

The briefing

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The police complaints system

This Police Foundation Briefing looks at the current system in England and Wales for dealing with complaints against the police and discusses some of the key related issues.

Introduction

Over the course of a year nearly half the population of the UK has some form of contact with the police⁽¹⁾. As Sir Ronnie Flanagan states in the Interim Report of his Review of Policing, ‘...every contact an officer will have with a member of the public will ‘leave a trace’ – a trace through which not only will they be judged personally, but through which their organisation and policing in general, will be judged.’⁽²⁾ Public confidence in the police service therefore

depends to a large extent on the conduct of every officer and it is important that each officer is held accountable for his or her behaviour and that any public complaint or concern is taken seriously and investigated properly.

In 2009/10 221 allegations were made per 1,000 officers⁽³⁾.

In England and Wales ⁽⁴⁾ complaints against the police are handled either locally by police forces or by the Independent Police Complaints Commission (IPCC). Set up in 2004, the IPCC has a statutory aim of increasing confidence in the police complaints system. It deals with the most serious cases, such as corruption, hate crimes, serious injury, deaths in custody or police shootings, or with appeals against the police handling of complaints cases. This Briefing looks at both the local resolution of police complaints and the national role of the IPCC, focusing in particular on the effectiveness of the current system and the public's confidence in it.

The importance of an effective complaints system

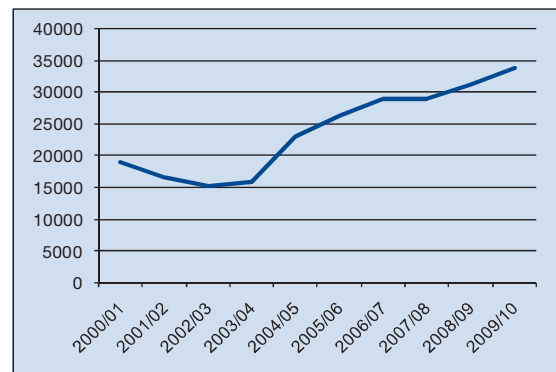
The police hold a unique position in society with considerable coercive powers to resolve disputes and conflicts and intervene in people's lives. With these powers comes a serious responsibility to adhere to the rule of law and to account for their actions. The Police Constable (PC) is the most visible policing role and it is crucial that every PC operates, and is seen to operate within an ethical, legal and human rights framework. This is particularly true today when images of officers' actions are the subject of persistent media and public scrutiny ⁽⁵⁾. An effective complaints system is central to police accountability and allegations must be investigated thoroughly and impartially.

Public confidence in policing depends primarily on the existence of effective means for securing redress when policing goes wrong. If citizens are to have confidence in the police service as a whole, they must believe that the actions the police take are legitimate

and lawful and that any police officer acting outside this framework will be held to account for their actions in a timely, transparent and fair manner.

Complaints can also offer valuable information to police forces, particularly in relation to Neighbourhood and Citizen Focused policing where it provides a store of information on the needs (both met and unmet) and concerns of a community. As well as setting standards for police conduct, an effective complaints system should therefore also identify issues that matter locally and pinpoint where changes might need to be made.

Fig. 1. Police complaint cases: 2000/01-2009/10



Source: *Police Complaints: statistics for England and Wales 2009/10* (IPCC February 2011)

A brief history of the police complaints system

In 1977 the Police Complaints Board (PCB) was established under the Police Act 1976. Prior to this all complaints against the police were handled by police forces themselves. The intention was to create a more independent system, but during its eight years of operation, the PCB questioned Chief

Officers' decisions in merely 0.4% of cases and accepted the police version in almost all of these⁽⁶⁾.

Following criticism by Lord Scarman⁽⁷⁾ after the Brixton Riots in 1981 that the system was cumbersome and lacked independence, the Police Complaints Authority (PCA) was set up in 1985. Serious complaints were formally investigated whereas less serious complaints, such as minor assaults, were to be dealt with by Informal Resolution. Section 85 of the Police and Criminal Evidence Act (1984), amended by the Police Act 1996, allowed the police to use Informal Resolution where complainants gave their consent. Under this system, if unhappy with the outcome of Informal Resolution, a complainant could ask for a formal investigation.

