about the application of the exemptions. In 2013, we found that complaints were wrongly being categorised as 'fanciful'. By 2014, the forces were no longer using that ground. However, they were continuing to mis-apply another ground for exemption: categorising complaints as 'vexatious' by reference to the complainant, not the complaint – including cases where the complainant was mentally ill.

The impact of this work has been considerable – allowing us to obtain information and use influence over the whole complex complaints system, for a relatively small resource investment. It has allowed us to refine our own guidance to all forces, and to record improvements in complaints handling in the forces examined. There is clearly more work to be done. Over the next year we will be looking at ways of building on the 2013/14 pilots, to continue effective oversight of the whole system, and increase the number of independent investigations.



Dame Anne Owers
IPCC Chair

Introduction

1. The Independent Police Complaints Commission (IPCC) has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales, under the Police Reform Act 2002 (PRA). The Police Reform and Social Responsibility Act 2011 (PRORA), which came into force in November 2012, changed the way most complaints are handled.
2. In 2013 we conducted a number of oversight projects on aspects of the complaints system that had been affected by these changes, two of which were the inclusion of 'direction and control' as matters that could generate complaints under the PRA, and changes that affected access to the police complaints system.
3. As a consequence of our findings on these projects and other pilot projects, we created *Focus*, a series of publications to provide guidance and practical advice on handling complaints, conduct matters and deaths and serious injury cases (DSIs) within the PRA. The first two issues addressed the findings of these projects.
4. In September 2014 we evaluated the success of the projects by reviewing the decisions made by the Professional Standards Departments (PSDs) who had taken part in the original project since the publication of the reports and the relevant issues of *Focus*, using the same assessment framework. During our file sampling, it became clear that one of the PSDs were using a recording system that meant that files labelled as 'direction and control' on its systems were not recorded direction and control complaints under the PRA, but had been handled outside the legislation. As such, we were unable to include those cases in our analysis. We are dealing with this directly with the force.
5. This report sets out the findings of our work to evaluate the impact of these two oversight projects on how the participating forces now handle these aspects of the complaint system.

Direction and control

6. Direction and control is defined as:
 1. Operational management decisions directed to the police force – including force-wide crime initiatives and the making of general strategic decisions about how certain police powers should be used.
 2. The drafting of operational policing policies and the process leading to their approval.
 3. Organisational decisions – including decisions about the configuration and organisation of policing resources, where officers or police staff should be located, how they should be managed, and what equipment should be bought for them.
 4. General policing standards in the force – the current IPCC Statutory Guidance provides information about what conduct matters are and, therefore, not considered to be general policing standards, such as:
 - a) decisions to (or not to) arrest and prosecute suspects for a certain crime, or
 - b) the application of force policies, in particular, circumstances where the application of policy involves an officer using their discretion.
7. Until November 2012, complaints about direction and control matters did not need to be recorded under the Police Reform Act 2002 (PRA). However, those whose complaints were not recorded on that ground, among others, could appeal to the IPCC. Sixty one¹ per cent of those appeals were successful, and a significant number were because the complaint had been wrongly categorised as direction and control, rather than a conduct matter. Since the introduction of the Police Reform and Social Responsibility Act (PRSSRA), direction and control matters must be recorded in the same way as complaints about conduct. However, they form a separate category of complaints, with no rights of appeal – either against the fact that they have been categorised as direction and control, or against the outcome of the complaint.
8. Because we knew that a high proportion of complaints were wrongly categorised under the previous legislation, there was a concern that this would continue to be the case without any oversight: or indeed that PSDs could have an incentive to categorise complaints in this way to avoid appeal rights, or to avoid appropriately enquiring into an officer’s conduct.

