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Oxford  
Policing  
Policy  
Forum

What is  
to be  
done about  
Police Complaints?

Report of the seventeenth Oxford Policing Policy Forum  
19 June 2015

All Souls College,  
Oxford

# POLICING POLICY FORUM

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## GUEST LIST

19 June 2015

Name	Job Title	Organisation
Ms Zoe Billingham	HM Inspector of Constabulary - Eastern Region	HM Inspectorate of Constabulary
Det. Insp. Simon Bottomley	Professional Standards	West Yorkshire Police
Ms Jo Byrne	Assistant Chief Constable	South Yorkshire Police
Mr Mark Chatterton	Chief Superintendent	Hampshire Constabulary
Mr Angus Cleary	North West Regional Manager. Interim	Equality and Human Rights Commission
Ms Liz Davidson	Police Integrity and Powers Unit	Home Office
Mr Hardyal Dhindsa	Deputy Police and Crime Commissioner	Office of the Police and Crime Commissioner for Derbyshire
Mr Nigel Ellis	Executive Director Investigations	Local Government Ombudsman
Ms Patricia Gallan	Assistant Commissioner for Specialist Crime and Operations	Metropolitan Police Service
Mr John Graham	Director	The Police Foundation
Mr Paul Hammond	Chief Executive	Office of the Police and Crime Commissioner for Thames Valley
Mr Alan Hardwick	Police and Crime Commissioner	Office of the Police and Crime Commissioner for Lincolnshire
Chief Superintendent Judi Heaton	Head of Professional Standards Branch	Humberside Police
Mr Simon Hurst	Detective Superintendent, Head of Professional Standards	Leicestershire Police
Mr Martin Jelley	Chief Constable	Warwickshire Police
Mr Oz Khan	Superintendent	West Yorkshire Police
Ms Laura Knight	Assistant Chief Executive	Office of the Police and Crime Commissioner for Northamptonshire
Mr Robert Leach	Director - Police, Crime and Justice	Capita Secure Information Solutions Ltd
Ms Kate Lloyd	Effectiveness Programme Team	Her Majesty's Inspectorate of Constabulary
Professor Ian Loader, Professor of Criminology	Centre for Criminology	University of Oxford
Ms Abie Longstaff	Legal and Policy Analyst	The Police Foundation
Detective Superintendent Ray Marley	Policing Standards Manager – Ethics, Integrity & Professional Standards	College of Policing
Ms Tiggey May	Senior Research Fellow	Birkbeck, University of London
Rt Hon Alun Michael JP	Police and Crime Commissioner	Office of the Police and Crime Commissioner for South Wales
Ms Julia Mulligan	Police and Crime Commissioner	Office of the Police and Crime Commissioner for North Yorkshire
Dame Anne Owers	Chair	IPCC
Ms Nikhita Saggi	Intern	The Police Foundation
Mr Anthony Stansfeld	Police and Crime Commissioner	Office of the Police and Crime Commissioner for Thames Valley
Mr Peter Swain	Assistant Director of Investigations	General Medical Council
Mr Clive Wain	Chief Superintendent	West Yorkshire Police

# The Oxford Policing Policy Forum

The Oxford Policing Policy Forum is a joint initiative of the Police Foundation and the Centre for Criminology at the University of Oxford. The Forum provides an opportunity for a wide range of stakeholders interested in policing to discuss fundamental issues under Chatham House rules. The main purpose is to encourage informal debate rather than inviting an audience to listen to formal presentations. Participation is by invitation only (see guest list).

## Background

The current police complaints system in England and Wales is in a state of uncertainty and flux. There is widespread agreement that the current approach has major shortcomings and that the problems cannot be solved simply by providing more resources, but much less agreement about what better arrangements would look like.

The seventeenth Oxford Policing Policy Forum met on the 19<sup>th</sup> June 2015 to discuss 'What should be done about police complaints?'

The Forum was chaired by John Graham, Director of the Police Foundation, and a presentation setting out the key issues was given by Dr Graham Smith of the University of Manchester.

