

# **An Independent Police Complaints Commission**

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### **Advisory Committee**

This research has benefited throughout from the supervision of an Advisory Committee. Members of the Committee have agreed terms of reference for the research, attended regular meetings, suggested lines of research, advised on the viability of proposals, and substantially contributed to this final report. The views contained in the report are those of Liberty, and do not in every respect reflect the opinions of all the individual members of the Committee.

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# Introduction

For many years there has been concern about lack of independence in the system of investigating complaints against police officers. The police hold a unique position in society, with powers to interfere in the lives of the public, and responsibilities to act independently to uphold the law. Inevitably at times this places them in positions of dispute and conflict, and will lead to complaints. A number of these complaints may amount to allegations of criminal conduct by those who are charged with upholding the law. Conversely, the very seriousness of a complaint against a police officer leaves them vulnerable to the consequences of unfounded complaints. Adequate methods of accountability are vital both for public confidence and for the operational effectiveness of policing, so that the police can be seen to be subject to rigorous, fair and open scrutiny.

Central to police accountability is the mechanism for investigating complaints: if citizens are to have confidence in the police service as a whole, they must feel that when they complain about individual instances of police misconduct their allegations will be investigated thoroughly and impartially. Liberty believes that the key to achieving this is a complaints system which is able to demonstrate independence and openness at every stage.

The importance of effective investigation of police complaints can be seen by the previous attempts to address this issue, the continued attention the subject attracts, and the ongoing calls for reform. The current system, which includes independent supervision by the Police Complaints Authority (PCA) of police investigations in some of the most serious cases, was set up after the recommendation for independent investigation of police complaints by the Scarman Inquiry.<sup>1</sup> However, concerns have continued with a series of high profile cases where there has been criticism of police investigations. Most recently the reports of the Home Affairs Committee on police complaints and discipline<sup>2</sup> and the Lawrence Inquiry<sup>3</sup> recognised that there is now widespread

support for the need to reform the current system with the introduction of a system of independent investigation of complaints against the police. The Government has therefore commissioned a feasibility study into the practicality of a mechanism for independent investigation of police complaints.

Liberty has long held that the rights of the public and police officers can be properly protected only by a truly independent system, including independent investigation. We have written extensively on this issue,<sup>4</sup> most recently in submissions to the Home Affairs Committee and the Lawrence Inquiry. We therefore welcome the opportunity to undertake our own feasibility study on independent investigation of police complaints with the support of funding from the Nuffield Foundation and the Lord Ashdown Trust.

The objective of our research has been to devise an independent, effective and practical method of handling police complaints that will secure greater police and public confidence in the complaints system and in policing as a whole. Independent investigation, as opposed to supervision is the key to public confidence, but is only one element of an independent complaints system. It is our view that for such a system to be truly effective, independence and openness are required throughout the whole complaints system.

In considering the structure of a new system, we have used the following terms of reference to guide our proposals. The independent body should:

- Enjoy public confidence
- Enjoy the confidence of the police
- Enjoy the confidence of complainants
- Ensure the fair accountability to law of police officers and afford them the full protection of the law
- Be open, accessible, accountable, value for money and properly resourced
- Ensure the highest standards of conduct by police officers

- Improve police performance
- Provide thorough and fair investigation
- Be efficient and speedy
- Seek to provide complainant satisfaction
- Have regard to the operational and managerial independence of the police
- Protect the police as far as possible from malicious and vexatious complaints
- Provide clear divisions of responsibility between the system and the police with full co-operation from the police
- Have an effective equal opportunities and non discrimination policy that is monitored
- Fulfil its functions with positive regard to and understanding of issues of race, gender, ethnicity, sexuality and disability.

There have been a variety of sources that have proved valuable to our research. England and Wales are not alone in having to address this difficult issue: most recently in Northern Ireland a police ombudsman has been established to undertake independent investigation of police complaints. The proposals in Northern Ireland have been a valuable model for our own research and we look forward to seeing how the system there develops. There are also police complaints systems operating all over the world with varying degrees of independence. We had the opportunity to meet with academics, police officers, members of oversight bodies and other interested parties from many different organisations and jurisdictions at the annual conference of IACOLE (The International Association of Civilian Oversight of Law Enforcement). Of the overseas systems we have concentrated on Queensland, Australia and Ontario, Canada, because of the extensive role given to these civilian oversight bodies in investigating police misconduct. We found it of particular value to visit the Criminal Justice Commission in Queensland to see the practical day to day running of an independent investigatory body.

We have also had the opportunity to discuss our proposals and seek the views of participants in the current system. This research has benefited throughout from the supervision of an Advisory Committee. Members of the Committee have agreed terms of reference for the research, attended regular meetings, suggested lines of

research, advised on the viability of proposals, and substantially contributed to this final report. In addition, we have visited police complaints and discipline departments of the Royal Ulster Constabulary and West Mercia. We have spoken with interested groups and individuals from a broad range of backgrounds. These include police officers, complainants, lawyers, academics, members of the PCA, members of the public, MPs, the Police Action Lawyers Group (PALG), Inquest, members of the Criminal Cases Review Commission (CCRC), the Prison Ombudsman, the Northern Ireland Police Ombudsman, Dr Maurice Hayes, members of the Independent Commission for Police Complaints in Northern Ireland (ICPC), Northern Ireland Office officials and the Committee for the Administration of Justice in Northern Ireland (CAJ).<sup>5</sup>

It has become apparent during the course of our research that many issues were raised, which were outside the remit of our project. In particular we have not considered methods of accountability in respect of operational matters. Additionally issues of informal resolution, and linked proposals such as restorative justice are largely outside the scope of this research. We consider these to be important areas, which have a role in resolving complaints against the police, and should be the subject of further research and development. They are not however an alternative to independent investigation where that is necessary.

It is clear from attempts to reform the police complaints process in the past, from the continued concern that these issues raise, and from our discussions with various stakeholders in the course of our research, that the police complaints process is in need of fundamental reform. The Government has signalled its commitment to this process. We hope that they and others interested in this issue will find this report of assistance, and will act on the recommendations we have made to create an independent system to investigate complaints against the police that will be effective, efficient and raise public, police and complainant confidence.

**John Wadham**  
Director, Liberty

April 2000

# Executive summary

This report proposes the creation of an organisation, independent of the police, to investigate complaints against police officers. We have named this organisation the Independent Police Complaints Commission (IPCC).

## Chapter 1 • Arguments for the IPCC

sets out the reasons why independent investigation of police complaints is vital in restoring confidence in the complaints system and in policing as a whole. The history of complaints systems in this country and abroad shows that the problems of internal investigation of police complaints that we face are part of a wider trend. Public and complainant attitude surveys both indicate dissatisfaction with the system of internal investigation, while the attitude of police officers to independent investigation may be more positive than would be expected.

After this discussion, Chapter 1 goes on to explore the underlying causes of dissatisfaction with internal investigation of complaints. It briefly addresses the most common practical arguments made against the independent investigation of police complaints, and signposts the areas of the report where these are dealt with in depth. The chapter concludes that there is a real need for a strong independent body to have a powerful investigative role in the investigation of complaints against the police.

### Recommendation

- 1 A new independent organisation should be established to investigate complaints against the police.

## Chapter 2 • Who investigates which complaints

discusses the proportion of all complaints made against the police which should be independently investigated. It argues that if only a small number of high profile and serious complaints are independently investigated then this will do little to restore the confidence of complainants in the system as a whole, and may be viewed as a superficial exercise. Complaints that would not be considered serious in nature under any formal system of classification may require independent investigation for a number

of reasons. However, the need to retain some police involvement in the process is recognised. A complaints system with no police involvement in even the more minor complaints could lead to a lack of management responsibility for the public actions of officers and polarisation between the IPCC and the police. The cost of investigating all complaints independently is also a prohibitive factor. Minimum levels of independent investigation are therefore set out which would give the IPCC a substantial investigative role, while leaving police forces with a part in the process. In addition to the investigation of complaints, it is considered vital that there are powers of referral available to the Chief Constable, and that the IPCC has the power to investigate even where no complaint has been made.

### Recommendations

- 2 There should be a mandatory category of matters to be investigated by the IPCC comprising of deaths, assaults causing serious injury, racial discrimination and corruption.
- 3 There should be a discretionary category of matters to be investigated by the IPCC. The minimum number in this category must be 25% of all complaints against the police that require full investigation, but do not fall into the mandatory category of investigation by the IPCC.
- 4 Informal resolution will be left in the hands of the police, but the IPCC should have a range of powers to ensure its proper use.
- 5 The Chief Constable should have the power to refer non-complaint generated matters.
- 6 There should be mandatory referral when the conduct of a member of the police force may have resulted in a death.
- 7 The IPCC should have an 'own motion' power, which allows it to commence an investigation, even where no complaint has been made.

## Chapter 3 • Access to the system

deals with the issue of how complaints are made. It is vitally important that potential complainants are not discouraged because of problems of access to the system. In particular there is consideration of the places where a

complaint can be made, the method for registering complaints, and public awareness of the complaints system.

### Recommendations

- 8 There should be a wide variety of places where a complaint can be made, including Citizens' Advice Bureaux, local government offices, law centres and local MPs.
- 9 A standardised form should be produced on which complaints are made.
- 10 The method by which a complaint can be recorded should be publicised by a free-phone number providing information on the complaints process, and the IPCC should be funded to promote its role within local communities.
- 11 Advice on the complaints system should be available at any of the places where a complaint can be made.

### Chapter 4 · Recording and allocation of complaints

discusses who should be responsible for recording the fact that a complaint has been made and who should decide whether it is the IPCC or the police who investigate. It discusses the need to put the IPCC at the centre of the complaints process. This can only happen if the IPCC has the power to record complaints and is able to decide which cases to investigate based on its own analysis of individual cases. If police forces retain the power to record all complaints, and make all decisions on which cases to refer to the IPCC for investigation, then the independence of the system will be jeopardised. However, consideration is also given to the speed of the process. If the IPCC has to record and process all complaints, there is a danger that the speed of the process will be significantly reduced. It is therefore suggested that police forces are allowed to deal with complaints where the complainant has agreed to informal resolution, providing other safeguards are put in place to ensure that informal resolution is used appropriately.

### Recommendations

- 12 The IPCC should be responsible for the receipt and recording of all complaints, not suitable for informal resolution.
- 13 All complaints not suitable for informal resolution should be initially considered by the IPCC for determination as to the most appropriate method for dealing with them, in accordance with agreed criteria.
- 14 Matters suitable for informal resolution should be directed straight to the appropriate police force for action.
- 15 At the end of the informal resolution process complainants should complete a satisfaction questionnaire, for analysis by the IPCC.

- 16 The IPCC should have the power to consider a sample of informally resolved complaints.

**Chapter 5 · Investigations** addresses issues relating to IPCC investigations. It does not deal with the entire investigative process. Rather, it addresses the more complex and difficult aspects of investigation of police misconduct by an external agency. First, it discusses the powers that IPCC investigators will need to conduct investigations, and how these powers can be used in a way which also protects the rights of police officers. It explains the need for a set of legally binding regulations to govern the conduct of IPCC investigations, and outlines some of the most important of these. It examines the problems relating to the timing of complaints investigations when there are outstanding criminal charges, and concludes with a discussion of the need for powers to compel witnesses to give evidence in extreme circumstances, and with appropriate safeguards given.

### Recommendations

- 17 Investigation officers of the IPCC should have all the powers of office of constable.
- 18 IPCC investigators should have the power of entry to police premises.
- 19 IPCC investigators should have the power to compel the preservation and production of documents and other materials.
- 20 The duty of police officers to 'obey all lawful orders' should be extended to include orders from staff of the IPCC.
- 21 All officers should be under a positive duty to co-operate with complaint investigations. Failure to do so should amount to a disciplinary offence. This positive duty remains throughout the investigation.
- 22 In respect of interviews regarding criminal allegations officers have the same right to silence as members of the public. Any interviews with officers obtained without the right to silence cannot be admitted in evidence against officers in criminal proceedings.
- 23 If during the course of an investigation an officer falls under reasonable suspicion of having committed a criminal offence he or she remains under a positive obligation to co-operate with the investigation in respect of disciplinary proceedings. However, in respect of criminal proceedings he or she should receive a criminal caution with the right to silence.
- 24 There should be legally binding regulations governing the conduct of IPCC investigations.
- 25 Statements and evidence gathered in complaints investigations must be disclosable to defendants in criminal proceedings, if relevant.

- 26 Complaints investigations should not normally await the outcome of any criminal proceedings. The IPCC should determine the timing of complaints investigations. Complaints investigations may be delayed pending criminal proceedings if the IPCC considers there is good reason to do so.
- 27 There should be a power to compel witnesses to attend and give evidence in proceedings. This power should only be used in limited circumstances. Safeguards such as immunity may need to be offered when such power is used.

### **Chapter 6 · Openness and transparency**

is concerned with the need for openness and transparency in complaints investigations. This is seen as a key aspect of improving public confidence in the complaints system. Specifically, it deals with the disclosure of Investigating Officers' (IOs) reports, and other information relevant to the investigation. It argues that the present position, whereby Public Interest Immunity can be claimed over all IOs' reports is an unnecessary bar to greater public confidence in the complaints system. It concludes that there should be a presumption that all relevant information should be disclosed at the end of an investigation, as long as this will not prejudice any criminal proceedings. This presumption would be overturned if it could be shown that the disclosure would create a substantial harm to the public interest.

#### **Recommendations**

- 28 Disclosure should be made to the complainant and the officer under investigation, but not until the conclusion of any criminal proceedings.
- 29 Disclosure of Investigating Officers' reports, statements and other evidence should occur subject to claims for PII on the basis of the contents of an individual document.
- 30 A decision should be made by IPCC members on the basis of the 'substantial harm' test, whether disclosure of a document or part thereof should be withheld. Submissions by the Chief Officer should be considered as part of this process.

### **Chapter 7 · Who are the investigators?**

is concerned with the investigators who will be working for the IPCC. It argues that civilians are capable of investigating complaints against the police. Investigation is a generic skill that is not unique to policing and civilians from a wide range of different backgrounds have investigative experience. With the implementation of a training programme teaching the specifics of investigating complaints, civilians without police backgrounds can become successful investigators. However, it is also argued that the practical experience of policing which former or seconded police officers could bring to the IPCC cannot be ignored. This experience should be

harnessed, especially in the early days of the organisation, but strict limits need to be set on the level of police involvement, and the roles that police officers play within the organisation so that the credibility of the IPCC is not damaged.

#### **Recommendations**

- 31 The investigative staff of the IPCC should comprise at least 75% civilians with no more than 25% seconded or ex-police officers.
- 32 Investigations should take place in a team structure reflecting the above proportions.
- 33 The IPCC should make the decision as to who are selected as seconded police officers.
- 34 Investigative teams should always be headed by a civilian team leader.
- 35 Specific provision should be made for a comprehensive training programme for investigators.

### **Chapter 8 · Disciplinary procedures and criminal prosecutions.**

This chapter sets out the position where disciplinary proceedings or a criminal prosecution are to be brought against a police officer. First, it deals with criminal prosecutions and states the need for the system to be changed so it is not a police decision to refer a case for criminal prosecution, thereby undermining the independence of the investigative process. The role of the CPS in prosecuting police officers is then discussed. It is suggested that changes need to be made to the current system ensure that the close working relationship between the CPS and the police does not lead to accusations of bias in the prosecution of officers.

The position with regard to disciplinary proceedings is then addressed. It is suggested that independence throughout this part of the process is vital to the credibility of the investigations of the IPCC. If cases were to be independently investigated, but there was no independence in the disciplinary process, allegations of bias may persist where no charges were upheld against an officer. Independence must therefore be demonstrated in the decision to bring disciplinary proceedings, the presentation of the case, the composition of the adjudication panel and in the openness and transparency of the disciplinary hearings themselves.

#### **Recommendations**

- 36 The IPCC should make the decision to refer the case to the appropriate body for consideration of prosecution.
- 37 A) The members of the IPCC should make the decision to prosecute with independent counsel's advice.
- B) A designated section of the IPCC should handle the prosecution of criminal cases.

*Alternatively*

C) The decision to prosecute and the prosecution of serious cases should be conducted by an entirely independent section of the Crown Prosecution Service (CPS). There are public guidelines as to what constitutes a serious offence.

D) The decision to prosecute by the CPS should be made in consultation with the Treasury Counsel.

- 38 The CPS or IPCC should be obliged to give detailed reasons in cases where it was decided that no criminal proceedings should be brought.
- 39 The IPCC should decide whether a case should proceed to a full disciplinary hearing, be dealt with by internal police management, or that no further action should be taken.
- 40 The preparation and presentation of disciplinary cases should be undertaken by the IPCC.
- 41 The adjudication panel at disciplinary hearings should comprise three members: the relevant Assistant Chief Constable and two non-police members.
- 42 The adjudication panel should decide whether disciplinary hearings should be in public or private. The presumption will be that they should be heard in public unless there are exceptional circumstances.
- 43 Where hearings are held in public, the police officer concerned should be allowed legal representation.
- 44 At all hearings the complainant should be accompanied by a legal representative to make sure that he or she understands the proceedings.

**Chapter 9 - A complaint analysis unit.**

The IPCC will be recording details of all complaints that are made by members of the public. It is argued that it is therefore in a unique position to be able to look at individual complaints and patterns of complaints from police forces all around the country. A pro-active unit within the IPCC would be able to analyse this data so that recommendations could be made in order to minimise the possibilities of complaints recurring in the future. It is argued that this role is vital to the success of the IPCC in allowing it to make positive recommendations for change to police practices and procedures.

**Recommendations**

- 45 A complaints analysis unit should be a fundamental part of the IPCC.
- 46 The unit should have discrete funding to allow thorough analysis of complaints and well-researched recommendations for change.
- 47 There should be a formalised mechanism for ensuring that recommendations are adopted by all police forces where appropriate.

**Chapter 10 - Structure of the IPCC**

This chapter describes the organisational structure of the IPCC itself. It starts by discussing the external accountability mechanisms by which the IPCC can be held to account. It goes on to examine what the senior staff structure of the IPCC should be, emphasising the importance of having a wide range of interests represented at the highest level of the organisation.

The office structure of the IPCC is then discussed, and it is concluded that this must operate on a regional basis if investigations are to be conducted effectively, and if the organisation is to be aware of the concerns of local communities. The staffing structure of the organisation as a whole is then set out, and the level of staffing needed for the various roles of the organisation is explained. Finally, an assessment is made of the cost of the proposed model. Although this is only a broad estimate, it does give an indication of the resources needed to make the IPCC an effective oversight body.

**Recommendations**

- 48 The IPCC should report to the Home Secretary on its operations in an annual report and such other reports as he might specify. Reports should be laid before Parliament and published.
- 49 The senior structure of the IPCC should consist of a Chair and Board of Members.
- 50 The Chair of the IPCC should be a person of considerable public standing with extensive legal experience.
- 51 The Board of Members should ensure that the IPCC is properly discharging its responsibilities and functions. Members should have a broad range of experience and be representative of a wide range of interests. Particular attention should be paid to ensuring that Members are representative of ethnic minority communities.
- 52 There should be a Head Office from which the Chair of the IPCC will operate. This office should also contain the Initial Analysis Unit, Complaint Analysis Unit and intelligence functions of the IPCC.
- 53 An organisational structure should be created on a regional basis. Members should operate from the regional offices which should each be run by a regional director. Investigative staff in each region should work in teams under the direction of civilian team leaders. Regional offices should also include Initial Analysis Units, Informal Resolution Monitors, Community Relations Officers, and Case Reviewers.
- 54 The IPCC should have an effective equal opportunities and non discrimination policy, that is monitored, in relation to all staffing positions.

# 1 Arguments for an independent body to investigate complaints against the police

## 1.1 Introduction

This report comes at a time when there are renewed calls for fundamental changes to the police complaints system. Three recent reports have highlighted this issue in particular. Most recently, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report criticising the current system of handling complaints against police officers. The Committee found that:

‘From the very beginning of the complaints process, at which stage the police retain sole discretion as to whether to record a complaint, through an investigation conducted and controlled by police officers, to the moment at which a police officer is required to assess the criminal and/or disciplinary implications of that investigation, the police themselves maintain a firm grip upon the handling of complaints against them.’<sup>1</sup>

As a result of these findings the CPT made the following recommendation for reform:

‘...the CPT entertains reservations about whether the Police Complaints Authority, even equipped with the enhanced powers which have been proposed, will be capable of persuading public opinion that complaints against the police are vigorously investigated. In the view of the CPT, the creation of a fully-fledged independent investigating agency would be a most welcome development.’<sup>2</sup>

The Stephen Lawrence Inquiry Report by Sir William MacPherson of Cluny also addressed the issue of police investigating complaints against other police officers. In his recommendations at the conclusion of the report, Sir William MacPherson recommends that:

‘The Home Secretary, taking into account the strong expression of public perception in this regard, consider what steps can and should be taken to ensure that serious complaints against police officers are independently investigated. Investigation of police officers by their own or another Police Service is widely regarded as unjust, and does not inspire public confidence.’<sup>3</sup>

In 1997 The Home Affairs Committee of the House of Commons produced a report on police disciplinary and complaints procedures.<sup>4</sup> The committee took oral evidence from the Minister of State at the Home Office, the three police associations of England and Wales, the Police Complaints Authority (PCA), the human rights organisation Liberty, the Police Action Lawyers Group, the Director of Public Prosecutions (DPP), and the Metropolitan Police Commissioner.<sup>5</sup> They also received written evidence from a number of other bodies and individuals. They concluded:

‘There was almost no argument in the evidence we received against the conclusion that independent investigation would be desirable in principle, not least because of the boost this would give to public confidence in the system. We are of the same view.’<sup>6</sup>

The Home Affairs Committee went on to add that there were several practical obstacles to overcome if independent investigation was to become a reality. This report will deal with those practical considerations. In this chapter, however, the background to the current debate will be related. This will explain the reasons why there is almost unanimous support for the principle that there should be an independent body investigating complaints against the police; and why the establishment of this body is fundamental to public confidence in the police service as a whole.

## 1.2 History and context

The current discussion about the complaints and discipline system in England and Wales is not a new phenomenon. As early as 1929, the Royal Commission on Police Powers considered the proposal that the DPP should be given personnel, independent of the police, to enable him to investigate allegations about criminal conduct committed by police officers.<sup>7</sup> The debate really began to intensify in the 1950s, ‘following a series of highly publicised complaints in which dissatisfaction with the outcomes was widely noted.’<sup>8</sup> This, in part, led to the setting up of the 1962 Royal Commission

on the Police whose terms of reference directed the Commission to address 'the means of ensuring that complaints by the public against the police are effectively dealt with.'<sup>9</sup> Again the Commission considered the idea of independent investigation. However, it was decided that it would be sufficient to improve internal mechanisms for dealing with complaints.<sup>10</sup>

Renewed criticism of the complaints process in the early 1970s was fuelled by widespread allegations of misconduct, particularly involving the corruption of detectives from London's Metropolitan Criminal Investigation Division.<sup>11</sup> In response to this, under the 1976 Police Act, the government set up the Police Complaints Board. This was a civilian oversight body which was empowered to review the final reports of the investigating officer (IO) in complaints cases. If it disagreed with the findings of the IO, it could recommend, and ultimately direct that disciplinary proceedings be brought.

However, from its early days the Police Complaints Board was widely regarded as ineffective.<sup>12</sup> Its paper review of completed investigations achieved little more than adding another layer of bureaucracy to the complaints process,<sup>13</sup> and led to mounting criticism.<sup>14</sup> It was, however the events that occurred in 1981, in Brixton and then shortly afterwards in Toxteth and Moss Side which threw the complaints procedure back under the spotlight.<sup>15</sup> Lord Scarman, in his report on the Brixton riots stated that there was '...a widespread and dangerous lack of public confidence in the existing system for handling complaints against the police.'<sup>16</sup> He went on to state that the introduction of an independent element into the investigation of complaints was vital.<sup>17</sup> Lord Scarman's own view was that 'any solution falling short of a system of independent investigation for all complaints' was unlikely to be successful in achieving public confidence. He therefore decided that it was a question of weighing up whether the costs of such a system would be balanced by the gains in public confidence that resulted. Eventually, a compromise was reached. Under the Police and Criminal Evidence Act (PACE) 1984, the Police Complaints Authority (PCA) was established. This body has survived until the present day. The PCA supervises around 1,000 of the most serious complaints investigations annually, including all incidents of death or serious injury involving police officers.<sup>18</sup> It also inherited the role of the Police Complaints Board to review all completed investigations, and ultimately direct that disciplinary action be taken if necessary.

The recent findings of the Home Affairs Committee and the Lawrence Report have demonstrated that

the changes made to the police complaints system over the last 30 years have been insufficient: neither complainants nor the public as a whole have been reassured that complaints are dealt with in an independent and impartial manner.

The investigation of police complaints is not an issue that has arisen in England and Wales alone. Over the last forty years in particular, there have been scandals and inquiries involving police complaints systems all over the world. A cyclical pattern of corruption and misconduct followed by attempted reforms has occurred in many other countries including Australia, Canada, the USA and Northern Ireland.<sup>19</sup> Numerous official inquiries have been set up as a result of high profile incidents and calls for reform, and many of the reports of these inquiries have stated the perceived inadequacies of internal police investigation.

### **Perceived inadequacies of internal police investigation**

#### **Knapp Report, New York City (1972):**

'At the present time a citizen wishing to complain about a policeman knows that his complaint will ultimately be investigated by other policemen. This discourages complaints, because New Yorkers just don't trust policemen to investigate each other.'<sup>20</sup>

#### **Christopher Commission, Los Angeles (1991):**

'No area of police operations received more adverse comment during the Commission's public hearings than the Department's handling of citizen complaints against LAPD officers...Many community groups and members of the general public firmly believe that the Department is incapable of disciplining its own officers...Our study indicates that there are significant problems with the initiation, investigation, and classification of complaints.'<sup>21</sup>

#### **Australian Law Reform Commission, Australia (1995):**

'The record of internal units is generally inadequate in terms of the effective conduct of investigations and there are excessive delays. A siege like mentality of police officers and their own police culture means that there are strong risks that they will not be able to conduct thorough and fair investigations.'<sup>22</sup>

#### **Fitzgerald Inquiry, Queensland (1989):**

'The Internal Investigations Section has been woefully ineffective... It has been a friendly, sympathetic and inept overseer. It must be abolished.'<sup>23</sup>

#### **The Wood Report, New South Wales (1997):**

'There is an inherent bias in investigations as the result of which the Service failed to carry out impartial investigations or pursue allegations with the same rigour or approach seen in ordinary criminal inquiries.'<sup>24</sup>

**‘The Home Secretary, taking into account the strong expression of public perception in this regard, [should] consider what steps can and should be taken to ensure that serious complaints against police officers are independently investigated. Investigation of police officers by their own or another police service is widely regarded as unjust, and does not inspire public confidence.’**

*The Stephen Lawrence Inquiry Report, Sir William MacPherson of Cluny*

Such negative critiques of internal investigation units shows that the lack of confidence in internal investigation in this country is part of a wider trend. For reasons discussed below, it is vitally important that police complaint systems are seen to be independent, so that civilians have an effective means of redress.

### 1.3 Attitudes

#### Public attitudes

Both the Lawrence Inquiry Report and the Home Affairs Committee gave public confidence as a primary reason for introducing an independent mechanism for investigating complaints against the police. All public attitude surveys on the police complaints process conducted in recent years show that there is a majority opinion in favour of independent investigation.

As part of the 1988 British Crime Survey questions were asked about attitudes to the investigation of complaints:

**‘...when asked how happy they were with the present system, only 36% declared themselves ‘very’ or ‘reasonably’ happy. And to the question of who they thought should investigate complaints, under one in six said they were content to leave it to the police: the most frequent response was ‘an independent lay body’. The above questions drew negative answers from significantly higher proportions of black and ethnic minority respondents than of white respondents.’<sup>25</sup>**

The PCA also commissioned yearly public attitude surveys on the complaints process until 1996, when budget cuts meant it was no longer able to perform this role.<sup>26</sup> The 1996 survey showed that trust in the police investigating themselves was at its lowest point since the surveys had started in 1992:

**‘There was...a sharp fall in public confidence in the police investigating complaints against fellow officers. In previous surveys between 41 and 44% of those interviewed believed that the police could be trusted to carry out these inquiries fairly. However the 1996 survey put this figure at only 37% compared to 40% who did not trust the police. This was the first time in five surveys that these questions had suggested an adverse anti-police balance.’<sup>27</sup>**

In addition, the percentage of people who believed the PCA to be independent and impartial was 39% and 37% respectively.

The survey went on to show that the findings were significantly worse in surveys conducted with ethnic minorities:

**‘The 1996 survey also confirmed that a clear majority from a minority background do not trust the police to investigate complaints against fellow officers.’**

Finally, the Police Federation conducted a survey in September 1997.<sup>28</sup> Five hundred members of the public were surveyed at 23 locations in England and Wales. When asked what system of investigation of police complaints would give them greatest confidence 59.4% said they would have greatest confidence in independent investigation, 16.4% said the police investigating themselves, and 19.6% said they would have equal confidence in either system. The Police Federation concluded that this indicated that there was widespread public concern about the lack of independent investigation of complaints against the police.

These figures show underlying public unease about the police investigating themselves, and that the majority would be in favour of independent investigation. Among ethnic minorities there is even clearer evidence that police officers investigating complaints against themselves is not considered acceptable.

#### Complainant attitudes

It is also valuable to assess the attitudes of individuals who are directly affected by the process. If a complaints system is to achieve its purpose, then one of its most important aims should be to reassure complainants that their complaints have been handled fairly and with due thoroughness. In 1991, the Home Office published the results of research on complainant attitudes to the handling of police complaints as part of an evaluation of the police complaints system, written by Maguire and Corbett.<sup>29</sup> This showed that the vast majority of complainants do not believe that the police should be investigating complaints against themselves. Almost 90% stated that they thought complaints should be investigated by an external body.<sup>30</sup>

The research also showed that the current system leaves the vast majority of complainants dissatisfied, many with their perceptions of the police damaged because of the experience they have had during the investigation of their complaints. Seventy four per cent of the 100 interviewees expressed dissatisfaction with the handling of their complaints, with most very dissatisfied, this increased to 90% when cases had been fully investigated by police as opposed to informally resolved.<sup>31</sup> Furthermore, 70% of the 40 interviewees who had their complaint formally investigated stated that the investigation had changed their view of the police for the worse.<sup>32</sup> This is especially serious when it is considered that just under two thirds of those surveyed started out with the belief that the police generally behaved well.<sup>33</sup>

It is a common argument that many complainants are manipulating the complaints process for their own ends. In fact, Maguire and Corbett's research showed that this is a common perception amongst police officers who had been the subject of complaints.<sup>34</sup> However, the researchers' own experience led them to comment on the sincerity of the complainants they encountered:

'...we were generally impressed by the genuineness of the sense of grievance expressed by the complainants we interviewed – an impression confirmed by several of the IOs we spoke to. Most were making the first complaint against the police in their lives, and a large minority told us that it had taken some courage to do so: as one put it, 'It's like walking up to a six foot man'. They were incensed by what had happened and expected some form of apology, a full explanation (at the very least of why, precisely, their complaint was considered unjustified), or an assurance that steps would be taken to prevent a recurrence.'<sup>35</sup>

The research tends to show that complainants are genuinely aggrieved and dissatisfied with the way their complaints are handled by the police, and their experience has a negative effect on their perceptions of the police as a whole. Almost all want independent investigation.

A more recent survey of complainants has been carried out by Ian Waters and Katie Brown.<sup>36</sup>

Although they warn of drawing any firm conclusions from the small sample of complainants who completed the survey (51 respondents) their results show many of the same characteristics as the Maguire and Corbett research; the majority of the sample (70%) were first time complainants.<sup>37</sup> Eighty per cent were not confident that the force had dealt with their complaint fairly.<sup>38</sup> Two thirds 'strongly agreed' that complaints should be investigated by an outside independent body.<sup>39</sup> Several complainants highlighted their lack of faith in the police as a result of their experience.

These statistics are not just found in England and Wales. Landau in 1996 conducted interviews with 104 complainants in Toronto, Canada<sup>40</sup> where complaints are investigated by police investigators, with the Police Complaints Commission (a civilian review agency) performing a supervisory role. Landau records that only 14% of complainants who had experienced the entire process felt that their complaint received a fair investigation. In addition 35% felt that the police investigation was biased.<sup>41</sup> Furthermore, 70% of those interviewed thought internal investigation was undesirable. Landau also indicates that the existence of the Police Complaints Commission did little to alleviate complainants' concerns about an unfair and prejudicial investigation<sup>42</sup> and that perhaps the most salient feature in the minds of complainants remains the fact that the police investigate the police.<sup>43</sup>

In Northern Ireland, Hayes undertook a survey of complainants as part of his research. He received 82 completed responses. Eighty three per cent of respondents declared that no part of the investigation had been handled effectively.<sup>44</sup> The same percentage also stated that they prefer a non-police investigator working for an independent body to be handling their complaint.<sup>45</sup> It was those who had never had any contact with the police before who felt most strongly that they had been badly treated.<sup>46</sup>

The overall impression created by complainant surveys in England and Wales, Northern Ireland and Canada is that complainants do not trust internal investigation.

.....

**'When asked how happy they were with the present system, only 36% declared themselves 'very' or 'reasonably' happy. And to the question of who they thought should investigate complaints, under one in six said they were content to leave it to the police: the most frequent response was 'an independent lay body'. The above questions drew negative answers from significantly higher proportions of black and ethnic minority respondents than of white respondents.'**

*A Study of the Police Complaints System, Mike Maguire and Claire Corbett*

## Civil actions

A further measure of confidence in the complaints system is the extent to which procedures other than the complaints system are used to bring actions against police officers. A civil claim for damages is the most frequently used alternative to the complaints system. The choice to pursue a civil claim rather than lodge a complaint does not in itself indicate lack of confidence in the complaints system. A civil claim can bring financial compensation that is not generally available to complainants. However, when the number of civil claims and the amount of damages paid reaches a certain level conclusions can be drawn about lack of confidence in the complaints system. The CPT noted the extensive use of civil actions by members of the public. They quote figures for the Metropolitan Police Service; 1178 civil actions, and £2,658,000 paid in damages<sup>47</sup> and conclude that:

‘...evidence gathered by the CPT’s delegation tended to confirm that many members of the public now seek to pursue their grievances against the police through the civil courts, rather than have recourse to a complaints system which they regard as discredited.’<sup>48</sup>

The amount of damages paid out by the Metropolitan Police Service in the two years following the CPT Report (£3,342,000 and £2,309,000)<sup>49</sup> indicates that the use of civil actions is still extensive. The change from the criminal to the civil standard of proof for disciplinary proceedings introduced in April 1999<sup>50</sup> may reduce the use of civil actions, but this remains to be seen.

## Police attitudes

Public and complainant attitude surveys suggest that more independence needs to be brought into the system if confidence is to increase. It is clear that the supervision of police officers is not enough, independent investigation must be introduced in order to enhance confidence in the system. This view is backed up by support given by the Police Federation to the independent investigation of police complaints since 1981:<sup>51</sup>

‘The Police Federation believes that the system needs to be changed so that it becomes, and is seen by the public to be, wholly independent of the service. Although we believe that all investigations are conducted in a thoroughly scrupulous fashion, the fact that police officers undertake the investigations, albeit under the direct supervision of PCA members, lays the system open to allegations of partiality and even cover-up.’<sup>52</sup>

In September 1997, at the same time as the Police Federation undertook their public attitude survey (see above), they also sent out

questionnaires on the complaints system to police officers.<sup>53</sup> Nine thousand responded. First, officers were asked which system of investigation they thought would give the public most confidence. Eighty five per cent believed the public would have greater confidence in independent investigation. Seven per cent believed the public would have more confidence in the present system and the same number said it would make no difference. It is clear, therefore, that police officers do realise that there is a lack of confidence in internal investigation.