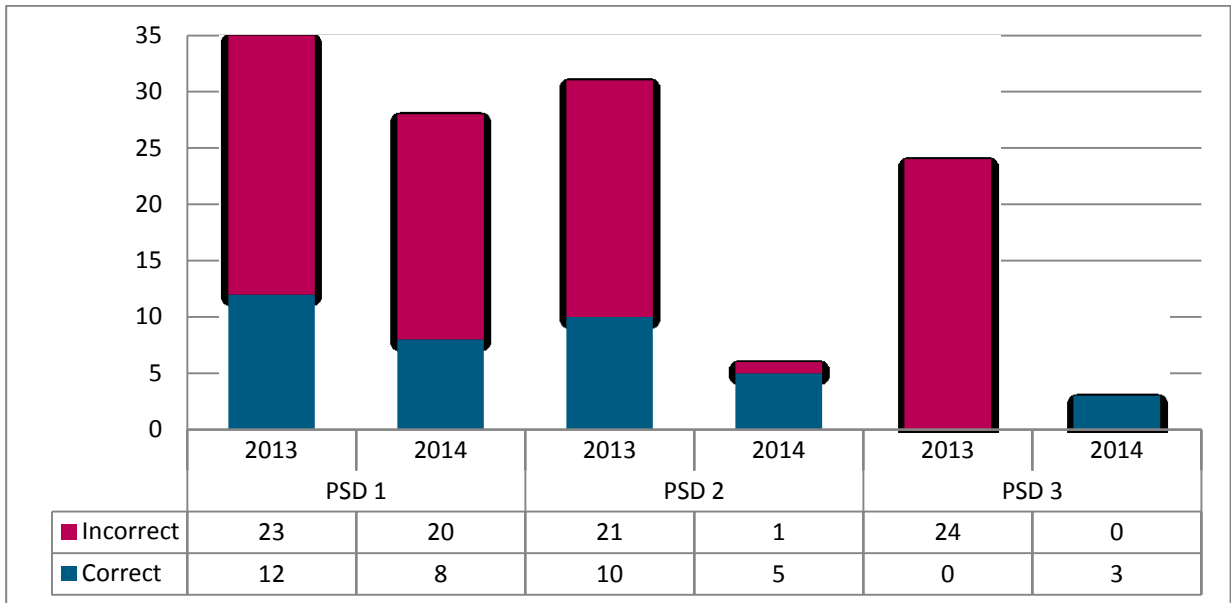
¹ Police complaints statistics 2011-2012

2013 findings

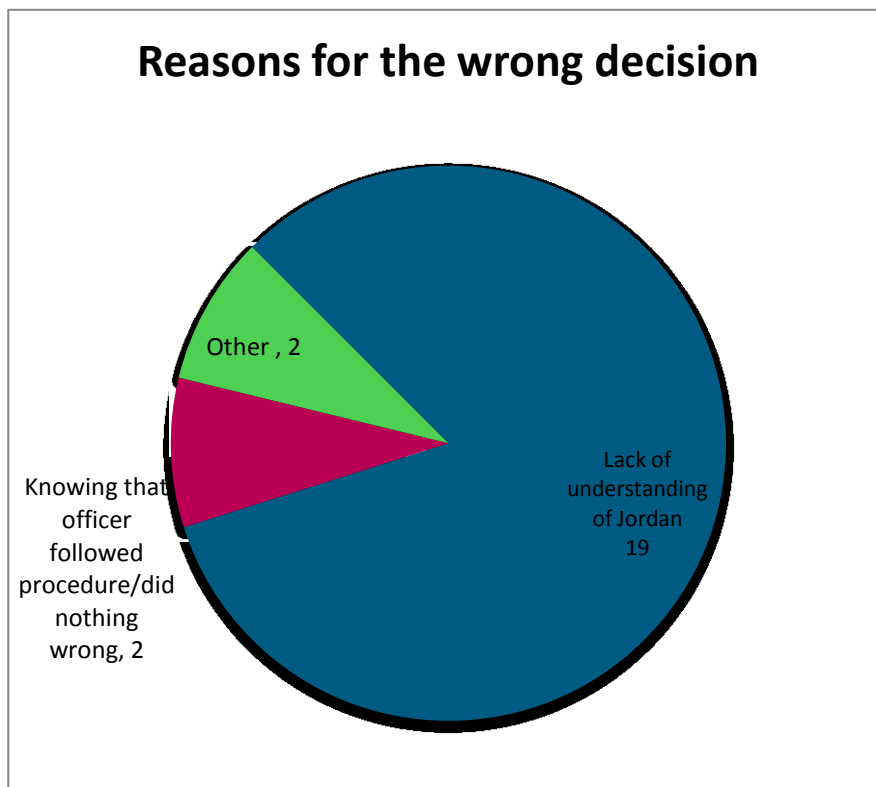
9. We sampled 120 case files across four PSDs, as well as interviewing PSD staff and published our report in January 2014, making the following findings:
 - Eighty per cent of the cases sampled (95 out of 120) were incorrectly categorised as direction and control. However, the evidence did not show that this was done deliberately to avoid due process, appeal rights or proper investigation. Seventy five per cent of the cases were concluded in a satisfactory way, appropriate to the complaint. Nevertheless, a significant minority were not, and the mis-categorisation took away those complainants' appeal rights.
 - None of the PSDs staff we spoke to had heard of the relevant case law (North Yorkshire Police Authority v IPCC (Jordan) 2010) for defining direction and control complaints, as opposed to conduct matters. This lack of knowledge was responsible for 48 per cent of the incorrect decisions. In particular, they were applying the definition of 'general policing standards' too widely.
 - In 34 per cent of cases, the categorisation decision was made because of a quick assessment: it appeared that the officer had followed procedure and had done nothing wrong. This should be the outcome of an investigation into conduct, not a reason for categorising it as direction and control.
 - Seventy five per cent of wrongly categorised complaints (58 out of 77) were dealt with appropriately, but 25 per cent were not. Even though there is no evidence that the miscategorisation was deliberately designed to avoid this, the fact remains that for those complainants, there was no appeal right against the decision.