## Presentation

Dr Graham Smith opened the Forum by asking: what is the purpose of the police complaints system? He commenced by suggesting that fundamentally, the aim of the system is to improve the quality of policing provided to the public by acting as an accountability mechanism, protecting against impunity. In this respect, it must address the grievances of complainants and facilitate responsiveness, aiding the service to learn lessons and gather the views of the local community. It also functions as a regulatory mechanism, identifying and punishing misconduct. Smith highlighted a range of cases, including Blair Peach, Orgreave, Dorothy 'Cherry' Groce, Daniel Morgan and Hillsborough where, despite alleged police misconduct, no officer has yet been held to account.

Reforms of police complaints systems have begun across the world, in keeping with the trend towards the democratisation or professionalisation of policing. Complainant dissatisfaction has been driving the reforms, which have largely been focused on removing complaints from the police service and creating systems of external supervision. Yet lesson-learning is part of the development of policing knowledge and we need to find a way forward that serves both the police and the public. There is a danger that we have lost sight of the need to address the complainant's grievances and have created too much distance between the police and the complainant.

It may be worth considering the approach of the General Medical Council (GMC), which employs a 'fitness to practise' bar. The police equivalent might be 'fitness to serve'. Under the GMC system, a complaint can originate from either the complainant or from staff/management. The police system could benefit from the reunification of a complaints/disciplinary system, delegating everything to an entirely independent body which would have the powers to launch an investigation, prosecute individual perpetrators and decide whether an officer is 'fit to serve'.

There are, however, a number of obstacles to this approach. The first of these is that there is a degree of confusion over police governance in terms of the respective roles of Police and Crime Commissioners (PCCs) and chief constables. Secondly, with 43 forces, both national and local arrangements would need to be accommodated. A third obstacle arises because of the close relationship between the police and the

Crown Prosecution Service (CPS) which makes the prosecution of officers problematic. Fourthly, within the police there lies an element of scepticism in relation to external interference, which has its roots in the desire to preserve the doctrine of constabulary independence. Lastly, there is some reluctance on the part of the police to engage with and believe complainants and we have seen a raft of cases where for one reason or another, complainants were not thought of as credible and chances to prevent wrongdoing were therefore ignored.

Dr Smith finished by saying that the 1980s and 1990s should serve as a warning for the damage caused by unresponsive, unaccountable and unrepresentative policing. Complaints contribute to policing knowledge and, in this respect, all complaints should be recorded including those considered vexatious or malicious, for even these can help police to understand their local communities. Overall, it is important to remember that the primary purpose of the police complaints system is to improve the quality of the policing services to the public.

## **Discussion**

There was almost universal agreement at the Forum that the current system of police complaints is not working for complainants, for police, or for the IPCC. Participants spent the day discussing a number of issues that needed consideration, before putting forward a set of principles to help guide future reforms.

### **Identification of misconduct**

Participants felt that complaints from the public should not form the primary source of knowledge of wrongdoing in policing. There needs to be a system of internal appraisal and reporting so that problems can be uncovered well before the public complain. These internal reports should feed into efforts to reflect upon and improve the profession of policing based on the development of a solid body of knowledge.

The gathering and sharing of good quality data is key to this; in areas such as mental health, for example, there is insufficient knowledge or statistics on issues such as the use of restraint techniques. This knowledge is needed in order to be able to compare forces and officers, identifying systematic incompetence or misconduct.

A culture needs to be created where officers and staff can speak out. In this respect, participants felt the term 'whistleblowing' was unhelpful. Reporting underperforming, incompetent or inappropriate behaviour by officers should be seen as part of the job of an officer, not as a separate act labelled 'whistleblowing'. Officers should see themselves as doing the right thing when giving evidence against other officers rather than as whistleblowers.

The Forum acknowledged that the culture has begun to improve from one where officers were reluctant to say anything, to one which is more open. Thought was given as to what could be done to encourage this further: there may be a role for PCCs in this regard. Some PCCs are finding that retired officers are contacting them to report on those still serving. The fact that the PCC is set apart from the day-to-day activity of operational policing may help to encourage greater confidence in coming forward. In addition, participants felt that the College of Policing, the IPCC and the HMIC could play a greater part in determining how best to handle internal reporting.