Forty four per cent said the police would have more confidence in the present system. Thirty three per cent said they would have more confidence in independent investigation, while 20% said they would have equal confidence in either system. This survey suggests that police officers are more open to the idea of independent investigation than may have previously been thought, as the Police Federation itself concludes. The figures suggest that 53% of officers would have greater or equal confidence in independent investigation.

## 1.4 Underlying causes of dissatisfaction

An independent system for the investigation of police complaints is also backed by many academics and writers on the subject.<sup>54</sup> On one level, the attitudes of many commentators can perhaps best be summed up by John Lambert’s often quoted remark about the inadequacies of the civilian supervisory model:

‘No system, however elaborate, which concentrates on supervision and *ex post facto* review of police investigations will satisfy the demand that justice will only be seen to be done when the investigation of complaints against the police is taken out of the hands of the police themselves.’<sup>55</sup>

However many commentators have also gone beyond arguments concerning confidence in the system to address why it is that there is a particular need for an independent body to investigate complaints against the police, rather than against other public officials and civil servants. There are many who see the occupation of policing as being in need of this particularly strong form of oversight because of the wide ranging powers that police officers have, and the informal settings in which they are used. As Dr Colleen Lewis states:

‘The police have been entrusted with considerable coercive powers and a significant degree of discretion. These two factors help to contribute to the thesis that “police are different” from other public servants...Broadly speaking, police are able to stop, question, detain and arrest people. They

can search and seize property, fingerprint and photograph them, conduct intimate body searches and use force, even violence to control a situation. Police have the power to deprive people of their freedom, autonomy and dignity and, under extreme circumstances, their lives. These potentially oppressive powers have been granted to police so that they can regulate and protect society in general and people's individual rights in particular. However, they are formally required to do so according to the law and to abide by the procedural rules and policies laid down by society. Even though policing is accepted as a licit form of social control, community acceptance of police authority is contingent on their "good behaviour", their compliance with the rule of law, and on there being processes which can deliver effective police accountability.<sup>56</sup>

Many other commentators have noted this unique position of police officers within society.<sup>57</sup> In essence, the wide range of powers described above are open to use by police officers in situations where their actions cannot be scrutinised like those of most other public servants. A police officer's decision whether or not to stop, search, arrest etc. is most often taken 'on the street'. Furthermore the decisions of police officers have far-reaching consequences:

'Because police are the gatekeepers of the criminal justice system any partiality in police decisions based on undue influences or self-interested motives taints the whole system of justice and citizen safety by increasing inequalities in service delivery and prosecutions.'<sup>58</sup>

Because the police are entrusted with such powers and discretion, and because of the far-reaching consequences that the actions of the police can have, there is a strong need to ensure that individual officers can be held to account when they abuse their position. If there is any suspicion that police officers are not being held to account effectively for their misdemeanours, then, for the reasons outlined above, the result will be a loss of faith in the criminal justice system as a whole.

It is therefore vitally important that police forces can convince citizens who complain about the misconduct of police officers that their complaints will be dealt with fairly and impartially. The lack of public and complainant confidence in the current system of internal investigation has already been noted. But, more fundamentally, commentators have observed that the very nature of policing makes the task of impartial investigation of complaints against fellow officers a very difficult task.

Police officers who are investigating complaints against other officers will inevitably have their attitudes towards complaints investigations shaped by their previous involvement in police

work. Since around 2% of all recorded complaints are substantiated,<sup>59</sup> and almost every officer is complained against at least once during his or her career,<sup>60</sup> most officers working in complaints and disciplinary departments will inevitably have experienced a large number of complaints against fellow officers which are unsubstantiated. In addition, the nature of police work means that complaints will often be made by individuals from groups whose relationship with police officers is sometimes antagonistic in nature.<sup>61</sup> These two factors are likely to increase the tendency for police investigators to suffer from 'occupational alignment':<sup>62</sup> the danger that police investigators will unconsciously be more sympathetic to fellow police officers than to complainants, and that this will shape their attitudes towards the way investigations are conducted.

The danger of occupational alignment is greatly increased within the police organisation by the strength of the police culture. Studies of police culture have reasoned that, because police work involves more confrontational situations and greater elements of danger than most jobs, officers develop a strong culture of mutual support to cope with the demands of the job.<sup>63</sup> The strength of police culture is often cited as a reason for keeping complaints investigation in the hands of the police – an independent body would be unable to break into the police culture and so would not be able to obtain the co-operation of police officers in the same way as internal investigators.<sup>64</sup> However commentators have noted that the strength of police culture can actually disadvantage police investigators. Dr Lewis states:

'This strong group loyalty is one of the culture's many beneficial features in dangerous operational situations. However, it has proven to be its "Achilles' heel" in relation to complaints about police behaviour. The exceptionally strong unwritten code, that police must stick together at all times, encourages police to cover up the misconduct, even the criminal activities of other officers.'<sup>65</sup>

The Australian Law Reform Commission (ALRC) recently reviewed the handling of complaints by the Australian Federal Police (AFP) and National Crime Authority (NCA). It considered the factors mentioned above, before concluding that:

'To ask the police to investigate complaints against their own places them in a 'hopeless conflict of interest position'. Police investigators, whether consciously or otherwise, will tend to be sceptical of complainants and will be 'softer' on the police concerned.'<sup>66</sup>

The ALRC therefore concluded that as much power and responsibility as possible should be given to an outside agency.

Even if concerns about occupational alignment and the effect of strong police culture on internal police investigators being affected by strong police culture are set aside, there is still an argument for setting up an independent body to investigate police misconduct on the basis that police investigators may have a very different view of ‘reasonable behaviour’ from a civilian bystander. Professor Maguire describes the issue as follows:

‘Investigating officers, in common with most police officers, have a perception of acceptable and unacceptable conduct which differs from the perceptions of many members of the public. What a police officer honestly (and perhaps justifiably) regards as totally ‘reasonable force’ to manoeuvre an intoxicated person quickly and effectively into a police van, may appear to the person – or to bystanders – as totally unreasonable force.’<sup>67</sup>

If community and police perceptions of acceptable police conduct are allowed to diverge then the whole concept of ‘policing by consent’ becomes endangered. An independent body, with civilian investigators, should be in a better position to ensure that police conduct is acceptable to both the police force itself and the community it serves, and so help to cement relations between police and communities.<sup>68</sup>

## 1.5 Independent investigation: practical problems

The 1997 Report of the Home Affairs Committee on police complaints and disciplinary procedures concludes that all the evidence received confirmed the desirability of independent investigation of police complaints.<sup>69</sup> However, they received several submissions from bodies such as the Association of Chief Police Officers (ACPO) and the PCA which warned that substantial practical problems must be overcome before they would support any model involving independent investigation of complaints. The ACPO position was that:

‘We are not totally opposed at all [to independent investigation]....If someone was to come up with a model that was discussed with us then we would express a view with regard to that particular model or otherwise.’<sup>70</sup>

The Home Affairs Committee summarise the practical difficulties of setting up an independent system as presented by bodies such as ACPO and the PCA. Five main problems are presented as obstacles to independent investigation.<sup>71</sup> At this stage, it may be useful to list the potential obstacles, briefly address how they may be overcome, and refer to where they are dealt with in greater depth elsewhere in this report.

- **Cost:** the implementation of the IPCC will create certain additional costs for the complaints system. This is because a separate infrastructure will have to be created for the organisation. This report will consider the various costs involved in setting up the IPCC, the savings that can be made to the existing system, and will set out the case that the resultant expenditure is reasonable given the benefit that will be gained in public confidence as a result.<sup>72</sup>
- **Staffing:** the IPCC will need to recruit a substantial number of civilian investigators who would need training in order to be effective investigators of police complaints. This report will propose that investigative skills are generic and are common among many other professions. It will argue that knowledge of police practices and procedures will need to be taught, but the presence of a minority of seconded or ex-police officers at the IPCC will provide a basis of expertise in this area.<sup>73</sup>
- **Police co-operation:** there is much debate about whether civilian investigators will receive sufficient co-operation from police officers in their investigations, or whether the strength of the police culture will make them ineffective in comparison to internal investigations. Again, the presence of a minority of seconded or ex-police officers at the IPCC should help this problem.<sup>74</sup> Also, it is argued that the implementation of legal protocols governing the interactions between police officers and IPCC investigators will ensure there is a framework for co-operation.<sup>75</sup> With these provisions in place, the residual dangers presented by lack of co-operation with civilian investigators needs to be balanced against the dangers of occupational alignment in internal police investigations.<sup>76</sup>
- **Police obligation to investigate crimes:** it is argued that the police have a constitutional obligation to investigate all criminal offences, so two separate inquiries would be necessary when the IPCC are investigating criminal allegations against police officers. However, Customs and Excise, the Serious Fraud Office and the Inland Revenue all investigate crimes without the need for parallel police investigations. Civilian oversight bodies have also been given the power to investigate criminal allegations in other jurisdictions, and the Police Ombudsman’s office in Northern Ireland has also been given this power.<sup>77</sup>
- **Management information:** it is argued that management information which police forces gain from their complaints investigations could be lost if investigations were transferred to an external body. However, this report will present evidence to suggest that a complaints analysis

unit at the IPCC which analysed complaints from police forces from all over the country could provide better management information to police forces than the current system does.<sup>78</sup>

## 1.6 Conclusion

The CPT Report, the Lawrence Inquiry and the Report of the Home Affairs Committee have recently highlighted the lack of confidence in the existing system for handling complaints against the police. But this is an issue that has been revisited time and again over the last forty years. Successive attempts to amend the process have failed to reassure the general public and complainants that the complaints system is fair and impartial. Opinion surveys, high profile cases and civil actions against the police all show that the general public and complainants do not trust a system where the police are allowed to investigate complaints internally, even when there is an oversight body (the PCA) to supervise those investigations. This lack of confidence in internal investigation should not be seen as a particular failing of the police forces of England and Wales. The experience of many foreign jurisdictions is that the practice of internal investigation of complaints is becoming more and more objectionable to the general public. Inquiries and commissions in Australia, Canada and the USA in particular have stated the inadequacies of police complaints systems based on internal investigation.

The wide-ranging powers and discretion of police officers and their vital position as 'gatekeepers' of the criminal justice system means that it is fundamentally important that members of the public feel they have an effective means of redress when officers abuse the powers they have been granted. The creation of an organisation, independent of the police, with the power to investigate the misconduct of police officers is vital not only to public confidence in the complaints system, but also to public confidence in the police service as a whole. The dangers of occupational alignment, a strong police culture and divergent community and police attitudes all suggest that there is a real need for a strong independent body to have a powerful investigative role in the investigation of complaints against the police.

This report will provide a working model of how such a body would function. It will address all the issues that need to be considered in the setting up of a successful independent investigative body, including the practical problems of independent investigation raised by the Home Affairs Committee and bodies such as ACPO and the PCA.

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## 1.7 Recommendation

- 1 A new independent organisation should be established to investigate complaints against the police.**
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### Other jurisdictions

There are three systems in foreign jurisdictions that we have found particularly useful when considering reform in this country, because of the extensive investigative powers that have been given to the civilian oversight bodies:

#### **The Criminal Justice Commission in Queensland, Australia.**

It is an organisation independent of the police which investigates the majority of cases of misconduct by the Queensland Police Service.

#### **The Special Investigations Unit in Ontario, Canada.**

It is an organisation independent of the police which investigates all cases where death or serious injury to a civilian may have been caused by a police officer.

#### **The Police Ombudsman for Northern Ireland.**

The Office of the Ombudsman was created following the Hayes report on reform to the Northern Ireland police complaints system. It is a body independent of the police. The Ombudsman's Office will start operating in October 2000, and will have strong powers to investigate a large proportion of the complaints made against officers in Northern Ireland. The Northern Ireland (Police) Act 1998 is the legislation which empowers the Ombudsman's Office.

A more detailed account of these three systems is given in Appendix 2.

# 2 Who investigates which complaints?

## 2.1 Introduction

How can an independent body investigating complaints against the police be created which engenders confidence and enhances the effective functioning of the complaints system and policing as a whole, while at the same time not burdening the system with disproportionate costs?

The initial practical issue is the number of complaints the IPCC should investigate. What proportion of all the complaints that are made against the police each year should be investigated independently? Answers range from a few hundred, to all complaints that are made.

Before discussing the merits of various models, it may be helpful to provide details of the number of complaints made against the police, and to explain the proposed method of counting the number of complaints that should be investigated independently.

## 2.2 Numbers of complaints and proposed method of counting

The number of complaints made against the police is set out in the table below. The figures represent an average for the last three years, and have been taken from two sources: the Police Complaints Authority (PCA) and the Home Office. Appendix 2 gives an explanation of how the figures were calculated. Complaints are divided into the four different procedures:

- complaints that are informally resolved;<sup>1</sup>
- complaints that are later withdrawn by the complainant;
- complaints where the police receive dispensation from the need to investigate from the PCA;<sup>2</sup>
- complaints that are fully investigated.

For each complaint procedure two different figures are given: the number of complaint cases and the number of individual items of complaint.

Complaint cases can contain more than one item of complaint, so there are substantially more items of complaint than cases. For details of how these figures were calculated, see Appendix 3.

| Procedure           | Cases  | Items of complaint |
|---------------------|--------|--------------------|
| Informal resolution | 8,618  | 11,664             |
| Withdrawn           | 4,139  | 5,602              |
| Dispensation        | 4,663  | 7,539              |
| Full investigation  | 4,755  | 10,746             |
| Total               | 22,175 | 35,551             |

An item of complaint refers to an individual accusation that has been made against a police officer, while a complaint case refers to a whole incident, where a number of items of complaint may have been made. Throughout the following discussion of which complaints should be independently investigated, complaints cases will be used rather than items of complaint. If investigations are to be split between the police and the IPCC, then they can only be split in terms of whole cases. It would not be practical for the IPCC to investigate certain items of complaint and the police to investigate other items within the same case.

## 2.3 Three models

Three models will be considered which explore the range of options to determine which complaints should be investigated by the IPCC.

### Model 1

- The IPCC investigates only a few hundred of the particularly serious and high profile complaint cases.
- This would include all complaints that an officer has caused the death of a civilian, complaints of particularly serious injuries, corruption and racial discrimination.

- The complaint cases investigated would be along the lines of those currently supervised by the PCA.
- Supervision of police investigation for a range of cases not subject to independent investigation.

### Model 2

- The IPCC investigates all complaint cases.
- The IPCC would investigate all complaint cases that are currently handled by the complaints and discipline departments in police forces around the country.
- This could include all complaint cases that are informally resolved.

### Model 3

- The IPCC investigates a range of complaints cases.
- The IPCC would investigate all the complaint cases put forward in the first model currently supervised by the PCA.
- The IPCC would also investigate a significant proportion of the other complaint cases currently investigated by complaints and discipline departments without supervision by the PCA.
- Informal resolution would continue to be handled by the police with appropriate safeguards.

Before a decision can be reached on which cases should be investigated by the IPCC, there is a range of issues to be considered. A discussion of these will be followed by an evaluation of the three potential models.

## 2.4 How many complaints should be investigated?

### Factors for deciding

#### Public and complainant confidence

Public and complainant attitude surveys, as well as the findings of the Home Affairs Committee and the Lawrence Inquiry show that both public and complainant confidence in the present system of internal investigation is low. Surveys also show that the general public and complainants are in favour of independent investigation of complaints, and that police officers realise that independent investigation of complaints would give the public greater confidence in the system.

If the IPCC investigated all complaints itself (Model 2) then the general public and complainants would have no doubt about the independence of investigations or the

accountability of the complaints process. Public confidence in the system would be maximised. However, the benefits of Model 1, where the IPCC investigates only the most serious complaints, should also be considered.

Independent investigation of the most serious complaints is most crucial to confidence in the complaints system. High profile cases (such as Stephen Lawrence and Ricky Reel) have been a key factor in bringing about the current debate around the problems of internal investigation. However, there are dangers that a system which concentrated only on the most serious cases would be viewed as a superficial exercise: it would have no effect on the way that the majority of complaints are investigated. As our Advisory Committee pointed out, it cannot always be assumed that the most serious complaints alone will give rise to public concern. Hayes' proposals for Northern Ireland make it clear that, for the credibility of the system, the Ombudsman should investigate a broad range of complaints, not just those that allege the most serious misconduct.<sup>3</sup> He states:

*'While some people have agreed that the complaints body should concentrate on the really serious cases, it has often been pointed out to me that more minor cases can often arouse more concern and are often less expertly handled than serious ones.'*<sup>4</sup>

There is no reason to doubt that the same principles apply in England and Wales.

It is especially important for the confidence of complainants in the system that the IPCC is not seen simply as a body that only deals with a small number of high profile cases. As the complainant surveys in chapter 1 show, the overwhelming majority of complainants think complaints should be investigated by an independent body. A system where a vast majority of complaints are still investigated by the police is unlikely to produce greater confidence for the average complainant whose case is not considered to be sufficiently serious for independent investigation.

Complaints that would not be considered serious in nature under any formal system of classification may require independent investigation for a number of reasons. The investigation of 'minor' complaints can be the basis for uncovering more widespread problems. They can also expose cases where police powers have been used inappropriately or where difficulties in existing procedures are giving rise to disproportionate numbers of complaints. Types of complaints that appear less serious may be in particular need of independent investigation because of the large-scale dissatisfaction caused to the complainant

**‘While some people have agreed that the Complaints Body should concentrate on the really serious cases, it has often been pointed out to me that more minor cases can often arouse more concern and are often less expertly handled than serious ones.’**

*A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland, Dr Maurice Hayes*

or even to the wider community. An obvious example is stop and search complaints. This category would never be investigated by an independent body that only had a mandate to investigate the most serious cases: it would not, for example, involve death, serious injury, or corruption. Yet it has been well documented that improper use of stop and search can have a very negative effect on police relationships with local communities. Most recently the research commissioned by the Metropolitan Police into stop and search practices has highlighted concerns over the use of this power.<sup>5</sup> The report states that the use of stop and search is an important tool of crime prevention and apprehension. But it also causes great dissatisfaction among members of the public towards the police, and some of the searches that take place may be unjustifiable or unnecessary.<sup>6</sup> Independent investigation of complaints such as these would be an important tool in restoring community confidence in the accountability of police officers.

The recent HMIC report about public confidence in the police force suggests that in many areas of the country concerns about the arrogance and incivility of police officers is the biggest problem.<sup>7</sup> If the IPCC is to be a valuable tool in increasing public and complainant confidence in the system, it needs the flexibility to be able to investigate a full range of complaints, so that it can provide independent investigation into any complaint that is particularly damaging to the reputation of police forces among complainants and the wider public. A system that only provides independent investigation for a narrow band of more ‘serious’ complaints will not have the flexibility to deal with the full range of issues that the complaints system exposes.

### Informal resolution

The position with regard to informal resolution is somewhat different. Keeping informal resolution in the hands of the police enables better police/community relations. Informal resolution appears to be the part of the process which satisfies complainants the most. It is a mechanism now used widely around the world to deal with police complaints and complainant satisfaction rates are always far higher than for formal investigation.<sup>8</sup> The majority of

complainants with these kinds of relatively minor complaints are looking for an apology, explanation, or a ‘ticking off’ for the officer concerned rather than formal disciplinary action.<sup>9</sup> To remove this function from the police would not allow the force concerned the chance to create any positive impression on individuals dissatisfied with the service they have received. Neither would it enable them to respond effectively and speedily to criticism. One of the attractions to complainants of informal resolution is the speed with which a complainant can have his or her complaint resolved.<sup>10</sup> The speed of the process would be likely to be decreased if these matters were handled externally.

If informal resolution is to be kept in the hands of the police it is important that the system is properly monitored to ensure that it is used appropriately. In our discussions with legal practitioners who have experience of representing complainants, a frequent criticism of the current system was the lack of monitoring of informal resolution. There was also concern as to the appropriateness of its use in certain cases. Maguire and Corbett’s research makes it clear that their support for the widespread use of informal resolution is dependent on the implementation of formal and rigorous monitoring by independent outsiders.<sup>11</sup> This will ensure that informal resolution is not used to resolve serious complaints which ought to be formally investigated, and that it is producing effective outcomes. Other commentators have stated the need for such a monitoring system.<sup>12</sup> The most appropriate body to monitor the use of informal resolution will be the IPCC because of its central role in the complaints process and its independence. Hayes states that the Ombudsman in Northern Ireland will be performing this role:

**‘I recommend that the complaints body should closely monitor the use made of informal resolution, by random detailed review of completed cases, by surveys of complainants, and by sampling. It should also audit outcomes, study trends and look at the incidence of complaints, and whether those tend to be associated with individuals, or stations, or particular operational policies or practices.’<sup>13</sup>**

If the IPCC had the role of overseeing informal resolution, it would also be able to ensure that

the system was used consistently across the country. It was noted in 1989 that the use of informal resolution varied widely between forces – from 12% of all complaints to 48%.<sup>14</sup> Disparity in use in 1998 appears to be just as great, ranging from 18% to 56%.<sup>15</sup>

### Police participation in the process

Consideration must be given to the effect of the IPCC on police officers and the police organisation as a whole. If the IPCC investigates all complaints made by the public, no matter how minor in nature, there is a danger that this type of exclusion may lead to a loss of management responsibility in the police force and polarisation from the IPCC. The Hayes report on the Northern Ireland complaints system recognises the need to keep some investigation in the hands of the police for the sake of management responsibility and police–IPCC co-operation.<sup>16</sup> A police service lacking sufficient internal responsibility to investigate even the most minor of complaints made by the public would in all likelihood be demotivated with regard to the whole complaints process.

Massive corruption scandals rocked the Queensland Police Service (QPS) in the 1980s, and left confidence in the complaints system and the service as a whole at rock bottom.<sup>17</sup> Consequently the Criminal Justice Commission (CJC) was set up with wide ranging powers to investigate all types of police misconduct.<sup>18</sup> The problems were more severe than those currently faced by the police force in England and Wales: four former government ministers served prison terms for corruption.<sup>19</sup> However, the CJC has recognised that a system whereby practically all complaints of misconduct are investigated by the independent body is not a long term solution to the problem. In its recent review, the CJC identified as a key target over the next few years that an increasing number of more minor matters should be dealt with internally by the QPS. There is a realisation that any complaints system needs a balanced approach for its long term prosperity. There must be a sufficient degree of internal police responsibility for the complaints process, while the oversight body continues to investigate a full range of cases (including all the most serious) to ensure complainant and public confidence in the system. Confidence in the CJC remains high, even though more minor cases have been handed back to the police.<sup>20</sup>

### Costs

The cost of an independent system of investigation is one of the major concerns voiced both by the Home Affairs Committee<sup>21</sup> and the Home Secretary in response to the Lawrence Inquiry.<sup>22</sup> Inevitably the establishment of the IPCC would create its own costs, distinct from those currently borne by the individual police forces and the PCA. These costs will depend on the scale of investigations that such a body undertakes. A more detailed analysis of the costs of such a proposed body is undertaken in Chapter 10.<sup>23</sup> However, in considering the scale of investigations the body should undertake, a general consideration of the cost implications is needed. Accurate analysis of costs is difficult as there is a lack of proper costing of the current system, especially in respect of ‘hidden’ costs currently absorbed into the general running of the police service. A balance must be struck between the costs of any new system and the improvements that added independent investigation will bring.

The more investigations the IPCC undertakes, the more staff and resources it will require and the higher its costs will be. Most of these will be offset by a comparative decrease in the sizes of police complaints and discipline departments as they undertake fewer investigations. The resources currently allocated to the PCA will be transferred to the IPCC. But there will still be additional costs that will be inevitable in the setting up of the IPCC.

IPCC investigators will need to be trained. Though initially important, training costs will decrease over time as the body becomes established. The use of former or seconded police officers will reduce the initial cost as they will require less training, but there will be limits as to how many of the IPCC staff can be recruited from these groups before its independence is seen to be compromised.<sup>24</sup> Initial training of civilian staff will be an extra cost. Costs cannot be reduced by using fewer investigators for investigations by the IPCC than police would use for internal investigations. Until recently the Special Investigations Unit (SIU) in Ontario, Canada was sending only 2–3 officers to serious incidents which, had the police been investigating, would have been investigated by up to five times as many officers. This led to delays in dealing with cases and a lack of confidence amongst the police that the SIU could effectively carry out the investigations.<sup>25</sup>

The IPCC will also need its own premises and support resources distinct from police premises to maintain its independence.

## 2.5 An assessment of the three models

When evaluating the three models set out at the beginning of this chapter all the factors set out above must be considered: public and complainant confidence, police involvement, and the costs of staff and accommodation.

In **Model 1**, the IPCC only investigates a few hundred of the particularly serious and high profile complaints. All other complaints will either be informally resolved or investigated by the police. Of those, some will be supervised. This is clearly the model that will cost the least in terms of recruitment and training and the number of offices needed. It also means that police participation in the system will be extensive, since they will be investigating the vast majority of complaints. However, if the IPCC is restricted to investigating only the most serious complaints it will inspire little confidence in the rest of the system. Supervision, however rigorously conducted, cannot be a satisfactory substitute. It is clear that the key to public and complainant confidence is independent investigation of complaints.

**Model 2**, in which the IPCC investigates all complaints, will provide the greatest public and complainant confidence. The cost of this system will be the most prohibitive factor. The number of civilian investigators that would have to be trained, and the number of offices that would have to be found would require a substantial investment. The lack of police involvement would also be a problem. A police service which had no power to respond to complaints would be unlikely to take any responsibility for its relationship with the public, and would be polarised from the IPCC itself. There would be limited opportunities for the IPCC to form constructive partnerships with police forces, and for the police to develop responsibility for their own conduct.

**Model 3** combines elements of both the first two models. It includes a category of complaints so serious that they require mandatory independent investigation: the same category which would be investigated under Model 1. However, under this model the IPCC should investigate a significant proportion of the less serious cases that do not fall within the scope of mandatory investigation. Informal resolution would remain in the hands of the police, but the IPCC would have a range of powers to ensure its proper use.<sup>26</sup> This would allow the IPCC to investigate cases based on a broader range of factors than simply the seriousness of the allegations made against the officer. As noted above,<sup>27</sup> cases from this range may benefit from independent

investigation as much as the more serious allegations. Unlike Model 2, the IPCC would not be investigating all the less serious cases, thus requiring fewer investigators, support staff and accommodation. This model will also allow police participation in the investigation of a substantial number of all complaints apart from the most serious.

Model 3 gives the IPCC a discretionary power to investigate a wide range of cases as well as a mandatory power to investigate the most serious. Before an informed evaluation of the practicalities of this model can be made, a more precise definition of how this power should be exercised is required. Central to the issue is the number of complaints that the IPCC will be handling. For the purposes of the following discussion, complaint cases will be considered rather than items of complaint. Furthermore it is proposed that the number of cases considered is restricted to those which are to be fully investigated by the IPCC, rather than those where dispensation or withdrawal would mean curtailment of an investigation. The number of fully investigated cases is the best indicator of the level of participation the IPCC will be having in the system as a whole.

## 2.6 Defining the preferred model

### Mandatory investigation by IPCC unless there are exceptional circumstances

There are certain complaints made against police officers where the allegations are so serious that, on those grounds alone, independent investigation should occur. This mandatory category will include:

- 1 All complaints of assault by a police officer that result in serious injury.<sup>28</sup>
- 2 All complaints involving the death of a civilian.
- 3 All complaints of corruption by a police officer.
- 4 All complaints that include an allegation of racial discrimination by a police officer.

The PCA have advised us that they are sometimes forced to supervise cases in the mandatory category that do not in fact require supervision because of the circumstances of the case. It may therefore be sensible to allow the IPCC the power to decline to take on a mandatory case when appropriate, although this should only be in exceptional circumstances and the process must be transparent.

It is impossible to predict exactly how many complaint cases will fall into mandatory investigation category. However, based on the figures from recent PCA Reports, there should

be around 1,000 complaint cases<sup>29</sup> that require mandatory investigation by the IPCC.<sup>30</sup> This equates to around 600 complaint cases when all the cases which do not require full investigation are removed.

### Discretionary investigation by IPCC

The second category of complaints will comprise a percentage of all the other complaints currently fully investigated by internal police investigators. Two decisions need to be taken with regard to this category:

- What should the criteria be for deciding that independent investigation is appropriate in individual cases?
- What percentage of all fully investigated complaints should be investigated by the IPCC?

### Criteria for deciding that investigation by IPCC is appropriate

It would be counter-productive to specify the exact types of complaints that the IPCC should be investigating within this category. This is recognised by Hayes who, in his proposals for the Ombudsman in Northern Ireland, states that the Ombudsman needs flexibility in making decision on what to investigate and what to hand back to the police.<sup>31</sup> If the IPCC were forced to investigate a set percentage of each category of complaints (e.g. stop and search, minor assaults etc.) then it would be unable to target its resources towards areas where its investigation would produce the greatest benefit. The best approach to this issue is, therefore, to design a series of criteria by which it can be decided whether it is appropriate for the IPCC or the police to investigate. These will have to be refined as the IPCC gains experience, but could include the following:

- 1 The likelihood that a criminal offence has been committed by a police officer.
- 2 The degree of community interest in the complaint.
- 3 Considerations of the victim's position – including representations from the victim and special features such as vulnerability.
- 4 A more widespread pattern.
- 5 Allegations of discrimination (other than racial discrimination which is in the mandatory category) involved in the complaint.
- 6 The involvement in the alleged misconduct of a group of persons acting in concert.

### Numbers of complaints the IPCC should investigate

The IPCC needs the power to investigate a cross-section of complaints, based on the above criteria, that do not fall into the category of mandatory investigation by the IPCC or are suitable for informal resolution by the police.

The number of fully investigated complaints cases over the last three years averages 4,700.<sup>32</sup> When the cases falling within the category of mandatory investigation by the IPCC are removed, this leaves around 4,000 complaints requiring full investigation. What percentage of these should be investigated by the IPCC? After wide consultation and consideration of all the issues, Liberty has concluded that the IPCC should be investigating an absolute minimum of 25% of all fully investigated complaints which equates to 1,000 complaint cases. This minimum figure represents the lowest threshold which would allow the IPCC to investigate sufficient numbers of complaint cases across all the forces in the country while exercising its discretion on the basis of the criteria listed above in a meaningful way.

The figure of 1,000 cases would allow the IPCC the discretion to investigate an average of around 23 cases per police force. This average would obviously be weighted towards the larger forces with greater numbers of complaints. So, if the IPCC were to investigate cases proportionately to the total number of complaints currently made against each force, it would be fully investigating around 210 cases from the Metropolitan Police, 75 from Greater Manchester, but only 4 or 5 cases from Durham, Warwickshire or Dorset.<sup>33</sup> If the discretionary category of complaints were to be any smaller, we do not believe the IPCC would be able to satisfy complainants or the general public that it was having an effect on the whole system.

### The need for an absolute minimum number

The problem with not setting an absolute minimum number of complaint cases to be handled by the IPCC is that the discretionary powers of the IPCC will be curtailed first when there is any problem over the level of funding. This problem has been common in other jurisdictions. In New South Wales, Australia where the Ombudsman has extensive powers to conduct his/her own investigations, he or she has rarely done so because of resource problems.<sup>34</sup> In Ontario there was an independent investigative body set up to handle all instances of death or serious injuries committed by police officers. However, it was unable to effectively

investigate all the cases within its remit, because it was only funded as if its role were limited to police shootings alone.<sup>35</sup> It suffered severe public criticism as a result. The Independent Complaints Directorate in South Africa has faced similar problems in its first few years. Lack of funds prevented it from setting up a presence in all but three of South Africa's nine provinces, and it lacked the resources to investigate all the complaints within its remit.<sup>36</sup> Finally, in many jurisdictions in the USA, civilian complaints review boards have failed because of inadequate funding: a recent example was San Diego, where the Citizen's Law Enforcement Review Board in 1997 had its budget arbitrarily cut in half.<sup>37</sup> In these scenarios, the apparent discretion to investigate a range of complaints becomes inoperative and redundant.

These examples demonstrate that civilian oversight bodies are bound to be under financial pressure. When minimum numbers of investigations are not set, discretionary powers can become illusory. The danger is that decisions will end up being taken purely on the basis of resources, rather than on the relative merits of internal or external investigations.

## 2.7 Conclusion

Model 3 gives the IPCC a discretionary power to investigate a wide range of cases as well as a mandatory power to investigate the most serious. This will ensure that all of the most serious complaints are independently investigated, as well as a significant number of other complaints, where independent investigation may be equally beneficial. This model will also allow some police participation in the system, and will not require the level of expenditure that independent investigation of all complaints would demand. Liberty therefore proposes this model for the IPCC. However, this is dependent on the adoption of the minimum numbers of independently investigated cases outlined in the discussion on the discretionary and mandatory categories above. The IPCC will not bring the desired independence to the complaints system unless this minimum level of independent investigation is agreed, and sufficient funding for this role is provided.

### Power of referral and own motion powers

In addition to the process described above, there should be a power to allow the Chief Constable of any force to refer matters to the IPCC where a criminal or disciplinary offence may have been committed by a police officer, even if there has not been a complaint from a

member of the public. There should also be a mandatory referral where the conduct of a member of the police force may have resulted in the death of a civilian.

The other power considered important for any body investigating police complaints is an 'own motion' power, which allows the IPCC to commence an investigation even where no complaint has been made. A lack of this power prevents the IPCC from playing a pro-active role, and the Royal Commission into the New South Wales Police saw this as a major failing:

'The major limitation of the Ombudsman model, as it operates in most Australian jurisdictions is the lack of an 'own motion' power.'<sup>38</sup>

Both the power of referral and the own motion power have been included in the Police (Northern Ireland) Act 1998 which implements the Hayes Report.<sup>39</sup>

## 2.8 Recommendations

- 2** There should be a mandatory category of matters to be investigated by the IPCC comprising of deaths, assaults causing serious injury, racial discrimination and corruption.
- 3** There should be a discretionary category of matters to be investigated by the IPCC. The minimum number in this category must be 25% of all complaints against the police that require full investigation, but do not fall into the mandatory category of investigation by the IPCC.
- 4** Informal resolution should be left in the hands of the police, but the IPCC will have a range of powers to ensure its proper use.<sup>40</sup>
- 5** The Chief Constable should have the power to refer non-complaint generated matters.
- 6** There should be mandatory referral when the conduct of a member of the police force may have resulted in the death of a civilian.
- 7** The IPCC should have an 'own motion' power, which allows it to commence an investigation, even where no complaint has been made.

# 3 Access to the complaints system

## 3.1 Introduction

For a police complaints system properly to fulfil its function, it is vitally important that potential complainants are not discouraged from making complaints because of problems of access to the system. There are three issues in particular that will affect the accessibility of the complaints system; the places where a complaint can be made, the method for registering complaints, and the public knowledge of the complaints system.

## 3.2 Where can a complaint be made?

Complainants should be able to lodge their complaints in a way that makes them comfortable with the process. Many complainants will be far more comfortable, and less likely to be intimidated, lodging a complaint at places other than police stations.<sup>1</sup>

Certainly it should be possible to make a complaint through a solicitor, as under the current complaints system. Also it should be possible to make a complaint directly to the IPCC. In addition, Hayes, proposed that complaints could be lodged at Citizens' Advice Bureaux, or at local government offices. Other potential sites would be law centres and with the local MP. As Hayes suggests:

'It should be possible to make a complaint almost anywhere.'<sup>2</sup>

## 3.3 Method for registering complaints

An important means of making the complaints system accessible is to have a widely available and standardised form on which complainants can write details of their complaint. There is evidence that in the past there has been some confusion as to the proper method for lodging a complaint,<sup>3</sup> and a standardised form, available in different languages, would help to reduce these problems. A standardised form would also enable an adviser to help a potential complainant to make a complaint without a detailed knowledge of the police complaints process. This will allow a wider variety of places where a complaint can be made. Use of this form should be encouraged but should not be essential, as this could act as a deterrent to certain complainants, for example those with learning difficulties.