2014 findings

10. We sampled 37 cases across four PSDs. In the files we sampled there had been a significant improvement in the categorisation of complaints as direction and control. In 2013, 80 per cent of the decisions we reviewed should not have been recorded as direction and control. In our evaluation sample, that had dropped to 57 per cent. While the sample is smaller and the figure still high, it is still a big improvement. In addition, when broken down by PSD, two of the three PSDs evaluated appear to have greatly improved their direction and control decisions – from 32 per cent correct to 83 per cent correct, and from zero per cent correct to 100 per cent correct respectively. Those two forces are to be congratulated on taking such positive action.



11. The quality of the decision letters we reviewed had also greatly improved with PSDs clearly explaining that the complaint was recorded as direction and control and what that meant. In addition, the quality of the outcome of the complaint, which was reasonable in 2013 (66 per cent had an appropriate outcome) had improved in the intervening time to 72 per cent (23 of the 32 cases that had an outcome present on the file).



Some files had more than one reason that the wrong decision had been made.

12. It is reassuring to see that the number of cases where the decision was based on a quick assessment of whether the officer had done anything wrong had dramatically decreased. In 2013, we saw 32 cases (out of 95 wrong decisions) where this had happened. In 2014, there were only two cases out of 21.
13. Lack of understanding of the *Jordan* judgement remains an issue. This observation

has to be tempered – in 2013, none of the PSD staff we spoke to had heard of the *Jordan* judgement. In 2014, only one PSD was consistently not applying the *Jordan* judgement when recording the complaint. This is particularly disappointing since the IPCC force liaison contact (FLC) had discussed the judgement with them and, in conversation, they had understood the principles. We will need to engage with this particular PSD to understand why the learning has not been applied to its recording decisions.

