Policing and Crime Bill

Factsheet: Police Complaints and Police Whistleblowing

Background

The Home Secretary launched the Government's consultation document '*Improving Police Integrity: Reforming the Police Complaints and Disciplinary Systems*[1] in December 2014. She said that it represents 'an important part of our radical programme of police reform' and that she wanted to 'ensure that the public have confidence in the police.' The consultation set out plans to reform a number of areas including the police complaints and disciplinary systems and to develop measures to strengthen the protection of police whistleblowers. This factsheet focuses on police complaints and police whistleblowers.

Police Complaints

1. The police complaints system is the mechanism by which the public may raise their concerns about the service they receive from their police force. It is governed primarily by the Police Reform Act 2002 ("the 2002 Act") and the Police (Complaints and Misconduct) Regulations 2012. It is an essential part of the framework through which the police are held to account. The operation of the complaints system and the outcomes it achieves are vital to ensure that the police continue to exercise their powers fairly and legitimately in the eyes of the public.

2. The Independent Police Complaints Commission (IPCC) oversees the whole of the police complaints system and it has a statutory duty to ensure that public confidence is maintained in the police complaints system.

3. The complaints process is complex. Essentially, once a member of the public makes an allegation to a police force, the IPCC, or a Police and Crime Commissioner (PCC) about someone serving with the police, the force must take a decision about whether the allegation should be recorded as a complaint. Once a complaint is recorded by the police force, efforts are made to resolve the allegation raised by the member of public, either by local resolution, a local investigation or by referring it to the IPCC for an investigation. If a member of the public is unhappy with the way their complaint has been handled, the system has a series of appeal points which allows them to challenge a decision. The appeal is usually dealt with by the chief constable or the IPCC depending on the circumstances.

4. Police forces must refer certain complaints and incidents to the IPCC – for example, an allegation that an officer has seriously assaulted someone or

[1] https://www.gov.uk/government/speeches/home-secretary-on-police-reform

committed a serious sexual offence, or if someone has died or been seriously injured following direct or indirect contact with the police.

5. In July 2014, the Government announced a review of the police complaints system including the role, powers and funding of the IPCC and the local role played by PCCs and their equivalents in London (the Mayor's Office for Policing and Crime and the Common Council of the City of London). The review found elements of the police complaints system do not work efficiently or effectively and that few of those involved in the system have confidence in its ability to operate effectively.

Problems with the Complaints System

Problem	Rationale
Public Satisfaction	Many members of the public lack confidence in the system. ○ 35% of people lack confidence in the ability of the police to deal with their complaint fairly[2]; ○ 72% of people are not satisfied with how their complaint is handled[3].
Timeliness	It takes too long to finalise complaint cases. ○ It took an average of 110 working days to finalise complaint cases in 2014/15. ○ The complaints system is overly complex and, as a result, resolution of complaints can be slow.
Effectiveness	Appeal upheld rates suggest the complaints system is not working effectively. ○ In 2014/15, 40% of appeals to the IPCC against decisions taken by police forces were upheld. ○ Over the last four years, the proportion of appeals upheld by the IPCC has risen from 30% in 2010/11 to 40% in 2014/15.
Adversarial for Officers	Officers who are the subject of complaints lack faith in the system, and are reluctant to engage in what they view as an adversarial process. The system fails in its efforts to help improve the service they give to the public by focusing too narrowly on where blame lies or whether officers have committed misconduct.

6. Complaints made against the police must be responded to in a way that restores trust, builds public confidence and allows lessons to be learned. The reforms will produce:

[2] https://www.ipcc.gov.uk/page/public-confidence, 2014, p.22
[3] http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/year-ending-march-2015/stb-crime-march-2015.html, 2014/15, 06 – supplementary tables

- A more ***customer focused*** police complaints system that focuses on resolving issues to the satisfaction of the complainant in a timely fashion, rather than looking for officers to blame.

- A more ***transparent*** and ***independent*** police complaints system, that has effective local oversight that provides the public with clear information with which to hold their PCC to account

- A ***simpler*** complaints system that is easier to understand.

- A system which enables the PCC and chief constable to ***identify patterns*** of dissatisfaction being raised and allows them to address any ***systemic issues***.

Police Whistleblowing

7. A whistleblower is a person who reports in good faith any kind of activity or information that is deemed illegal, dishonest or against the principles of the organisation. The Public Interest Disclosure Act 1998 sets out a framework for public interest whistleblowing, which protects workers from reprisals because they have raised a concern about malpractice.

8. Within every organisation there is a risk of intended or unintended malpractice. One of the ways in which police misconduct, malpractice and corruption is brought to light is when police officers/staff report it themselves. However these reports are not always made. Anecdotal evidence suggests that this may be partly due to a belief that nothing will be done, the reporting routes available are not trusted, or they fear an adverse reaction from the police force.

Reforms

Police Complaints

9. The measures in the Bill will give PCCs a greater role in oversight of the local complaints system by making it a function of each PCC to secure effective and efficient delivery of the complaints system and to be the appeal body for complaints currently heard by chief constables. The reforms will make the complaints system more independent than it currently is. PCCs will also have the option of taking on direct responsibility for certain functions in the process for handling individual complaints:

Model	Mandatory / Opt-In	Involves
A Oversight	Mandatory	Explicit statutory responsibility for performance of complaints system locally, including: o Appeal body for complaints currently heard by chief constables.
B Receiving & Recording	Opt-In	(Model A and) Responsibility for the initial part of the complaints handling process, including: o The ability to resolve issues outside of the complaints system where appropriate. o The duty to make initial contact with a complainant to understand how best their issue might be resolved. o The recording of complaints.
C Single Point of Contact	Opt-In	(Models A and B and) Responsibility for all statutory duties regarding contact with the complainant throughout the complaint process.