## 3.4 Publicising the complaints system

As well as making sure there are a variety of places where a complaint can be lodged, it is also important that these options are publicised so that people are aware they are available. Maguire and Corbett's interviews with complainants in the late 1980s shows that a lack of knowledge about the complaints system can put off complainants.

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'Only ten out of 100 complainants in our interview sample from three forces said that they had any clear idea of how to go about complaining or how the system worked. This suggests that a considerable number of potential complainants 'fall by the wayside' because of a lack of knowledge about how to proceed.'

*A Study of the Police Complaints System, Maguire and Corbett*

'...only ten out of 100 complainants in our interview sample from three forces said that they had any clear idea of how to go about complaining or how the system worked. This suggests that a considerable number of potential complainants 'fall by the wayside' because of a lack of knowledge about how to proceed.'<sup>4</sup>

Hayes suggests that there should be a free-phone number for complainants in Northern Ireland.<sup>5</sup> In Ontario there is also a free-phone number. This could provide information to complainants about the complaints system, in particular explaining the variety of options available for lodging their complaints.

The IPCC should also be promoting its role within local communities. Reports on police complaints systems in foreign jurisdictions have noted the importance of liaising with local communities and informing local groups about various aspects of the complaints system.<sup>6</sup> Part of this promotion should involve informing people about the ways in which a complaint should be made.

It is also important that complainants are able to obtain advice on how to make complaints, how to fill in complaints forms, and on the relative merits of formal investigation or informal resolution. Information should therefore be available to staff at any of the bodies where a complaint can be made so that they can effectively advise complainants.

## 3.5 Conclusion

Making sure that complainants feel at ease in making their complaints, and understand the method of complaining will greatly increase the validity of the complaints system. This can be achieved by ensuring that there are a variety of places where a complaint can be made, creating a formalised system for registering complaints, and providing extensive information and advice on making a complaint.

## 3.6 Recommendations

- 8** There should be a wide variety of places where a complaint can be made, including Citizens' Advice Bureaux, local government offices, law centres and local MPs.
- 9** A standardised form should be produced on which complaints are made.
- 10** The method by which a complaint can be recorded should be publicised by a free-phone number providing information on the complaints process, and the IPCC should be funded to promote its role within local communities
- 11** Advice on the complaints system should be available at any of the places where a complaint can be made

# 4 Recording and allocation of complaints

## 4.1 Introduction

This chapter assumes that the third model from Chapter 2 is adopted, ie that the IPCC investigates all complaints in the mandatory category and a discretionary category of at least 25% of all investigated complaints.

Once potential complaints have been submitted by the appropriate mechanism, a decision has to be made on whether they can be dealt with under the complaints system. Complaints about the control or direction of the force, for example, cannot be handled under these procedures. In addition a decision has to be made on the appropriate action to take in each case: informal resolution by the police, investigation by the police or investigation by the IPCC. The decisions made at this stage will obviously have a great effect on the rest of the process; complainants should be confident in the impartiality of decisions not to record a complaint, for example, or to require police rather than IPCC investigation. If control of the process is left entirely in the hands of the police, then the impartiality of these decisions is bound to be questioned. Before deciding on the degree of independence needed there are a number of sources that provide valuable evidence on this issue.

## 4.2 The current situation and the Home Affairs Committee report

Currently the recording of complaints is at the discretion of the police force to which the complaint has been submitted.<sup>1</sup> The PCA have no right to question whether the right decision has been made. The Home Affairs Committee Inquiry into Police Complaints and Disciplinary Procedures quotes the Police Complaints Authority (PCA) research into recording practices. This indicates that only around half of all potential complaints are recorded.<sup>2</sup> The Committee makes it clear that 'this is not in itself a criticism, since the other half may be

about the control and direction of the force rather than about the conduct of individual officers...' But they also point out that:

'this can lead to a prospective complainant being confronted at the first hurdle with a decision, by the very police force being complained about, that the matter in hand is not a complaint and that therefore the complaints system is not available.'

The Committee went on to recommend that there should be mandatory registration 'for all representations that could constitute a complaint', and that the complainant should have the right of appeal to an independent body over the decision not to record a complaint.

Clearly the Home Affairs Committee recognised the problems with leaving discretion to record complaints entirely in the hands of the police. But it is questionable whether the right of appeal over a refusal to record in individual cases brings sufficient accountability and independence at the outset of the complaints process. There is evidence from this country and abroad which indicates advantages in giving the IPCC the power to record complaints and to decide what action should be taken in individual cases. However, these concerns must be balanced against the risk of adding unnecessary bureaucracy and delay to the complaints process.

## 4.3 Other jurisdictions

There are systems in place in many other jurisdictions where varying degrees of independent investigation occurs. A study of these systems reveals that in nearly all of them the decision on whether there is a complaint and how it should be handled is made by the independent body and not the police. Where this is not the case, problems have occurred.

In Northern Ireland it has been deemed necessary for the credibility of the complaints system that the Ombudsman is in control of the initial intake of complaints, and the decision on what action should be taken. Hayes states that it is vital that the independent body has control

of the whole process, deciding what constitutes a complaint, how it should be handled, and by whom it should be investigated.<sup>3</sup> He sees this as essential if the body is to bring credibility to the system: without the final say on what constitutes a complaint and how it should be investigated, public perception of its independence will be impaired, as will perceptions of police accountability. Hayes states:

**'I made the observation at nearly all the discussions I had that the inability of the ICPC<sup>4</sup> to decide what was or was not a complaint effectively seemed to me to remove one leg of the stool of credibility. I cannot recall any dissent.'**<sup>5</sup>

Inquiries into reform of the complaints system in Queensland<sup>6</sup> and New South Wales<sup>7</sup> in Australia also concluded that the independent body should decide what constituted a complaint and how it should be handled. Other jurisdictions such as New Zealand,<sup>8</sup> and New York<sup>9</sup> have similar systems.

### **The Special Investigations Unit, Ontario**

The Junger Inquiry in Ontario shows the problems which can arise when this decision making process is left in the hands of the police. In that system it was up to the police to decide which complaints to refer to the Police Complaints Commission (PCC). The Inquiry found that in many cases complaints were not reaching the PCC when they should have been, and that this affected credibility and effectiveness. Similar problems have occurred with the Special Investigations Unit (SIU) in Ontario, which investigates all cases of deaths and serious injuries involving police officers: there have been many problems over police referrals to the SIU because of differing perceptions of what constitutes serious injury.<sup>10</sup> Community groups also 'strongly objected' to a system whereby the police decided whether the SIU should become involved.<sup>11</sup>

### **The Criminal Justice Commission, Queensland**

The Criminal Justice Commission (CJC) receives all complaints made against the Queensland Police Service. It records all complaints and

then decides what action is needed to resolve them. This function is performed by an 'Assessment Unit', which decides whether the Criminal Justice Commission (CJC) should investigate, whether cases should be referred back to the police for investigation or informal resolution, or whether cases can be finalised without the need for further action. Where further information is needed before a decision can be taken the complainant is interviewed by a member of the Assessment Unit. Interviews are mostly conducted over the telephone and face to face interviews are rarely needed. Our analysis of this system highlighted a number of advantages of having this function within the CJC:

- The CJC is able to make decisions on what it decides to investigate itself, based on its own analysis of the evidence, rather than relying on the police service to refer appropriate cases. This allays the fears of the CJC, complainants and the public as a whole that the police are not passing cases to the CJC when they should be.
- The CJC, as a body independent of the police, can be far more robust in its decisions on whether an investigation of a particular complaint is needed because it is not perceived as having the conflict of interest that a police force making that decision would have. It is also far easier for an independent person to persuade a complainant that, for example, the police have not acted beyond their powers, or that in the circumstances the complaint does not warrant further investigation. This is shown by the fact that in 1998–99 almost a third (32.6%) of complaints were finalised at the assessment stage and no further action was taken.
- In cases where further inquiries are needed before a decision can be taken on whether the matter should be investigated by the CJC or referred back to the police, a member of the CJC talks to the complainant. Complainants are therefore reassured by an independent person being their first point of contact. Even where their complaints are then referred back to the police for investigation, they know that the CJC is in control of the process.

The Assessment Unit of the CJC also does not produce great delays to the complaints system. In 1998–99 59% of assessments were finalised

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**'It is vital that the independent body has control of the whole process, deciding what constitutes a complaint, how it should be handled, and by whom it should be investigated. This is essential if the body is to bring credibility to the system: without this, public perception of its independence will be impaired, as will perceptions of police accountability.'**

within two weeks. The median time for all assessments was ten days. These figures also include the complaints about corruption and criminal misconduct from the rest of the public sector which make up about 30% of the CJC's workload. An Assessment Unit not dealing with these serious and often complex cases would be able to complete its assessments more speedily. Its role should also be considered in context: it is finalising a third of all complaints received by the CJC, decreasing the amount of complaints that need further investigation and thereby increasing the speed of the system as a whole.

#### 4.4 Research on the complaints system in England and Wales

The research of Maguire and Corbett came to the conclusion that the recording of complaints varied between forces and police stations, depending on particular practices and individuals:

'...while there are always complainants who will not be diverted from their purpose, the number of complaints recorded has considerable elasticity, dependent largely upon the responses of middle-ranking officers (influenced, of course, by force instructions and informal policies.) Our best guess is that at least one in three people who make a definite attempt to complain are dissuaded (for good or bad reason) from so doing, but that the proportion varies widely both between forces and between individual police stations.'<sup>12</sup>

Maguire and Corbett go on to make it clear that this does not necessarily mean that complainants are all being dissuaded from making perfectly genuine complaints. The research states that 'in many cases, the potential complainant is fully satisfied with an explanation and freely decides not to pursue the matter.'<sup>13</sup> However, the research raises the question of whether practices across all the police forces and police stations in the country are uniform. In a system where individual forces are in charge of the recording of complaints, it seems inevitable that the level of recording will vary depending on the practices of those individual forces and individual officers within the forces. Any attempt to ensure that every force makes the same decisions to record or not will be very difficult to co-ordinate. In addition consistency in the referral of complaints to the IPCC will be difficult to achieve. An independent body in charge of recording all complaints from across the country would be in a far better position to ensure consistency.

#### Informal resolution

While there is therefore evidence that control of the process appears to be a fundamental accountability mechanism for the credibility of the IPCC, there are concerns about whether the most minor complaints (those suitable for informal resolution) should all be referred to the IPCC before any action can be taken. Informal resolution is the part of the complaints process which complainants like the most, with far higher rates of satisfaction than formally investigated complaints.<sup>14</sup> One of the attractions of informal resolution is the speed with which a complainant can have his or her complaint resolved.<sup>15</sup> If all complaints have to be referred to the IPCC before informal resolution is attempted then the process will inevitably be slowed down, since these complaints will have to be analysed by the IPCC along with all other complaints that the body receives. There will also be an additional cost in having the complaints sent to the IPCC instead of internal handling by the police alone.

However, in our discussions with legal practitioners who have experience of representing complainants, a frequent criticism of the current system is the lack of monitoring of the use of informal resolution. It was often stated that complainants were channelled into informal resolution without a proper understanding of what they had agreed to. This suggests a need to monitor the use of informal resolution to ensure appropriate use. Maguire and Corbett's research also makes it clear that their support for the widespread use of informal resolution is dependent on the implementation of formal and rigorous monitoring by independent outsiders.<sup>16</sup> This will ensure that informal resolution is not being used to resolve serious complaints that ought to be formally investigated. Other commentators have stated the need for such a monitoring system.<sup>17</sup>

If informal resolution is to be used effectively by the police, structures to ensure sufficient control and monitoring by the IPCC need to be developed.

#### 4.5 Three possible models

##### Model 1

**Individual police forces record all complaints and decide whether the police or IPCC should handle the case. The complainant has the right of appeal to the IPCC if a police force refuses to register a complaint, or a force decides to investigate a complaint internally rather than refer it to the IPCC for investigation.**

This is similar to the Home Affairs Committee recommendation on changes to the present system (see above). The Committee recommended a right of appeal over the recording of a complaint. Under this proposal the complainant would also have the right to appeal as to which body investigated the case. This would be a necessary power to ensure complainants did not feel as though they were being forced into an internal police investigation without any mechanism to review the police decision making process that led to that decision.

This model would probably be the most cost effective, because there would be no need to send any complaints to the IPCC for a decision on how they should be investigated. However, this would depend on the number of appeals over police decisions, and the cost of the appeal process.

But internal police responsibility for recording complaints and deciding how they are handled, even with the right of appeal, will not produce sufficient accountability or make the system run effectively. This mechanism would give far less independence to the system than the models in nearly all the foreign jurisdictions with independent investigation, where it was considered vital to give the oversight body control of the process. Hayes' proposals for Northern Ireland state that the independent body must have control of the process of recording a complaint and deciding how it is handled for the sake of public confidence in the system and the credibility of the independent body. The complaints system in Ontario has shown the dangers of leaving the decision making process in the hands of the police: there will always be doubts about whether the independent body is receiving all the complaints within its remit, and public confidence is thus likely to suffer. The right of appeal on individual cases is unlikely to restore that confidence. Successful appeals will lead to concern over how many other complaints have not been recorded or have not been referred to the IPCC where it was appropriate to do so. The appeals process is also likely to lead to unnecessary confrontation between the police and the IPCC over individual cases, and could be a cause of polarisation between the two bodies. Finally, if control of the process is left in the hands of the police, the issue of consistency of recording of complaints across the country will not be resolved.

It was suggested during our research that the problems with the system outlined above could be resolved if police investigators were to provide an investigation plan to the IPCC stating the nature of the complaint, the action already

taken, and the proposed course of action for dealing with it. This would ensure that the IPCC was involved at the beginning of the investigation. Also, on the basis of the investigation plans, the IPCC could decide which complaints it wanted to investigate itself. However, there are several reasons why such a measure would be an unsatisfactory accountability mechanism and a misdirection of resources compared with the benefits of allowing the IPCC to perform an initial sift:

- In all investigations, it will be the police who make the initial inquiries in the case. Complainants' first point of contact will always be with the police, even when the IPCC later decides to investigate itself. From the complainant's perspective, therefore, the police will be in control of the process.
- The IPCC will not be making its decision to investigate based on its own analysis of the facts, but on the basis of representations made by police forces. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recently commented on the perceptions that the current review of the case files of completed cases by the PCA was inadequate. This is because the PCA is wholly dependent upon evidence gathered by an investigating police officer for its review, and may be unduly swayed by the recommendations of police officers. The Report said that documents they saw during their visit reinforced these criticisms.<sup>18</sup> To create another paper review of evidence collected by police officers at the beginning of the complaints process would be to risk repeating the problems of the current disciplinary review. The danger is that the investigation plan will become simply an added layer of bureaucracy to the complaints process, and will delay the investigation of complaints. Given the large number of plans that have to be written and read (13,000 approximately for those not informally resolved) the process could become purely mechanical without any real evaluation of how the police propose to conduct the investigation.
- Investigation plans would have to be written on all cases, even where they later were withdrawn or where dispensation was granted. Since two thirds of cases fall into these latter two categories, much of the work done by police officers in writing plans for all cases would be wasted.
- Compared with allowing the IPCC to conduct an initial sift, this is very labour intensive. There will still have to be an initial analysis of all complaints to decide what action is required,

but it will be carried out by the police rather than the IPCC. However, in addition, a substantial amount of the working hours of Complaints and Discipline Officers and IPCC staff will be taken up by writing and analysing reports respectively.

From research into other jurisdictions, analysis of the current system for handling complaints in this country, and discussions with experts in the field, Liberty has concluded that a successful independent body must be at the centre of the complaints system. The power to record a complaint and the decision to investigate are vital to the credibility of the IPCC. Without these powers, the IPCC will be entirely dependent on police forces to record complaints and refer them to the IPCC. The IPCC will not be central to the complaints system. Model 1, which only gives the complainant the right of appeal in individual cases, will not fit these criteria for a successful system. The IPCC would not have sufficient control over the complaints system to make it a credible and effective oversight body. For the reasons outlined above, the use of investigation plans written by police officers that had to be agreed by the IPCC would not be a sufficient accountability mechanism, and would be a misdirection of resources. Liberty therefore concludes that this is an unsatisfactory model on which to base a new system.

Two further models are considered which give the IPCC a more central role in the recording of complaints and in the decision as to how they should be handled.

## Model 2

**The IPCC records all complaints and decides how they should be handled.**

**All complaints, wherever they were made, would be sent to the IPCC where a decision would be made on whether to record a complaint. If a complaint was recorded, then the IPCC would decide whether the complaint was suitable for informal resolution or whether it should be investigated by the police or by the IPCC.**

This system would be the best in terms of the accountability it would bring to the system. There would be no doubts about the independence of the decisions on whether to record complaints and how they should be handled. Public confidence will be greatest in this system, and it will also show that the IPCC is at the centre of the complaint process. It is the system favoured by most systems of independent investigation in other jurisdictions for exactly those reasons. It is also the one proposed by Hayes for Northern Ireland. All the

benefits described above that the Assessment Unit brings to the CJC in Queensland would come to the IPCC. Furthermore this system will reduce police–IPCC conflict over the handling of individual cases, and ensure consistency in recording practices across the country.

This model would be the most expensive of the three systems, although even here the costs do not seem disproportionate to the accountability and independence gained by the system. The other drawback is time: if all complaints have to be sifted by the IPCC before investigation or informal resolution can begin, then there will be a delay to the completion time of complaints. With an efficient system for the initial sift of complaints, this delay should not be significant for complaints requiring formal investigation. However, one of the major attractions of the informal resolution procedure is the speed of the process and this model would inevitably slow the process down to a certain extent. On the positive side it would ensure that informal resolution was being used appropriately by all forces across the country.

## Model 3

**All complaints suitable for informal resolution are directed straight to police forces without analysis by the IPCC. All complaints not considered suitable for informal resolution are directed to the IPCC and a decision is made there on how they should be handled.**

This system gives the complainant control over the process. When making their complaint, the complainant will be able to decide whether they wish their complaint to be informally resolved. They will be able to receive advice on the effect of this. If the complainant opts for informal resolution, the complaint is directed to the relevant police force, without analysis by the IPCC. If the complainant wants the matter to be formally investigated, or it is in a category not suitable for informal resolution (eg serious assault), then the complaint is directed straight to the IPCC for a decision to be made on whether it should be investigated by the police or by the IPCC.

The advantage of this system is that it will not delay informal resolution. It also ensures that the complainant can always opt for formal investigation and ensure that his or her complaint receives an initial analysis by the IPCC.

For this system to work effectively, and to ensure sufficient accountability, measures should be put in place to make sure that complainants understand the informal resolution process and to prevent inappropriate use of informal resolution:

**Information:** wherever an individual makes a complaint, there must be an information form explaining the processes of informal resolution and formal investigation so that complainants can make a decision on which action they wish to take. Information forms should also explain that complainants can, at a later date, opt for formal investigation if they are not satisfied with informal resolution. Further advice could be given at a variety of locations about the relative merits of the two procedures. Complaints forms could then be sent straight to the police force concerned or the IPCC, depending on whether informal resolution or formal investigation has been chosen.

**Return slips:** at the end of the informal resolution process there should be a form for the complainant to fill in. This would state brief details of the complaint. It would also allow the complainant to state whether s/he wanted to take any further action in respect of the complaint. This would allow the IPCC to record all the statistics concerning informal resolution without it slowing down the process.

**Monitoring:** the IPCC should have the power to consider a sample of all cases which are informally resolved to ensure they are being handled appropriately. The IPCC should be able to ask for any further information involving the conduct of the case, and supervise any cases where it feels that this would be beneficial.

Model 3 would allow informal resolution of complaints to be concluded without delays due to the involvement of the IPCC, as in Model 2. At the same time, they provide measures whereby the IPCC can ensure that informal resolution is being used in appropriate circumstances.

## 4.6 Conclusion

Both Model 2 and Model 3 have many positive aspects that will enhance the independence of the system. Model 2 will provide the greatest independence since all complaints must be referred to the IPCC to be recorded. It will undoubtedly put the IPCC at the centre of the complaints process. The doubts about this model concern those complaints suitable for informal resolution. The need for independent control must be balanced against the effective functioning of the complaints system. There are dangers that under this system the informal resolution of complaints will be significantly slower, especially since the IPCC's resources are likely to be limited. Model 3 would leave control of complaints where the complainant has agreed to informal resolution in the hands of the police, and would remove the potential for delay.

However, if all cases suitable for informal resolution are not to be initially referred to the IPCC, then the accountability measures outlined above must be implemented to ensure appropriate use. With these measures put in place, Model 3 seems to represent the best balance between independent control and effective functioning of the system. Model 3 is therefore the recommended model.

### Initial Analysis Unit

Under the proposed model the IPCC will be recording all complaints suitable for investigation and deciding whether they should be investigated by the IPCC or the police. For speedy and efficient completion of this process there should be a department within the IPCC where an initial assessment of the complaints is made, similar to the Assessment Unit at the CJC in Queensland. This department would first decide whether the allegation made gives rise to a complaint suitable for investigation.

If the matter is suitable for investigation then a decision will be made on whether it is investigated by the IPCC or the police, in accordance with the agreed criteria.<sup>19</sup> This may require some preliminary inquiries in some cases where it is not clear who should investigate, or where more information is needed. However, it should be possible, as it is at the CJC, to complete most of these inquiries by telephone and thereby keep the cost of this function to a minimum. An analysis of the staffing and cost required for the IPCC to perform this function can be found in Chapter 10.

## 4.7 Recommendations

- 12** The IPCC should be responsible for the receipt and recording of all complaints, not suitable for informal resolution.
- 13** All complaints not suitable for informal resolution should be initially considered by the IPCC for determination as to the most appropriate method for dealing with them, in accordance with agreed criteria.
- 14** Matters suitable for informal resolution should be directed straight to the appropriate police force for action.
- 15** At the end of the informal resolution process complainants should complete a satisfaction questionnaire, for analysis by the IPCC.
- 16** The IPCC should have the power to consider a sample of informally resolved complaints.

# 5 Investigations

This chapter will deal with how the IPCC will undertake investigation.

## 5.1 Introduction

Once it has been decided that the IPCC should undertake the investigation of a case, a team of investigators will be allocated. The number of investigators involved will vary depending on the complexity of the case and the amount of work needed. Whatever the size of the investigative team, it is vitally important to the independence of the process that the IPCC takes over the investigation at the earliest possible stage to avoid any allegations that initial police involvement has prevented the IPCC from being able to undertake an effective investigation. It will be up to the investigative team, under the direction of the team leader, to make decisions on the necessary courses of action to take. Decisions will have to be made, for example, on what interviews need to be conducted, and what evidence needs to be preserved. The team leader, who will always be a civilian, must make the final decision. This will ensure that the presence of seconded or former police officers in investigative teams does not lead to accusations that investigation is still being run by police officers. At the conclusion it will also be the task of the team leader to make recommendations about any further action to be taken against the officer who is the subject of the complaint.

It is not feasible in this study to address every issue that could arise in the course of investigations by the IPCC. However, there are several issues that need to be considered to ensure that IPCC investigations can be as effective as possible. For the purposes of this discussion, these can be split into four headings:

- Powers required by the IPCC to conduct effective investigations.
- Rules to ensure that the IPCC receives the necessary co-operation from police officers.
- Timing of when to deal with complaints when there are outstanding criminal charges.

- Power to compel attendance of witnesses and to compel witnesses to give evidence: a 'long stop' power.

## 5.2 Powers required by the IPCC to conduct its investigations

### Powers of the office of constable

It has already been stated that the IPCC will be investigating a range of cases, including the most serious allegations against police officers, which will inevitably include criminal allegations. The IPCC must be allowed to handle the criminal allegations: if the public lacks confidence in the current system, then complaints involving criminal aspects – which are therefore the most serious – will be in most need of independent investigation.

There is no reason to suppose that all criminal allegations must be handled by police officers. It is not a function that is carried out exclusively by the police in this country: bodies investigating serious criminal offences include the Inland Revenue, Customs and Excise, and the Serious Fraud Office. In other jurisdictions, civilian oversight bodies have been given the power to investigate criminal offences by police officers: both the Special Investigations Unit (SIU) in Ontario and the Criminal Justice Commission (CJC) in Queensland have the power to investigate criminal allegations. This will also be the case for the Ombudsman in Northern Ireland: Hayes concluded that it was appropriate to give the Ombudsman responsibility to investigate a complaint in these circumstances.<sup>1</sup>

IPCC staff will need powers to enable them to investigate those allegations effectively. The best solution to this problem is to follow the example of the Police (Northern) Ireland Act 1998 which sets out the law governing the Ombudsman's office. Section 56(3) of the Act gives investigators employed by the Ombudsman 'the powers and privileges of a constable throughout Northern Ireland and the adjacent United

Kingdom territorial waters'. If IPCC investigators were also given 'the powers and privileges of a constable' this would give them the basic powers they needed to conduct investigations: arrest, entry (with or without warrant, depending on the circumstances) and the powers to search premises and to seize and retain materials.

### Additional powers

Because the IPCC will be investigating the conduct of police officers, extra powers need to be considered to ensure that investigators are able to obtain the evidence they need. This raises issues about the protections given to police officers against self-incrimination. The basis of any additional powers with regard to police officers arises from their duty as employees to co-operate with investigations into their misconduct. The Code of Conduct for Police Officers states that police officers must 'obey all lawful orders'. The present system of internal investigation places officers under a duty to obey all lawful orders with regard to misconduct investigations. With the introduction of an independent body to investigate misconduct that arises from complaints, this duty needs to be transferred so that officers are under the same duty in respect of the IPCC.

### Power of entry into police premises

IPCC investigators should be granted the power to enter police premises at any time without a warrant to ensure that they received co-operation from police forces. This is a power that has been granted to every civilian oversight body in every state and territory in Australia,<sup>2</sup> even though many of these oversight bodies have very limited investigative powers.

### Physical evidence

It has already been stated that IPCC investigators should have the power of constable, which will allow them to seize and retain materials in accordance with the Police and Criminal Evidence Act 1984 (PACE). In order to be an effective investigative body, it is

proposed that the IPCC should also be given the power to compel the preservation and production of documents and other materials. This would ensure that materials relevant to investigations could not be hidden or destroyed without any liability. Police officers would be under an obligation to produce all relevant materials as part of their general employees' duty to co-operate, as outlined above.

### Power to compel police officers to give evidence

Obtaining the co-operation of police officers is vital to the success of investigations. Police officers are in a unique position, with the duty to uphold the law giving them wide powers, discretion and responsibilities, whilst potentially leaving them more vulnerable to allegations of criminal conduct than other members of the public during the course of their employment. Thus the requirement for police officers to co-operate as a duty of their employment must be balanced against ensuring that they do not lose their fundamental rights against self-incrimination under Article 6 of European Convention on Human Rights. They should be placed in no worse position than any member of the public facing criminal or disciplinary employment charges.

The current position is that police officers are under a positive duty to co-operate in a wide range of scenarios as a result of their employment:<sup>3</sup>

**'All officer witnesses are under a duty to give evidence at the trial of the alleged offender, if required. All officer witnesses are under a duty to give evidence at criminal courts, Coroner's Courts, public inquiries and on occasions civil courts, and of course can be compelled to do so if necessary. They can also be ordered to attend and give evidence at disciplinary hearings of colleagues and, if necessary, can be compelled to do so by witness summons. Ultimately an officer could be in contempt of court and/or face disciplinary proceedings for failing to attend a court or other hearing under the Police (Conduct) Regulations 1999.'**

Where allegations are made against an officer, however, different considerations apply. At the commencement of any disciplinary interview an

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officer is given a written notice advising that he or she is not obliged to say anything, but may make a written or oral statement concerning the matter.<sup>4</sup> For criminal investigations officers receive the usual caution, with adverse inferences drawn if they fail to answer questions.<sup>5</sup> This situation would appear to be anomalous and to give police officers more protection than normal members of the public or other professionals or public servants, who would be expected to answer questions from their employers regarding alleged misconduct in the course of their employment. Indeed in respect of other employees it is possible that evidence obtained in the course of employment disciplinary matters might be used in any subsequent criminal proceedings.

The position whereby officers are cautioned at the outset of any investigation – either criminal or disciplinary – has given rise for concern, especially in ACPO. Given the seriousness of allegations of misconduct against police officers and their duty to uphold the law it is questionable whether such protections are necessary or justifiable.

The underlying principle should be that all officers, subject or witness, are under a duty to co-operate with the investigation, be it criminal or disciplinary. Failure to co-operate with an investigation, including failure to answer questions in interview, should be a disciplinary offence. The only exception to this rule is where an officer faces criminal charges, in which case they must be protected by the right to silence. This means that any interviews of these officers should be conducted under caution, and any statements obtained from officers not under caution may not be admitted in evidence against that officer in criminal proceedings. While giving officers less protection than they currently have, this will nevertheless provide greater protection than members of the public, who may be questioned by their employers in respect of criminal allegations with no right to silence protection.

The American law on compelled interviews of police officers supports the position outlined above. It originates from the case of *Garrity v New Jersey*.<sup>6</sup> In the United States, an officer may refuse to answer questions when s/he has been advised that any statement could be used against him or her in a criminal prosecution. However, if an officer refuses to answer questions in an interview that is being used only for disciplinary proceedings, it is possible to compel answers, and refusal to answer is a disciplinary offence.<sup>7</sup> In Queensland, the Criminal Justice Commission (CJC) also has the power to compel officers to answer all questions for the purpose

of disciplinary proceedings.<sup>8</sup> Failure to comply with a lawful direction of the Commission provides grounds for disciplinary action.<sup>9</sup>

The workings of this principle in practice must take account of two variable sets of circumstances: the different position in respect of criminal and disciplinary matters and the difference between subject officers (those who are the subject matter of complaints and therefore potentially facing criminal or disciplinary charges) and witness officers (those who are only witnesses to the incident).

In respect of both of these sets of variables it may often be difficult to determine immediately which apply. Thus in an investigation involving many officers it may become apparent that some of those initially considered subject officers are only involved as witness officers. Likewise the converse may be true: it may become apparent that officers initially regarded as witnesses have greater involvement and may potentially face criminal or disciplinary charges, and so should be regarded as subject officers.

Also the distinction between conduct that may lead to disciplinary or criminal charges may not be clear. In some circumstances it may immediately be apparent that the conduct alleged could amount to a criminal allegation (eg a fatal shooting). On other occasions whether an officer is facing criminal or disciplinary conduct allegations may not always be apparent. Often investigations are conducted on the basis that either criminal or disciplinary – or both – proceedings may ensue. Both ACPO and the Police Federation felt that criminal and disciplinary investigations are usually inextricably linked. The Police Federation were concerned that in practice this will mean that any provisions requiring officers to answer questions in respect of disciplinary matters will have the effect of undermining their right to silence in respect of criminal proceedings.

The relationship between criminal and disciplinary investigations is complex. Investigators of the IPCC will need to conduct their interviews of officers to take account of the variables discussed above, following the principles that officers should be required to co-operate with investigations, but be protected by the right to silence.

There may be occasions when the IPCC investigators can easily identify whether an officer is a witness or subject officer, and therefore whether or not to interview under caution. Likewise it may be easy to determine at an early stage whether the conduct alleged is likely to lead to criminal or disciplinary proceedings.

But there may be many occasions when the boundaries are less clear. In these circumstances there are real issues as to how the investigation can most effectively be carried out while not compromising the rights of the officers. A basic principle is that, should any interview with an officer occur without the right to silence, then that interview cannot be used against the officer in any subsequent criminal proceedings. There is a range of options as to how IPCC investigators should proceed when it is unclear whether proceedings may be disciplinary or criminal:

- A Independent investigators may choose to delay the interview of officers until they are in a position to decide whether there are any criminal or only disciplinary proceedings. While this would solve this problem, it is likely that there could be difficulties in causing delays to investigations, and also in determining whether matters were criminal or disciplinary prior to interview.
- B Alternatively, investigating officers should always proceed on the basis that there might be criminal proceedings, and only conduct interviews under caution. This again would allay any fears of diluting the right to silence. Disciplinary interviews could only occur in these circumstances where a decision had been made not to proceed with the criminal allegation. The difficulty with this would be that in effect disciplinary matters would have to be delayed until the outcome of criminal proceedings, and potentially valuable information for an investigation would not be available.
- C Criminal and disciplinary investigations and interviews could exist in tandem. Thus an officer is required to answer questions in a disciplinary interview. If at some stage there appears to be reasonable suspicion that they have committed a criminal offence, they are cautioned, and could invoke their right to silence. They could then be informed that they would now be interviewed for a disciplinary offence only, in which they would be required to answer questions. This is what occurs in the United States.<sup>10</sup>

## Conclusion

Liberty considers it important for investigations to occur with the fullest co-operation possible from police officers. We recognise there may be concerns that placing officers under a positive duty to co-operate may in effect dilute their right to silence in criminal matters. However, we believe that there will be adequate protection with the provision that any interviews that may occur without caution will not be admissible in subsequent criminal proceedings. The three options listed above present practical

alternatives as to how IPCC investigators can carry out investigations while at the same time respecting the fundamental rights of police officers.

## 5.3 Rules to ensure that the IPCC receives the necessary co-operation from police officers

The above discussion has been concerned with the powers that the IPCC will need to conduct its investigations effectively. Many of these have inevitably concerned IPCC interaction with police officers. The discussion below concerns the need for a framework of more detailed rules. The work of the IPCC involves investigating the alleged misconduct of officers and there is bound to be some degree of disagreement and conflict between IPCC investigators and police officers. It is vital to the effectiveness of investigations that rules are set down on how investigations are to be conducted. The more rules that can be formalised and given the force of law, the less room there is for disagreement and conflict over the manner in which the IPCC is conducting its investigations.

An example of the problems that can occur in the absence of a detailed set of legally binding rules is shown by the investigations of the SIU in Ontario. The SIU investigates all cases of death or serious injury where police officers may have been involved. At the time of its creation, a Standard Operating Procedure (SOP) was devised as a means of 'institutionalising the manner of its investigations'<sup>11</sup>. The SOP provided regulations, for example, on referral by the police of cases to the SIU; the conduct of interviews with police officers; interaction with the involved police service over the collection of evidence at the incident scene, and the interviewing of witnesses. The recent report of The Honourable George Adams QC concerning police co-operation with the SIU found that the inadequacies of the SOP were one of the main reasons for the problems in co-operation between the two bodies. Chiefs of police, police officers representatives, and the SIU itself all stated that the lack of detail in the SOP and the fact that it did not have the force of law, created enormous difficulties to successful interaction between the SIU and the police.

The SIU commented on the SOP as follows:<sup>12</sup> 'While the Standard Operating Procedure (SOP) was designed to give administrative certainty to SIU investigations, a variety of factors have stood in the way. To begin with, the SOP does not have the force of law. It is a policy developed by the SIU and is not a regulation or a legislative enactment. Accordingly its effectiveness depends on the

knowledge of its provisions by members of the police service and their willingness to comply with its directions. When either condition is absent, the SIU faces direct challenges to its ability to carry out its mandate.’ It is clear that without a set of legally binding rules the administration of SIU investigations has been made a great deal more problematic. It had no clear reference points on which to base the conduct of its investigations, and no way of enforcing compliance with the generalised rules that were available.

The lack of detail and lack of enforceability of the SOP appears to have been as much of a problem to police officers as it has been to the SIU:<sup>13</sup>

‘The police pointed out that the SIU Standard Operating Procedure is not part of the statute or a regulation and is entirely lacking in detail. The absence of a regulation outlining the manner in which police officers are expected to co-operate causes confusion, particularly because police officers, by training and background, are inclined to do things “by the book”. In this setting, it was said to be inevitable that officers would challenge the existence of powers and procedures not clearly spelled out in law.’

