

Policing and Crime Bill

The Independent Police Complaints Commission (IPCC)

Introduction

1. The role of the IPCC is crucial in a robust system of police scrutiny and complaints that functions well and commands public confidence. The Policing and Crime Bill includes a package of measures which will strengthen the powers of the IPCC and the independence of the investigative process.
2. The IPCC's role and powers will also be enhanced by the wider reforms to the police discipline and complaints systems. See separate factsheets for detail.¹
3. Additionally, the Government has very recently consulted the public on plans to reform the structure and governance of the IPCC. See the Home Office pages of the GOV.UK website for more information.²

Background

4. The IPCC was set up under the Police Reform Act 2002 ("the 2002 Act") and started operating in 2004, replacing the Police Complaints Authority. It oversees the police complaints system in England and Wales, assesses appeals against complaints decisions made by police forces and claims of police misconduct, and investigates serious matters involving the police, including Deaths and Serious injuries (DSI) following police contact³.
5. The IPCC sets the standards by which the police should handle complaints and has a statutory responsibility to maintain public confidence. The majority of complaints raised by the public are dealt with by the police, but serious matters must be referred to the IPCC if they meet the mandatory referral criteria.
6. Under the previous Government, the Home Secretary committed⁴ to a major change programme to ensure that the IPCC has increased capacity and funding to investigate all serious and sensitive matters involving the police. The IPCC has increased the number of cases that it deals with and the speed with which it closes them.

¹ Factsheet 11b – Police discipline and Factsheet 11c – Police complaints and whistleblowing

² Reforming the IPCC: structure and governance. The Home Office. 17 December 2015. ISBN: 978-1-911194-63-7.
<https://www.gov.uk/government/consultations/reforming-the-independent-police-complaints-commission-structure-and-governance>

³ The IPCC defines a DSI as "any circumstances in which a person has died or sustained serious injury and:

- had been arrested or was otherwise detained in custody at the time
- had contact of any kind with a person serving with the police that may have caused or contributed to the death or serious injury."

⁴ Statement by the Home Secretary to the House of Commons on Tuesday 12 February 2013.

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130212/debtext/130212-0001.htm#13021255000004>

Increasing the independence of the IPCC's investigations

Policy aims and background

7. Under the existing legislation, the IPCC shall have regard to the seriousness of a case and the public interest before it decides how and by whom a complaint, conduct or DSI should be investigated. The IPCC has powers to: refer cases back to the police force; to investigate cases independently; to exert direction and control over an investigation (a “managed” investigation); or to have the police investigate within prescribed terms of reference (a “supervised” investigation).
8. As the previous Government noted in the response to its public consultation on “Improving Police Integrity” in 2015⁵, this range of options can be “*confusing for the complainant, blurring the lines between cases investigated by the police and those investigated by the IPCC*”. In managed and supervised investigations, a police officer makes the key decisions, not the IPCC. These investigations are therefore perceived by the public to be more independent than they are.
9. A majority of respondents to the public consultation agreed with the principle that police involvement should be kept to an absolute minimum to ensure greater clarity about the independence of the IPCC's investigations, as well as the practical impact such involvement can have on police resources. But others, including the IPCC and the National Policing Lead for Complaints and Misconduct, felt that some form of police involvement was still needed, including, for example, cases needing forensic specialisms or covert intelligence. The Government's aim is to increase public confidence by increasing the IPCC's control over investigations undertaken on its behalf.

What changes are being made?

10. The Bill repeals existing provisions in the 2002 Act which allow the IPCC to carry out “managed” and “supervised” investigations, under which the police carry out the investigative work with oversight by the IPCC. A new mode of investigation will be created: “IPCC-directed” investigations.
11. This new framework will increase the independence of the IPCC's investigations by ensuring that the IPCC can exert greater direction and control over investigations that police forces undertake on its behalf. IPCC-directed investigations will see the IPCC making the key decisions on how a case is conducted.
12. The new framework will also introduce a new presumption: that the IPCC should undertake an independent investigation wherever possible, unless using police resources is key to ensuring a timely and effective investigation. As such, there will be a higher threshold to meet when opting for an IPCC-directed investigation than there was for managed and supervised investigations. The IPCC will be required to be more accountable and transparent about its reasons

⁵ Improving police integrity: reforming the police complaints and disciplinary systems. Summary of consultation responses and next steps. 12 March 2015. ISBN: 978-1-47411-6-411.
<https://www.gov.uk/government/consultations/improving-police-integrity-reforming-the-police-complaints-and-disciplinary-systems>

for not undertaking an independent investigation by communicating its reasons to complainants and interested parties both at the outset and in its final report.