10. At present, a complaint is defined in the 2002 Act as 'any complaint about the conduct of a person serving with the police.' The Bill amends this so that there is **a clearer definition of a complaint around any expression of dissatisfaction with the police**. This will make the complaints system much simpler and straightforward. It is envisaged that moving away from a conduct-based definition (alongside the other provisions) the system will be less adversarial, with the focus shifting away from apportioning blame to redressing grievances and identifying where improvements are needed.

11. Currently, on receipt of a complaint which involves low-level matters, many forces seek to resolve it informally outside of the complaints system where it is appropriate to do so. Resolving complaints in this way is not expressly provided for in the 2002 Act. The Bill expressly provides for this option where it is appropriate and where it is to the benefit of the complainant. In cases where the force or PCC (depending on the model adopted) deems the complaint unsuitable for resolution informally (due to its severity), or where the complainant is clear they want to make a formal complaint, they will have a duty to record it. Unlike now, if it is not possible to resolve a complaint informally, the force will be required to record the complaint (at present a force may not record a complaint in certain circumstances, for example because it is considered to be vexatious).

12. At present, once a complaint is recorded, the force must determine whether it should be dealt with through certain processes: local resolution, a local investigation or whether it should be disapplied (in certain circumstances a complaint can be dealt with outside the statutory framework). The exception is

where a force is required to refer a complaint to the IPCC, namely when it contains allegations of conduct that have resulted in a death or serious injury, or fall under one of the following categories: serious assault; serious sexual offence; serious corruption; or a criminal offence or behaviour which is liable to lead to misconduct proceedings and which, in either case, is aggravated by discriminatory behaviour. The IPCC referral criteria will remain. But in all other cases, in order to simplify the complaints process, these separate processes are being replaced with a duty to take 'reasonable and proportionate action' to resolve complaints. The reforms seek to shift the focus away from process and categories to how best a complaint can be resolved to the satisfaction of the complainant.

13. Under the current appeal system, if a complainant is dissatisfied with the outcome of a complaint dealt with by a force, an appeal can be submitted to either the chief constable or the IPCC depending on the circumstances. Under the present system an appeal may be lodged in the following circumstances: a decision not to record a complaint; a decision to disapply the requirements of 2002 Act in relation to a complaint (an ability to handle a complaint outside of the legislation and take no further action); the outcome of a complaint dealt with through local resolution; a decision to discontinue an investigation into a complaint; and the outcome of an investigation into a complaint. To support the broader aim to make the complaints system simpler, the Bill removes all these rights of appeal and replaces them with a single ground of appeal: that the outcome is not reasonable or proportionate.

14. Under the new provisions, to introduce greater independence in the appeals process, PCCs will replace chief constables as the appeal body for certain categories of complaints. The IPCC will remain the relevant appeal body for dealing with the most serious and sensitive cases investigated. This will include complaints that have been investigated under 'special requirements', i.e. if the conduct complained about were proved, it would justify the bringing of criminal or misconduct proceedings or would involve the infringement of a persons rights under Article 2 (right to life) or 3 (prohibition of torture) of the European Convention on Human Rights[4]. For example, this would apply in cases where a person dies while in police detention or the police are alleged to be aware of a threat to a person's life and have failed to take adequate steps to protect that life.

15. It is important that PCCs have powers to support them with undertaking their appeal functions effectively by allowing them to act decisively and to give complainants clear outcomes to their complaints. The Bill provides that PCCs will have a number of powers in relation to their appeal role, similar to those the IPCC already has in regards to its appeal role. These include powers to recommend to

4 https://www.ipcc.gov.uk/sites/default/files/Documents/statutoryguidance/2015_statutory_guidance_english.pdf see page 135 for definition

the force that: reviews the approach it took to resolving the complaint; the complaint is investigated (if upon review they believe if proved, the conduct alleged would justify the bringing of disciplinary or criminal proceedings); or that an appropriate remedial action is carried out such as an apology or formal mediation. There will continue to be no review right following an IPCC investigation into a complaint.

Police Whistleblowing

16. In its response to the consultation document *Improving Police Integrity*, the Government announced its intention to go further to strengthen protections for police whistleblowers to give them the confidence they need to raise their concerns.

17. The Bill amends the 2002 Act to introduce a new discretionary power for the IPCC to investigate whistleblowing concerns, subject to a public interest test. This will create an alternative reporting route for whistleblowers. The Bill will also create a duty for the IPCC to protect the identity of a genuine whistleblower and give the IPCC the power to restrict the information it provides to forces when it does investigate a whistleblowing report., We propose to achieve in part through the use of non-disclosure agreements. This will provide reassurance to police whistleblowers that where the IPCC decides to investigate then it will be able to do so without disclosing the complainant's identity thus alleviating the whistleblower's concern that he or she may suffer adverse consequences if they report their concerns.

18. Under the proposed changes, any breach of a non-disclosure agreement by a police officer which reveals the identity of a whistleblower could, if proven, result in disciplinary action in the future. The Police (Conduct) Regulations 2012 will be amended to reflect this.

Home Office

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