The recommendations of the Adams Report have led to the enactment of a new regulation<sup>14</sup> to create a legally binding set of rules over the conduct of SIU investigations, and the co-operation required from police officers. There appears to be universal agreement that if this regulation had been brought into force at the inception of the SIU, many of the problems experienced could have been overcome.

There is no reason to doubt that the IPCC and police officers in this country would face similar problems if detailed legally binding rules were not produced governing the conduct of IPCC investigations. The IPCC will be facing exactly the same problems as the SIU in terms of the interaction of IPCC investigators and police officers. A detailed set of legally binding rules will ensure that both police officers and IPCC investigators know how investigations should be conducted, and will remove many of the opportunities for conflict between the two bodies. If officers do fail to comply with the rules that are set down, then the most obvious and relevant procedure to deal with this would be under the existing misconduct procedures. Hayes recommends that failure to co-operate with an investigation by the Ombudsman would be a disciplinary offence.<sup>15</sup>

## 5.4 Regulations governing the conduct of IPCC investigations

There is a range of areas that should be covered in order to minimise disagreements during the course of investigations. These are some of the more important:

**Before the arrival of IPCC investigators on the scene, police officers shall ensure that the scene is secured in a manner that is consistent with the need to preserve all evidence relevant to the investigation of the complaint.**

In some of the cases investigated by the IPCC, especially in respect of the more serious matters currently automatically referred to the PCA, it will be necessary to visit the scene of the complaint so that an effective investigation can be undertaken. There will inevitably be police officers at the scene before the arrival of IPCC investigators. It is obviously vital to the effectiveness of the IPCC investigation that when IPCC investigators do arrive they find all the evidence necessary for their investigation. Police officers are already under a duty to secure the scene of an incident. This duty should be extended to include securing a complaint scene for IPCC investigators. Placing police officers under a positive duty to preserve the integrity of the incident scene is therefore vital to ensuring co-operation between the two bodies. Where there is no incident scene to preserve, then IPCC investigators should always be given access to any existing evidence at the earliest opportunity.

**The IPCC investigative team leader should be in overall charge of any investigation where there is a complaint of misconduct by police officers.**

When the IPCC is called in to investigate the potential misconduct of police officers, it should be the investigators from the IPCC, and specifically the IPCC investigative team leader, who makes decisions on how the investigations should be conducted. This would include decisions on interviews and the collection and analysis of evidence. This will ensure the independence of the investigative process.

The situation will be relatively simple where there is a complaint made against an officer, but no crime to investigate against any civilians. Often, however, there will be cases where the complainant may have also committed an offence, and so the police will be investigating this aspect. For instance, where a bank robber has been shot by police officers in the course of the robbery, the IPCC would be investigating the shooting, and the police would be investigating the robbery. There would need to be co-operation between the IPCC and the police, since they would probably want to interview many of the same witnesses etc.

**It is proposed that the IPCC investigators would be given precedence in interviewing witnesses and collecting evidence.**

The SIU in Ontario operates under this system, and it is the system proposed by Hayes for the

Ombudsman in Northern Ireland.<sup>16</sup> By giving this precedence to the IPCC it would ensure that there would be no conflict between the IPCC and the police force involved. There will be occasions, in practice, where the lead role is taken by the police investigators. Such a situation would occur where the complaint made was minor compared to the nature of the crime that had been committed, or where the complaint was made some time after the criminal investigation had started. However, the decision on this matter would be at the discretion of the IPCC in order to prevent the potential for disagreement in cases where it was debatable whether the complaint or the criminal offence was the more serious incident or which should take precedence. Guidelines on the exercise of this discretion could be established.

**Police officers should be informed by IPCC investigators whether they are considered to be witness or subject officers and should be available to be interviewed by IPCC investigators within a reasonable time period. Police officers should not communicate with each other over a complaint matter until interviews have been conducted.**

IPCC investigators should inform police officers as soon as possible whether they are the subject of the complaint that is being investigated, in order to be fair to the officers concerned. Once officers know whether they are subject or witness officers, they should be required to give evidence about the incident in question as soon as possible after the incident.<sup>17</sup> In Ontario police officers must make themselves available for interview within 24 hours of the request by SIU investigators, unless there are appropriate grounds for delay.<sup>18</sup> It is important to the integrity of the investigations of the IPCC that police officers are not allowed to talk through their involvement in the complaint with other officers who were involved in the incident. Without the imposition of a legal regulation preventing such interaction, there could be allegations that officers had colluded in making statements and no means by which action could be taken if this were proved to be the case.

## 5.5 Timing of when to deal with complaints when there are outstanding criminal charges

One of the problems with the current system for dealing with complaints against police officers is the time taken to complete investigations. This is particularly so where an individual who has made a complaint is also the subject of a criminal charge arising out of the same incident. In these cases, complaints are not normally investigated until after the criminal trial has been

completed. One of the reasons for this is that, if the complainant makes a statement to the officer investigating the complaint, this statement would then be disclosed in the criminal proceedings. From the complainant's perspective, making a statement about a complaint may be an unnecessary risk since the statement made for the purpose of the complaint could undermine any defence at a criminal trial. Similarly, any statement made by a police officer could also be used by the defence in the criminal case to undermine the police officer's evidence.

This situation has been changed somewhat by the introduction of fast-track procedures which allow an offending officer to be dismissed before the conclusion of any criminal proceedings. However this will only occur where the evidence is overwhelming, and the conduct of the officer is particularly serious.<sup>19</sup> In the vast majority of cases, complaints will still be held up until the conclusion of criminal proceedings. Our Advisory Committee was of the view that the IPCC should determine whether to delay a complaint investigation pending the outcome of criminal proceedings against the complainant. It was felt that usually complaint investigations should proceed prior to the conclusion of criminal proceedings unless there was good reason to do otherwise.

### Disclosure of statements in criminal proceedings

As discussed above, if statements are made, or investigations undertaken in respect of complaints proceedings, there are issues as to whether these should be disclosed in criminal proceedings. There are many situations when these difficulties may occur:

- when a subject officer makes disclosures in a disciplinary interview
- when a complainant is the subject of criminal proceedings
- when both complainant and subject officer are subject to criminal proceedings

Hayes proposes a solution to this issue for the complaints system in Northern Ireland, where the same problem was addressed. Hayes proposes that disclosure of any statements made by police officers or complainants as part of a complaint case should be 'banned'.<sup>20</sup> This means that they would only be used for the purpose of resolving the complaint, and could not be used in any other legal proceedings.

However, there are problems with this approach. It would probably not be compliant with the Article 6 (1) of the European Convention, guaranteeing a fair trial, and Article 6(3)(b) which

provides that everyone charged with a criminal offence 'have adequate time and facilities for the preparation of his defence'. The case of *Jespers v Belgium*<sup>21</sup> has interpreted these rights to mean that the defence has access to all relevant material in the hands of the authorities for the purpose of a criminal trial. Relevant material includes documents which concern acts of which the defence has been accused.<sup>22</sup> Therefore, if a police officer's complaint statement was not released to a defendant for the purposes of a criminal trial, then that would probably be a breach of the Convention. According to this argument, a ban could only be imposed on the disclosure of the complaint investigation, including statements, where none of the parties were facing criminal charges.

## Conclusion

It seems therefore, to be compliant with the ECHR that where there are criminal proceedings full disclosure of complaints interviews and investigations must take place. On occasions this may lead to practical difficulties. For example complainants may be reluctant to proceed with a complaint whilst they are the subject of a criminal charge if statements given by them in respect of the complaint may be used to support the criminal proceedings. Likewise police officers may not wish to have disciplinary interviews disclosed in criminal proceedings. It will be up to the IPCC to take these factors into account, and to decide whether a complaints investigation should await the outcome of criminal proceedings.

### 5.6 Power to compel attendance of witnesses and to compel witnesses to give evidence: a 'long stop' power

Where a complaint against a police officer is particularly serious it is clearly in the public interest that every effort is made to obtain evidence from all available witnesses. There may be some cases where a 'long stop' power is needed for this to happen. In such cases witnesses may have to be compelled to give evidence, with some form of immunity being offered in return. Such a power would not be unique to the IPCC. It is currently used by other bodies in this country and abroad.

In the United Kingdom, compulsory powers (backed by some restrictions on the disclosure of information obtained as a result of their employment) have been conferred on both the Commission for Racial Equality (CRE) and the Equal Opportunities Commission (EOC). Under

section 50(1) Race Relations Act 1976 the CRE may, for the purposes of investigation, issue a notice on a person requiring him/her, at any specified time, to provide written information (s.50(1)(a)); or to attend at a specified place and time to give oral information and produce any specified documents (s.50(1)(b)). In the event of a failure to comply with any notice the CRE may apply to a County Court for an order requiring compliance. Section 52 of the Act generally restricts the disclosure of any information obtained during an investigation subject to certain specified exceptions one of which is 'for the purpose of any criminal proceedings' (s.52(1)(f)). The EOC enjoys powers comparable to those of the CRE in relation to investigations carried out under the Sex Discrimination Act 1975 (ss.59, 61)

A further example of coercive powers of examination are those provided by the Tribunals of Inquiry (Evidence) Act 1921. This Act confers on tribunals of inquiry all of the powers, rights and privileges which are vested in the High Court and a judge of that court. Thus a tribunal is empowered to enforce the attendance of witnesses, examine them on oath, and compel the production of documents. If a witness should fail to comply with a direction of the tribunal then, on certification by the tribunal, the offender may be punished by the High Court in the manner they would have been if guilty of contempt of court.

So, for example, under the Tribunals of Inquiry (Investigations) Act 1921, the Stephen Lawrence Inquiry had the power to order the attendance of witnesses and to compel them to give evidence under oath. However this was balanced by the Attorney General's authorisation:

'to undertake in respect of any person who provides evidence to the Inquiry that no evidence he or she may give before the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence nor any document produced by that person to the Inquiry will be used in evidence against him or her in any criminal proceedings, except in proceedings where he or she is charged with having given false evidence in the course of this Inquiry or with having conspired with or procured others to do so'.

In the context of investigations into complaints against the police, the power to compel attendance of witnesses is a power granted to every external oversight body in Australia.<sup>23</sup> In Queensland, the CJC may hold hearings for which it has the power to compel witnesses to attend and give evidence by serving a summons.<sup>24</sup> In the event of a witness failure to comply with a summons the CJC may apply to the Supreme Court for a warrant for a persons detention and attendance before the CJC.<sup>25</sup> This power can be exercised in respect of any witness – police officer or member of the public

– in addition to any person under investigation. On the other hand, this is balanced with the safeguard that, where any person objects to answering any question put to them, the answers cannot be used in any civil, criminal or disciplinary proceedings except in proceedings for contempt of the Commission or perjury.<sup>26</sup> Although this power has been rarely used, the CJC consider the existence of the power, and their ability to use it if necessary, to be extremely useful.

## Conclusion

The power to compel witnesses to attend and give evidence has been granted to a number of bodies in this country and abroad. There is, however, an important counter-balance to this. In the majority of bodies who have this power; the evidence given cannot be used against the witness except where the complainant has committed perjury in giving evidence. This safeguard should also be introduced if this power is to be granted to the IPCC. In addition the power should only be used in extreme circumstances since it might act as a deterrent to complainants: there may be cases where individuals do not want to give evidence for fear of reprisals. However, where there was a great public interest in obtaining evidence about a particularly important case, it would allow investigations where otherwise no action would be possible.

## 5.7 Recommendations

### Powers required by the IPCC

- 17** Investigation officers of the IPCC should have all the powers of office of constable.
- 18** IPCC investigators should have the power of entry to police premises.
- 19** IPCC investigators should have the power to compel the preservation and production of documents and other materials.
- 20** The duty of police officers to ‘obey all lawful orders’ should be extended to include orders from staff of the IPCC.
- 21** All officers should be under a positive duty to co-operate with complaint investigations. Failure to do so should amount to a disciplinary offence. This positive duty remains throughout the investigation.
- 22** In respect of interviews regarding criminal allegations officers have the same right to silence as members of the public. Any interviews with officers obtained without

**the right to silence cannot be admitted in evidence against officers in criminal proceedings.**

- 23** If during the course of an investigation an officer falls under reasonable suspicion of having committed a criminal offence he or she remains under a positive obligation to co-operate with the investigation in respect of disciplinary proceedings. However in respect of criminal proceedings he or she should receive a criminal caution with the right to silence.

### Rules governing investigations

- 24** There should be legally binding regulations governing the conduct of IPCC investigations including:
  - Police officers should secure the scene of a complaint prior to attendance of IPCC officers;
  - IPCC investigative team leader is in overall charge of any investigation where there is a complaint against an officer;
  - IPCC investigations take precedence over police investigations unless IPCC investigators agree otherwise;
  - Police officers should be informed by IPCC officers if they are witness or subject officers, and be available for interview as soon as practicable. Police officers should not communicate with each other over a complaint matter until interviews have been conducted.

### Timing of investigations and criminal proceedings

- 25** Statements and evidence gathered in complaints investigations must be disclosable to defendants in criminal proceedings, if relevant.
- 26** Complaints investigations should not normally await the outcome of any criminal proceedings. The IPCC should determine the timing of complaints investigations. Complaints investigations may be delayed pending criminal proceedings if the IPCC considers there is good reason to do so.

### Compelling witnesses to give evidence

- 27** There should be a power to compel witnesses to attend and give evidence in proceedings. This power should only be used in limited circumstances. Safeguards such as immunity may need to be offered when such power is used.

# 6 Openness and transparency in the investigation of complaints

## 6.1 Introduction

Openness and transparency at all stages of the process will allow complainants to feel ownership of the process, and will encourage them to believe that their complaints are being dealt with fairly. This needs to be balanced against the need for police forces to withhold certain information and details about investigations, when there are other pressing concerns.

The Report of the Home Affairs Committee recommended certain changes in procedures to increase the openness of the system, thereby increasing complainant confidence in the fair and impartial handling of their complaints:

- Complainants should be fully informed about the outcome of any disciplinary hearing arising from their complaint.
- The IPCC (or whatever other body oversees police complaints) should be given greater freedom to explain its work and decisions to complainants and the public than is currently available to the PCA.
- Investigating Officers' (IOs') reports should be subject to disclosure on the same basis as other documents relating to the complaint.<sup>1</sup>

The government has accepted that the first two of these proposals should be implemented, in line with its general approach to introduce greater openness to the complaints system. The following discussion is therefore concerned with the issues relating to disclosure of IOs' reports. Although the government has also accepted this recommendation in principle, there are still doubts about when, and how it will be implemented.

## 6.2 Investigating Officers' reports: the present legal position

The present legal position on the status of the investigating officer's report in complaints against the police is based on the case of *Taylor v Anderton*.<sup>2</sup> In that case the court ruled that such reports were, as a class, subject to Public

Interest Immunity (PII). This gives rise to a presumption against the disclosure of investigating officers' reports in complaints cases. The Chief Officer, after assessing the public interest, might be able to disclose or obtain consent from the court to do so. However, recent events have highlighted the need for more openness in this procedure.

## 6.3 The need for change

The government's general approach to PII is that claims should be made on a contents rather than a class basis. The Attorney General has stated that 'Public Interest Immunity will not be asserted by the Government unless the relevant minister believes that disclosure of a document or piece of information will cause real damage to the public interest'.<sup>3</sup> The current approach to police investigating officers' reports is not, therefore, consistent with the government's policy on PII claims.

The need for disclosure of reports has been highlighted by the reports of both the Home Affairs Committee<sup>4</sup> into complaints and discipline procedures, and the Lawrence Inquiry<sup>5</sup>. Both concluded that imposition of class immunity on investigating officers' reports was unnecessary. PII should be claimed on a content only basis: if the Chief Officer considers that substantial harm would result from the disclosure of a particular report or part thereof it would be open to him or her to claim contents based PII. If necessary the courts would decide the validity of this claim.

Both reports also concluded that disclosure of investigators' reports would be an important tool to increase complainant confidence in the complaint system. Their rationale is as follows: if a complainant is dissatisfied with the handling of his or her complaint, then the more information that can be given about the way the investigation was conducted, the more the complainant is likely to be convinced that the investigation was handled fairly and impartially.

The research of Maguire and Corbett<sup>6</sup> shows that 80% of complainants interviewed in investigated cases said they were not kept sufficiently well informed about the progress of their cases. Seventy per cent thought that the IO had merely gone through the motions of an investigation, while only 10% thought that he had 'tried to get to the bottom of the matter'. This displays a combination of lack of ownership of the process and lack of confidence in the handling of investigations. With access to the IO's report, complainants would have an understanding of how complaints investigations are conducted. The Association of Chief Police Officers (ACPO)<sup>7</sup>, the Police Superintendents Association,<sup>8</sup> and the Police Complaints Authority (PCA)<sup>9</sup> all gave evidence to the Home Affairs Committee that complaint investigations were generally conducted very thoroughly. It is difficult for this thoroughness to be accepted by complainants if they do not know how complaints investigations are conducted, and how conclusions are reached.

The experience of other jurisdictions also suggests that there would be value in disclosure of IO's reports. Hayes, in his proposals for Northern Ireland states that:

'Another important element in openness is the provision of a detailed concluding report to the complainant. My experience of cases in Northern Ireland is that fairly standard letters are sent out to complainants which do not really do justice to the investigation that is taking place or satisfy sufficiently the complainant's interest in the case. In other jurisdictions, New Zealand being an example, a full copy of the investigating officer's report is sent out to the complainant unless it contains sensitive information. I think we should move in this direction. The problems of the disclosure of investigating officer's reports (and they are not currently disclosed unless the court directs otherwise) would be lessened.'<sup>10</sup>

The recent report recommending changes to the SIU in Ontario also focused on the disclosure of reports of SIU investigations as an important aspect of increasing the credibility of the SIU. It concluded that:<sup>11</sup>

'There was broad agreement that the SIU Director's report should be made public in cases where no charges were laid. A public report seems central to providing the necessary accountability and community confidence. Indeed, the SIU currently releases an oral summary of its report to affected families and officers. Concerns about personal information can be accommodated by judicious editing of the written report prior to release.'

It is interesting to note that this proposal was supported by the SIU, community groups, the police union and chiefs of police. They all recognised that the SIU had been set up to improve public confidence in police accountability, and that public release of

investigation reports was an integral part of increasing public confidence.

The introduction of an independent body in this country, investigating a significant proportion of all complaints, would not remove the need for transparency in the process of investigation. Similarly to the SIU, transparency of process is as much a part of increasing public confidence in the system as independent investigation.

## 6.4 Arguments against disclosure

The main argument put forward against the disclosure of investigating officers' reports is that there would be a danger that reports would become 'more bland and less useful':<sup>12</sup> investigating officers would be unable to be frank and candid in their conclusions and recommendations on the case in question. Reports would lose much of their usefulness in deciding what action was appropriate as a result of the investigation. As a compromise, it is argued that reports should be disclosed without the conclusions and recommendations of the investigating officer. However, the real value in disclosing the reports in the first place is to reassure complainants that conclusions have been reached fairly. Removal of all evaluation of the evidence by the investigating officer would therefore negate the primary purpose of disclosing the documents in the first place.

It is therefore necessary to assess the extent to which disclosure of reports will detract from their usefulness in deciding what further action should be taken as a result of the investigation. It should be remembered that the primary purpose of the report is to decide whether any disciplinary or criminal offence has been committed by the police officer. In this context, conclusions and recommendations in any investigation should be based on the evidence in the case. If there is sufficient evidence to allow the investigating officer to come to a definite conclusion about the complaint, s/he should be able to be frank and candid in his or her statements and recommendations.

If an investigating officer has reasons to suspect that there are particular problems with the accused officer, but cannot substantiate these suspicions, then an alternative mechanism should be created to communicate this to management. The investigating officer's formal report should be simply concerned with evaluating the evidence and coming to conclusions on that basis. This alternative mechanism could also be used to pass on information concerning problems with police policies and procedures that had arisen as a result of the investigation, and were too sensitive to put in a public report.

**‘We have given specific consideration to whether Investigating Officers’ reports produced during the investigation of complaints should continue to attract class exemption under Public Interest Immunity rules and procedures. Having seen and used the Kent Investigating Officer’s report in the course of our inquiry we are sceptical of the need for class exemption. There appears to be little, if anything, in the report which could and should not be made available to complainants’**

*The Lawrence Inquiry Report, Sir William MacPherson*

The joint submission of Bhatt Murphy Solicitors, Bindman and Partners and Liberty to the Home Office Working Group on this issue points out that similar expansions in disclosure provisions with regard to parole decisions have enhanced rather than detracted from the process:

‘...in the context of parole decisions in prisons, it used to be said that disclosure of parole dossiers to prisoners would hinder the flow of relevant information from reporting officers. In reality, however, disclosure has served to enhance the quality of the parole process as a whole as well as its reputation for fairness amongst prisoners and prison officers alike. It is a particularly apt analogy, since the Home Office introduced the disclosure policy in this context against a background of case law on which it could have avoided disclosure. Moreover, the implementation of the policy has involved the operation of the “substantial harm” test at work with little or no prejudice to the interests of security and management.’

A second argument that is made against disclosure is that investigating officers’ reports contain much confidential information which should not be disclosed (eg to protect the identity of informers). However, it would still be open to the Chief Officer to make a PII claim on a contents basis using the substantial harm test. The deleting of sensitive sections and personal details from a document should be sufficient in most cases, rather than withholding the whole report. This was the proposal made for the SIU in Canada, which investigates the most serious cases of police misconduct, where one would expect there to be the greatest potential harm in disclosure.

In the Stephen Lawrence Inquiry Report, Sir William MacPherson commented:

‘....in the context of complaints we have given specific consideration to whether Investigating Officers’ reports produced during the investigation of complaints should continue to attract class exemption under Public Interest Immunity rules and procedures. Having seen and used the Kent IO’s Report in the course of our inquiry we are sceptical of the need for class exemption. There appears to be little, if anything, in the Report which could and should not be made available to complainants.’<sup>13</sup>

## 6.5 Conclusion

There appears to be little justification for the continued use of class based PII for IOs’ reports. It is against general Government policy, and both the Home Affairs Committee and the Lawrence Inquiry have deemed it unnecessary. Evidence from other jurisdictions, as well as the handling of parole decisions in this country suggests that class immunity is an unnecessary bar to greater public confidence in the complaints system. The ability to claim contents based PII will ensure that no information will be made public that causes substantial harm to the public interest. This creates the right balance between the need for greater openness in the system, and the need to protect sensitive pieces of information in appropriate circumstances.

### Practical implementation

The presumption will be that Investigating Officers’ Reports should be disclosed at the end of investigations. However, when there is a PII claim by a Chief Officer then a procedure will have to be followed to ensure that this claim is properly evaluated. Two questions in particular need to be addressed: who should decide whether an IO’s report is disclosed in a particular case, and to whom should reports be disclosed?

It is important to the credibility of the decision-making process that the decision whether or not to disclose is made independently. With the creation of the IPCC, members could make decisions about disclosure of IO’s Reports. They would have to take submissions from Chief Officers into consideration in their deliberations about whether substantial harm would result from disclosure. In addition, it would be important to ensure that Chief Officers had the right to challenge decisions of the IPCC in the courts.

Disclosure should be made to complainants and officers under investigation, so as to be fair to both parties. No disclosure should occur,

however, until either the CPS has advised against a criminal prosecution, or until any criminal proceedings arising from the complaint have been concluded. Disclosure in such cases would prejudice any criminal trial.

### Disclosure of statements and other evidence relating to the complaint investigations

In the case of *R v Chief Constable of West Midlands ex parte Wiley*<sup>14</sup> it was held that PII did not generally attach to statements and other evidence obtained during a complaint investigation. The current legal position is therefore that, unlike for IO's reports, refusal to disclose statements and other evidence must always be based on a claim about the content of an individual document (that it would cause substantial harm if disclosed). However, at present, disclosure only occurs when a complainant brings legal proceedings where it is relevant to the case.

The conclusion reached above with regard to the IO's report was that it should be disclosed at the end of the investigation subject to any PII claim by the police. The current legal position on

statements and other evidence allows for greater disclosure than for IOs' reports. It therefore seems natural that, in any proposals for change, there should be a presumption that statements and other evidence will be disclosed at the end of an investigation, subject to the same test as that applied to IOs' reports.

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## 6.6 Recommendations

- 28** Disclosure should be made to the complainant and the officer under investigation, but not until the conclusion of any criminal proceedings.
  - 29** Disclosure of Investigating Officers' reports, statements and other evidence should occur subject to claims for Public Interest Immunity on the basis of the contents of an individual document.
  - 30** A decision should be made by IPCC members on the basis of the 'substantial harm' test, whether disclosure of a document or part thereof should be withheld. Submissions by the Chief Officer should be considered as part of this process.
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# 7

## Who are the investigators?

### 7.1 Introduction

It is vitally important to the success of the IPCC that the right individuals are employed as investigators of complaints. Therefore it is necessary to decide what skills and experience the IPCC investigators will need in order to effectively perform their duties. The central questions are whether civilians without police experience are capable of investigating complaints, and whether the IPCC should be using police officers as part of investigative teams.

As has been discussed in Chapter 1, the independence of the IPCC is vital to public and complainant confidence. It is likely that there would be most confidence in the independence of a new system if the IPCC used no serving or former police officers. This would ensure that there were no doubts about the integrity and impartiality of the investigations conducted by the IPCC. It would also remove any fears about occupational alignment, as discussed in Chapter 1.<sup>1</sup> However there is a question as to whether investigation would be more effective if police officers were involved. Will an IPCC that is staffed only by civilians, with no police background, have the necessary skills and experience to be effective in its investigations? Furthermore would such a body be able to break into the police culture, or would the lack of police presence in the IPCC mean that the two bodies would become polarised?

An important issue to bear in mind throughout is that the needs of a new organisation in its early days may be very different from an organisation which is fully operational and has been running for some time. Recruitment and training will have to be done on a far larger scale while the organisation is being set up than thereafter, and investigators will learn the skills necessary to investigate effectively as they gain experience from their investigations.

### 7.2 Conducting effective investigations

A concern expressed by ACPO and others is the quality of investigation that non-police investigators will be able to achieve. Our Advisory Committee were of the view that there was no point in creating a system that was merely independent, without it producing as good or better investigation than the existing system. However it was also recognised that improving public perception and confidence was an achievement in itself, in that currently good investigations were not vindicated. The Committee addressed the difficulties surrounding civilian investigations, but were of the view that these were not insurmountable.

There are three separate issues to consider when evaluating the difficulties IPCC investigators will face: First, will civilian investigators have the basic investigative skills to be good investigators? Second, how will they acquire knowledge of police practices and procedures? Third, will they successfully be able to break into the police culture and obtain the co-operation of police officers in their investigations?

### 7.3 Investigative skills

Investigative skills are not unique to policing. Investigation is fundamentally a generic skill, capable of being learned and applied within a wide range of different situations.<sup>2</sup> The basis for good investigative technique is sound analytical skills and an enquiring mind; the ability to think logically, take a step by step approach to information gathering and develop theories and further lines of inquiry based on an intelligent and well-founded interpretation of the salient evidence. Obviously, these basic investigative skills will need to be applied to a policing context, and a variety of specific skills will have to be learned, but as shown below, many of the specific skills needed are transferable when the IPCC employs staff with previous non-police investigative experience.

In practical terms there is a large pool of potential staff for the IPCC with wide-ranging investigative experience. So, for example, staff could come from backgrounds in Customs & Excise, the Serious Fraud Office, the Department of Health, the Commission for Local Administration in England, the Prison Ombudsman, the immigration service, the insurance industry, as well as solicitors and barristers. Individuals recruited from these bodies would have extensive investigative experience. Most importantly many would have the skills necessary for interviewing effectively, the core activity of dealing with complaints against the police. They would also have other skills useful for the job such as preserving and compiling evidence, and the ability to manage case files.

Many academics who study complaint systems are equally convinced that complaints investigations can be carried out by civilians with investigative experience. For example:

**'The main problem with the competency argument made against civilian control is that it assumes investigation is a skill unique to policing. This is quite false. Almost all government departments and many private companies employ 'inspectors' or others who conduct inquiries and prosecute suspects. While some of these inspectors may be ex-police, this is not always the case.'**<sup>3</sup>

Hayes, in proposing the extensive use of non-police investigators by the Ombudsman in Northern Ireland, concluded that there were a wide range of civilians with investigative backgrounds who were capable of investigating complaints against the police:

**'I am not convinced by the argument put forward that only police can investigate police. I have seen other jurisdictions where this is not the case (New South Wales, Queensland). Also, in our own jurisdiction, customs officers, immigration officials, DHSS and Inland Revenue staff all investigate cases, and the Government appears to have conceded that independent investigators can work for the Criminal Cases Review Commission.'**<sup>4</sup>

As stated by Hayes, there are civilian oversight bodies in foreign jurisdictions which use substantial numbers of non-police investigators. For example, Queensland, New South Wales, Ontario, New York, and Chicago all have significant numbers of civilian investigators. Not all of these systems have been an unqualified success, but the consensus appears to be that the reasons for this are not so much inadequacies in the experience of civilian investigators, as lack of funding, lack of powers or lack of co-operation between the bodies investigating complaints and the police. Civilian investigators in other jurisdictions have been drawn from a variety of backgrounds. The Special Investigations Unit in Ontario (SIU) for example uses lawyers, social

workers and labour board investigators.<sup>5</sup> The Civilian Complaint Review Board (CCRB) in New York is almost entirely made up of civilian investigators. Many of the junior investigators are recruited straight out of college. They complete an initial training course, and then are placed under the supervision of experienced investigators as they gain experience of investigations. Team managers have a minimum of fifteen years law enforcement/investigative experience and are veterans of agencies such as the Internal Revenue Service, the Drug Enforcement Agency and the Immigration and Naturalisation Service.<sup>6</sup>

The Criminal Cases Review Commission (CCRC) investigates suspected miscarriages of justice in England, Wales and Northern Ireland. The vast majority of staff at the CCRC come from a non-police background. Although their role is different from a body that investigates complaints against the police, the same kind of investigative skills are needed and must be applied in a policing context:

**'The type of investigative activity involved in case reviews includes visits to the crime scene, the commissioning of expert reports, interviews with witnesses and applicants, and visits to the original investigating police force. Statements, reports and other documents are studied and checked for anomalies which might require further exploration.'**<sup>7</sup>

Case review managers are primarily responsible for carrying out the day to day work on cases,<sup>8</sup> and the majority are lawyers.<sup>9</sup> Commission members, who take the final decisions on the action to be taken in each case<sup>10</sup> come from a variety of backgrounds: There is a Coroner, a former Deputy Director of the Serious Fraud Office, several academics, a Chief Executive of ICI, and a Chief Executive of a County Council, among others.

There also seems to be an increase in the use of civilian caseworkers within complaints and discipline departments in this country and, although most are former police officers, the implication is that civilians with the right training are capable of being part of investigative teams. In several recent cases where complaints against the police have been made, a Senior Crown Prosecutor has been brought into teams of police investigators.

Investigative skills are not unique to policing, individuals from a variety of different backgrounds have the basic skills necessary for effective investigation. These individuals can be recruited by the IPCC, and apply their investigative skills to a policing context. The experiences of civilian oversight bodies in foreign jurisdictions, the views of Hayes, the experience of the CCRC and complaints and discipline departments in this country all suggest that civilians can then become effective investigators.

## 7.4 Knowledge of police practices and procedures

As well as having the skills necessary for effective investigation, it is essential that investigators have substantial knowledge of police procedures and practices. Most civilian investigators will not have this knowledge when they join the IPCC. However, this knowledge can be learned, and with the implementation of a training programme, and the presence of a minority of seconded or ex-police officers, civilian investigators can gain the relevant expertise. It must be remembered that police officers themselves have to learn about police practices and procedures.

### Training

It is essential that civilians have knowledge of police practices and procedures. In order to achieve this, an effective in-house training programme must be developed, as this will produce great benefits in terms of the expertise of investigators.<sup>11</sup> The SIU in Ontario has suffered in the past as a result of not having a sufficient training programme. One of the important recommendations of the Adams Report was a substantial increase in resources for initial and ongoing training of investigators.<sup>12</sup> The SIU is now in the process of having a specialised programme created at the Canadian Police College in Ottawa.<sup>13</sup>

The CCRB in New York is an example of a system where a well planned training course has been instituted. New recruits start with an intensive two week training programme:

‘During this two week intensive training period, investigators are familiarised with the jurisdiction, authority, and rules of the CCRB; interviewing techniques; the structure of the police department; methods for acquiring documentary evidence such as police and medical records; and Patrol Guide procedures and legal principles governing the use of force, search and seizure, and discourtesy. The team managers run training seminars based on practical simulations of investigative work. They take new investigators step-by-step through actual investigations and critique mock interviews of civilians and police officers. The managers also conduct seminars on evidence gathering and field safety, which often involve practising investigative work outside the office. Once assigned to investigative teams, managers, supervisors, and assistant supervisors observe and critique interviews conducted by new investigators and closely monitor their investigative work.’<sup>14</sup>

Any new investigator to the IPCC should attend a course which familiarises them with police practices and procedures. It is also vital that investigative teams are designed in such a way that more experienced investigators are able to

help new recruits to obtain the experience and expertise they need. At the CCRB and the SIU this is the case.<sup>15</sup>

## 7.5 Use of seconded or former police officers

It has been stated above that there is no reason why civilian investigators, with appropriate training cannot become effective investigators of complaints against the police. However, consideration still needs to be given to whether experienced police investigators should be working alongside civilians as part of investigative teams at the IPCC.

The negative aspect to using police investigators is that this may well damage perceptions of the independence of the IPCC; there will be accusations that the police are still investigating the police. On the positive side, the police officers will bring practical experience of policing to the IPCC that civilian investigators will not have. The question is whether the benefits of police experience outweigh the damages to the perception of the IPCC. Our Advisory Committee felt that some police involvement was desirable because of their expertise and the need for police involvement in the process, but that it was important to balance this with the need for the perception of independence.

For the purposes of the following discussion, the relative merits of seconded and former police officers will not be considered separately, although there are advantages and disadvantages with either.<sup>16</sup> What is considered is whether there should be any police presence at the IPCC at all, and if so, how great that presence should be. A decision on the merits of former or seconded police officers should be made on the basis of individual applications.

### The benefits of police experience to civilian oversight bodies

Hayes had to decide whether the Ombudsman in Northern Ireland should use seconded or former RUC officers. He conducted extensive research of civilian oversight bodies in other jurisdictions and came to the conclusion that the practical experience of police officers was a resource that could not be ignored in the setting up of a new independent body.<sup>17</sup> He decided that RUC officers’ knowledge of police practices and police culture outweighed the dangers to public credibility that their involvement would bring. This decision needs to be considered in light of the fact that the use of police officers in an oversight body is particularly problematic in Northern Ireland given the lack of confidence in the police from such a significant proportion of

the population. It shows how important police experience is considered to be in the investigation of complaints.

In Queensland, the CJC has by far the most wide-ranging role in police complaints investigation of any oversight body in the world. They have found that the use of seconded QPS officers is vital to the effective investigation of complaints. The SIU in Ontario, on the other hand, is an example of an oversight body that experienced initial difficulties because of a lack of police experience.<sup>18</sup> It was then forced to draft in large numbers of former police officers to cope with the backlog of cases.<sup>19</sup> This then reduced community confidence in the organisation. A more structured initial approach, recognising the value that police experience could bring would have avoided these problems.

The Criminal Cases Review Commission (CCRC) has also found the use of former police officers valuable to their investigations. As stated above, the majority of the investigative staff have non-police backgrounds, but staff with police experience are also used at the CCRC. They have benefited from having an 'Investigating Advisor' who is a senior ex-police officer and has been able to help others on procedural issues where they lacked experience. The CCRC also have several case review managers who are ex-police officers, and their practical experience of policing has been found valuable.

The use of seconded or former police officers at the IPCC, combined with a training programme for civilian investigators where police practices and procedures are taught will enable the IPCC to gain sufficient knowledge of the police organisation to be able to conduct effective investigations.