The system nevertheless continued to be criticised for its lack of popular support and independence (Home Affairs Select Committee, 1998). In 1999, the Stephen Lawrence Inquiry, which was highly critical of the police and found that confidence in the police among ethnic minority communities was worryingly low, called for an impartial, independent body to handle police complaints and increase public confidence⁽⁸⁾. Liberty echoed this call in 2000⁽⁹⁾ and in 2004, following a public consultation, the Independent Police Complaints Commission (IPCC) was created under the Police Reform Act 2002 to replace the PCA. The same legislation replaced Informal Resolution with Local Resolution, which allows for a third-party, such as a witness, to make a complaint and removes the complainant's right to ask for a formal investigation once consent has been given to the Local Resolution process.

The Independent Police Complaints Commission

The IPCC is a non-departmental public body independent of the police and political parties. Its remit is to investigate complaints against the police⁽¹⁰⁾, recommend appropriate action by the police force concerned and, where relevant, refer cases to the Crown Prosecution Service. It independently investigates serious complaints such as incidents of death or serious injury or allegations of serious criminality, with referrals coming from members of the public or from the police. Individual forces are responsible for any disciplinary action that may follow from a complaint.

The IPCC has around 400 staff and its budget of £35 million per annum comes mostly from the Home Office. Full-time Commissioners (board members) are appointed by the Home Secretary for a five year (re-appointable) term of office; they cannot have previously served as police officers. The IPCC has offices in Cardiff, Coalville, Wakefield, London and Sale.

The IPCC only deals with complaints relating to the behaviour and conduct of the police, rather than those relating to operational matters (such as the standard of a particular service or the organisation as a whole) or policing policy. To complain against a specific direction or control of policing, a complainant must write to their MP, the Chief Constable or the Police Authority.

The complaints procedure

Who can make a complaint?	Anyone in receipt of, or adversely affected by, or a witness to, the behavior or conduct of police officers or staff.
What do people complain about?	Inappropriate police behaviour such as conduct falling below the Standards of Professional Behaviour. In 2009/10 the most common complaints were for neglect or failure in duty (26%); incivility, impoliteness and intolerance (20%); and excessive force (13%).
To whom do people complain?	To the police force concerned or to the IPCC. In most cases the IPCC will pass on complaints to the relevant force.

Cases are dealt with in a number of different ways, depending on the severity of the allegation:

- Local Resolution – the complaint is resolved by the police at the local level.
- Local Investigation – the complaint is investigated by the police themselves through their Professional Standards Department (PSD)
- Supervised Investigation – the complaint is investigated by the police PSD under IPCC supervision
- Managed Investigation – the complaint is investigated by the police (usually PSD) under IPCC management
- Independent Investigation – this is for serious complaints, or particular issues around community concern which are investigated by the IPCC’s investigators.

Appeal

There is no right of appeal against the outcome of Local Resolution; the only basis for appeal relates to the process (e.g. where the complainant did not agree for the complaint to be dealt with by the Local Resolution process). In Local and Supervised Investigations, the decision of the PSD

can be appealed to the IPCC. There is no right of appeal for Managed Investigations or for Independent Investigations; for these the only route of challenge is through judicial review.

In 2009/10 the IPCC upheld 21% of appeals against the outcome of a police investigation ⁽¹¹⁾.

Local Resolution

Local Resolution is the most common way of resolving allegations ⁽¹²⁾. When a complaint is made, the local police assess whether the complaint is likely to result in criminal or misconduct proceedings. If it is not, the complainant is offered the chance to resolve the allegation informally, by, for example meeting the officer against whom the complaint is made. If the complainant consents, the allegation is then resolved by the local police.

Reports by the Police Foundation and the IPCC ⁽¹³⁾ found that while on the whole Local Resolution was a good vehicle for dealing with complaints, neither complainants nor officers were satisfied with the system. Complainants wanted more contact with investigating

officers and their preferred outcome was often an apology. Officers felt they were insufficiently trained in the process and were not kept informed of how the complaint was progressing nor the end result. The reports identified a lack of awareness and understanding of Local Resolution and recommended the process be better implemented in police forces.