### **Focus on malpractice**

The Forum identified a number of problems in the adversarial approach to complaints commonplace in England and Wales. Currently, assessment of a complaint starts with looking at the worst possible outcome that could result. Allegations are seen through the lens of misconduct or criminality by an individual officer, and the public expects to see 'heads on sticks'. Currently, very minor and very serious complaints tend to be treated in the same way and, unless there is culpability, the complaint is not upheld: this is not helpful for

either complainants or the police. The need to begin by investigating wrongdoing slows down complaints rather than encouraging an officer to apologise upfront. If there is no culpability and the complaint is not upheld, the complainant can end up feeling they have not been believed or taken seriously. The system also leads to a defensive attitude on the part of the police, a need for the officer to protect his or her job or reputation. An example was given of a recent case where an officer had three local resolutions against his name, and the CPS used these to form a 'bad character' argument in court.

The system needs to start by establishing 'what happened, why did it happen, and what can we learn'. It should focus on service standards rather than on the action of an individual officer. An analogy was drawn with the airline industry which deliberately does not employ a blame culture; there everyone works together to try to stop a similar incident happening again.

Misconduct does need to be addressed – the police service is unique in the wide range of powers they hold to restrict liberty and to use reasonable force, and officers must be held accountable where appropriate. But not all police performance has to be a disciplinary issue: it can instead be a useful guide for improving behaviour.

### **Addressing what the complainant wants**

What do complainants want? There was general agreement that most complainants simply want an apology. Indeed, in most cases, if an apology had been given straight away, at frontline level, a complaint might not even have been lodged. As time goes by, as the complaint is slowly investigated, and as the officer becomes more defensive, what the complainant wants can escalate. Instead of being satisfied with an apology, discipline (or even dismissal) is demanded or at least expected.

The service needs to ensure that matters are dealt with at the lowest level in a timely manner. Fewer complaints would then end up having to go through a formal complaints system. Restorative Justice (RJ) was raised as a possible approach to resolving police complaints, however research has shown that RJ does not always work in a police setting. It can take time and is heavily dependent on having the right individual to oversee it. One participant asked: 'why is no force running a pilot on simply saying sorry?' Saying sorry requires no legislation, it is quick and easy, it restores faith in police officers and may well stop a formal complaint being made.

Another participant pointed out that it is important to manage the expectations of complainants. Complainants do not always understand how the complaints system works and what kind of outcome can be achieved. This can lead to confusion or disappointment. In the medical profession, the GMC uses trained counsellors who meet with complainants at the start of the process, setting out how the system will work and the potential outcomes. These counsellors are not involved with the investigation of the complaint but are merely present to help the complainant understand the process. At the end they meet the complainant again and explain what has happened and why the particular decision was reached. This enables the GMC to control the expectation of complainants, making sure the process is clear and fair in terms of procedure as well as outcome.

### **Police culture**

The Forum agreed that in order to reform the complaints system there needs to be a change of culture within policing and specifically a shift in how complaints are viewed. The labels of vexatious or malicious are often used by forces to avoid investigations, yet the police should look at all complaints that come through – each carries information about the local community and the type and quality of service it receives from the police.

Because of the initial focus on misconduct (see above), there is a culture of blame in the police service and a feeling that discipline will concentrate on the officer who is 'holding the parcel when the music stops.' Officers are therefore reluctant to apologise for something which could equally have been the fault of someone else. The Police Federation does not help the complaint system in this respect – officers are often told not to apologise. A better relationship needs to be developed between the IPCC and the Federation and officers need to rid themselves of the view that the IPCC is 'out to get them'. Officers need to be told that it's alright to make a mistake, they are only human, and they need to feel free to be able to say sorry straight away without fear of self-incrimination or losing face.

The Forum discussed how to bring about cultural change. One approach might be to move the complaints system away from individual blame and view wrongdoing as a service breach; systemic problems in the service can reach much higher up the chain than the officer accused. Another avenue for cultural change may lie in the work currently being done on developing the service into a more professional organisation, based on a learning-focused culture. The College of Policing has the potential to be the guardian of professional practice and standards, which could be reinforced in legislation, along with greater sharing of knowledge and information between HMIC, the College and the IPCC. The IPCC could do more to gather the opinions of the police service itself: the Northern Ireland Ombudsmen surveys police forces asking for their opinions on the complaints system, which helps to create a dialogue between the Ombudsman and the service and increases police confidence in the complaints system.

Chief Officers and PCCs are both in the position to bring about cultural change and this is possibly the key to achieving success in this area. If the lead players focus on listening to and responding to the needs of the local community and working in partnership to tackle problems, this sets the right tone for the complaints system.