## 7.6 Breaking into police culture

Concerns have been expressed that civilian investigators would not be able to break into the police culture, and therefore independent investigations would be less effective than the current internal system. However, there is little objective evidence as to how much of a problem this would be. The Police Federation, in evidence to the Home Affairs Committee regarding the issue of police culture stated that there was now in the police 'a great willingness to analyse and explain when things go wrong...I do not think there will be a wall of silence.'

This view is backed up by the experience of foreign jurisdictions. Civilian oversight bodies investigate serious misconduct by police officers in other jurisdictions such as Ontario and Queensland; it has been found that these bodies can successfully investigate police officers without being prevented from effectively

investigating by the strength of police culture. The implementation of legal protocols to govern the way that police officers and investigators from the oversight body interact provides a framework in which co-operation can be achieved.<sup>20</sup>

The report of Hayes on the Northern Ireland complaints system also suggests that co-operation can be achieved by an independent body that investigates complaints against the police. Whatever problems do exist for the IPCC will be eased by the use of seconded or ex-police officers; polarisation between the two organisations will be reduced and therefore co-operation will be easier to obtain.

The presence of police officers at the IPCC does give rise, however, to concerns about their use within a body that needs to be independent of the police. The measures set out below address these concerns:

## 7.7 How police experience can be utilised effectively by the IPCC

If police officers are to be used within the IPCC, then an approach must be adopted which makes sure that police experience is harnessed effectively while maintaining the independence of the IPCC as a whole. Three important measures are set out below to ensure these dual aims are realised:

- **The proportion of police officers in the IPCC should be no more than a quarter of the total investigative staff.**

Ideally, the use of police experience should be of primary importance as the IPCC is being set up and the civilian investigators have very little experience of complaints investigations. However, the experience of other jurisdictions is that often seconded or former police officers can continue to make up a large proportion of the investigative staff, even when the oversight body has been running for many years. One of the main reasons for this approach is that investigators with police experience need less training, and are therefore initially more cost effective than those without experience. However, the independence of the IPCC is of primary importance to ensuring that confidence in the system is improved. Therefore a restriction on the maximum number of police investigators needs to be introduced to ensure that perceptions of independence are not impaired. A maximum of 25% seconded or ex-police officers will effectively utilise police experience and help the IPCC to break into the police culture while allowing the IPCC as a whole to maintain an organisational identity that is distinct from the police.

■ **Police officers should work in investigative teams where the majority of staff are civilians and where there is a civilian team leader.**

A further measure to ensure the independence of the IPCC is the structure of the investigative teams. Investigative teams should, where possible, each individually have the same proportions of police and non-police personnel as the organisation as a whole.<sup>21</sup> In addition, all investigative teams will have team leaders. The team leaders will monitor all on-going investigations, will make decisions on what lines of enquiry to pursue, and will make the final recommendations on further action to be taken (eg disciplinary hearing, criminal prosecution). Team leaders should all be civilians without police backgrounds. This will be an important accountability measure to safeguard the independent image of the IPCC. At the CJC in Queensland, where extensive use is made of seconded police officers, they use civilian team leaders in exactly this way. The presence of civilian team leaders will be able to reassure the minority of complainants whose initial contact is with seconded or ex-police investigators that the investigation is independent. However, it should be recognised that there will be particularly sensitive investigations in which the use of any seconded or former police officers, as investigators, is inappropriate.

■ **Importance of ensuring the quality of investigators seconded to the IPCC.**

The quality of the staff employed by the IPCC is vital to its success. A well designed selection process, where the management of the IPCC decides who to employ, and competitive salaries for all staff are fundamental elements of creating a skilled and motivated investigative body. If seconded police officers are to be used by the IPCC it is particularly important that the officers will be high quality investigators who are committed to their work and see their role at the IPCC as a means to enhancing their overall career prospects. Hayes makes this point with regard to the selection of RUC officers by the Ombudsman: ‘...the Ombudsman should select and recruit the officers....they should be high flying officers seconded for a short period. The experience of other jurisdictions and my own as Ombudsman, was the importance of choosing one’s own staff to ensure suitability and quality rather than depending on assignment or secondment. The knock-on effect would be that the police would not see the postings as dead-end ones but rather as developmental.’<sup>22</sup>

The IPCC must have the power to decide which police officers it decides to employ. If these are seconded officers, it must be made clear by the relevant police force that time spent at the IPCC will enhance their career prospects.

**7.8 Conclusions**

The IPCC, using teams of civilian investigators with a minority police presence can investigate complaints as effectively as internal police investigators. Civilians with the right professional backgrounds will have the generic investigative skills necessary for investigations. Police practices and procedures can be learned by civilian investigators, as long as thorough and well-designed selection and training procedures are introduced. The presence of a minority of police officers at the IPCC will help civilian investigators to acquire the knowledge they need, as well as reducing the problems in obtaining co-operation from police officers in investigations. The experience of other jurisdictions, the conclusions of the Hayes Report and the experience of the CCRC all suggest that the benefits of police experience to an independent investigative body are substantial. It is possible to harness the advantages of police experience while still ensuring that the IPCC has sufficient organisational independence from the police to be able to be an effective accountability mechanism. This will occur if the specific provisions outlined above are implemented.

**7.9 Recommendations**

- 31 The investigative staff of the IPCC should comprise at least 75% civilians with no more than 25% seconded or ex-police officers.**
- 32 Investigations should take place in a team structure reflecting the above proportions.**
- 33 The IPCC should have the decision as to who are selected as seconded police officers.**
- 34 Investigative teams should always be headed by a civilian team leader.**
- 35 Specific provision should be made for a comprehensive training programme for investigators.**



# Disciplinary procedures and criminal prosecutions

## 8.1 Introduction

In all concluded investigations, a report will be written by the investigating officer on the investigation and its findings. Where a complaint has been substantiated, a decision will have to be made on what further action should be taken in the case. This will include the possibility of criminal prosecution or disciplinary proceedings against the officer concerned. It is clear that the IPCC needs to be involved in this part of the process for the sake of the credibility of the system. Independent investigation of complaints will not inspire public confidence if the entire post-investigation process is handled internally by the police. The degree of independence needed is the subject of this chapter. There are a number of aspects to the system where an independent element needs to be considered:

- Who makes the decision to bring criminal prosecutions or disciplinary proceedings?
- If a criminal prosecution is a possibility then, currently, it is the Crown Prosecution Service (CPS) which prosecutes the case. A further decision needs to be taken on whether it should continue in this role.
- If disciplinary proceedings are brought, then there are a number of issues to consider. Who should make the decision to bring disciplinary proceedings? Who should be presenting the cases? Who should sit on the adjudication panel? Finally, should disciplinary cases be heard in private or public?

This chapter will provide proposals for how to deal with the above questions. However, it is necessary to realise that these proposals will only relate to criminal and disciplinary proceedings initiated by complaint investigations. Therefore officers facing proceedings originating from internal processes will continue to be dealt with under existing procedures.

The discussion starts with issues relating to criminal prosecutions, and moves on to a discussion of disciplinary proceedings.

## 8.2 Criminal prosecutions

The issue of criminal prosecutions arising from complaints has been one of the most controversial issues discussed by our Advisory Committee, with strong concerns expressed on both sides of the debate. A delicate balance needs to be struck between ensuring the independence and openness of the system and the rights of police officers. This debate is recognised by the alternative recommendations made below.

### The decision to refer the case for prosecution

At present, the chief officer of police determines whether the report on the complaint indicates that a criminal offence may have been committed by the officer concerned.<sup>1</sup> If this is the case, s/he must send a copy of the report to the CPS who will make a decision on whether criminal proceedings should be brought.<sup>2</sup> Under the proposals for an independent mechanism, the IPCC will be investigating many of the cases where criminal charges are likely to occur, since they will be investigating the most serious cases. It would therefore seem inappropriate for these cases to be referred back to the Chief Constable of the relevant force to make the decision on whether to refer the case to the CPS. The recently published report on police complaints and disciplinary procedures by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) comments on this issue. The CPT makes it clear that they see the current system, whereby the Chief Officer makes the decision to refer cases to the CPS as lacking in independence, and therefore inappropriate.<sup>3</sup>

In Northern Ireland, under the Police (Northern Ireland) Act 1998, it is the Ombudsman who decides whether a criminal offence may have been committed, and sends a report to the Director of Public Prosecutions for Northern Ireland, if appropriate.<sup>4</sup> The Criminal Justice Commission (CJC) in Queensland undertakes all investigations

**‘It is a perception, and I believe it is one that is commonly held not only in ethnic minorities but more widely, that the close working relationship between the CPS and the police leads to favoured treatment of the police. As I have already said, from the cases that I have examined, I do not believe this to be a justified perception. It is, however, an understandable perception.’**

His Honour Judge Gerald Butler QC

where criminal offences may have been committed by police officers. It also decides whether an offence may have been committed, and it has the power to refer these matters straight to the Director of Public Prosecutions (DPP).<sup>5</sup>

The independence of the complaints process will be compromised if it is not the IPCC who has the power to refer cases for prosecution. A decision by a Chief Constable not to refer a case will be viewed suspiciously by the public and complainants, even if the IPCC has undertaken the entire investigation. If a credible independent investigative body is to be created, then it needs the power to make decisions based on the findings of its investigation. Determinations about criminal prosecutions are the most important of those decisions, because they will involve the most serious kind of misconduct by police officers. The IPCC must, therefore, make the decision to refer the case to the appropriate body for consideration of prosecution.

### **The decision to prosecute and the prosecution of criminal cases**

The above discussion concerned the power to refer cases to the CPS where a criminal offence may have been committed by a police officer. At present it is the CPS which makes the decision to bring a criminal charge and then prosecute the case. There have, however, been certain criticisms of the role of the CPS with regard to complaints against the police, which give rise to doubts about whether they are the best body to bring cases against police officers.

### **Lack of confidence in the current system**

The Home Affairs Committee Report on Police Disciplinary and Complaints Procedures refers to submissions made by both the Police Action Lawyers Group and Birnberg & Co. Solicitors that the CPS was not making appropriate decisions in cases where there was substantial evidence to justify a criminal charge.<sup>6</sup> Birnberg & Co. submitted that:

**‘responsibility for prosecuting police officers should be removed from the CPS...It is the need for greater independence that leaps out when one examines the way in which the CPS has purported to fulfil its functions in this regard. There is clearly**

**a bias which pervades both the police and the CPS preventing viable prosecutions through nonsensical analysis of evidence.’<sup>7</sup>**

The Home Affairs Committee concluded that: **there is clearly a danger that the CPS can appear to make judgements involving the police that are not properly balanced.’<sup>8</sup>**

However, it left a more thorough analysis of this issue to the inquiry into the CPS conducted by Judge Gerald Butler QC.

The inquiry by Judge Gerald Butler QC followed the deaths in custody of Richard Joseph O’Brien and Oluwashijibomi Lapite and the false confession of Derek Treadaway. It concerned the decision by the CPS not to prosecute any of the police officers involved in these three cases. The Butler Report concluded that the decision-making process of the CPS in the prosecution of police officers was ‘inefficient and fundamentally unsound’.<sup>9</sup> It made various recommendations for changes in procedure and training at the CPS. Butler’s central concern was to ensure that steps were taken to ensure that correct decisions were made by the CPS in cases involving the prosecution of police officers. He also commented more generally on the role of the CPS with regard to complaints against the police:

**‘It is a perception, and I believe it is one that is commonly held not only in ethnic minorities but more widely, that the close working relationship between the CPS and the police leads to favoured treatment of the police. As I have already said, from the cases that I have examined, I do not believe this to be a justified perception. It is, however, an understandable perception.’<sup>10</sup>**

The question under consideration is whether reforms to the decision-making process of the CPS are sufficient to ensure public confidence in its role in prosecuting police officers. Both the Home Affairs Committee and the Butler Report comment on the perceived lack of independence of the CPS from the police service. Due to the necessity of a close working relationship between the CPS and the police, it seems highly unlikely that there will ever be complete public confidence in the CPS’ role in prosecuting police officers. For instance, the Police Action Lawyers Group continues to express concern about the role of the CPS. Consideration of other options therefore appears appropriate.

## Prosecution of criminal cases by an organisation separate from the IPCC or the CPS

If public confidence in the impartiality of prosecutions of police officers is to be obtained, then it would seem necessary to transfer this duty from the CPS to another body. However, to set up another independent body simply for the prosecution of police officers, does not appear to be a viable option; the expense of another separate body with a separate infrastructure would be prohibitive considering the very low number of cases it would be handling.

## Prosecution of criminal cases by the IPCC

The alternative is for the IPCC to handle this function itself: A decision would first have to be taken on whether or not to prosecute the case, based on the evidence in the investigators' report. It would seem appropriate for the Members of the IPCC to make this decision, given its importance. The Members would have to have sufficient legal qualifications and experience to make such decisions, and would be obliged to refer to independent legal counsel for an opinion on the desirability of bringing a prosecution. The actual prosecution of the officer could then either be handled by the same individuals who investigated the case, or by a separate department which dealt only with prosecutions. This second option would ensure that there was separation between investigation and prosecution within the organisation.

The drawback with this proposal is that the same body (the IPCC) would then be investigating cases and prosecuting them, and there could be doubts about the objectivity of a decision to prosecute. It could be argued that the Crown Prosecution Service (CPS) was set up in order to avoid a situation where police officers were performing the dual role of investigating and prosecuting cases. However, there were a number of other factors involved in that decision. The Royal Commission on Criminal Procedure, whose report led to the setting up of the CPS, stated that important reasons for the need to set up an independent prosecuting body were the lack of consistency in prosecution policies and funding for prosecutions as well as inefficiencies because of the haphazard nature of the previous arrangements.<sup>11</sup> Because the IPCC would only be dealing with a very small number of cases, these factors would not apply, and there are several other bodies who conduct the investigation and prosecution of cases: Customs and Excise, the Serious Fraud Office and the Health and Safety Executive. All prosecute cases where they have conducted the investigation. So there is no

reason to suppose that the IPCC could not also perform this role objectively, with the help of independent legal advice to ensure that the decision to bring prosecutions was appropriate.

During our Advisory Committee meetings, however, both the Police Federation and ACPO made it clear that they opposed any proposal to give the IPCC this function. Both felt that it was important to retain a clear separation between the investigation and prosecution of offences. They also considered that the CPS was the most experienced and appropriate body currently available to perform the function of prosecution.

## Prosecution by the CPS

If the CPS is to continue to make decisions on prosecutions and to prosecute cases, then a review of its existing structure should occur with a view to ensuring that there is appropriate separation between the department that prosecutes officers, and the rest of the organisation. In addition the degree of transparency in the current process needs to be considered.

From Liberty's understanding of the current system, cases are split into serious and less serious cases. Less serious cases are handled at a local level in CPS regional offices. Cases can be handled by a different region where it is thought appropriate. Serious cases are handled by the Casework Directorate. But there is no separate department within the directorate for police prosecutions, so prosecutors will be handling other cases where they will be working with police officers. A definition of serious cases is not set out in statute, but there is a 'service agreement' between Chief Constables and the CPS. Serious cases would include; any offence committed by a Superintendent or above, any offence investigated by an outside force, offences of corruption, causing death or serious injury, deaths in custody, inappropriate use of firearms and abuse of position.

There needs to be consideration of whether the current system provides for sufficient separation of roles within the CPS. There might be greater confidence in the role of the CPS if measures were put in place to ensure that there was greater separation between the prosecution of police officers and the rest of the organisation. A separate department with staff only concerned with police prosecutions would help to avoid the perception that police officers were receiving any favoured treatment.

A second consideration is the transparency of the prosecution process. It is beyond the scope of this research to assess whether the criteria for a case to be handled centrally rather than

locally are appropriate. However, any guidelines or regulations should be publicly available, and the relevant authority should have to justify any decision to allow prosecution at a local level on those grounds.

### Giving reasons for decisions not to prosecute

Whether it is the IPCC or the CPS who makes the decision to prosecute, where a decision is made not to bring a prosecution at all, the recommendations of the CPT with regard to the CPS should be implemented. The CPT states in its report:

'Reference should also be made to the high degree of public interest in CPS decisions regarding the prosecution of police officers (especially in cases involving allegations of serious misconduct). Confidence about the manner in which such decisions are reached would certainly be strengthened were the CPS to be obliged to give detailed reasons in cases where it was decided that no criminal proceedings should be brought. The CPT recommends that such a requirement be introduced.'<sup>12</sup>

It is, however, important that reasons given by the CPS or IPCC are carefully drafted. Prosecutions can be taken only where there is sufficient evidence and where it is in the public interest to prosecute. If the reason for the failure to prosecute is that there is insufficient evidence then that can be stated. In many cases it will be necessary to give a more detailed response, particularly when the complainant is a witness him or herself. It is important that sufficiently detailed information is given to allow the complainant to understand which parts of the evidence were inadequate. It may be that the prosecuting body will have to be robust in describing its assessment of the evidence. In some cases this will mean saying that the complainant's evidence is 'weak' or is not reliable. Transparency and openness require honesty. Without such honesty the complainant is not able to understand the real reasons for the decision not to prosecute.

The public interest test also has to be handled carefully. If the evidence is available against a police officer it is likely that more often than not the factors which ordinarily are taken into account in the public interest test will favour prosecution. There will be cases where it will not be in the public interest to prosecute despite the evidence. Again an honest and transparent approach in giving reasons is important.

Where there is sufficient evidence the reasons for the decision not to prosecute will have to be carefully drafted to avoid infringing the officer's rights under the European Convention on

Human Rights and in particular the presumption of innocence in Article 6(2). However providing that the reasons given do not in effect make a clear declaration of the officer's guilty it will be possible to avoid a violation.<sup>13</sup>

### Conclusion

With the introduction of the IPCC, it is clearly inappropriate for the Chief Constable to retain the right to refer cases to the appropriate body for prosecution. The IPCC must take on this role. However, consideration also needs to be given to the current role of the CPS in making decisions to prosecute, and prosecuting police officers. The close working relationship between the CPS and police forces means that it seems highly unlikely that there will ever be complete public confidence in the CPS' role in prosecuting police officers. It is therefore proposed that the Members of the IPCC make the decision to prosecute with independent counsel's advice, and a designated section of the IPCC handles the prosecution of criminal cases against police officers. If this proposal is not accepted, then at the very minimum, the decision to prosecute and the prosecution of serious cases against police officers must be conducted by a separate section of the CPS where the staff are only concerned with these prosecutions. In addition, guidelines or regulations on how decisions are taken as to what constitutes a serious case should be made publicly available. Whether it is decided that it should be the CPS or the IPCC that handles the prosecution of police officers, detailed reasons should be given in cases where it was decided that no criminal proceedings should be brought.

## 8.3 Disciplinary proceedings

### The decision to bring disciplinary proceedings

The need for independence in decision making also applies to disciplinary cases. Whether the investigation is undertaken by the police or by the IPCC, it should be the IPCC who makes the final decision on whether to bring disciplinary proceedings. Our Advisory Committee were in agreement with this proposition.

This decision is of particular importance as it will determine whether the conduct is such that officers should face full disciplinary hearings, or the matter is suitable to be dealt with by less formal management procedures, such as admonishment, advice etc.

Decisions on disciplinary proceedings are currently taken by the PCA, and it is vital that the IPCC also has this role. The Police Complaints

Authority stated in its evidence to the Home Affairs Committee that it would be ‘catastrophic’ if it lost the power to insist on charges being brought.<sup>14</sup> The PCA needs to have this sanction available in order to ensure that its supervision of investigations obtains the respect of the police force. Similarly, the IPCC needs the power to direct disciplinary action, so that it can have confidence in the outcomes of its investigations. The Police (Northern Ireland) Act 1998 makes this power available to the Police Ombudsman in Northern Ireland,<sup>15</sup> and it seems equally important to the IPCC in England and Wales.

The IPCC should involve the Chief Constable in the decision-making process at the end of investigations, because in some cases the outcome of the investigation will suggest the need for action other than formal disciplinary action. In these cases other action may be possible. The complaint may point to the need, for instance, for further training for the officer concerned, for the implementation of unsatisfactory performance procedures, or for changes in police practices and procedures. If a broad and responsive approach is to be adopted, then it is vital that the IPCC and police force concerned are able to discuss the various options available before a decision on further action is to be taken.

The desire to adopt a broad and responsive approach, however, should be balanced against the need for the IPCC to be objective and independent in its decision-making. The CPT report expressed concerns about the ability of the PCA to make independent decisions on whether disciplinary proceedings should be brought:

‘...the decision as to whether disciplinary proceedings should be brought against a police officer is made by the Chief Officer of the police force which employs the officer concerned, after considering the report prepared by an investigating police officer appointed by that Chief Officer. Whilst it is true that all disciplinary decisions by Chief Officers are subject to “review” by the PCA, certain of the practising lawyers and representatives of non governmental organisations met by the delegation expressed doubts as to whether the PCA is properly equipped to carry out this role in a meaningful way. Emphasis was placed upon the fact that, even in respect of “supervised” investigations, the PCA is wholly

dependent upon evidence gathered by an investigating police officer of possible misconduct by other police officers, in most cases employed by the same force. It was also suggested that, when conducting reviews, members of the PCA may, on occasion, be unduly swayed by disciplinary recommendations made by Chief Officers (or their delegates). The force of these criticisms appeared to be buttressed by certain of the documents seen by the CPT’s delegation during the visit.’<sup>16</sup>

The IPCC needs to be perceived as robust in its decisions about disciplinary actions. In cases where the IPCC is investigating the complaint itself, it will not have to rely on evidence collected by police investigators, and so the concerns raised by the CPT should not be so critical. However, in complaints cases which are still investigated internally, the IPCC will need to overcome the problems raised by the CPT. In such cases, IPCC members who are making decisions about disciplinary action should have the power to ask police investigators for further information, demand that witnesses are re-interviewed by IPCC investigators, or reinvestigate the complaint themselves.

## The disciplinary hearing

Where it has been decided that disciplinary charges against an officer are appropriate, there will be a hearing where the case is presented. There are two further questions that need to be addressed: First, who will prepare and present the case against the officer charged? Second, who will adjudicate the case?

## Preparation and presentation of the case

If there is to be an independent body which conducts investigations and makes all decisions about bringing disciplinary proceedings, then there seems to be a strong argument, on the basis of public confidence, that it should also prepare and present the cases at disciplinary hearings. In a case investigated by the IPCC but presented by a police officer, there is still likely to be public concern that, where no disciplinary charges have been proved, the case was not presented with due thoroughness. Our Advisory

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**‘As regards the conduct of disciplinary hearings, the presence of at least one independent member on adjudication panels, as proposed by the Home Affairs Committee, would certainly represent a step forward. However, given that police disciplinary hearings should be, and be seen to be, impartial, the CPT considers that it would be preferable if the independent element on adjudication panels were to preponderate.’**

Report of the European Committee for the Prevention of Torture, 1997

Committee agreed on the importance of presentation of the case by the IPCC.

The Chair of the PCA, in his evidence to the Home Affairs Committee, stated that he was worried about the robustness of the presentation of the case by police officers, especially where charges had been directed by the PCA.<sup>17</sup> He stated that the quality of the defence case and prosecution case was at times very different. If the IPCC are investigating cases and bringing charges, there are likely to be similar problems as those experienced by the PCA, if police officers then take over case preparation and presentation. The enthusiasm of officers to take on cases against other officers that have been brought by the IPCC would be in question. Furthermore, Hayes recommended that the complaints body he proposed in Northern Ireland should be given the role of presenting cases.<sup>18</sup> The preparation and presentation of disciplinary cases should therefore be undertaken by the IPCC.

### Adjudication of the case

At present hearings are presided over by an Assistant Chief Constable and two officers of Superintendent rank.<sup>19</sup> The problem with this system is the lack of any independent presence on the adjudication panel. If decisions on disciplinary action are taken by police officers alone, then the same issue arises as for the presentation of the case; however independent the rest of the complaints process is, a decision taken by police officers not to impose disciplinary sanctions against another police officer will not appear impartial. Therefore, a decision needs to be made on the number of independent persons needed on the panel, and who they should be.

No member of the IPCC should sit on this panel. It would be inappropriate for the IPCC to be deciding on disciplinary charges, presenting cases, and to be part of the system of adjudication. This is a problem that the PCA have encountered when they have directed that a hearing should take place and then are forced to sit on the panel which adjudicates the issue. They felt that this dual role was inappropriate.<sup>20</sup> There needs to be a separation between the body bringing the disciplinary action, and the one that adjudicates the case.

There is considerable support for varying degrees of independent presence in the adjudication process. The Home Affairs Committee heard evidence from the Police Lawyers Action Group, Birnberg & Co., the PCA, and the Police Federation in support of independent representation for complaints

cases. They came to the conclusion that:

‘...adjudication of a discipline hearing arising from a complaint is an area where independence is important, particularly from the point of view of encouraging public confidence. We recommend that the revised complaints procedures should provide for the adjudication panel to include at least one independent member.’<sup>21</sup>

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) agreed with the Home Affairs Committee’s recommendation that there should be an independent presence. However the Committee was not convinced that this went far enough:

‘As regards the conduct of disciplinary hearings, the presence of “at least one independent member” on adjudication panels, as proposed by the Home Affairs Committee, would certainly represent a step forward. However, given that police disciplinary hearings should be, and be seen to be, impartial, the CPT considers that it would be preferable if the independent element on adjudication panels were to preponderate.’<sup>22</sup>

The Hayes Report was even stronger in its call for independent adjudication where there had been a direction by the Ombudsman for disciplinary proceedings. Hayes recommends that

‘further thought should be given to this area when the Government is taking forward its police discipline reforms with a view to the establishment of a wholly independent disciplinary tribunal’.<sup>23</sup>

The system in Queensland incorporates ‘Misconduct Tribunals’, which deal with all serious disciplinary matters. Persons appointed to adjudicate on the Tribunal must be ‘barristers or solicitors of the Supreme Court of at least 5 years standing’.<sup>24</sup> No member of the Criminal Justice Commission (CJC) or the Queensland Police Service (QPS) is eligible to stand for appointment.

The need for an independent presence on the adjudication panel at disciplinary hearings is absolute. However, opinions differ on whether the panel should be entirely independent, be weighted in favour of the independent element, or have a single independent member. Our Advisory Committee accepted the need for a majority of independent members, but was not in complete agreement about the need for any police presence.

A single independent member appears to be a compromise that would do little to improve public confidence in the system of adjudication as a whole: as the police presence would still outweigh the independent presence, then decisions could still be taken by the police majority. A single independent member could be perceived as merely a token gesture towards independence. On the other hand, a panel with

no police presence might be viewed as focusing too narrowly on the need for independence, without considering other factors; there needs to be recognition of police management in the disciplinary process. A refusal to allow police management to have any input into the deliberations that lead to a decision to discipline an officer would be unlikely to gain the support of that management. An adjudication panel with one Assistant Chief Constable and two independent members would seem to offer the best solution. It would be perceived as independent by the general public. At the same time, it would allow the Assistant Chief Constable to have input from a police service management perspective.

If there are to be two independent members on each adjudication panel, then consideration needs to be given to how these independent members should be selected. The best solution appears to be that members should be chosen from a pool of experts who could travel to different locations when needed. This would allow them to acquire the necessary expertise, and create consistency in decision making across the country. If independent members were appointed for each force, they would be adjudicating very few cases and would have problems acquiring and retaining the knowledge needed to perform their functions.

## Conclusion

It is clear that independent investigation of complaints will not be sufficient to restore confidence in the complaints system unless there is also independence in any disciplinary action that results from those investigations. The IPCC must make the decision whether a case should proceed to a full disciplinary hearing, be dealt with by internal police management, or that no further action should be taken. The IPCC must also prepare and present the case against the police officer. If these roles were to be left to police forces, then doubts over the independence and impartiality of the disciplinary process would undermine the independent investigation of complaints. Similarly, there must be independence on the adjudication panel. An adjudication panel of one Assistant Chief Constable and two independent members would allow the independent element to preponderate, while it would also allow input from a police service management perspective.

## 8.4 Private or public disciplinary hearings?

The present position with regard to disciplinary hearings is that the complainant may attend the hearing, and may, at the discretion of the presiding officer, be accompanied by a friend or relative.<sup>25</sup> But hearings are not open to the general public, they are held in private, and the admittance of any other person is at the discretion of the presiding officer, with the consent of all parties to the hearing.<sup>26</sup> Consideration needs to be given to whether this system is necessary and appropriate, or whether there should be wider public access to disciplinary hearings.

The issue of public or private hearings arising from complaints has been an issue where consensus could not be reached by our Advisory Committee. It was accepted that complainants should have the right to be present throughout the hearing, with legal representation present. The legal representative would have no right to intervene in the proceedings, but would be able to explain what was happening: often, under the current system complainants are confused by the conduct of the proceedings. However, strong concerns were expressed on the one hand about the need for openness in the process, but also about the need to protect police officers from a degree of public scrutiny considered disproportionate to the charges faced.

The Police Federation were particularly opposed to public hearings. They argued that the nature of the profession makes police officers particularly vulnerable to malicious allegations, and that public hearings would encourage more unfounded complaints made for tactical reasons. In addition they argued that public presence could turn disciplinary hearings into public spectacles, and that media intrusion could create conditions under which it is more difficult for police officers to perform their jobs to the required standard. They were, however, prepared to consider public hearings in cases where legal representation was offered to the officer concerned, as long as the offer of representation was based on a uniform set of criteria.

In Liberty's discussions with legal practitioners who have experience of representing complainants, a frequent criticism of the current system was the lack of openness in disciplinary hearings. There was a general consensus that public hearings would do a great deal to enhance confidence in the complaints and discipline process. The principal reason for having disciplinary hearings held in public is that this makes the proceedings transparent and open. If the public have access to the hearings

there will be a degree of scrutiny of the proceedings that brings accountability to the process. Without public hearings there may still be doubts over how the presentation and adjudication of cases were conducted.

The Home Affairs Committee, in their consideration of the existing complaints and disciplinary procedures, heard evidence both for and against the introduction of public disciplinary hearings and decided:

**‘As regards public hearings, we consider that these would be generally desirable unless in the view of the presiding officer there are exceptional reasons for them to be held in private; and we accordingly recommend that such a procedure be introduced.’<sup>27</sup>**

Under this system, an evaluation of the need for a private hearing would be made in every case, and would only be granted if there were exceptional circumstances. This proposal was rejected by the Home Office on the grounds that much of the evidence being discussed was confidential in nature, and because a disciplinary hearing is essentially a management exercise.<sup>28</sup> However, the CPT commented in their recent report that the practice of holding hearings in private does not inspire confidence in the fairness of the disciplinary system.<sup>29</sup> Evidence from other professions, which is presented below, also suggests that a refusal to allow any disciplinary cases to be heard in public may not be striking the right balance between police effectiveness and public accountability. The European Convention on Human Rights may also have some relevance to this issue.

## Medical misconduct

The General Medical Council deals with all serious professional misconduct. Serious professional misconduct is defined as ‘actions with regard to the pursuit of the practitioner’s profession which would be reasonably regarded as dishonourable by his professional brethren of good repute and competency’.<sup>30</sup> In adjudicating such cases, a Preliminary Proceedings Committee, held in private, first decides whether the case should go before the Professional Conduct Committee (PCC). If a case is not suitable for the PCC, the only other possible action is a confidential letter of warning that is kept on the file for three years. The PCC deals with around 70 cases a year, and the presumption is that all cases will be held in public. It can receive an application from either side to have the hearing held in private. Only once or twice a year on average will whole cases be held in private. Sometimes the Committee will be *in camera* for part of a hearing, for example, to hear evidence about the personal health record of a party involved in the case.

## Solicitors’ misconduct

The Office for the Supervision of Solicitors deals with all misconduct by solicitors. In all cases where any kind of official disciplinary action needs to be taken, cases are passed to the Solicitors Disciplinary Tribunal. The only action possible without reference to the Tribunal is a warning, which is not made open to the public. The Solicitors Disciplinary Tribunal hears around 350 cases a year; only approximately 1% of those cases are heard in private. Any party can make an application to have the hearing held in private,<sup>31</sup> but he or she will have to show exceptional circumstances in order that an application is granted. An applicant must show that some person would suffer undue prejudice from a public hearing or that for any other reason the circumstances and nature of the case make a hearing undesirable.<sup>32</sup>

## The military discipline system

There are two mechanisms for dealing with misconduct by military persons; a summary trial or a court martial.<sup>33</sup> A summary trial is for more minor offences and is not held in public. Punishments include fines and reprimands. A court martial deals with all serious misconduct that is not suitable for a summary trial. Although a court martial has the power to punish for criminal offences, it also has a similar range of disciplinary sanctions as the police: dismissal, reduction in rank, fine, reprimand or caution. A court martial sits in open court, unless it considers it necessary or expedient in the interests of the administration of justice to sit *in camera*. Practically every case is in fact held in public.

## The European Convention on Human Rights

Article 6(1) of the Convention guarantees a fair trial not just in criminal cases, but also in the determination of ‘civil rights and obligations’. Subject to specific exceptions Article 6 imposes a requirement that trials be held in public. There is considerable debate about the applicability of Article 6 to disciplinary hearings. But it may be that Article 6 requires that hearings be held in public for all serious cases that may result in the dismissal of a police officer. Appendix 3 gives details of the arguments.

## Conclusion

The current position where all disciplinary hearings are heard in private seems unnecessarily secretive and insular. If the principles of Article 6 of the Convention apply, then all hearings where dismissal of the officer is

a possible outcome should be held in public. However, there is evidence that hearings should be public in a wider range of cases.

The view of the Home Affairs Committee is that decisions on public attendance should be made on a case by case basis by the presiding officer, and only in exceptional circumstances should there be a need to hold hearings in private. This is the situation in the medical and legal professions, as well as for military tribunals. The Home Office statement that disciplinary hearings contain too much confidential information to be held in public is contradicted by the practices of these other disciplinary tribunals. Cases of medical and military misconduct would appear to have the same potential to contain a great deal of confidential information; medical records of patients and information about the policies and procedures of the armed forces are both highly confidential, and military tribunals might even have implications for national security. However, in practice, there are very few occasions when the public is prevented from attending even part of the hearing.

The other government argument is that disciplinary hearings are essentially an internal management exercise. However, the medical and legal professions and the military hold their hearings in public, and these hearings are performing the same disciplinary function. The fact that so many people recognise the need for an independent presence on the adjudication panel (see above), is indicative of the requirement for disciplinary hearings to perform a dual function; internal discipline and external accountability. A public hearing will still enable effective management of police officers, but it will also bring an openness and transparency to the proceedings that will enhance the accountability of the disciplinary process.

Liberty recognises that there is likely to be more public and media attention focused on police disciplinary proceedings than for other sections of the public service. However, this public attention is due to the fundamentally important role of police officers in the criminal justice system. The adjudication panel will have the power to prevent public attendance when it would be prejudicial to the officer's case to allow the public to attend. This strikes the right balance between protecting the right to a fair hearing for police officers, and ensuring that the disciplinary process is open, transparent, and accountable.

Where hearings are held in public, the police officer concerned should be allowed legal representation. At all hearings, even those held in private, the complainant should be accompanied by a legal representative to make sure that he or she understands the proceedings.

## 8.5 Recommendations

### Criminal prosecutions

- 36** The IPCC should make the decision to refer the case to the appropriate body for consideration of prosecution.
- 37** A) The members of the IPCC should make the decision to prosecute with independent counsel's advice.  
B) A designated section of the IPCC should handle the prosecution of criminal cases.

### Alternatively

- C) The decision to prosecute and the prosecution should be conducted by an entirely independent section of the CPS. There are public guidelines as to what constitutes a serious offence.
- D) The decision to prosecute by the CPS should be made in consultation with the Treasury Counsel.
- 38** The CPS or IPCC is obliged to give detailed reasons in cases where it was decided that no criminal proceedings should be brought.