Following these reports, the IPCC undertook work to address the main findings and improve awareness of the Local Resolution process. This work continues in the new IPCC Statutory Guidance, which encourages the use of Local Resolution as a simple, effective and proportionate way of resolving complaints and emphasises the need for police officers to learn from the process and to be willing to acknowledge to a complainant when something could have been done differently or handled better.

New statutory guidance

In April 2010 the IPCC issued new Statutory Guidance on police complaints ⁽¹⁴⁾. Under the Police Reform Act 2002 the police must have regard for this Guidance with failure to do so citable as evidence in disciplinary proceedings. The new Guidance reflects a cultural shift in the way that complaints are to be considered. Prior to the Guidance, the IPCC could only act in response to an allegation of 'misconduct'. Now the approach is more about dealing with public dissatisfaction with poor service, rather than concentrating on individual officer misconduct and adopts a more restorative approach to complaints: where it is not clear who is to blame, police forces should try to deal with the reason for the complainant's dissatisfaction and be willing to acknowledge fair criticism. Under the Guidance a complaint

will now be 'upheld' or 'not upheld', focusing on dealing effectively with the complaint, rather than on asking whether there is a case to answer on a charge of individual misconduct.

***'The complainant should end his or her contact with the complaints system feeling he or she has been listened to and given a clear explanation of what happened and why, and that all the complaints have been addressed in a fair and impartial way.'* Statutory Guidance, Independent Police Complaints Commission 2010**

The changes made by the new Guidance aim to place the complainant at the heart of the complaints process, thereby increasing confidence in the process itself, as well as public trust and legitimacy in policing.

The complaints process – key issues

There are two ongoing concerns with the current police complaints process. These are explored below:

Reluctance to complain

On the whole, citizens are in fact quite reluctant to complain against the police. The British Crime Survey shows that of the 27% of people who describe themselves as 'really annoyed' with the police, only one in ten make a complaint ⁽¹⁵⁾. This reluctance could be due to a number of factors. Firstly, complaints against the police have a low rate of success. This could be partly circumstantial: an individual police officer often operates on his or her own discretion, outside of the gaze of more senior officers, so frequently only the

complainant and the police officer are present when an incident occurs and there are no independent witnesses to substantiate or repudiate claims. In both 2008/09 and 2009/10 90%⁽¹⁶⁾ of allegations were found to be 'unsubstantiated' (now known as 'not upheld')⁽¹⁷⁾. The high level of unsubstantiated complaints does raise additional concerns about the outcomes of investigations, particularly since the figures also vary widely across forces. In Cheshire, for instance, 3% of allegations were 'substantiated' whereas in Northamptonshire substantiated allegations numbered 23%⁽¹⁸⁾. This suggests a need for more standardisation which the new Statutory Guidance should help to secure by allowing the upholding of complaints for reasons other than substantiated misconduct.

A second factor is fear of reprisal. Many complaints against the police are investigated by the police themselves. The IPCC only conducts independent investigations in serious cases and, in 2008/09 less than 1% of complaints against the police were investigated by the IPCC⁽¹⁹⁾. So if, for example, a complainant were concerned about his/her local police behaving in an aggressive and harassing manner, he/she has to submit the complaint to the local police themselves. For those who may feel fearful of, or feel victimised by the police, complaining to the police is not necessarily an option.

'If you think the police are all bastards, you don't bother to complain because you think it will get you victimised. If you are Mr and Mrs Suburban who have a good view of the police and think they do a good job, and they stop you and swear at you, then you are shocked and you complain.'⁽²⁰⁾
Nick Hardwick, Former Chair of the IPCC

Charities such as Liberty run a free advice and information service giving initial stage legal advice to the public and a frequently heard grievance⁽²¹⁾ is that the police do not take complaints seriously.