Access to the police complaints system

2013 findings

14. There are some complaints – a small minority – which do not need to be dealt with in the complaints system set up under the PRA. If these exemptions apply, complaints may not be recorded at all, or recorded and then ‘disapplied’ (that is, the force can choose to deal with it in some other way), or the investigation can be stopped – ‘discontinued’. Effectively, this prevents people from having access to the complaints system that is overseen by the IPCC.
15. In many cases, applying these exemptions involves a subjective assessment of the merits of the complaint. There are three such exemptions in the PRA: that complaints are vexatious, oppressive, or an abuse of procedure. The PRSRA added a fourth exemption in 2012: that a complaint is fanciful. If so, it need not be recorded².
16. Our experience under the PRA was that the three existing exemptions were sometimes mis-applied. We were therefore concerned about the addition of a further, even more subjective, exemption. In addition, the IPCC is no longer the decision-maker in relation to the great majority of decisions to disapply; this is now dealt with within the PSD, usually by the chief officer or his or her delegate. If complaints are not recorded at all, there is a right of appeal to the IPCC; but if a complaint is recorded and then subsequently disapplied, the appeal right is usually to the force. As a consequence, PSDs could use ‘disapplying’ as a way of avoiding any IPCC oversight of the complaint, using what we have referred to as the ‘disapplication loophole’.
17. We therefore sampled 59 case files across nine PSDs, as well as interviewing PSD staff and published our report in January 2014, making the following findings:
 - In just under half of the cases (46 per cent) either an incorrect decision was made (whether completely or in part) or we were unable to find out whether the forces had made a correct decision or not. We found that this was due to a lack of understanding by the PSDs of the grounds, how to apply them, and when they should be applied.
 - In those cases where an incorrect decision had been made, 14 were said to be fanciful. This ground was not being applied correctly – it was based on a judgement that the incident that generated the complaint, rather than the complaint itself, was fanciful.
18. For the majority of PSDs, there was not evidence that the ‘disapplication loophole’ was being used to avoid the IPCC overseeing cases.

² **Fanciful:** if, and only if, no reasonable person could lend any credence to it.

Vexatious: made without foundation which is intended, or tends, to vex, worry, annoy or embarrass.

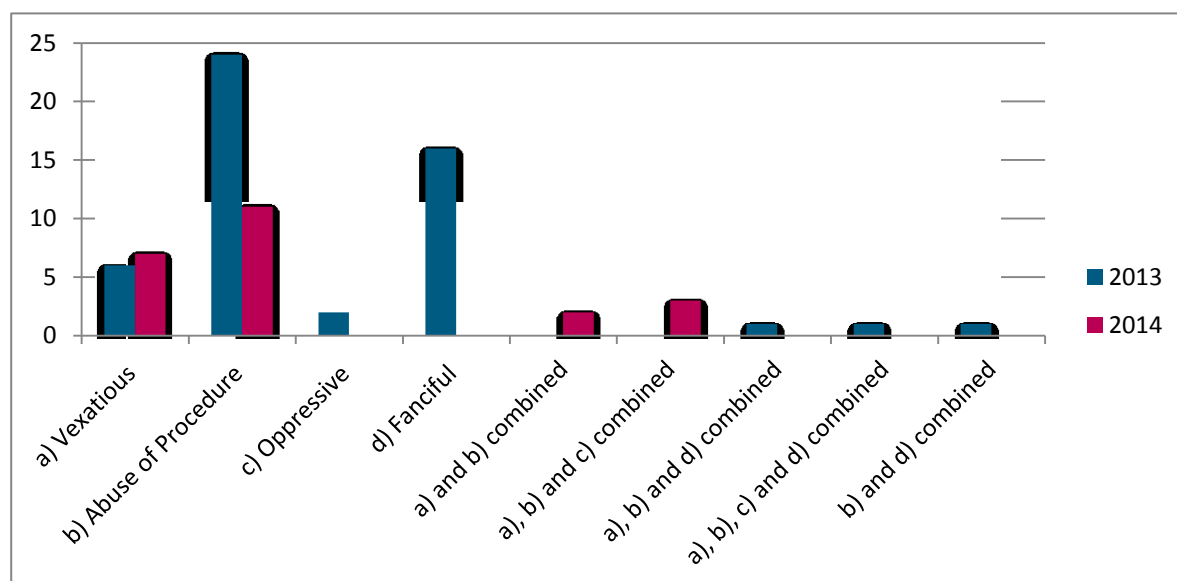
Oppressive: made without foundation and is intended, or likely, to result in burdensome, harsh or wrongful treatment of the person complained against.

Abuse of procedure: where there has been manipulation or misuse of the complaints system in order to make or progress a complaint which, in all the circumstances of the particular case, should not have been made or should not be allowed to continue.