### Disciplinary proceedings

- 39** The IPCC should decide whether a case should proceed to a full disciplinary hearing, be dealt with by internal police management, or that no further action should be taken.
- 40** The preparation and presentation of disciplinary cases should be undertaken by the IPCC.
- 41** The adjudication panel at disciplinary hearings should comprise three members: the relevant Assistant Chief Constable and two non-police members.

### Public or private disciplinary proceedings?

- 42** The adjudication panel should decide whether disciplinary hearings should be in public or private. The presumption will be that they should be heard in public unless there are exceptional circumstances.
- 43** Where hearings are held in public, the police officer concerned should be allowed legal representation.
- 44** At all hearings the complainant should be accompanied by a legal representative to make sure that he or she understands the proceedings.

# 9 A complaint analysis unit

## 9.1 Introduction

It has already been stated that, in the recommended model, the IPCC would have control of the complaints process. It should decide what constitutes a complaint, and how it should be investigated. The IPCC would have an oversight role with regard to informal resolution. All other complaints would be passed to the IPCC which would decide how they should be investigated.

The IPCC will, therefore, be recording details of all complaints that are made by members of the public. It is in a uniquely well placed to scrutinise individual complaints and patterns of complaints from police forces all around the country. A pro-active unit within the IPCC would be able to analyse this data so that recommendations could be made in order to minimise the possibilities of complaints recurring in the future.

Before making recommendations about how a complaint analysis unit would function within the IPCC, it will be useful to analyse the current situation in this country and abroad to see what lessons can be learned.

## 9.2 The Police Complaints Authority

The Police Complaints Authority (PCA) currently produces thematic reports based on its work, and includes other matters relating to the need for change in policies and procedures in its Annual Report. It has a database of complaints statistics and details which forms the basis of reports into a variety of issues. Members who are supervising investigations and reviewing case files from all over the country are able to evaluate where analysis and research would be most appropriate.

The last annual report of the PCA states:

**'This year the Authority published three reports on policing issues – custody officer training, new batons and reducing the risks of deaths in**

**custody. All three drew on the lessons learned from the work of the Authority and produced clear recommendations for action by police forces. The feedback has been overwhelmingly positive. Improvements in training in particular have been reported as resulting directly from one or other of the Authority's reports.'**<sup>1</sup>

The PCA clearly sees that it can play a valuable pro-active role in analysing complaints and producing reports and recommendations. Analysis of complaints trends is seen by the PCA as an important tool in improving training within police forces:

**'Although many forces use complaints to identify the training needs of individual officers, the Authority commends those who apply the lessons learnt more broadly to pinpoint defects in overall training provision. The Authority's issue-based reports also draw out the lessons for training from complaints investigations.'**<sup>2</sup>

Research can be used in a variety of different ways. For example, before the report on deaths in custody, there was a national conference to look at the issues raised by the PCA research. A follow up report is currently being written examining the implementation of the recommendations in police forces around the country.

## 9.3 The need to extend this role

There is, however, no discrete funding for the PCA to undertake this kind of function: reports are written and analysis undertaken only to the extent that funds are available. Members of the PCA have expressed the view that a great deal more of this kind of work could be done if the PCA had the funds to undertake it.

Many commentators and academics who have studied the police complaints process see a complaint analysis unit as a fundamental aspect of any body dealing with police complaints.<sup>3</sup> Goldsmith is one of many to state the need for oversight bodies to broaden their role and focus more on their proactive functions:

**‘This year the Authority published three reports on policing issues – custody officer training, new batons and reducing the risks of deaths in custody. All three drew on the lessons learned from the work of the Authority and produced clear recommendations for action by police forces. The feedback has been overwhelmingly positive. Improvements in training in particular have been reported as resulting directly from one or other of the Authority’s reports.’**

1998–99 Annual Report of the Police Complaints Authority

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‘Collection of evidence in individual complaints needs to be seen in part as facilitating “information feedback” about how police departments are operating and the state of police-community relations. Although external and civilian review agencies often produce annual reports which, in addition to statistical compilations, list organisational reforms and procedural changes recommended on the basis of complaint findings and patterns, more should be done to develop and publicise this aspect of their work.’<sup>4</sup>

Various reports from the last few years have shown the need to increase pro-active analysis of complaints in this country. The recent Her Majesty’s Inspectorate of Constabulary (HMIC) report on public confidence in the police force noted that police forces were often failing to learn lessons from proper analysis of why more complaints were occurring:

‘The Inspection Team asked forces whether they analysed their incivility complaints to see what lessons might be learned. Many did not, although some mentioned the need to address the apparent racial imbalance in their stop and search statistics; this, however, often amounted only to an attempted justification of the imbalance as not being racial prejudice. One community liaison officer in a busy inner-city division admitted people from ethnic minorities accounted for one third of all the people targeted for attention in this way. Interestingly, many people spoken to during the Inspection, who had been stopped, even repeatedly stopped, did not object in principle; they only objected when the officer was unable or reluctant to explain adequately why the stop had taken place.’<sup>5</sup>

The report goes on to state that:

‘Many forces are not using complaint and civil claims data effectively as a management tool. One complaints and discipline investigating officer remarked: ‘Complaints are seen as a threat to the organisation, rather than as a way to learn how to provide a better service’.<sup>6</sup>

The recent report into stop and search policies within the Metropolitan Police Force has also drawn attention to the need for close monitoring to ensure that sections of the community are not unnecessarily alienated by improper use of police powers.<sup>7</sup> As Hayes suggested for Northern Ireland,<sup>8</sup> it is important that the complaint analysis unit takes particular care to

monitor cases and statistical patterns concerning ethnic minorities and other minority groups.

The use of informal resolution is another area where a complaint analysis unit could help to improve the complaints process. In 1989 it was noted that recourse to informal resolution varied greatly between forces, from about 12% to 48% of all complaints.<sup>9</sup> An analysis of the complaints statistics for 1998–99 shows that a similar pattern is still occurring. An analysis of the different uses of informal resolution within forces across the country would allow the IPCC to suggest how informal resolution could be used uniformly.

Many commentators on complaints systems have written about how external oversight bodies are best placed to adopt a broad approach concerning allegations of misconduct.<sup>10</sup> Inquiries and commissions set up to look into improving complaints systems have also commented on this phenomenon.<sup>11</sup>

‘Internal affairs units have a tendency to investigate in a narrow and individual specific context. Outside investigation is required if systematic, organisational, and management failings are to be revealed.’<sup>12</sup>

The Hayes Report also states that the NI police complaints system is too narrow in its approach. It looks towards disciplining individual officers rather than complainant satisfaction and institutional reform.<sup>13</sup>

## 9.4 The Northern Ireland Ombudsman

The pro-active function has been recognised as a vital part of the new Ombudsman’s office in Northern Ireland. Hayes spoke of the need for a research arm of the Ombudsman’s office which would track and monitor trends in complaints.<sup>14</sup>

Hayes envisaged that the Ombudsman’s Office would become the focal point for all the statistics on complaints. This would avoid the disparity in the statistics produced by the Chief Constable and the Independent Commission for Police Complaints (ICPC).<sup>15</sup> The Ombudsman would then report on practices tending to increase occasions for complaint:

‘...the Police Ombudsman...would be expected to analyse trends and to draw attention to policies and practices which for some reason give rise to an inordinate number of complaints...He/she might also analyse the geographic spread of complaints and whether these seemed to be associated with a particular station or management style.’<sup>16</sup>

However, the Police (Northern Ireland) Act 1998 does not implement these ideas fully. Only section 61 of the legislation deals with these issues, and it fails to put any onus on the Ombudsman to carry out research into patterns of complaints.

The Report of the Independent Commission on Policing for Northern Ireland (the Patten Report) also makes some comments on the new Ombudsman’s Office. The Commission stated in its report that it was fully behind the recommendations of Hayes and believes that:

‘a fully independent Ombudsman operating as envisaged in his report should be a most effective mechanism for holding the police accountable to the law.’<sup>17</sup>

It also made specific recommendations concerning the Ombudsman’s Office that it saw as crucial for its effective functioning. This included the most detailed recommendation which stated:

‘The Ombudsman should be responsible for compiling data on trends and patterns in complaints against the police, or accumulations of complaints against individual officers...and should work with the police to address issues emerging from this data. It is important that management at all levels should use information from the complaints system as a tool of management and to identify training needs. The Policing Board<sup>18</sup> should utilise such data in developing or reviewing policies or practices. There should be no doubt of the Ombudsman’s power to investigate and draw conclusions from clustering in patterns of complaints and to make recommendations for change to police management and the Policing Board.’<sup>19</sup>

Furthermore, the recent appointment of the Ombudsman led to the Northern Ireland Information Service putting out a statement on the appointee and the roles she would be expected to perform. It states, as one of only six points made, that:

‘The legislation also provides for the Ombudsman to produce an annual report, and such other reports as are requested by the Secretary of State. The Ombudsman’s Office will also be expected to analyse trends in respect of complaints. For example the extent to which specific policing practices or policies, the use of certain types of equipment, etc, tend to increase the occasion of complaint, and to make recommendations on these issues.’

The comments contained in the Hayes and Patten Reports and the statement made by the Northern Ireland Information Service show that the analysis of trends of complaints is a central part of the role of the Ombudsman. The information the Ombudsman’s office will have available from its investigations and the database of complaints it will compile are considered valuable assets that need to be fully explored.

## 9.5 The Criminal Justice Commission in Queensland

There are various civilian oversight bodies that have pro-active functions in addition to their core reactive powers. There are several cities in the USA which have systems of civilian oversight of police complaints which make procedural and policy recommendations to their police departments. In New York, San Francisco, San Jose, Portland, and San Diego as well as other cities in the USA, civilian review agencies have the power to analyse patterns of complaints and make recommendations on changes in policy or procedure to police chiefs. This is also the case in several Australian states. The system held in highest regard is in Queensland, where the Criminal Justice Commission (CJC) has a Research and Prevention Division. This is the pro-active arm of the CJC.

The Division undertakes wide-ranging research into all aspects of policing. Section 29(3)(e) of the Criminal Justice Act 1989 empowers the CJC to ‘offer and render advice or assistance by way of education or liaison to... units of public administration concerning the detection and prevention of official misconduct.’ Between April 1990 and June 1996 the CJC made a total of 197 procedural recommendations to the QPS. The range of matters covered has been very wide including the desirability of introducing guidelines to regulate the use of police dogs, the restricted use of strip searches, and property handling procedures. The majority of these procedural recommendations have been acted upon by the QPS. The CJC routinely undertakes follow-up projects to monitor the implementation of its recommendations, and their effectiveness.

In the case of complaints of minor misconduct which are referred back to the QPS for investigation, the CJC now has in place a system of routine auditing, which can be used to flag areas where QPS procedures and practices appear deficient. Under section 23(h) of the Criminal Justice Act the CJC is also empowered to issue policy directives to the QPS, although to date this power has not been used.<sup>20</sup>

The CJC has a very wide remit. Much of its work is carried out in this country by Home Office research. However the basis for the CJC's research into police policies and procedures is its access to complaints information supplied by the Official Misconduct Division which investigates police misconduct. The Parliamentary Criminal Justice Committee (PCJC) oversees the operations of the CJC and reports on its findings. In its 1998 report it recognises the great value of having an independent body with the power to undertake pro-active research based on complaints analysis:

**'The Committee accepts the Commission's submission that the Research Division is uniquely situated to discharge the independent research and monitoring function in relation to the QPS. The Committee considers that this unique position which the Research Division occupies is largely due to the fact that it has ready access to the complaints data from the Official Misconduct Division. The Committee considers that these files will continue to form the primary source material for major reforms in the police service.'**<sup>21</sup>

The presence of the Research and Prevention Unit within the CJC allows easy access to the data with which it undertakes its research, and a close working relationship with misconduct investigators. This relationship also works well in reverse. The Research and Prevention Unit undertakes surveys of complainants who have expressed dissatisfaction with the complaints process. The findings of these surveys have enabled the Official Misconduct Division to institute new procedures.<sup>22</sup> Complainant surveys play a vital role as quality control mechanisms for the complaints process.<sup>23</sup> Public opinion surveys are also an important mechanism for measuring public awareness of the oversight body's role and perceptions of its effectiveness.<sup>24</sup> The CJC carries out these surveys every two years. As noted in Chapter 1, the PCA carried out annual surveys until 1996, when cuts in funding meant that it could no longer perform this role.

One example of research undertaken by the CJC was a project looking at assault complaints with a view to reducing situations that gave rise to such complaints.<sup>25</sup> The justification for research into these types of complaints in particular was that they are the most common category of

complaints against the police, but the most difficult to investigate and prove:

**'For various legal and evidentiary reasons complaints of assault are very difficult to substantiate, a factor which limits the deterrent value of the complaints investigation process.'**<sup>26</sup>

There were many recommendations made in the final report into assault complaints, based on analysis of complaints and further investigations and inquiries. The findings and recommendations are very detailed, but a summary of some of the most important are as follows:

- improved rostering and supervision so that inexperienced officers are paired with more experienced colleagues on high-risk shifts;
- improved communication skills so that conflicts are resolved without violence;
- greater use of female officers;
- less reliance on arrest for minor offences;
- enhanced monitoring of police activity, particularly through strategically placed video cameras and the mandatory use of tape recorders in the field;
- better identification and management of 'at risk' officers.

Research in this country into the nature of the confrontations giving rise to the occurrences of complaints suggests that a similar analysis here might be useful.<sup>27</sup>

The Research and Prevention Division of the CJC has also been instrumental in creating a better working relationship with the QPS. Reports are now regularly written jointly between the CJC and the QPS, and recommendations of the CJC are, for the most part implemented satisfactorily. Lewis states:

**'By having discrete corruption prevention and independent research functions, the Criminal Justice Commission is not seen as simply wielding a big stick over the police. It is also seen as the provider of impartial, expert and relevant advice which assists police to prevent complaints occurring. The value of this kind of input has been acknowledged by the Queensland police hierarchy.'**<sup>28</sup>

Such acknowledgement can be found in the PCJC Report mentioned above, where the Committee noted that the Research Division had

.....

**'By having discrete corruption prevention and independent research functions, the Criminal Justice Commission is not seen as simply wielding a big stick over the police. It is also seen as the provider of impartial, expert and relevant advice which assists police to prevent complaints occurring. The value of this kind of input has been acknowledged by the Queensland police hierarchy.'**

Dr Colleen Lewis

‘established an extensive working relationship with the Queensland Police Service’.<sup>29</sup> It included in its report a submission from the Police Commissioner, Mr Jim O’Sullivan, which praised the activities of Research Division.

### 9.6 Acting on the recommendations

It is important that the IPCC does not simply make recommendations for change without there being any means of bringing those recommendations into practice. Because of the nature of the relationship between the IPCC and the police service, there may at times be reluctance to address the issues raised by the research and to act upon recommendations made by the IPCC. Furthermore, even where recommendations are formally accepted, this cannot be a guarantee that changes have occurred ‘on the ground’. Follow-up assessments need to be undertaken to ensure that changes have actually occurred.

There should be a mechanism whereby the IPCC can ensure that its recommendations are considered, and where appropriate, brought into practice by police forces. In Queensland, as has been stated, the CJC has the ultimate power to direct that a recommendation be implemented. Although this power has never been used it acts as an important deterrent. In New South Wales all reports are tabled in the Parliament.<sup>30</sup> In this country it should be possible for the IPCC to work in conjunction with HMIC to ensure that appropriate action is taken by police forces in response to recommendations by the IPCC. However it is important that there is some kind of formal mechanism to ensure that all reports of the IPCC are properly considered.

### 9.7 Conclusions

The current research work of the PCA and the evidence that further research would be beneficial, the emphasis placed on analysing patterns of complaints for the Ombudsman in Northern Ireland, and the work of the CJC in Queensland all seem to suggest that giving the IPCC a strong pro-active research role is a fundamental element of creating a successful oversight body. As mentioned above, there can also be benefits to the IPCC as a whole in having a research role within the organisation. One of the perceived problems for an external body investigating police misconduct is that it will find it difficult to obtain the co-operation of the police in its investigations. If the IPCC can gain a reputation for producing high quality research, which leads to positive reform of police forces, then this could help to promote co-operation between the two bodies.

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### 9.8 Recommendations

- 45 A complaints analysis unit should be a fundamental part of the IPCC.**
  - 46 The unit should have discrete funding to allow thorough analysis of complaints and well-researched recommendations for change.**
  - 47 There should be a formalised mechanism for ensuring that recommendations are adopted by all police forces where appropriate.**
- .....

# 10 Structure of the organisation

## 10.1 Introduction

This chapter presents an overview of how the IPCC will be structured. It is broken down into the following sections:

- External accountability
- Management structure
- Office structure
- Staff structure
- Costs

## 10.2 Accountability

As with any public body, there must be mechanisms in place to ensure that the IPCC itself can be held to account for its operations. It will need a formal mechanism whereby it reports regularly on its activities. This requirement could be fulfilled by an annual report to the Home Secretary which is also published and laid before Parliament. The IPCC would also be under a general duty to report to the Home Secretary on matters which he identified. This is the current system of accountability for the Police Complaints Authority (PCA).<sup>1</sup> The PCA also produces an annual report for the Home Secretary 'on the discharge of their functions during that year'.<sup>2</sup> Any report written by the PCA is laid before Parliament, and is published by the Home Secretary.

There should also be other mechanisms by which the IPCC can be held accountable. As with any other public body, the actions of the IPCC will open to judicial review. It may also be appropriate to bring the IPCC under the control of the Parliamentary Commissioner for Administration (Parliamentary Ombudsman), who investigates complaints about 'the exercise of administrative functions' of any departments or authorities under the remit of that office.<sup>3</sup>

## 10.3 Management structure

A management structure needs to be designed for the IPCC which enables it to carry out the

functions described elsewhere in this proposal in a manner that produces confidence in its ability to be an effective oversight body.

### The chair of the organisation

There must be an overall head of the organisation who is responsible for the operations of the IPCC. This individual will have overall responsibility for its investigations, the publication of reports, and all its other operational functions.

The head of the organisation will need to be able to convince both the public and police officers of the independence and objectivity of the IPCC. He or she will need to be of sufficient stature to create a culture within the organisation which is distinct from the police organisation, and is professional in its handling of cases. The postholder should therefore be a person of considerable public standing, who would be capable of handling relationships with government, chief police officers, the Police Federation, the media and complainants. He or she should also have extensive legal experience, because of the need to make decisions on criminal prosecutions, and the general need to assure the public and police officers that complaints cases are being handled professionally and according to legal principles. Legal experience is a requirement for the heads of the two civilian oversight bodies with the most extensive investigative powers; Queensland<sup>4</sup> and Ontario.<sup>5</sup> It was also recommended by Hayes that the Ombudsman in Northern Ireland have legal experience,<sup>6</sup> and the first appointee is a Senior Lecturer in Law.

### Members

Consideration needs to be given to whether the head of the organisation will be a single person in charge of running the IPCC, or whether there will be members who will jointly participate in the running of the organisation.

The Criminal Justice Commission (CJC) in Queensland employs a Chair and four part-time

Commissioners, who act in the same way as members. One Commissioner must be a legal practitioner and the other three must have demonstrated an interest and ability in community affairs. In addition at least one of the members must have senior managerial experience in a large organisation.<sup>7</sup> The Chair and the Commissioners together make up the 'Board' of the Commission, which generally meets on a fortnightly basis. The role of the Commissioners on the Board can be summed up as follows:<sup>8</sup>

'...to provide informed and relevant contributions to the deliberations of the Commission; to offer the Commission a broad range of expertise and knowledge to assist the Commission in achieving its objectives; to act as an internal accountability mechanism to ensure the Commission acts appropriately.'

The Parliamentary Criminal Justice Committee which reports to Parliament on the activities of the CJC has reviewed this system of management, and options for reform including the abolition of the Commissioners and replacement with a Deputy Chair. However, it concluded that:<sup>9</sup>

'...the current management model allows a cross-section of community representation at the Commission that could not be so readily achieved under any alternative model...The broad range of professional and practical experience brought to the Commission by the part-time Commissioners is extremely valuable, and the Committee acknowledges the importance of their role.'

The advantage of this kind of structure is that it allows the experience and expertise of a wide range of individuals to be utilised. It also gives the opportunity for participation in the organisation by a broad range of interested parties, which will add to the credibility of the complaints process as a result. This type of structure can be seen in other bodies where the importance of a broad range of interests and backgrounds is apparent. The Criminal Cases Review Commission (CCRC) is structured in this way, with no less than eleven members serving at any one time.<sup>10</sup> This has allowed members with diverse experience to be appointed; local government, academia, psychiatry, accountancy, the police and criminal and commercial law.<sup>11</sup> The Legal Aid Board is another body which has between eleven and 17 members of the board acting under a chairperson,<sup>12</sup> to obtain a suitably wide range of experience of law and legal services at a management level. The Northern Ireland Human Rights Commission has a management structure made up of a 'Chief Commissioner and other Commissioners appointed by the Secretary of State'.<sup>13</sup> The Secretary of State is obliged to ensure that 'the Commissioners, as a group, are representative of the community of Northern Ireland'.<sup>14</sup>

In all of the above examples, a management structure that includes members or their equivalents has held great advantages for the bodies concerned. Members can introduce a wide range of experience and be representative of a wide range of interests. It is crucial to the validity of the IPCC that its members are representative of the community as a whole. It is particularly important that ethnic minority communities are substantially represented to ensure that this body has validity for those individuals who have least faith in the current system<sup>15</sup>.

## The role of members

The duties of members should include:

- Formulating policies and strategies for the IPCC, together with the chair of the organisation;
- Taking responsibility for the actions and decisions of the IPCC;
- Liaising with police organisations and local communities to promote the role of the IPCC;
- Taking final decisions on all fully investigated cases about whether disciplinary charges should be brought or whether cases should be referred for criminal prosecution;
- Granting dispensations in cases where IPCC investigators or complaints and discipline departments are seeking it.

## Length of tenure of chair and members

It is common practice among civilian oversight bodies and other comparable institutions for the chair, members and their equivalents to have maximum permitted time in their positions to avoid a situation where senior management becomes too entrenched in its role. It also allows fresh input by new management at reasonable intervals. However, shortened tenure periods should also be avoided so that members are not lost just as they become able to perform the role to its full potential. This is a problem that has occurred at the CJC in Queensland<sup>16</sup>. It appears to be general practice for lengths of tenure to range between three and seven years. A five year period of tenure would create the right balance between using experience and ensuring fresh input at regular intervals. For the Chair of the IPCC a longer period may be considered appropriate to ensure the stability of the organisation. The Ombudsman in Northern Ireland is appointed for a seven year period<sup>17</sup>, and this would also appear to be a suitable period for the Chair of the IPCC.

## Structure of the organisation

A description of the structure of the organisation as a whole is given below. It starts with the office structure, moves on to the type and number of staff needed in each office, and ends with a discussion of the cost of this model. All the figures given are estimates of the numbers needed to make the IPCC run effectively. The usefulness of these estimates is in giving a broad overview of the structure of the IPCC, rather than a precise calculation of the numbers needed.

### 10.4 Structure of offices

We have seen in Chapter 2 that the IPCC will be dealing with several thousand complaints per year<sup>18</sup>. Many of these complaints will be the most serious – and therefore time consuming – that the police currently investigate. With such a large number of complaints the IPCC will need regional offices around the country. To investigate all complaints from one central location would present great problems to the IPCC's ability to carry out its investigations effectively.

If the IPCC operated from one central location, then investigators would be travelling out to investigate complaints in locations all over the country from their central position. An inability to interview witnesses and gather evidence at short notice and without considerable travel would inevitably prevent the IPCC from conducting investigations as effectively. Furthermore, a number of regional offices in locations around the country would help the IPCC to create links with local communities, publicise its role as an independent investigative body, and assess the particular policing problems raised by complaints for the region in question. Several bodies that undertake a sizeable number of investigations into police misconduct in other jurisdictions have identified a need for a regional structure. The Police Complaints Commission in Ontario has seven regional offices<sup>19</sup>. The Independent Complaints Directorate in South Africa has said that it needs offices in each of the nine provinces to run an effective operation.<sup>20</sup>

The regional offices could not be within police premises: this would undermine confidence in its independence. Any such body that operated in such a way would immediately become a target for accusations of bias and lack of independence.<sup>21</sup> Almost all the major police oversight bodies around the world operate from premises totally separate from those of the police. The IPCC will need a sufficient number of offices to allow investigators to handle complaints effectively, without excessive delays to their arrival on the scene of the complaints. Too many offices, however, will lead to

excessive costs and risk replicating existing police organisational structures and reduce the separation between the two bodies. Finally, if the IPCC is operating from too many locations, then investigators will not receive the experience gained from conducting a broad range of investigations.

Taking the above considerations into account, we have designed a structure for the independent body incorporating seven offices, with each office controlling a region of the country, and a head office in Birmingham. A list of the regional areas, office locations and police forces covered is as follows:

- 1 **London, London Office:** Metropolitan Police Service, City of London
- 2 **South East, Guildford Office:** Hampshire, Surrey, Sussex, Kent, Essex
- 3 **South West, Bristol Office:** Devon & Cornwall, Avon & Somerset, Dorset, Wiltshire, Gloucestershire, Gwent, South Wales
- 4 **East, Norwich Office:** Thames Valley, Hertfordshire, Suffolk, Norfolk, Cambridgeshire, Bedfordshire, Northamptonshire, Lincolnshire
- 5 **Midlands, Birmingham Office:** Dyfed Powys, North Wales, West Mercia, Staffordshire, West Midlands, Warwickshire, Leicestershire, Nottinghamshire, Derbyshire
- 6 **North West, Manchester Office:** Merseyside, Greater Manchester, Cheshire, Lancashire
- 7 **North, York:** South Yorkshire, West Yorkshire, North Yorkshire, Humberside, Cleveland, Durham, Northumbria, Cumbria

These seven offices have been located so that, as far as is possible, each office is dealing with a similar number of complaints. A list of the regions with the current number of complaints currently dealt with by each region can be found in Appendix 3. The offices in London, Birmingham and Manchester have comparatively larger regions, with more complaints, and this has been reflected throughout by higher staffing levels in these regions. The London office generally has staffing levels twice as high as the four smaller offices, with the Birmingham and Manchester offices one and a half times as high.

### 10.5 Staff structure

#### The Head Office

It seems reasonable that the Head Office should be located in Birmingham: this provides a central location and will be cheaper than locating in London. The Chair will be based in the Head Office, and members will attend regular meetings where the policies and

practices of the IPCC are discussed. The Head Office should also contain a number of other functions. Placing as many functions as possible in a central location will reduce the overall costs of the IPCC. These are the functions that can be located centrally:

**Complaints Analysis Unit.** This is the unit that will analyse complaints and provide strategies and policies to minimise future occurrences.<sup>22</sup> It will produce publications setting out the details of research and projects undertaken. Placing this unit in a central location will ensure that there is consistency in analysis of complaints, and also it will be far more cost effective than having separate units in each regional office. The Complaints Analysis Unit will have to develop a central database on which a range of information about all complaints can be stored for future analysis. This pro-active side of the IPCC can potentially produce the greatest benefit to the police service as a whole through its preventative approach. It is therefore vital that this function is not under-funded. A team of five researchers working under a head of research would be the minimum that would allow the IPCC to undertake meaningful analysis of complaints from all the forces around the country.

**The helpline.** This is the telephone service that will provide information to complainants about the complaint system.<sup>23</sup> Four helpline advisors should be sufficient to provide a comprehensive service to complainants

**Other staff.** There are a number of other staff that should be located in the central office; Human Resources, Finance and the Head of the IT support for the organisation. There should also be a PR person at the Head Office to co-ordinate the IPCC’s dealings with the media. Finally there must be sufficient administration staff to make the office run efficiently, including a senior secretary for the chair.

The overall staff numbers needed for the Head Office are set out in the table below:

.....  
**Head office staff numbers**

| Staff type               | number |
|--------------------------|--------|
| Chair                    | 1      |
| Complaints analysis unit | 6      |
| Helpline                 | 4      |
| PR                       | 1      |
| Human resources          | 2      |
| Finance                  | 3      |
| Head of IT support       | 1      |
| Administration           | 4      |

.....

**Structure within regional offices**

Each regional office will have a number of staff performing different roles within the organisation. For the purpose of this analysis, staff have been split into four categories:

- Members and other senior staff
- Investigators
- The initial analysis unit
- Other staff.

Staffing levels are calculated on the basis of seven regional offices. However the London, Manchester and Birmingham offices are covering larger areas, with higher levels of complaints than the other regions. London therefore has double the staff of the smaller regions for most of its functions. Manchester and Birmingham have one and a half times the number. A table of the staff in each of the regional offices is given on the opposite page. Here is a brief explanation of their roles and reasoning behind the numbers chosen.

**Members and other senior staff.** The major responsibilities of the members have already been explained in the section above on the management structure of the organisation. it is proposed that there are 18 members. This will allow a number of members to be located in each regional office, and will ensure that they are able to perform all their roles adequately.

**Regional directors.** Each regional office will also need a director who will be the line-manager for all the staff in his or her area, and ensure the smooth running of day to day operations. He or she will report to the members.

**Assistant directors.** These will also operate in the London and Birmingham offices; London is the biggest region, and Birmingham contains the central office functions.

**Case reviewers.** These staff will work with the members to review all completed investigations, and to grant dispensations in cases where further investigation is deemed inappropriate. This number of staff is required because they will be reviewing all the police investigations as well as the investigations of the IPCC. It would be impossible for the members to complete this workload alone.

**Investigative teams.** Our analysis of the number of investigators needed has been based on several sources. We have been able to analyse the figures and workings set out in the KPMG feasibility study. We have looked at the current workload and staffing levels of complaints and discipline departments in this country, and assessed the work of civilian oversight bodies in

### Staff number in regional office – full time equivalents

| Staff type       | London      | SE        | SW        | East      | Midlands    | NW          | North     | Total        |
|------------------|-------------|-----------|-----------|-----------|-------------|-------------|-----------|--------------|
| Members          | 4           | 2         | 2         | 2         | 3           | 3           | 2         | 18           |
| Directors        | 1           | 1         | 1         | 1         | 1           | 1           | 1         | 7            |
| Asst directors   | 1           |           |           |           | 1           |             |           | 2            |
| Case reviewers   | 4           | 2         | 2         | 2         | 3           | 3           | 2         | 18           |
| Investigations   | 40          | 16        | 16        | 16        | 24          | 24          | 16        | 152          |
| Initial analysis | 12          | 6         | 6         | 6         | 9           | 9           | 6         | 54           |
| Informal res     | 2           | 1         | 1         | 1         | 1.5         | 1.5         | 1         | 9            |
| Community rela   | 2           | 1         | 1         | 1         | 1.5         | 1.5         | 1         | 9            |
| Administration   | 11.5        | 5         | 5         | 5         | 7.5         | 6.5         | 5         | 45.5         |
| <b>Total</b>     | <b>77.5</b> | <b>34</b> | <b>34</b> | <b>34</b> | <b>51.5</b> | <b>49.5</b> | <b>34</b> | <b>314.5</b> |

other jurisdictions, in particular the CJC in Queensland. While none of these sources was able to provide an absolute answer to the number of investigators needed by the IPCC, the combined information we were able to acquire allows us to predict that a figure of around 150 investigators would allow the IPCC to complete all the cases within its remit. This represents a reasonable estimate of the investigative staff that will be needed if the IPCC is to be able to complete its workload of 1,600 fully investigated cases per year.<sup>24</sup> This would mean that on average each investigator was completing just over 10 investigations per year, although there is likely to be a large disparity between individual investigators due to the differing length of individual cases. With the appropriate support staff (IT, administration etc.) and management structure in place, this is not an unreasonable workload.

Each office will need its own investigators to investigate cases in that area. We have put investigators into teams of eight, with one chief investigator, two senior investigators and five junior investigators in each team. This structure also allows two former or seconded police officers to make up 25% of each team, which is the prescribed police presence.<sup>25</sup> Because of the need to have a civilian team leader at the head of each team, there should be one senior investigator and one junior investigator who are police officers. This would allow a more senior police officer (a Detective Inspector or Detective Chief Inspector), with more policing experience to operate within each team, as well as a more junior officer (a Sergeant or Constable), while the overall balance of the investigative teams would retain a strong civilian bias. The following two tables demonstrates how an investigative team would work, and sets out the number of investigative teams assigned to each regional office:

#### An investigative team

|                     |   |
|---------------------|---|
| Position in team    | Civilian/police   |
| Chief investigator  | Civilian  |
| Senior investigator | Civilian  |
| Senior investigator | Police<br>Detective Inspector or<br>Detective Chief Inspector |
| Junior investigator | Civilian  |
| Junior investigator | Police<br>Constable or Sergeant                               |

#### Number of investigative teams in each regional office

|            |   |            |   |
|------------|---|------------|---|
| London     | 2 | Midlands   | 3 |
| South East | 2 | North West | 3 |
| South West | 2 | North      | 2 |
| East       | 2 |            |   |

The above model may, however, be underestimating the need for flexibility in the investigative staff of the IPCC. There may be a need for a pool of investigators who can be assigned to any regional office when particularly long and complex cases are under investigation by a particular region. This is the practice in Ontario, where the SIU has a large proportion of its investigative staff not attached to any particular region. These investigators are assigned to regions as the need arises in particular cases<sup>26</sup>. The IPCC will have to assess this issue as the work of the body progresses.

In considering this system for investigators two problems emerged. First, it was pointed out by several commentators that police investigators

at the IPCC would be on higher pay levels than the civilians of the same rank, and that this would cause problems within investigative teams. This issue will have to be overcome. The alternative – that civilian investigators all be paid the same as police officers – would significantly increase the costs of the IPCC. The fact that police officers will only be seconded to the IPCC for short periods will do something to ease this issue. The second problem raised was that, in cases where the IPCC was investigating senior ranking police officers, the lack of a police officer of equal or greater ranking at the IPCC would hinder the investigation. It is difficult to predict how serious a problem this will be. The civilian Chief Investigating Officer may find that he or she is able to lead the investigation, and that his or her seniority is sufficient to obtain the co-operation of senior police officers. Alternatively, one or more teams could be created from a pool of investigators with higher ranking police officers, and equivalent civilians to deal with cases against senior officers, or several higher ranking officers could be seconded and join investigating teams when there was an investigation into a senior officer.

**Initial Analysis Units.** Initial Analysis Units will be recording all complaints suitable for investigation, and deciding whether they should be investigated by the IPCC or by the police. They will also have the role of receiving all the return slips for informal resolution and recording them. The following table sets out the Initial Analysis Units for each region.

It is proposed that there should be 54 staff undertaking this role. They would be split into six person teams comprising a head lawyer, four paralegals, and one person for administration (two teams for London, one and a half for Manchester and Birmingham, one team for all the other regions), as the following table sets out:

With this level of staffing, the Initial Analysis Units would be recording and allocating just over one complaint per member of staff per day, based on current levels of complaints.<sup>27</sup> This would allow staff plenty of time to make all the

necessary initial inquiries before deciding whether the police or the IPCC should be investigating the case. It also takes account of the fact that there may be some increase in the overall number of complaints made due to the introduction of the IPCC.

The Units would also have the role of recording all return slips for informal resolution.<sup>28</sup> This would not be very time consuming, and would only equate to each member of staff recording the details of two return slips every three days.<sup>29</sup>

## Other staff

**Informal resolution supervisors.** These staff would be in charge of ensuring that informal resolution was being used appropriately in each region.<sup>30</sup> All return slips would be passed on by the Initial Analysis Unit where the complainant wanted to take further action with regard to the complaint. They would also be responsible for all other monitoring of informal resolution, including analysing a sample of cases, and, where appropriate, supervision.

**Community Relations Officer.** Community Relations Officers would work with Members to explain the role of the IPCC to local communities and to refer the concerns of local communities back to the IPCC. It is particularly important that they should have regard to the concerns of ethnic minorities and black communities.