Power of initiative

Policy aims and background

13. The IPCC has powers to investigate allegations of police misconduct, DSIs involving the police and complaints against the police. However, it can only consider or open an investigation after the matter has been referred by the police. Although the IPCC already has powers to require the police to refer cases to it, this process can introduce unnecessary delay. Sometimes, there may be differences of opinion where the IPCC and the force disagree on the seriousness of the matter. The Government considers that such delays may compromise a subsequent investigation, but also call into question the IPCC's independence from the police forces it oversees.
14. Many regulatory and "Ombudsman" bodies, including the Police Ombudsman for Northern Ireland (PONI), have a "power of initiative" to start their own investigations without waiting for a referral. There was broad support from respondents to the public consultation on police integrity for the IPCC to have this new power.

What changes are being made?

15. The Bill amends Schedule 3 to the 2002 Act to insert a new power for the IPCC to undertake investigations into allegations of police misconduct, death or serious incidents involving the police or complaints against the police without first having received a referral from the police (or any other body, such as the National Crime Agency (NCA), which falls within the jurisdiction of the IPCC).
16. To avoid the possibility of the IPCC using the power of initiative granted by the Bill to investigate matters which are outside its remit, specific conditions apply. The matter to be investigated must either appear to the IPCC to amount to a recordable conduct matter⁶ or a criminal offence, or it must be in the public interest that the IPCC investigate.

Power to reopen cases

Policy aims and background

17. There is legal uncertainty over the IPCC's powers to "reopen" investigations⁷ once an investigation report has been issued and a final decision taken, even if errors or failings in the original investigation come to light later. Following recent court challenges,⁸ the Government considers that the circumstances in which the IPCC may review and reopen cases should be put beyond doubt in order to

⁶ As set out in Schedule 3, Paragraph 11 of the PRA 2002.

⁷ In effect a reopened investigation is a new investigation, which could mean a fresh pair of eyes to examine existing evidence or an investigation resulting from new evidence coming to light.

⁸ e.g. R (on the application of Demetrio) v Independent Police Complaints Commission and R. (on the application of Commissioner of Police of the Metropolis) v Independent Police Complaints Commission. Queen's Bench Division (Administrative Court) 06 March 2015. [2015] EWHC 593 (Admin). Appeal lodged, 1 April 2015

avoid future legal challenges (with all the distress they can cause, for example for the families involved in a death in police custody).

18. The Bill is clear that the IPCC should only be able to reopen cases where it is satisfied that there are “compelling reasons” to do so: for example, where new evidence has come to light which, in the IPCC’s opinion, casts doubt on the accuracy of the findings of the original investigation.

What changes are being made?

19. The Bill amends Schedule 3 to the 2002 Act in order to provide a clear power to the IPCC to reopen an investigation, regardless of whether the underlying issue is a complaint, recordable conduct matter or DSI matter, or whether the IPCC or, for example, a police force (as the “appropriate authority” conducted the original investigation) conducted the original investigation.

Determinations and remedies

Policy aims and background

20. Current law does not allow the IPCC to provide a clear outcome for every type of complaint that it investigates. The IPCC already has the power to make certain determinations. For example, it can give an opinion on whether there is a case to answer following allegations on the conduct of an officer. Similarly, on matters involving criminal allegations, the IPCC can make a judgement on whether there is sufficient evidence to warrant referral to the Director of Public Prosecutions (DPP), who determines whether criminal charges should be brought.
21. However, for complaint allegations which fall short of criminal or disciplinary issues - for example, service failure⁹ - there is no express legal power for the IPCC to make a determination on the complaint’s merits.
22. Similarly, the IPCC already has a number of powers to recommend and direct remedies, such as direct a case to answer¹⁰; direct disciplinary proceedings; and make organisational learning recommendations. However, the IPCC’s powers to provide a clear resolution to a complainant are limited.

What changes are being made?

23. The Bill amends the 2002 Act to provide the IPCC with the power to make a determination regarding non-criminal or non-misconduct cases. This will ensure that, following an investigation, the IPCC can provide a determination for complaints which do not amount to a recordable conduct or criminal matter.
24. Where the reviewing body, be it a PCC or the IPCC, recommends a change in the outcome of the complaint or states that further work is required (for example

⁹ A service failure is where the service provided does not meet the expectations of those using the service e.g. being dealt with in a discourteous manner, receiving an unreasonably slow response, or not being kept informed of progress

¹⁰ Defined by the IPCC’s statutory guidance to the police service on complaints (May 2015) as there being “sufficient evidence, upon which a reasonable misconduct meeting or hearing could, on the balance of probabilities make a finding of misconduct or gross misconduct”

a reinvestigation), they will be able to clearly determine the outcome of the review.

25. The Bill expands the powers of the IPCC to recommend alternative remedial action following a complaint and/or review.
26. This will enable the IPCC to have a broad range of additional statutory powers to recommend remedial action, such as to recommend:
 - an apology;
 - an explanation from a force; or
 - that the complaint is referred for formal mediation.

Providing these additional powers of remedy will address concerns around the limitations on the IPCC's ability to provide a clear resolution to a complainant. This should also help reduce repetitious complaints in providing a definitive outcome for complaints raised.

Home Office

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