2014 findings

19. We sampled 23 cases across three PSDs.

Application of the grounds



20. Abuse of procedure was still the most commonly applied ground (and applied well – all but one of the cases sampled was correct). The significant change was that the ground of ‘fanciful’ had not been applied to any of the cases we sampled. In 2013, one of our significant findings was that ‘fanciful’ was being mis-applied.
21. ‘Fanciful’ cases accounted for 14 (67 per cent) of the 21 cases where the grounds had been either incorrectly or only partially correctly applied in 2013. As we found that this ground was no longer being applied in 2014, we would have expected the proportion of cases where the grounds for exemption had been mis-applied to have reduced, but it had not. This is because there had been an increase in the mis-application of the ‘vexatious’ ground – in only two of the seven cases that we sampled was that ground applied correctly.
22. As in 2013, ‘vexatious’ was being mis-applied because the complainant and not the complaint was being judged. Examples that we saw in our evaluation included assuming that the complaint was vexatious because the complainant had been sectioned, or that the complainant’s abusive and threatening attitude showed the complaint was without foundation.

Use of ‘disapplication loophole’

23. None of the three PSDs we evaluated were using the ‘disapplication loophole’ in 2013 and that remains the case – 22 of the 23 cases sampled had the grounds applied at the recording stage.

Access/reasonable adjustments

24. As in 2013, we did not find any link between ethnicity, gender or age and whether the decision on the case was made correctly.
25. In 2013, 27 per cent of the complainants in the cases sampled had a stated mental health illness, communication difficulties, or exhibited behaviour that could be a sign of mental health issues. The evidence we found did not support a link between that

and an incorrect decision. However, we were concerned that in the 2014 sampling, the 'vexatious' ground was incorrectly applied in both of the cases where the complainant had a stated mental illness. In one of these cases, the only rationale given for the decision was that the complainant had been sectioned. In the other case, reference was made to the complainant's past engagement in other complaints, there were details of the mental health illness, and an internal email described the complainant as a 'victim of life'.

Standard of explanation

26. All but one of the correct decisions were adequately and appropriately explained in the decision letter. In 2013, the decision letters we reviewed often lacked explanation. In 2014, the letters that fell below standard were insensitively worded or contained judgemental comments.

'I consider your complaint to be inconsequential and again without foundation. Furthermore, the PCSO concerned may not be identifiable and the matter therefore difficult to progress anyway. I will not be pursuing this allegation.'

Evaluation

27. Any conclusions drawn must be considered against the small sample size for both evaluations. However, it is clear, both from the feedback on *Focus* and the results of this sampling, that both projects have made a difference in helping forces to improve in those areas. In particular:
 - there had been a reduction in the number of cases where the merit of the case was being considered before making a recording decision
 - there has been a significant improvement in the correct recording of direction and control matters, particular in two of the three PSDs.
 - two of the three PSDs were applying the Jordan judgement correctly
 - PSDs were able to better explain direction and control to a complainant
 - PSDs were better able to explain the grounds for exemption to a complainant without causing offence
28. In their feedback on *Focus*, PSDs have said that they now use the explanations of the exemption grounds provided in the relevant issue of *Focus* in their decision letters. Ninety six – one hundred per cent of respondents - said that the content of the relevant issue of *Focus* was helpful to them, with 55-65 per cent confirming they would make changes to the way they worked as a result.
29. However, our findings suggest that, where the complainant's behaviour suggests a lack of credibility to the person deciding whether to record the complaint, the judgement of the individual clouds the judgement of the complaint. That judgement then creeps into the language used and the standard of explanation given in the letter.

Next steps

30. For the PSDs who are still not applying the Jordan judgement correctly, we will meet with them, go through the assessment of their cases with them, and consider further evaluation.
31. We will be giving the individual PSDs feedback on the files sampled including, where appropriate, the customer service issues seen in a small number of the files.
32. The number of cases available for sampling in this evaluation was low, a positive sign that these grounds for not recording complaints are being used appropriately. Consequently, any future sampling will need to happen once a reasonable sample size is available. We will consider conducting file sampling in other PSDs who were not part of this project.