**Other staff.** Each office will need appropriate levels of IT support and administration.

## 10.6 Supervision

No staff have been made available in this report for supervising police investigations. This is because Liberty believes that the IPCC should be concentrating its efforts on investigation of complaints, for the reasons set out in Chapter 1 of this report; it is only by independent investigation of a substantial number of complaints that public and complainant confidence in the complaints system will be restored.

### Initial analysis units

|                    | London    | SE       | SW       | East     | Midlands | NW       | North    |
|--------------------|-----------|----------|----------|----------|----------|----------|----------|
| No of teams        | 2         | 1        | 1        | 1        | 1.5      | 1.5      | 1        |
| Head lawyers       | 2         | 1        | 1        | 1        | 1.5      | 1.5      | 1        |
| Paralegals         | 8         | 4        | 4        | 4        | 6        | 6        | 4        |
| Admin              | 2         | 1        | 1        | 1        | 1.5      | 1.5      | 1        |
| <b>Total staff</b> | <b>12</b> | <b>6</b> | <b>6</b> | <b>6</b> | <b>9</b> | <b>9</b> | <b>6</b> |

‘It cannot be overestimated how important it is that the IPCC is funded adequately to perform its functions. In the course of this research it was found that the most common reason for the failure of civilian oversight bodies in other jurisdictions was lack of resources.’

## 10.7 Costs

This section sets out an estimate of the costs of the IPCC. We are very grateful to Pannell Kerr Forster, the accountants and business advisers who have calculated the figures and costs on which the following discussion is based, as well as helping with the staffing structure above. The figures given represent the best estimates that can be made. They are somewhat hampered by the lack of available information as to the current costs of the complaints system. However, they are based on a number of sources which together allow us to make our estimates:

- our knowledge and experience of the current system and individual complaints and discipline departments;
- the figures produced by KPMG for the Home Office feasibility study on changes to the complaints system:

- figures and costs we have obtained from systems operating in foreign jurisdictions.

However, all figures given are approximations, and more work needs to be done to assess precisely the costs of these proposals before they are implemented. The usefulness of these estimates is in giving a broad overview of the structure of the IPCC and the resources required for its effective operation. It cannot be overstated how important it is that the IPCC is funded adequately to perform its functions. In the course of this research it was found that the most common reason for the failure of civilian oversight bodies in other jurisdictions was lack of resources.

The table opposite gives a breakdown of the employment costs of the IPCC:

The totals for the functions set out above have been arrived at by multiplying the numbers of staff in each function by the salaries we have calculated are appropriate for those functions. Calculations of salaries have been based on a number of sources; current staffing costs of complaints and discipline departments, the KPMG feasibility study for the Home Office on changes to the police complaints system, the Northern Ireland Ombudsman’s Office<sup>31</sup> and systems in foreign jurisdictions. Also, for support staff, we have used the principles which apply to similar sized organisations in calculating costs. All salaries include National Insurance contributions and benefits. All London salaries are calculated at 10% higher rates. Details for the breakdown of the salaries of investigators, complaints analysis units and all other regional staff can be found in Appendix 6.

The tables presented overleaf give the overheads for the IPCC in the first full year in which it operates, and then in subsequent years. The difference between the two sets of figures occurs because the cost of recruitment, training and furniture is substantially higher in the first year of the IPCC, when all staff will have to be recruited and trained. A breakdown of how all figures were calculated is provided below.

**Accommodation:** The cost of office space was calculated at the average rate of 120 square feet per member of staff. The cost of a square foot was calculated by finding out the price of office space in each of the seven sites proposed for the regional offices. In each of the seven cities,

### Employment costs

| Regional offices                | No of employees | Total cost £      |
|---------------------------------|-----------------|-------------------|
| Members                         | 18              | 1,481,200         |
| Regional directors & assistants | 9               | 528,425           |
| Investigators                   | 152             | 4,933,500         |
| Initial analysis                | 54              | 1,184,960         |
| IR monitoring/case review       | 27              | 571,320           |
| Community relations             | 9               | 211,600           |
| IT support                      | 9               | 264,500           |
| Administration                  |                 |                   |
| Investigation                   | 28.5            | 403,650           |
| Regional staff                  | 17              | 315,560           |
|                                 | <b>323.5</b>    | <b>9,894,715</b>  |
| <b>Central office</b>           |                 |                   |
| Chair                           | 1               | 112,500           |
| Complaints analysis unit        | 6               | 155,250           |
| Helpline                        | 4               | 92,000            |
| Finance                         | 3               | 86,250            |
| IT support                      | 1               | 40,250            |
| Human resources                 | 2               | 46,000            |
| PR/marketing                    | 1               | 34,500            |
| Administration                  | 4               | 74,750            |
|                                 | <b>22</b>       | <b>641,500</b>    |
| <b>Total staff costs</b>        | <b>345.5</b>    | <b>10,536,215</b> |

**Overheads – first year**

|                              |                  |
|------------------------------|------------------|
| Accommodation                | 1,286,520        |
| Recruitment                  | 2,009,470        |
| Training                     | 691,000          |
| Travel and subsistence       | 1,216,000        |
| Technical support services   | 1,500,000        |
| Publications and Advertising | 300,000          |
| Office services and supplies |                  |
| Stationery and consumables   | 59,300           |
| Furniture and equipment      | 366,064          |
| Legal and professional fees  | 200,000          |
|                              | <b>7,628,354</b> |

**Overheads – subsequent years**

|                              |                  |
|------------------------------|------------------|
| Accommodation                | 1,286,520        |
| Recruitment                  | 183,082          |
| Training                     | 69,100           |
| Travel and subsistence       | 1,216,000        |
| Technical support services   | 1,500,000        |
| Publications                 | 300,000          |
| Office services and supplies |                  |
| Stationery and consumables   | 59,300           |
| Furniture and equipment      | 36,606           |
| Legal and professional fees  | 200,000          |
|                              | <b>4,850,608</b> |

the cost of renting second hand office space, rates, services, utilities and insurance was added together to provide a cost per square foot.

**Recruitment:** The cost of recruitment for the first year of the IPCC has been calculated at 20% of the total staff cost for the IPCC. However, given the large number of staff involved, it is extremely likely that the IPCC would be able to obtain a contract from a recruitment firm that would substantially reduce this price. Recruitment costs in subsequent years has been calculated on the assumption of 10% staff turnover. Recruitment costs are therefore 2% of total staff costs.

**Training:** Training costs have been calculated at £2,000 per staff member. However, on the basis that non-investigative staff will require minimal training, the amount of money available to train the investigators will be over £3,000. Training for subsequent years is once again calculated on the basis of a 10% staff turnover.

**Travel and subsistence:** This has been calculated at £8,000 per investigator per year. An attempt was made to approximate the distances an average investigator might travel. However, this should be taken as a very broad estimate.

**Technical support services:** With substantial investigative powers, seven regional offices, and the need for large scale databases to record, store and access information about complaints investigations, the IPCC will need very sophisticated computer systems if it is to operate effectively. Other comparable organisations have formed partnerships with private firms who provide all the necessary equipment and support to run their IT programmes. This allows the organisations to spread the cost of implementation over several years. Also, with IT support staff in each regional office (see above) there would be help at first hand when problems arose.

**Publications and advertising:** This figure allows £50,000 for the publication of the Annual Report and £250,000 for advertising and publicising the role of the IPCC.

**Office services and supplies:** This figure includes the cost of furniture (at higher rates for senior staff), stationery and mobile phones. Furniture costs in subsequent years is calculated on the basis of a 10% depreciation in value each year.

**Legal and professional fees:** This figure is included to take account of the expenditure required for obtaining legal advice on prosecutions and disciplinary actions against police officers. However, it may also be necessary to hire in-house lawyers to deal with legal issues and judicial review proceedings against the IPCC. Alternatively the Treasury Solicitor could be used, but this would lack the independence that in-house lawyers would bring.

**Overall cost of the IPCC**

The above calculations of staffing costs and overheads have enabled us to make an estimate of the overall cost of the IPCC, both for its first year of operation and in subsequent years:

**Total costs for first year of operation**

|                |                   |
|----------------|-------------------|
| Staff costs    | 10,536,215        |
| Overhead costs | 7,628,354         |
|                | <b>18,164,569</b> |

**Total costs for subsequent years of operation**

|                |                   |
|----------------|-------------------|
| Staff costs    | 10,536,215        |
| Overhead costs | 4,850,608         |
|                | <b>15,386,823</b> |

This final total, although presented as such, is not a precise figure. The process of costing the IPCC has involved making assumptions that have a certain margin for error. However, we consider that these final figures broadly reflect the scale of the financial commitment necessary in the implementation of this model.

When considering this total cost, it must be recognised that there will be substantial savings in other areas. The implementation of the IPCC would mean that the PCA would be disbanded. This would mean that £3.5 million could be diverted into funding the IPCC. Furthermore, there will be an effect on internal police staffing levels if the IPCC is investigating a significant proportion of the complaints against the police currently investigated by police complaints and discipline departments. It is inevitable that the drop in workload will mean that a substantial number of police officers can be transferred to other duties, without any cost. Therefore in considering the overall cost of the IPCC these savings should be taken into account. Finally, the cost of the IPCC needs to be considered in the context of the overall budget for policing in England and Wales which is well in excess of £7,000,000,000.<sup>32</sup>

## 10.8 Conclusion

This chapter has described the external accountability, organisational structure and costs of the IPCC. It has also provided a model of how the IPCC will exercise the powers and functions set out in the preceding chapters. None of the figures for staffing levels or costs are absolutely precise, but they do provide an estimate of the scale of the commitment necessary to implement the recommendations proposed throughout this report.

## 10.9 Recommendations

- .....
- 48** The IPCC should report to the Home Secretary on its operations in an annual report and such other reports as he might specify. Reports should be laid before Parliament and published.
  - 49** The senior structure of the IPCC should consist of a Chair and Board of Members.
  - 50** The Chair of the IPCC should be a person of considerable public standing with extensive legal experience.
  - 51** The Board of Members should ensure that the IPCC is properly discharging its responsibilities and functions. Members should have a broad range of experience and be representative of a wide range of interests. Particular attention should be paid to ensuring that members are representative of ethnic minorities and black communities.
  - 52** There should be a head office from which the Chair of the organisation will operate. This office should also contain the Initial Analysis Unit, Complaint Analysis Unit and intelligence functions of the IPCC.
  - 53** An organisational structure should be created on a regional basis. Members should operate from the regional offices which should each be run by a regional director. Investigative staff in each region should work in teams under the direction of civilian team leaders. Regional offices should also include Initial Analysis Units, Informal Resolution Monitors, Community Relations Officers, and Case Reviewers.
  - 54** The IPCC should have an effective equal opportunities and non-discrimination policy, that is monitored, in relation to all staffing positions.
- .....

## APPENDIX 1

# Acknowledgements

### England and Wales

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### Others interviewed concerning the CJC

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# Information about systems in other jurisdictions

There are three systems in other jurisdictions that we have found particularly useful when considering reform in this country, because of the extensive investigative powers that have been given to the civilian oversight bodies. Since these systems will be referred to throughout this research, it seems useful to provide an overview of how these civilian oversight bodies operate:

## 1 The Criminal Justice Commission

### Queensland, Australia

The Criminal Justice Commission in Queensland (CJC) was set up as a result of the Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Misconduct. This inquiry uncovered widespread misconduct and corruption throughout the Queensland Police Service (QPS). The report of the Inquiry was highly critical of the internal investigation of police complaints, and concluded that the establishment of an independent civilian oversight body was crucial to the well being of the complaints system.

The CJC represents a very advanced form of civilian oversight, and has a variety of functions in addition to its large investigative capacity. These are set out below. Although a large percentage of its time and resources are spent on policing, it also has the power to investigate serious misconduct of other public officials, such as politicians, prison officers and local authorities. Around 30% of complaints relate to bodies other than the QPS.

The staffing figures for the CJC are as follows:<sup>1</sup>

|  |     |
|--|-----|
| Executive and Office of the Commission | 9   |
| Official misconduct                    | 141 |
| Research and prevention                | 28  |
| Intelligence                           | 23  |
| Witness protection                     | 28  |
| Corporate services                     | 36  |
| Total                                  | 265 |

There follows a description of the structure and functions of the CJC.

## Senior structure

The CJC has a full time Chair and four part time Commissioners. The Chair must be a person of substantial legal qualifications. Of the Commissioners, one must be a legal practitioner and the other three must have demonstrated an interest and ability in community affairs. In addition at least one of the Commissioners must have senior managerial experience in a large organisation.<sup>2</sup> The Chair and the Commissioners together make up the 'Board' of the Commission, which generally meets on a fortnightly basis. The role of the Commissioners on the Board can be summed up as follows:

'...to provide informed and relevant contributions to the deliberations of the Commission; to offer the Commission a broad range of expertise and knowledge to assist the Commission in achieving its objectives; to act as an internal accountability mechanism to ensure the Commission acts appropriately.'<sup>3</sup>

## Official Misconduct Division (OMD)

This division investigates complaints against police officers as well against other public officials. Approximately 3,000–3,500 complaint cases are received by the OMD each year. It does not rely exclusively on complaints, since it can decide to investigate matters of its own volition.

Police misconduct is divided into three categories: official misconduct,<sup>4</sup> misconduct,<sup>5</sup> and breach of discipline.<sup>6</sup> The OMD investigates all cases of official misconduct and many of misconduct, although it does hand back some of these cases to the police for investigation.

When a complaint is first received it is assessed by the Assessment Unit. There, all complaints are recorded and a decision is made on what further action is needed to resolve them. For complaints against the police the decision is whether the CJC should investigate, whether cases should be referred back to the QPS for investigation or informal resolution, or whether cases can be finalised without the need for further action. If the CJC does investigate itself, it will be passed on to

a complaints team for investigation, or a multidisciplinary team<sup>7</sup> if it is a particularly large or complex investigation. If a complaint is handed back to the police for investigation, then the CJC has the power to supervise.

A report is written for every complaint investigated by the OMD, which is assessed by the team leader. This is then assessed by the Chief Officer of the complaints section together with the team leader's recommendation. If a complaint is assessed as involving official misconduct or criminal conduct, then the case is referred to the Director of the OMD, who reports to the Chair. The report may then be forwarded to the Director for Public Prosecutions, or a Misconduct Tribunal for official misconduct. Lesser matters are handed back to the police to be dealt with internally.

## Research and Prevention Division

The Research and Prevention Division undertakes wide-ranging research into all aspects of policing. Section 29(3)(e) of the Criminal Justice Act 1989 empowers the CJC to 'offer and render advice or assistance by way of education or liaison to....units of public administration concerning the detection and prevention of official misconduct.' Between April 1990 and June 1996 the CJC made a total of 197 procedural recommendations to the QPS. The range of matters covered has been very wide including the desirability of introducing guidelines to regulate the use of police dogs, the restricted use of strip searches, and property handling procedures. The majority of these procedural recommendations have been acted upon by the QPS. The CJC routinely undertakes follow-up projects to monitor the implementation of its recommendations, and their effectiveness.

## Other Divisions

### The Intelligence Division

This division maintains databases of specialist criminal intelligence data for the purposes of OMD investigations. There are strict rules on access to the information.

### The Witness Protection Division

This division provides a witness protection programme for individuals who are helping the CJC or any other law enforcement agency with their investigations.

### Corporate Services Division

This division supports the Commission in the areas of finance, administration, human resources and information management.

## 2 The Special Investigations Unit Ontario, Canada

The Special Investigations Unit (SIU) came into existence as a result of the report of the Task Force on Race Relations and Policing in 1988. It was created because of concerns expressed at the hearings of the Task Force 'about the integrity of the process in which police conducted investigations involving other police officers or police services.'<sup>8</sup> Its mandate is to investigate 'circumstances involving serious injury, sexual assault, or death that may have resulted from criminal offences by police officers'.<sup>9</sup> Over the past eight years, it has investigated between 150 and 230 cases per year. The SIU is currently going through the biggest period of transition since its inception due to the report of the Honourable George W Adams QC. It recommended many changes to the SIU in order to improve its relationship with the police, including an increase in staff and resources,<sup>10</sup> legal regulations governing the conduct of SIU investigations and greater openness in SIU investigations. The Report is useful, both in the recommendations it makes, and in highlighting the weaknesses that were present in the SIU, and should be avoided in designing any new system in this country. The Adams Report can be found on the SIU website.<sup>11</sup>

At the present time there is only a limited value in discussing the staffing levels of the SIU, since more staff are currently being recruited as a result of the Adams Report. However, the full compliment of investigative staff would be 69 full and part time. Investigative staff are split into four regions, but there is a large pool of staff which is allocated to regions as investigations arise where they are needed. There is a good organisational chart on the website,<sup>12</sup> which explains the various roles within the organisation.

## 3 The Northern Ireland Police Ombudsman

The Office of the Police Ombudsman was created following the report of Dr Maurice Hayes on reform to the Northern Ireland police complaints system. Although the Ombudsman has now been appointed, the office will not be operational until October 2000, so the majority of the references made to the system in this research refer to the report of Dr Hayes or the Police (Northern Ireland) Act 1998 which establishes the Office.

The Hayes Report lays down a model of how the Ombudsman's Office should function, and what powers it should have. The most important of these are as follows:

- The Ombudsman has complete control of the complaints process; deciding what constitutes a complaint, recording all complaints, determining how complaints should be handled, and by whom. The Ombudsman also has the power to investigate any suspected police misconduct even where no complaint has been made.
  - The Ombudsman is under a statutory duty to investigate all serious complaints (such as deaths in custody, serious injury etc.). The Ombudsman has the discretion to investigate all other complaints suitable for investigation, or alternatively allow the police to investigate, but can still be supervised by the Ombudsman. All complaints suitable for informal resolution are sent back to the police to be resolved. The Ombudsman will be able to monitor the use of informal resolution.
  - The Ombudsman will have her own body of investigators and has the discretion to employ either former or seconded police officers from the RUC or from forces in Great Britain.
  - The Ombudsman will make recommendations on criminal charges to the DPP and recommendations on disciplinary charges to the Chief Constable. The case at the disciplinary tribunal would be presented by the Ombudsman.
  - The Ombudsman will report on complaints trends, and draw attention to policies and practices that give rise to an inordinate number of complaints.
- The Police (Northern Ireland) Act 1998 has legally established the Office of the Ombudsman, based on the model proposed in the Hayes Report.

# Figures on items of complaint and complaint cases: sources and calculations

The figures for items of complaint in each of the four categories were obtained from PCA Annual Reports and Home Office statistics for the last three years. It proved impossible to restrict the analysis to just one source because in neither source were the complaints broken down into all four procedures for both complaint cases and items of complaint. Although there are discrepancies between the two sets of figures, they are broadly in line for each of the four procedures (within a few hundred complaints). Any inaccuracies that occur are very small within the context of what is only meant to be a rough estimate of the breakdown of complaint statistics.

## Methodology

All figures used are averages of the last three years of complaint statistics (98–99, 97–98, 96–97).

### Items of complaint

| averages                          | 98–99  | 97–98  | 96–97  | 3-yr avg |
|-----------------------------------|--------|--------|--------|----------|
| Informal resolution <sup>13</sup> | 11,625 | 12,280 | 11,028 | = 11,644 |
| Withdrawn <sup>14</sup>           | 4,657  | 5,860  | 6,288  | = 5,602  |
| Dispensation <sup>15</sup>        | 6,766  | 7,854  | 7,998  | = 7,539  |
| Fully investigated <sup>16</sup>  | 9,784  | 10,500 | 11,955 | = 10,746 |

### Complaint cases

In order to work out the numbers of complaint cases the above figures relate to, it is necessary to work out the average number of items of complaint per complaint case. The overall average is 1.6 items of complaint per complaint case<sup>18</sup>. There is, however, a substantial difference in items per case for each of the procedures. The difference can be worked out using PCA and Home Office Reports:

- 1999: Total cases (Home Office)  
20,300 complaint cases = 31,653 items of complaint

- Only fully investigated complaints and those receiving dispensation (PCA Reports)  
8,559 complaint cases = 16,550 items of complaint = 1.93 items per case
- PCA : fully investigated complaints only  
4,134 complaint cases = 9,784 items of complaint = 2.37 items per case

By subtracting the number of fully investigated complaints and those receiving dispensation from the total number of complaints, the total for informally resolved and withdrawn complaints can be calculated:

11,741 cases = 15,103 items of complaint

The average items of complaint per case can then be calculated at 1.29. This figure can then be used to calculate the number of informally resolved and withdrawn complaint cases separately.

A similar calculation can be used to find the number of items of complaint per case for dispensations and fully investigated cases:

|                    |                                  |
|--------------------|----------------------------------|
| Dispensation       | 1.53 items of complaint per case |
| Fully investigated | 2.37 items of complaint per case |

So, using this methodology for all three years under consideration, the number of items of complaint per complaint case is as follows:

|                     | 1999 | 1998 | 1997 | average |
|---------------------|------|------|------|---------|
| Informally resolved | 1.29 | 1.40 | 1.37 | 1.35    |
| Withdrawn           | 1.29 | 1.40 | 1.37 | 1.35    |
| Dispensation        | 1.53 | 1.72 | 1.60 | 1.62    |
| Fully investigated  | 2.37 | 2.13 | 2.28 | 2.26    |

The number of complaints cases can then be calculated by dividing the number of items of complaint (in the first table in this appendix) by the average number of complaints per case:

| Procedure           | Cases  | Items of complaint |
|---------------------|--------|--------------------|
| Informal resolution | 8,618  | 11,664             |
| Withdrawn           | 4,139  | 5,602              |
| Dispensation        | 4,663  | 7,539              |
| Full investigation  | 4,755  | 10,746             |
| Total               | 22,175 | 35,551             |

These figures in the calculations are the same as those presented in Chapter 2.

## APPENDIX 4:

# The European Convention on Human Rights

Article 6(1) of the Convention guarantees a fair trial not just in criminal cases, but also in the determination of 'civil rights and obligations'. Subject to specific exceptions Article 6 imposes a requirement that trials be held in public. There is considerable debate about the applicability of Article 6 to disciplinary hearings.

In the case of *X v UK*<sup>18</sup> the European Commission of Human Rights held that police disciplinary proceedings did not involve the determination of a civil right. This is because of the nature of police employment:

**'Police Officers are specially selected and trained by the State in order to perform on its behalf tasks related to maintaining public order. In the exercise of their functions, they are exclusively subordinated to governmental authorities and do not enter into contractual relationships of a private nature.'**<sup>19</sup>

The above case was decided almost 20 years ago and was decided by the Commission at the 'admissibility stage' and not by the Court itself. Since that date the concept of a civil right or obligation has been extended by subsequent cases. The application of Article 6(1) in cases concerning public officials is now quite complicated. A series of cases has extended the application of Article 6(1) to cases which have a decisive effect on the economic rights of the public official concerned, rather than simply affecting his or her career. Thus, in *Couez v France*,<sup>20</sup> a police officer was applying for reinstatement into the service. It was decided that, whether the decision went in his favour or not, it was bound to have a decisive effect on his economic rights. Similar statements of principle have been made in other cases.<sup>21</sup>

The position with regard to disciplinary proceedings against police officers has not been tested again since the case of *X v UK*. However it does seem that the same test would be applied. Will the decision in the hearing have a decisive effect on the economic rights of the police officer concerned? If the severity of the charge was likely to lead to the officer's dismissal, then this would seem to have a decisive effect on economic rights. For lesser punishments the issue would be

less clear cut. However, a reduction in rank or a fine do not seem to be of the same order. A reduction in rank is primarily a career issue and, although there will be economic consequences, this does not appear to be sufficiently severe to be considered 'a decisive effect on economic rights'. A fine cannot be for more than 13 days' pay, and so again it does not seem sufficiently severe. A caution or a reprimand would certainly be career issues rather than economic ones.

Thus it may be that the Article 6 requirements will only apply in serious cases where there is a chance that the officer may be dismissed as a result of the complaint. The approach by the Strasbourg institutions may be one which could be adopted here. At present police disciplinary cases are categorised into serious and non-serious before the hearing and this determines whether the officer is entitled to legal representation. Perhaps this categorisation could be adopted to allow public hearings in serious cases only. This would mean that in less serious cases where the officer was only likely to be reprimanded the hearing would be in private and thus protect the officer's reputation.

There are also other reasons why Article 6 might not apply. There is some case law under the ECHR to suggest that public officials may not have 'civil' rights' under Article 6 – in a series of cases the ECHR has found that disputes relating to the recruitment, employment and dismissal of public officials is outside the scope of Article 6.<sup>22</sup> However it may be that the need for justice to be seen to be done in relation to the disciplining of police officers is so important that the courts will take the view that this overrides this principle, and at least in serious cases, the wishes of the parties.

The right to a public hearing is not simply the right of the officer facing the disciplinary charge. The purpose of public hearings is to protect all parties to the case from 'the administration of justice in secret with no public scrutiny'<sup>23</sup> and also to maintain public confidence in the administration of justice.<sup>24</sup> These are factors that would be directly relevant to police disciplinary hearings.

The wishes of the parties to the hearing will be important considerations in whether the hearing should be in public or not but are not decisive because the requirement for a public hearing is based on importance of open justice and need for justice to be seen to be done.

It is not clear however whether a non-party can insist that the hearing be in public when the parties agree to it being in private. Nevertheless it is very likely that the complainant, although not a party, is likely to be a 'victim' for the purpose of the Human Rights Act and would be able to try to challenge the decision to have a hearing on a serious case in private.

If Article 6 does apply there are nevertheless exceptions to the requirement for a public

hearing. These are provided for 'in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

However the European Court has repeatedly stated that public hearings are fundamentally important and so it will only allow private hearings on these grounds in cases such as sexual offences against children, divorce proceedings, or to protect the private life of patients in medical disciplinary hearings.<sup>25</sup>

APPENDIX 5

## Numbers of complaints currently investigated by region

| Cases               | 1999 <sup>26</sup> | 1998 <sup>27</sup> | Supervised <sup>28</sup> | Cases   | 1999        | 1998        | Supervised |
|---------------------|--------------------|--------------------|--------------------------|---|-------------|-------------|------------|
| <b>Area 1</b>       |                    |                    |                          | <b>Area 5</b>   |             |             |            |
| Metropolitan Police | 1,883              | 2,275              | 195                      | Dyfed Powys   | 37          | 43          | 8          |
| City of London      | 32                 | 33                 | 1                        | North Wales   | 134         | 91          | 10         |
| <b>Total</b>        | <b>1,915</b>       | <b>2,308</b>       | <b>196</b>               | West Mercia   | 149         | 133         | 10         |
| <b>Area 2</b>       |                    |                    |                          | Staffordshire   | 126         | 122         | 5          |
| Hampshire           | 249                | 278                | 16                       | West Midlands   | 408         | 491         | 49         |
| Surrey              | 123                | 100                | 11                       | Warwickshire  | 60          | 36          | 3          |
| Sussex              | 337                | 251                | 23                       | Leicestershire  | 115         | 139         | 11         |
| Kent                | 163                | 255                | 21                       | Nottinghamshire   | 160         | 234         | 16         |
| Essex               | 188                | 184                | 10                       | Derbyshire  | 78          | 97          | 10         |
| <b>Total</b>        | <b>1060</b>        | <b>1068</b>        | <b>81</b>                | <b>Total</b>  | <b>1267</b> | <b>1386</b> | <b>122</b> |
| <b>Area 3</b>       |                    |                    |                          | <b>Area 6</b>   |             |             |            |
| Devon & Cornwall    | 253                | 269                | 30                       | Merseyside  | 483         | 474         | 60         |
| Avon & Somerset     | 246                | 302                | 10                       | GMP   | 659         | 657         | 80         |
| Dorset              | 67                 | 50                 | 5                        | Cheshire  | 166         | 147         | 8          |
| Wiltshire           | 51                 | 52                 | 6                        | Lancashire  | 275         | 316         | 25         |
| Gloucestershire     | 110                | 168                | 12                       | <b>Total</b>  | <b>1583</b> | <b>1594</b> | <b>173</b> |
| Gwent               | 71                 | 46                 | 20                       | <b>Area 7</b>   |             |             |            |
| South Wales         | 273                | 287                | 48                       | South Yorkshire   | 150         | 115         | 9          |
| <b>Total</b>        | <b>1071</b>        | <b>1174</b>        | <b>131</b>               | West Yorkshire  | 249         | 336         | 47         |
| <b>Area 4</b>       |                    |                    |                          | North Yorkshire   | 83          | 106         | 9          |
| Thames Valley       | 256                | 232                | 35                       | Humberside  | 141         | 161         | 19         |
| Hertfordshire       | 48                 | 74                 | 8                        | Cleveland   | 103         | 109         | 13         |
| Suffolk             | 123                | 102                | 6                        | Durham  | 38          | 51          | 8          |
| Norfolk             | 119                | 121                | 10                       | Northumbria   | 122         | 130         | 23         |
| Cambridgeshire      | 145                | 217                | 8                        | Cumbria   | 72          | 80          | 7          |
| Bedfordshire        | 57                 | 43                 | 17                       | <b>Total</b>  | <b>958</b>  | <b>1088</b> | <b>135</b> |
| Northamptonshire    | 94                 | 101                | 9                        | For a UK map of police forces see <a href="http://www.apa.police.uk/links.htm">http://www.apa.police.uk/links.htm</a> |             |             |            |
| Lincolnshire        | 65                 | 60                 | 13                       |   |             |             |            |
| <b>Total</b>        | <b>907</b>         | <b>950</b>         | <b>106</b>               |   |             |             |            |

APPENDIX 6

# IPCC: Additional breakdown of costs

|                          | Area 1<br>London | Area 2<br>Guildford | Area 3<br>Bristol | Area 4<br>Norwich | Area 5<br>Birmingham | Area 6<br>Manchester | Area 7<br>York | Total |
|--------------------------|------------------|---------------------|-------------------|-------------------|----------------------|----------------------|----------------|-------|
| Staff                    | 79.5             | 35                  | 35                | 35                | 75                   | 51                   | 35             | 345.5 |
| Investigation teams      | 5                | 2                   | 2                 | 2                 | 3                    | 3                    | 2              | 19    |
| Complaint analysis teams | 2                | 1                   | 1                 | 1                 | 1.5                  | 1.5                  | 1              | 9     |

## INVESTIGATIONS

### Cost per team (£):

|                              |         |                  |                |                |                |                |                |                |                  |
|------------------------------|---------|------------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|
| Chief investigator           | 40,000  | 220,000          | 80,000         | 80,000         | 80,000         | 120,000        | 120,000        | 80,000         | <b>780,000</b>   |
| Senior investigator          | 30,000  | 165,000          | 60,000         | 60,000         | 60,000         | 90,000         | 90,000         | 60,000         | <b>585,000</b>   |
| Senior investigator (police) | 37,000  | 203,500          | 74,000         | 74,000         | 74,000         | 111,000        | 111,000        | 74,000         | <b>721,500</b>   |
| Junior investigator          | 22,000  | 121,000          | 44,000         | 44,000         | 44,000         | 66,000         | 66,000         | 44,000         | <b>429,000</b>   |
| Junior investigator          | 22,000  | 121,000          | 44,000         | 44,000         | 44,000         | 66,000         | 66,000         | 44,000         | <b>429,000</b>   |
| Junior investigator          | 22,000  | 121,000          | 44,000         | 44,000         | 44,000         | 66,000         | 66,000         | 44,000         | <b>429,000</b>   |
| Junior investigator          | 22,000  | 121,000          | 44,000         | 44,000         | 44,000         | 66,000         | 66,000         | 44,000         | <b>429,000</b>   |
| Junior investigator (police) | 25,000  | 137,500          | 50,000         | 50,000         | 50,000         | 75,000         | 75,000         | 50,000         | <b>487,500</b>   |
| Admin                        | 12,000  | 99,000           | 36,000         | 36,000         | 36,000         | 54,000         | 54,000         | 36,000         | <b>351,000</b>   |
|                              | 232,000 | 1,309,000        | 476,000        | 476,000        | 476,000        | 714,000        | 714,000        | 476,000        | <b>4,641,000</b> |
| NI & benefits:               | 34,800  | 196,350          | 71,400         | 71,400         | 71,400         | 107,100        | 107,100        | 71,400         | <b>696,150</b>   |
|                              | 266,800 | <b>1,505,350</b> | <b>547,400</b> | <b>547,400</b> | <b>547,400</b> | <b>821,100</b> | <b>821,100</b> | <b>547,400</b> | <b>5,337,150</b> |

### Total costs including NI & benefits

|                |           |         |         |         |         |         |         |                  |
|----------------|-----------|---------|---------|---------|---------|---------|---------|------------------|
| Investigators  | 1,391,500 | 506,000 | 506,000 | 506,000 | 759,000 | 759,000 | 506,000 | <b>4,933,500</b> |
| Administration | 113,850   | 41,400  | 41,400  | 41,400  | 62,100  | 62,100  | 41,400  | <b>403,650</b>   |

### No. of employees

|                        |           |           |           |           |           |           |           |             |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|
| Investigation: Senior  | 15        | 6         | 6         | 6         | 9         | 9         | 6         | <b>57</b>   |
| Investigation: Junior  | 25        | 10        | 10        | 10        | 15        | 15        | 10        | <b>95</b>   |
| Administration         | 7.5       | 3         | 3         | 3         | 4.5       | 4.5       | 3         | <b>28.5</b> |
| <b>Total employees</b> | <b>48</b> | <b>19</b> | <b>19</b> | <b>19</b> | <b>29</b> | <b>29</b> | <b>19</b> | <b>181</b>  |

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|                          | Area 1<br>London | Area 2<br>Guildford | Area 3<br>Bristol | Area 4<br>Norwich | Area 5<br>Birmingham | Area 6<br>Manchester | Area 7<br>York | Total |
|--------------------------|------------------|---------------------|-------------------|-------------------|----------------------|----------------------|----------------|-------|
| Staff                    | 79.5             | 35                  | 35                | 35                | 75                   | 51                   | 35             | 345.5 |
| Investigation teams      | 5                | 2                   | 2                 | 2                 | 3                    | 3                    | 2              | 19    |
| Complaint analysis teams | 2                | 1                   | 1                 | 1                 | 1.5                  | 1.5                  | 1              | 9     |

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**MEMBERS/REGIONAL STAFF**

**Senior staff:**

|                             |         |                |                |                |                |                |                |                |                  |
|-----------------------------|---------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|
| Regional director           | 52,000  | 57,200         | 52,000         | 52,000         | 52,000         | 52,000         | 52,000         | 52,000         | <b>369,200</b>   |
| Members                     | 70,000  | 308,000        | 140,000        | 140,000        | 140,000        | 210,000        | 210,000        | 140,000        | <b>1,288,000</b> |
| Assistant director          | 43,000  | 47,300         | 43,000         | 90,300         |                |                |                |                |                  |
| IT support                  | 25,000  | 55,000         | 25,000         | 25,000         | 25,000         | 37,500         | 37,500         | 25,000         | <b>230,000</b>   |
| Community relations         | 20,000  | 44,000         | 20,000         | 20,000         | 20,000         | 30,000         | 30,000         | 20,000         | <b>184,000</b>   |
| Case reviewer               | 17,000  | 37,400         | 17,000         | 17,000         | 17,000         | 25,500         | 25,500         | 17,000         | <b>156,400</b>   |
| Case reviewer               | 17,000  | 37,400         | 17,000         | 17,000         | 17,000         | 25,500         | 25,500         | 17,000         | <b>156,400</b>   |
| Informal resolution monitor | 20,000  | 44,000         | 20,000         | 20,000         | 20,000         | 30,000         | 30,000         | 20,000         | <b>184,000</b>   |
| Senior admin                | 20,000  | 44,000         | 20,000         | 20,000         | 20,000         | 20,000         | 20,000         | 20,000         | <b>164,000</b>   |
| Admin                       | 0       | 0              | 0              | 0              | 0              | 0              | 0              | 0              |                  |
| Admin                       | 12,000  | 26,400         | 12,000         | 12,000         | 12,000         | 24,000         | 12,000         | 12,000         | <b>110,400</b>   |
|                             | 296,000 | 700,700        | 323,000        | 323,000        | 323,000        | 497,500        | 442,500        | 323,000        | <b>2,932,700</b> |
| NI & benefits:              | 44,400  | 105,105        | 48,450         | 48,450         | 48,450         | 74,625         | 66,375         | 48,450         | <b>439,905</b>   |
|                             | 340,400 | <b>805,805</b> | <b>371,450</b> | <b>371,450</b> | <b>371,450</b> | <b>572,125</b> | <b>508,875</b> | <b>371,450</b> | <b>3,372,605</b> |