80% of people who made a complaint against the police were very or a bit dissatisfied by the way the police handled it. British Crime Survey 2006/07

Access to the complaints system

Engaging with the police complaints system can be daunting with some aspects of the procedure being rather complicated, particularly for certain groups of people. The Children's Legal Centre has raised concerns that young people are often unaware of their rights and find the complaints process difficult to understand and overly long⁽²²⁾. A 2010 IPCC report⁽²³⁾ found the greatest disincentive for ethnic minority respondents was that 42% did not know how to make a complaint and 48% thought that making a complaint would take up too much of their time. Contrast this with the National Health Service, which receives a similar volume of complaints (around 130,000 per year). Members of the public who wish to make a complaint regarding the conduct of a health service practitioner, whether a nurse, doctor or consultant, have access to a cadre of trained advocates through its Patient Advice and Liaison Service (PALS). Staff listen to the complaints of patients, talk the issue through with them and, if they can't resolve it themselves, help the complainant through the formal complaints process. Furthermore, complaints in the NHS can be made on behalf of someone else (with their consent), which means that those who are reluctant or unable to make a complaint, for whatever reason, can have their case taken forward by someone acting on their behalf.

The IPCC – key issues

Despite the new Guidance, there remain a number of concerns with the IPCC. Some of the main ones are explored below.

Independence

The IPCC has been criticised for being ‘culturally tilted’ towards the police (24). Former police and customs officers fill many of the investigatory roles so even in serious cases, where independent investigation does occur, there are still concerns. The Home Affairs Select Committee also heard evidence that the independence of the IPCC could be compromised by employment structures that allow the re-appointment of Commissioners (with a review after five years) and recommended a seven-year appointment system, as used by the Police Ombudsman in Northern Ireland (25).

The IPCC has instituted a number of procedural safeguards both at the organisational and the investigatory level. Investigators always work in teams and investigation reports are thoroughly checked before publication. The IPCC also follows a strict investigatory process to ensure evidence is unbiased. Nevertheless, questions over the independence of the complaints system have arisen in respect of the results of investigations, with concerns that the recommended disciplinary measures have been too light (26). The fact that there is no right of appeal against the outcomes of Independent and Managed Investigations (other than by judicial review) also raises concerns. Judicial review is a complicated and costly legal remedy to which few appellants would wish to resort. There is a right of appeal against Supervised Investigations, although as reported by the National Audit Office, the

number of successful legal challenges to IPCC decisions is very low (27).

In the high profile case of Jean Charles de Menezes, who was shot by police officers in July 2005, an IPCC investigation was delayed after Sir Ian Blair, Commissioner for the Metropolitan Police, ‘resisted’ the investigation (28). In January 2008, the Police Action Lawyers Group resigned from an advisory group set up to support the IPCC’s work citing a lack of impartiality and poor decision-making (29). In April 2009 Ian Tomlinson died at the G20 protests and the IPCC was later widely criticised for too readily accepting the police version of events and delaying the start of an independent investigation (30).

In Northern Ireland, the Police Ombudsman is responsible for investigating complaints, and has the power to initiate misconduct hearings. Figures show that 86% of people in Northern Ireland believe the Police Ombudsman to be independent. In England and Wales this figure is lower, with 69% of people believing the IPCC to be independent from the police (31). Dame Nuala O’Loan, former Police Ombudsman, attributes this to the fact that the IPCC hands back cases to the police for investigation:

‘My view from the day I was appointed was that people had to understand that this system was independent and that a process of handing complaints back to the police for investigation, although it is provided for by statute, would cause confusion and would reduce the confidence in the organisation which had been created for the people and for the police’ (32)

The Northern Ireland Police Service has evolved under quite special circumstances, however the Police Ombudsman model,

though much more expensive than our own system, is one from which we can still learn. In Northern Ireland, the Police Ombudsman has a statutory duty to be independent⁽³³⁾ whereas in England and Wales, the IPCC merely has to maintain an ‘appropriate degree of independence.’⁽³⁴⁾ One might argue that an organisation is either independent or it is not – there is really little room for compromise.