### **Legislation/procedure**

Many participants mentioned that the current legislation can be overly constrictive. The Police Reform Act 2002 has created a system which is complex and bureaucratic, resulting in delay and other inefficiencies. The legislation sets clear limits on who can do what; for example, all that PCCs are able to do with appeals is 'handle' them. This can lead to a 'complaints roundabout' where allegations are passed from the force to the IPCC and back again without being resolved.

The legislation also has gaps: incidents often take place that involve officers from different forces, but each force is obliged to conduct its own investigation or referral, each with its own individual disciplinary procedures. As well as wasting resources, this can lead to different outcome based on different disciplinary procedures. As regionalisation becomes more common, new legislation might be needed which takes account of this.

One participant pointed out that we don't need a 'system' of dealing with complaints, we need a 'method'. The concept of a system imposes restrictions and regulations when many complaints could be resolved by local forces through a more common-sense approach.

This led the Forum to discuss whether local forces could indeed handle their own complaints with less supervision.

### **Who should deal with complaints?**

Some participants expressed concern at the government's intention to transfer complaint handing to PCCs. It was felt that this might place too great a degree of oversight with regard to complaints with PCCs, potentially confounding the respective roles and responsibilities of the police, the PCC, the IPCC and the public. Those who thought the police should remain a significant part of the complaints process pointed to

the valuable local knowledge that complaints bring, believing that it would increase lesson-learning if the local force handled the complaints themselves. Many considered there to be reluctance within the service to accept external governance and it was suggested that more/better training was required in this area. Participants raised the question of what to do about forces with a poor track record of complaint handling and whether PCCs could raise standards through facilitating local resolution and increasing accessibility to the complaints system. If PCCs became the starting point for complaints recording, those who are reluctant to complain directly to the police might be more likely to come forward. These participants felt that the risk of trading on constabulary independence was slight; although the PCC should receive the complaint, the local force should still decide how to resolve it, with the PCC holding the force to account for that decision and ensuring that the force takes the complaint seriously. This would allow the PCC to be the point of contact and support for the complainant and might create a more transparent system. The Forum was reminded that feedback from the public in terms of complaints is important knowledge for PCCs too. The PCC needs to understand the local community and to listen to concerns in order to be able to do his or her job properly.

The Forum discussed the recent reforms in more detail.

## **Reforms**

It was the view of almost all participants that fundamental reform of the complaints system was required. The Home Office was warned not to tinker with the problem, but rather 'start with a blank sheet of paper'. The Forum urged the government to think more radically about how to design the best working model and, only after this, draft new legislation.

The Forum discussed what kind of reform was needed. It was agreed that the starting point should be improving the service to the public. A better system would be one that was simpler and speedier, non-confrontational, focused on service failure rather than individual blame.

A number of participants warned about the perils of losing sight of accountability. The public does want to see individual officers take responsibility where relevant, but a thorough and proper investigation of incidents takes time, and we should not sacrifice effectiveness for efficiency. The cost implications needed to be considered too – there is a high volume of low-level complaints and although most of these concern incivility or other relatively less serious issues, they still need to be dealt with properly, as even low-level complaints have the potential to undermine public trust in the police. Serious complaints require a greater degree of investigation and require additional resources and time.

Together the Forum set out the most important points in a complaints system, calling for:

- Two new duties: a duty of candour as well as a duty on officers to report wrongdoing - to enable a proper understanding of what happened, as well as to identify systemic issues.
- A higher level of accessibility.
- More freedom within legislation to come to a faster, more common-sense solution, preferably locally.
- Individual accountability and sanctions where appropriate.
- Organisational accountability and learning.
- Prevention of any further wrongdoing.
- Suitable level of transparency and oversight.

## **Conclusion**

The 17<sup>th</sup> Oxford Policing Policy Forum took a more practical turn than expected, perhaps because complaints is an issue that participants felt strongly about, perhaps because reform is currently underway in this area, but more probably because of the general consensus that the system was broken and needed

fixing. For the most part, participants were clear that the current system needed a complete overhaul and were broadly in agreement as to the kinds of changes they wanted to see. The outstanding concern, however, was that the government's reform programme allowed little time for the 'blank page' approach required. A number of participants indicated they would want to contribute to the Home Office Integrity Working Group on complaints reform and we hope that the Forum has assisted in this respect as well as in highlighting the issues concerned.

**Abie Longstaff**