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**Total costs including NI & benefits**

|                                 |         |         |         |         |         |         |         |  |                  |
|---------------------------------|---------|---------|---------|---------|---------|---------|---------|--|------------------|
| Regional director and assistant | 120,175 | 59,800  | 59,800  | 59,800  | 109,250 | 59,800  | 59,800  |  | <b>528,425</b>   |
| Members                         | 354,200 | 161,000 | 161,000 | 161,000 | 241,500 | 241,500 | 161,000 |  | <b>1,481,200</b> |
| IT support                      | 63,250  | 28,750  | 28,750  | 28,750  | 43,125  | 43,125  | 28,750  |  | <b>264,500</b>   |
| Community relations             | 50,600  | 23,000  | 23,000  | 23,000  | 34,500  | 34,500  | 23,000  |  | <b>211,600</b>   |
| IR monitoring/Case review       | 136,620 | 62,100  | 62,100  | 62,100  | 93,150  | 93,150  | 62,100  |  | <b>571,320</b>   |
| Administration                  | 80,960  | 36,800  | 36,800  | 36,800  | 50,600  | 36,800  | 36,800  |  | <b>315,560</b>   |
|                                 | 805,805 | 371,450 | 371,450 | 371,450 | 572,125 | 508,875 | 371,450 |  | <b>3,372,605</b> |

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**Number of employees**

|                           |           |           |           |           |             |             |           |  |           |
|---------------------------|-----------|-----------|-----------|-----------|-------------|-------------|-----------|--|-----------|
| Regional manager + assist | 2         | 1         | 1         | 1         | 2           | 1           | 1         |  | <b>9</b>  |
| Members                   | 4         | 2         | 2         | 2         | 3           | 3           | 2         |  | <b>18</b> |
| IT support                | 2         | 1         | 1         | 1         | 1.5         | 1.5         | 1         |  | <b>9</b>  |
| Community relations       | 2         | 1         | 1         | 1         | 1.5         | 1.5         | 1         |  | <b>9</b>  |
| Case reviewers            | 4         | 2         | 2         | 2         | 3           | 3           | 2         |  | <b>18</b> |
| Informal resolution super | 2         | 1         | 1         | 1         | 1.5         | 1.5         | 1         |  | <b>9</b>  |
| Administration            | 4         | 2         | 2         | 2         | 3           | 2           | 2         |  | <b>17</b> |
| <b>Total employees</b>    | <b>20</b> | <b>10</b> | <b>10</b> | <b>10</b> | <b>15.5</b> | <b>13.5</b> | <b>10</b> |  | <b>89</b> |

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|                                   | <b>Area 1</b> | <b>Area 2</b>  | <b>Area 3</b>  | <b>Area 4</b>  | <b>Area 5</b>  | <b>Area 6</b>  | <b>Area 7</b>  | <b>Total</b>   |                  |
|-----------------------------------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|
|                                   |               | London         | Guildford      | Bristol        | Norwich        | Birmingham     | Manchester     | York           |                  |
| Staff                             |               | 79.5           | 35             | 35             | 35             | 75             | 51             | 35             | 345.5            |
| Investigation teams               |               | 5              | 2              | 2              | 2              | 3              | 3              | 2              | 19               |
| Complaint analysis teams          |               | 2              | 1              | 1              | 1              | 1.5            | 1.5            | 1              | 9                |
| <b>COMPLAINTS ANALYSIS UNIT</b>   |               |                |                |                |                |                |                |                |                  |
| <b>Complaints analysis staff:</b> |               |                |                |                |                |                |                |                |                  |
| Lawyer                            | 30,000        | 66,000         | 30,000         | 30,000         | 30,000         | 45,000         | 45,000         | 30,000         | <b>276,000</b>   |
| Paralegal                         | 17,000        | 37,400         | 17,000         | 17,000         | 17,000         | 25,500         | 25,500         | 17,000         | <b>156,400</b>   |
| Paralegal                         | 17,000        | 37,400         | 17,000         | 17,000         | 17,000         | 25,500         | 25,500         | 17,000         | <b>156,400</b>   |
| Paralegal                         | 17,000        | 37,400         | 17,000         | 17,000         | 17,000         | 25,500         | 25,500         | 17,000         | <b>156,400</b>   |
| Paralegal                         | 17,000        | 37,400         | 17,000         | 17,000         | 17,000         | 25,500         | 25,500         | 17,000         | <b>156,400</b>   |
| Admin                             | 14,000        | 30,800         | 14,000         | 14,000         | 14,000         | 21,000         | 21,000         | 14,000         | <b>128,800</b>   |
|                                   | 112,000       | 246,400        | 112,000        | 112,000        | 112,000        | 168,000        | 168,000        | 112,000        | <b>1,030,400</b> |
| NI & benefits:                    | 16,800        | 36,960         | 16,800         | 16,800         | 16,800         | 25,200         | 25,200         | 16,800         | <b>154,560</b>   |
|                                   | 128,800       | <b>283,360</b> | <b>128,800</b> | <b>128,800</b> | <b>128,800</b> | <b>193,200</b> | <b>193,200</b> | <b>128,800</b> | <b>1,184,960</b> |
| Senior                            |               | 2              | 1              | 1              | 1              | 1.5            | 1.5            | 1              | <b>9</b>         |
| Junior                            |               | 8              | 4              | 4              | 4              | 6              | 6              | 4              | <b>36</b>        |
| Admin                             |               | 2              | 1              | 1              | 1              | 1.5            | 1.5            | 1              | <b>9</b>         |
| <b>Total employees</b>            |               | <b>12</b>      | <b>6</b>       | <b>6</b>       | <b>6</b>       | <b>9</b>       | <b>9</b>       | <b>6</b>       | <b>54</b>        |

# Notes

## Introduction

- 1 *The Scarman Report: The Brixton Disorders*, Lord Scarman, HMSO, London, 1982
- 2 *Home Affairs Committee, First Report, Police Complaints and Disciplinary Procedures*, The Stationery Office Ltd, London, 1997
- 3 *The Stephen Lawrence Inquiry Report* by Sir William MacPherson of Cluny, The Stationery Office Limited, 1999
- 4 See bibliography
- 5 A list of those consulted is provided in Appendix 1.

## CHAPTER 1

### Arguments for an independent body to investigate complaints against the police

- 1 *Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, 8 to 17 September 1997, section 48
- 2 *Ibid*, section 55
- 3 *The Stephen Lawrence Inquiry Report* by Sir William MacPherson of Cluny, The Stationery Office Limited, 1999, p333
- 4 *Home Affairs Committee, First Report, Police Complaints and Disciplinary Procedures*, The Stationery Office Limited, 1997
- 5 *Ibid*, vol 1, p v
- 6 *Ibid*, vol 1, p xxvi
- 7 *Police Powers and Accountability*, Lambert, John, Croom Helm, 1986, p61
- 8 *A Study of the Police Complaints System*, Maguire M and Corbett C, HMSO, 1991, p7
- 9 *Report of the Royal Commission on the Police*, HMSO, 1962
- 10 Maguire, M, and Corbett, C, *A Study of the Police Complaints System*, HMSO, 1991, p7
- 11 *Complaints Against Police – The Politics of Reform*, Lewis, Colleen, Hawkins Press 1999, p20; Maguire and Corbett 1991, p7
- 12 Lambert 1986, pp64–65; Lewis 1999, p43
- 13 Maguire and Corbett 1991, p8
- 14 Lambert 1986, p70
- 15 *Ibid*
- 16 *The Scarman Report: The Brixton Disorders*, Lord Scarman, HMSO 1982, para 5.43
- 17 *Ibid*, para 7.28
- 18 *The 1998–99 Annual Report of the Police Complaints Authority*, The Stationery Office Ltd, 1999, pp8–9
- 19 Lewis 1999
- 20 *The Knapp Commission Report on Police Corruption*, Knapp W, George Braziller, 1972 p14
- 21 *Report of the Independent Commission on the Los Angeles Police Department*, Christopher W, Independent Commission on the LAPD, 1991, p153
- 22 *Under the Spotlight: complaints against the AFP and NCA*, Australian Law Reform Commission, Australia Government Publishing Service, 1995, pp194–195
- 23 *Report of a Commission of Inquiry Pursuant to Orders in Council*, Fitzgerald, G, Goprint, 1989, p289
- 24 *Royal Commission into the NSW Police Service: Final Report*, Wood, J, Government of the State of New South Wales, 1997, p201
- 25 Maguire and Corbett 1991, p159
- 26 *The 1995/96 Annual Report of the Police Complaints Authority*, The Stationery Office Ltd, 1996, p48
- 27 *Ibid*
- 28 Home Affairs Committee 1997, pp194–195
- 29 Maguire and Corbett 1991
- 30 Maguire and Corbett 1991, p180
- 31 *Ibid*, p59, satisfaction rates are far higher for informal resolution, with 57% expressing some satisfaction.
- 32 *Ibid*, p62
- 33 *Ibid*, p62
- 34 *Ibid*, p67
- 35 *Ibid*, p196
- 36 *Police Complaints and the Complainants' Experience*, Water, Ian and Brown, Katie, British Journal of Criminology, in press
- 37 *Ibid*, p13
- 38 *Ibid*, p21
- 39 *Ibid*, p22
- 40 *When police investigate police: a view from complainants*, Landau, T, in Canadian Journal of Criminology, July 1996
- 41 *Ibid*, p505
- 42 *Ibid*, p291
- 43 *Ibid*, p310
- 44 Hayes 1997, p121
- 45 *Ibid*
- 46 *Ibid*, p40
- 47 CPT 1997, section 37
- 48 *Ibid*, section 52
- 49 *Metropolitan Police Commissioner's Annual Report 1998–99*, Information Sheet on Civil Actions and Damages, The Stationery Office, 1999

**Notes to chapter 1, continued**

- 50 The Police (Conduct) Regulations 1999, section 23
- 51 *The Times*, 9.11.81
- 52 <http://www.polfed.org.uk/wherewes.html#polview>
- 53 Home Affairs Committee 1997, pp194–195
- 54 eg Lewis 1999; *The Governance of Police*, Lustgarten, Lawrence, Sweet & Maxwell, 1986, p157
- 55 Lambert 1986, p82
- 56 Lewis 1999, p10
- 57 Maguire and Corbett 1991, p10; Lambert 1986, p81; 'Florence Nightingale in pursuit of Willie Sutton: a theory of the police', Bittner, E, in *The Potential for Reform in Criminal Justice*, Jacob, H (ed), Sage, 1974; *Models of Police Oversight: A Critique*, Prenzler, Tim and Ronken, Carol, Griffith University, 1999, p3; *The Ethics of Policing*, Kleinig, J, Cambridge University Press, 1996
- 58 Prenzler and Ronken 1999, p3
- 59 Home Affairs Committee 1997, vol 1, p xii
- 60 Maguire and Corbett 1991, p65
- 61 'What's wrong with complaint investigations? Dealing with difference differently in complaints against the police', Andrew Goldsmith, in *Criminal Justice Ethics*, Winter/Spring 1996, p38
- 62 Ibid
- 63 'Police Culture', Chan, Janet, in *A Culture of Corruption*, Dixon, David, (ed.), Hawkins Press, 1999, p98; Lewis 1999, p23; 'The Corruption Problem', Goldstein, Herman, in *Policing a Free Society*, ed Goldstein, Herman, Ballinger Publishing Co, 1997
- 64 e.g. PCA, *Triennial Review of the Police Complaints Authority*, HMSO, 1991–1994; Home Affairs Committee 1997
- 65 Lewis 1991
- 66 Australian Law Reform Commission, 1995
- 67 'Complaints against the police: where now? The role of the complaints system in defining police deviance', Mike Maguire, in *Criminal Justice; Theory and Practice* ed. Bottomley Fowles and Rever, BSC 1991, p81
- 68 Lambert 1986, p81
- 69 See Section 1.1
- 70 Home Affairs Committee 1997 vol II, p7
- 71 Home Affairs Committee 1997, vol I, p xxvi
- 72 See Chapter 10 – Structure of the IPCC
- 73 See Chapter 7 – Who Investigates?
- 74 Ibid
- 75 See Chapter 5 – Investigations
- 76 See this chapter, section 1.4
- 77 See Chapter 5 – Investigations
- 78 See Chapter 9 – A Complaints Analysis Unit
- 3 *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*, Hayes, Maurice, The Stationery Office Ltd, 1997, p62
- 4 Ibid, p55
- 5 *The Final Report into Stop and Search*, Fitzgerald, M, <http://www.met.police.uk/>, 2000
- 6 Ibid, Chapter 5: Discussion, Conclusions and Recommendations
- 7 *Securing and Maintaining Public Confidence: a report by HMIC*, The Stationery Office, London, June 1999, p13
- 8 *A Study of the Police Complaints System*, Maguire M and Corbett C, HMSO 1991, p 59; Hayes 1997, p25; *Models of Police Oversight: A Critique*, Prenzler, Tim and Ronken, Carol, 1999 p16
- 9 Maguire and Corbett 1991, p59
- 10 Ibid, p186f
- 11 Ibid, p90
- 12 Prenzler and Ronken 1999 p16; *Human Rights on Duty*, O'Rawe, Mary, and Moore, Linda, Committee on the Administration of Justice 1997, p124
- 13 Hayes 1997, p 26
- 14 Maguire and Corbett 1991, p185
- 15 These figures are based on a Home Office breakdown of complaints by resolution type for 1997–1998. They indicate that while only 18% of complaints in Essex and 19% in N. Yorks are informally resolved, 56% in Gwent and 55% in Derbyshire are resolved in this fashion. Usage in other forces is distributed between these two extremes.
- 16 Hayes 1997, p 53f
- 17 *Complaints Against the Police – The Politics of Reform*, Lewis, Colleen, Hawkins Press 1999
- 18 Criminal Justice Act 1989
- 19 Lewis 1999, p124
- 20 *Public Attitudes towards the Queensland Police Service, June 1995 survey*, summary of findings, Criminal Justice Commission, Queensland 1995
- 21 *Home Affairs Committee, First Report, Police Complaints and Disciplinary Procedures*, The Stationery Office Ltd, 1997, vol 1, p xxvi
- 22 Stephen Lawrence Inquiry, Home Secretary's Action Plan, March 1999, p 29
- 23 Chapter 10 – Structure of the IPCC
- 24 See Chapter 7 – The Investigators
- 25 *Consultation Report of the Honourable George Adams QC concerning police co-operation with the Special Investigations Unit*, Ontario Government, 1998, p82.
- 26 See Chapter 4, section 4.5
- 27 See this chapter, section 2.4
- 28 Complaints that fall under this category are the same as those that currently require mandatory supervision by the PCA because of the seriousness of the injury to the complainant
- 29 Items of complaint will be greater than numbers of complaint cases since complaints cases can obtain more than one item of complaint.
- 30 PCA Annual Report 1998–99: 444 death or serious injury, 203 racial discrimination, 62 corrupt practice, Total 709. PCA Annual Report 1997–98: 509 death or serious injury, 358 racial discrimination, 114 corrupt practice, Total 981. PCA Annual Report 1996–97: 518 death or serious injury, 444 racial discrimination, 139 corrupt practice, Total 1101.
- 31 Hayes 1997, p55
- 32 See section 2.2

**CHAPTER 2****Who investigates which complaints?**

- 1 Informal Resolution is a procedure whereby complaints of a minor nature can be resolved without a full investigation. The complainant must agree to the procedure, and the conduct complained of, if proved, cannot not justify a criminal charge or misconduct proceedings
- 2 Dispensation can be granted by the PCA on the grounds that the complaint is anonymous, where investigation is not reasonably practicable, repetitious, vexatious, oppressive or otherwise an abuse of procedure, or on grounds of delay.

- 33 The IPCC would, however, want the discretion to investigate more complaints in forces where there were particular concerns. It should not be tied to investigating set proportions of complaints from each force
- 34 Hayes 1997, p130
- 35 *Ontario Race Relations and Policing Task Force Report*, Ontario Government, 1992, p120
- 36 *Independent Complaints Directorate South Africa, Annual Report 1997/98*, foreword p iii
- 37 *Research Brief by the Centre on Crime, Communities and Culture*, Occasional Paper Series, No. 3, September 1998, p9
- 8 *Royal Commission into the NSW Police Service: Interim Report*, Wood J, Government of the State of New South Wales, 1996, p77
- 39 Police (Northern Ireland) Act 1998, section 55
- 40 See Chapter 4, section 4.5

### CHAPTER 3

#### Access to the complaints system

- 1 *Complaints Against the Police: the politics of reform*, Lewis, Colleen, Hawkins Press, Sydney, 1999
- 2 *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*, Hayes, Maurice, The Stationery Office Ltd, 1997, p65
- 3 *A Study of the Police Complaints System*, Maguire, M, and Corbett, C, HMSO, 1991, p54. 'among those interviewees whose first move had been to visit or telephone a local police station almost thirty percent had been 'put off' at that stage, and had had to take the initiative themselves to register it on a later occasion. For example, several who went to police stations had been told by officers or civilians on the desk to write to the Chief Constable or to the local Superintendent, and one had been told to write two letters to different stations. Another had been told that she would have to visit headquarters (nearly 20 mile away to register her complaint). Others too had been told to come back later when the Inspector was on duty.'
- 4 Ibid
- 5 Hayes 1997, p65
- 6 Adams 1998, p51

### CHAPTER 4

#### Recording and allocation of complaints

- 1 Police Act 1996, section 69
- 2 Home Affairs Committee, *First Report, Police Complaints and Disciplinary Procedures*, The Stationery Office Limited, 1997
- 3 Hayes 1997, p47
- 4 The Independent Commission for Police Complaints for Northern Ireland – The equivalent of the PCA in Northern Ireland. It will be replaced by the Police Ombudsman model
- 5 Ibid
- 6 Criminal Justice Commission 1996, p 6
- 7 *Royal Commission into the New South Wales Police Service, Interim Report*, February 1996, Wood J p100
- 8 New Zealand Police Complaints Authority Act 1988, section 12
- 9 Hayes 1997, p47
- 10 *Consultation Report of the Honourable George W. Adams QC concerning police co-operation with the SIU*, May 1998, p21
- 11 Ibid, p17

- 12 Maguire and Corbett 1991, p54
- 13 Ibid
- 14 Ibid, p59
- 15 Ibid, p186f
- 16 Ibid, p 90
- 17 *Models of Police Oversight: A Critique*, Prenzler, Tim and Ronken, Carol, Griffith University, 1999, p16; *Human Rights on Duty*, O'Rawe, Mary, and Moore, Linda, CAJ, Belfast, 1997, p124
- 18 *Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 17 September 1997*, section 31
- 19 See Chapter 2 – section 2.6

### CHAPTER 5

#### Investigations

- 1 *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*, Hayes, Maurice, The Stationery Office Ltd, 1997, p58
- 2 *External Oversight of Complaints in Australia: A Cross-Jurisdictional Comparison*, Criminal Justice Commission, 1995, p34
- 3 Police Federation Response to Liberty Paper on Independent Investigation of Police Complaints
- 4 The Police (Conduct) Regulations 1999 9 (c)
- 5 *Home Office Guidance on police unsatisfactory performance, complaints and misconduct*, 1999, s3.22
- 6 *Garrity v New Jersey* 385 US 493 (1967)
- 7 Adams 1998, p73
- 8 Section 18.4.3 of the Human Resources Management Manual, under section 4.9 of the Queensland Police Service Administration Act 1990.
- 9 Section 9, subsection 1, paragraph c of the Police Service (Discipline) Regulations
- 10 *Garrity v New Jersey* 385 US 493 (1967)
- 11 Adams 1998, p19
- 12 Ibid p22
- 13 Ibid p44
- 14 Regulation 673/98 made under the Police Services Act 1990
- 15 Hayes 1997, p107
- 16 Ibid, p105f
- 17 Queensland Police Service Operational Procedures Manual: 'The regional crime co-ordinator is to...(iv) ensure that members who are involved in the incident, or who are witnesses to the incident, are interviewed as soon as practicable and it is highly desirable that interviews occur prior to any critical incident stress debriefing, including any defusing:'  
'Policy.  
First response officers, regional duty offices and regional crime co-ordinators should ensure that the integrity of independent versions of members directly involved and members who are witnesses to a police related incident is preserved as far as practicable. In this regard, members directly involved in the incident or who are witnesses to the incident should be interviewed separately and as soon as possible following the incident. It is highly desirable that interviews occur prior to any critical incident stress debriefing, including any defusing. Members directly involved in the incident or who are witnesses to the incident should not discuss the incident amongst themselves prior to being interviewed.'

**Notes to chapter 5, continued**

- 18 Regulation 673/98 made under the Police Services Act 1990, section 8
- 19 Home Office Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures, Section 3 Appendix, 1999
- 20 Hayes 1997, p70
- 21 *Jespers v Belgium* (1981) 27 DR 61
- 22 *Cannon v UK*, Application 29335/95, 17 January 1997 (unreported)
- 23 Criminal Justice Commission, July 1995, p34
- 24 section 74, 76 Criminal Justice Act 1989 (Queensland)
- 25 *Ibid*, sections 79, 80
- 26 *Ibid* section 96

**CHAPTER 6****Openness and transparency in the investigation of complaints**

- 1 Home Affairs Committee, *First Report, Police Disciplinary and Complaints Procedures*, The Stationery Office Ltd, 1997, Vol 1, plii f.
- 2 *Taylor v Anderton* (Chief Constable of Greater Manchester Police) [1995] 1 WLR 447, CA
- 3 Written Answer to a Parliamentary Question by the Attorney-General, 11 July 1997
- 4 Home Affairs Committee 1997 volume 1, p liii
- 5 *The Stephen Lawrence Inquiry Report* by Sir William MacPherson of Cluny, The Stationery Office Limited, 1999, p328
- 6 Maguire, M, and Corbett, C, *A Study of the Police Complaints System*, HMSO, 1991, p61
- 7 Home Affairs Committee 1997, p3
- 8 *Ibid*, p 22
- 9 *Ibid*, p 53
- 10 *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*, Hayes, Maurice, The Stationery Office Ltd, 1997, p66
- 11 Adams 1998, p95
- 12 Home Affairs Committee 1997, volume 1, p lii
- 13 *The Stephen Lawrence Inquiry Report* p 324
- 14 *R v Chief Constable of West Midlands ex parte Wiley* [1995] 3 WLR 433

**CHAPTER 7****Who are the investigators?**

- 1 See Chapter 1 – section 1.4
- 2 *Models of Police Oversight: A Critique*, Prenzler, Tim and Ronken, Carol, Griffith University, 1999, p13; *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*, Hayes, Maurice, The Stationery Office Ltd, 1997, p52; *Consultation Report of the Hon George Adams QC concerning police co-operation with the Special Investigations Unit*, Adams, George, Ontario Government, Toronto, 1998, p51
- 3 Prenzler and Ronken 1999, p13
- 4 Hayes 1997, p52
- 5 E.mail from Gail Scala at the SIU, 9 December 1999
- 6 *Civilian Complaint Review Board, Semi-annual Status Report*, NYPD 1998, Vol VI, No.2 p7
- 7 *Introducing the Criminal Cases Review Commission*, Fiona King, The Prison Service Journal, December 1998

- 8 *The Criminal Cases Review Commission Annual Report 1997–98*, The Stationery Office Ltd, 1998, p16
- 9 King 1998
- 10 *Criminal Cases Review Commission Report 1998*, p16
- 11 O'Rawe and Moore, p123, 1997
- 12 Adams 1998, p51
- 13 Email from Gail Scala at the Special Investigations Unit, Ontario, 9 December 1999
- 14 NYPD 1998, Vol VI, No.2 p 8
- 15 Email from Bonnie Talty Community Associate, Civilian Complaint Review Board, New York; Email from Gail Scala at the SIU, 9 December 1999
- 16 e.g. seconded officers could have better current knowledge of police procedure and practices than ex-police officers. They could also be more motivated because their time at the IB will be part of a longer term career structure. On the other hand former officers will not be returning to the police force after finishing at the IB, and so may be perceived as more independent than seconded officers.
- 17 Hayes 1997, p58
- 18 Hayes 1997, p143
- 19 *A Blueprint for the Future of the SIU*, Andre Marin, Director of the Special Investigations Unit, 1996
- 20 See Chapter 5 – section 5.4
- 21 In smaller investigations, where very few investigators are assigned to the investigation this may not always be possible.
- 22 Hayes 1997, p58

**CHAPTER 8****Disciplinary procedures and criminal prosecutions**

- 1 Police Act 1996 section 75 (2)
- 2 *Ibid* section 75 (3)
- 3 *Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* 8 to 17 September 1997, section 49
- 4 Police (Northern Ireland) Act 1998, section 58
- 5 Criminal Justice Act 1989, section 33 (2A)
- 6 Home Affairs Committee, *First Report, Police Complaints and Disciplinary Procedures*, The Stationery Office Limited, 1997, Vol 1 p xxxi
- 7 *Ibid*, Vol 2, p234
- 8 *Ibid*, Vol 1, pxxxii
- 9 *Inquiry into Crown Prosecution Service Decision-Making in Relation to Deaths in Custody and Related Matters*, His Honour Judge Gerald Butler QC, The Stationery Office, 1999, section 10, (<http://www.official-documents.co.uk/document/cps/custody/contents.htm>)
- 10 *Ibid*, section 9.4
- 11 Royal Commission on Criminal Procedure Report, HMSO, 1981, p126
- 12 European Committee for the Prevention of Torture, 8 to 17 September 1997, section 57
- 13 In the leading case of *Allen de Ribemont v France* (1995) 20 EHRR 557, at para 41 the European Court of Human Rights said: 'The Court notes that in the instant case some of the highest-ranking officers in the French police referred to Mr Allenet de Ribemont, without any qualification or reservation, as one of the instigators of a murder and thus

- an accomplice in that murder. This was clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority. There has therefore been a breach of Article 6(2).'
- 14 Home Affairs Committee 1997, vol 2 p 61
  - 15 Police (Northern Ireland) Act 1998, section 59
  - 16 CPT 1997, section 31
  - 17 Ibid, Vol 2 p 62
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  - 20 Home Affairs Committee 1997, vol 1, p xxxiii
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  - 23 Hayes 1997, p31
  - 24 Queensland Misconduct Tribunals Act 1997, section 6
  - 25 The Police (Conduct) Regulations 1999, section 25
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  - 28 Detailed Response by the Home Office to the Home Affairs Committee ([www.parliament.the-stationery-office.co.uk](http://www.parliament.the-stationery-office.co.uk))
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  - 31 Solicitors (Disciplinary Proceedings) Rules 1994 rule 13a
  - 32 Ibid, rule 13c
  - 33 Armed Forces Act 1996, Schedule 1
- CHAPTER 9**  
**A Complaint Analysis Unit**
- 1 *Annual Report of the Police Complaints Authority 1998-1999*, The Stationery Office Ltd, 1999, p58
  - 2 Ibid, p51
  - 3 *Human Rights on Duty*, O'Rawe and Moore, CAJ, 1997, p121; *Complaints Against Police – The Politics of Reform*, Lewis, Colleen, Hawkins Press 1999, pp 79f, 97f, 134-35, 149, 152-3, 181; 'What's Wrong with Complaints Investigations?', Goldsmith, Andrew, *Criminal Justice Ethics* Vol 15 Winter/Spring 1996, p51;
  - 4 Goldsmith 1996, p 51
  - 5 Her Majesty's Inspectorate of Constabulary (England, Wales and Northern Ireland), *Securing and Maintaining Public Confidence: a report by HMIC*, The Stationery Office, London, June 1999, p13
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  - 8 *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*, Hayes, Maurice, The Stationery Office Ltd, 1997, p74
  - 9 Maguire and Corbett 1991, p186
  - 10 Maguire and Corbett 1991, p72; *Complaints Against the Police: The Trend to External Review*, Goldsmith, Andrew, Clarendon, 1991, p 116; *Policing a Free Society*, Goldstein H, Ballinger 1977, p169; 'Police Organisation in the Twentieth Century', Reiss A, p 75, in Tonry and Morris (ed) *Modern Policing*, University of Chicago Press 1992
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  - 12 *A Focus in Internal Affairs – International Perspective*, PJ Knoll QC, p 80, Police Law Reports Volume 1, 1999
  - 13 Hayes 1997, p 12
  - 14 Ibid, p79
  - 15 Ibid, p 33
  - 16 Ibid, p 45
  - 17 *A New Beginning: Policing Northern Ireland*, Independent Commission on Policing for Northern Ireland, The Stationery Office Ltd, 1999, p 37
  - 18 The Policing Board is intended to replace the present Police Authority. Its function is 'to hold the Chief Constable and the police service publicly to account. The Board should be empowered and equipped to scrutinise the performance of the police effectively....' (p 28 of the report)
  - 19 Ibid
  - 20 *Reforming the Police Complaints System*, CJC, November 1996, p10
  - 21 *A report of a review of the archives of the Criminal Justice Commission pursuant to s118(1)(f) of the Criminal Justice Act 1989*, Parliamentary Criminal Justice Committee, Report no. 45, 1998, p45
  - 22 *Complaints Against Police – The Politics of Reform*, Lewis, Colleen, Hawkins Press 1999, p20; Maguire and Corbett 1991, p13
  - 23 *Models of Police Oversight: A Critique*, Prenzler, Tim and Ronken, Carol, Griffith University, 1999, p19
  - 24 Ibid
  - 25 Reducing police-civilian conflict: An analysis of assault complaints against Queensland Police, Brereton and Burgess, CJC, 1997
  - 26 Ibid, p1
  - 27 Maguire and Corbett 1991, p118
  - 28 Lewis 1999, p85
  - 29 Parliamentary Criminal Justice Commission Report No. 45, June 1998, p92
  - 30 Lewis 1999, p134
- CHAPTER 10**  
**Structure of the organisation**
- 1 Police Act 1996, section 79 (1)
  - 2 Police Act 1996, section 79 (4)
  - 3 Parliamentary Commissioner Act 1967, section 5(1)
  - 4 Criminal Justice Act 1989, section 9
  - 5 *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*, Hayes, Maurice, The Stationery Office Ltd, 1997, p62
  - 6 Hayes (1997), p 43
  - 7 Criminal Justice Act, section 9
  - 8 *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, by the Parliamentary Criminal Justice Committee, Report No. 45, 1998, p 22
  - 9 Ibid, p 24
  - 10 Criminal Appeals Act 1995, section 8
  - 11 Introducing the Criminal Cases Review Commission, King, Fiona, *The Prison Service Journal*, December 1998.

**Notes to chapter 10, continued**

- 12 Legal Aid Act 1988 section 3
  - 13 Northern Ireland Act 1998 section 68(2)
  - 14 Northern Ireland Act 1998 section 68(3)
  - 15 See Chapter 1 – section 1.3
  - 16 Parliamentary Criminal Justice Committee, June 1998, p 26
  - 17 Police (Northern Ireland) Act 1998 Schedule 3
  - 18 See Chapter 2 – section 2.2
  - 19 Office of the Police Complaints Commissioner, *Annual Report 1995*, Ontario Government, 1995, p9
  - 20 Independent Complaints Directorate, *Annual Report 1997/98*, Ontario Government, 1998, Foreword, p iii
  - 21 *Shielded from Justice – Police Brutality and Accountability in the United States*, by Human Rights Watch (1998), p 59
  - 22 See Chapter 9 – A Complaints Analysis Unit
  - 23 Chapter 3 – section 3.4
  - 24 This is the number of cases investigated by the IPCC as set out in chapter 2, including both their mandatory and discretionary cases
  - 25 Chapter 7 – section 7.7
  - 26 Special Investigations Unit, Organisational Chart, November 1999
  - 27 The Initial Analysis Unit will be dealing with all cases not suitable for informal resolution (ie fully investigated complaints, withdrawn complaints and those that receive dispensation). This is approximately 13,500 complaint cases (see Chapter 2, section 3). With 54 staff this is equivalent to 250 cases per year, per member of staff. Since there are approximately 225 working days per year this equates to just over 1 complaint case per member of staff per day.
  - 28 Chapter 4, section 4.5
  - 29 Around 8,500 cases per year, worked out in the same way as above
  - 30 Chapter 24, section 4.5
  - 31 *Independent on Sunday*, 19 March 2000
  - 32 The Police Resources Unit at the Home Office gave figures of £7,213,600,000 for policing funding excluding that raised by council tax, while the department of the Department of the Environment, Transport and the Regions gave a figure of £7,011,657,952 for the ‘net budget requirement’ of England alone. Both of these figures are for 1999–2000.
- APPENDICES**
- 1 *The Role and Functions of the Criminal Justice Commission*, CJC, Queensland, 1998
  - 2 Criminal Justice Act, section 9
  - 3 *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Parliamentary Criminal Justice Committee, Report no 45, 1998, p 22.
  - 4 Official misconduct is the more serious charge, and must constitute a criminal offence or a breach of discipline that provides reasonable grounds for termination of that person’s services.
  - 5 Misconduct is defined as disgraceful, improper or other conduct unbecoming an officer; or conduct that does not meet the standard of conduct reasonably expected by the community of a police officer.
  - 6 Breach of discipline matters are the least serious offences and are commonly described as ‘violation or dereliction of duty’
  - 7 Multidisciplinary teams contain intelligence analysts, accountants, surveillance staff etc.
  - 8 <http://www.siu.on.ca/>
  - 9 *Ibid*
  - 10 The government has increased funding from \$2.1 million to \$5.1 million as a result of the Adams Report
  - 11 <http://www.siu.on.ca/>
  - 12 *Ibid*
  - 13 *Police Complaints and Discipline, England and Wales, April 1998 to March 1999*, Home Office Research Development and Statistics Directorate, The Stationery Office Ltd, 1999, p 9
  - 14 This figure was obtained by using the Home Office figure for all complaints withdrawn or dispensed for the last three years (see 1 above) and subtracting the PCA figure for dispensed complaints for the last three years (*PCA Annual Reports*, 96–97, 97–98, 98–99)
  - 15 *PCA Annual Reports*, 98–99, 97–98, 96–97
  - 16 *PCA Annual Reports*, 98–99, 97–98, 96–97
  - 17 *Police Complaints and Discipline, England and Wales, April 1998 to March 1999*, Home Office Research Development and Statistics Directorate, The Stationery Office Ltd, 1999, p 3
  - 18 *X v UK* (1980) 21 DR 168
  - 19 *Ibid*
  - 20 *Couez v France*, 24 August 1998
  - 21 *Benkessiouer v France*, European Court (24 August 1998), *Darnell v UK* (1991) 69 DR 306
  - 22 See *Lombardo v Italy, Neigel v France, Massa v Italy*. For more details see *European Human Rights Law*, Keir Starmer, Legal Action Group, 1999, pp.661–662,
  - 23 *Pretto v Italy* (1983) 6 EHHR 182
  - 24 *Diennet v France* (1995) 21 EHHR 554
  - 25 Starmer 1999, p 369
  - 26 Figures taken from PCA Annual Report 1998–1999
  - 27 Figures taken from PCA Annual Report 1997–1998
  - 28 Figures taken from the parliamentary answer of Charles Clarke, 4 November 1999. These figures represent the number of cases per force that were supervised by the PCA in 1998–99. They are useful in that PCA supervision tends to indicate a serious complaint, and so these figures give some indication of the spread of serious complaints around the country

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