Accountability

As well as independence, an important requirement of an effective complaints system is accountability. The complaints system itself must be one that is subject to a monitoring process to ensure that it is fair. The National Audit Office report highlighted that fact that there is no external independent scrutiny of the IPCC’s work and no mechanism to monitor whether its recommendations have been implemented⁽³⁵⁾. These criticisms were echoed in a report in March 2009 by the Public Accounts Committee⁽³⁶⁾ and in response the IPCC has created a new Quality Standards Directorate to monitor and audit its work. Routine customer satisfaction surveys are also to be employed by forces to assess responses to the new approach. These changes are welcome, but they amount to internal, rather than external scrutiny.

Workload and resources

The volume of complaints has increased significantly since the IPCC was set up in 2004. In 2009/10 there were 2,746 referrals from police forces (an increase of 12% on the previous year). 2,208 of these were sent back to the relevant forces for local investigation and the IPCC conducted 106 independent investigations (a 100% increase since 2005/6). The number of appeals to the IPCC has also increased to 5,500 (a 21% increase on the previous year and a 100% increase since 2005/6)⁽³⁷⁾. The increase in demand without a corresponding increase in resources

means that the IPCC is unable to complete as many cases as it annually receives.

Both the National Audit Office and the Public Accounts Committee raised concerns about the IPCC’s lack of capacity for dealing with the number of investigations and appeals it receives. This overload can cause problems. With limited resources each investigation already takes on average just over 200 working days to complete; lengthy delays can make people less inclined to make a complaint and reduces public confidence in the process⁽³⁸⁾. To counteract this under IPCC Complaint Guidelines the complainant must be kept informed of the progress of an investigation at least every 28 days.

The reports by the National Audit Office and the Public Accounts Committee both recommend making better use of resources to cope with the increase in workload and improving the training of investigators and caseworkers. In 2009, the IPCC underwent corporate restructuring and appointed a new Director of Investigations in order to try to meet increasing demand⁽³⁹⁾.

How successful is the IPCC?

Despite these criticisms, the IPCC itself is seen as a considerable improvement compared with its predecessors⁽⁴⁰⁾.

The Public Accounts Committee report found that the IPCC had improved access to and raised confidence in the complaints system and in 2009 86% of people surveyed believed the IPCC would treat a complaint fairly⁽⁴¹⁾.

Although there has been a large increase in complaints, this could be indicative of a greater confidence in, and more awareness of, the IPCC itself, with citizens more able and willing to complain. The introduction of

Policing and Crime Commissioners in 2012 will also pose new challenges for the IPCC, which will be under a duty to investigate complaints against the Commissioner.

To its credit, the IPCC has also recently tried to change the culture of complaints handling and has shown a willingness to accept criticism. Changes made in the new Guidance begin to place the complainant at the centre of the complaints process and publications such as the regular bulletin 'Learning the Lessons'⁽⁴²⁾ encourage the police to view complaints as a helpful means of service improvement, rather than as an obstruction to their work. It is also in the process of seeking to get regular feedback from those who have used its services, such as appellants. In an interview with Police Oracle, Jane Furniss, Chief Executive of the IPCC emphasised the importance of complaints as valuable feedback for officers and stated her desire to make the complaints system faster and less costly⁽⁴³⁾.

'At the heart of the IPCC's work is the belief that public confidence in the police complaints system will lead to greater trust in the police service as a whole and that this in turn will contribute to increasing the overall effectiveness of the police service.'
IPCC annual report 2008/09

Conclusion

If the police are to remain a legitimate source of authority, capable of assessing and investigating breaches of the law, then their conduct must in turn be open to independent, impartial scrutiny. Public confidence in policing depends on the integrity and accountability of individual officers, forces and services. Citizens need to be able to voice legitimate

concerns and have those concerns dealt with in an accessible, transparent way.

Although there are still a number of problems with the current system of police complaints, some of these are being addressed and the system as a whole is certainly an improvement on what preceded it. The IPCC is considerably more independent and impartial than the old Police Complaints Board and Police Complaints Authority. Concerns still remain over the high percentage of cases that are investigated by the police themselves and over whether the IPCC ought to be able to assess policing policy and operations as well as police conduct. There are issues too with the IPCC's workload and the need for greater external scrutiny.

One of the biggest obstacles to a successful complaints system is the mind-set of the police themselves. Forces need to take a learning approach to complaints and see them as useful feedback, rather than as criticism against which they should defend themselves.

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