

Anti-social Behaviour, Crime and Policing Bill

Fact sheet: The Independent Police Complaints Commission (clauses 121 to 125)

Background

1. Since 2004, the Independent Police Complaints Commission (“the IPCC”) has had a remit to provide independent oversight of the police complaints system, including the investigation of complaints and alleged misconduct in England and Wales. Its primary statutory purpose is to increase public confidence in the complaints system.
2. The need to extend the IPCC’s powers has become increasingly apparent since the publication of the Hillsborough Independent Panel’s report on 12 September 2012,¹ and the Home Secretary’s subsequent commitment to provide the IPCC with the powers and resources it requires to investigate the tragedy effectively.² More recent impetus has been provided in light of the Home Secretary’s specific commitment on 12 February 2013 to drive up standards of integrity and professional behaviour in policing to the highest level,³ and her announcement that the IPCC would be expanded to deal with all serious and sensitive complaints against the police.⁴ While the IPCC itself has found that corruption is not endemic in the police, its reports clearly indicate that police integrity needs to be strengthened and there needs to be a greater consistency in standards across all forces. There have been a number of high-profile cases over the past few years that also demonstrate the need for action.
3. The new powers will strengthen the remit and functions of the IPCC in five areas by:
 - extending IPCC oversight of private sector contractors who carry out functions for the police;
 - extending the IPCC’s power to obtain data from third parties;
 - creating a statutory framework to require responses to IPCC recommendations;
 - providing the IPCC with a power to authorise certain activities under the Police and Criminal Evidence Act 1984; and
 - providing that the IPCC may recommend and direct that a force instigates Unsatisfactory Performance Procedures in cases which involve a death or serious injury.

¹ Hillsborough: The Report of the Hillsborough Independent Panel, September 2012, available at: <http://hillsborough.independent.gov.uk>.

² Hillsborough debates, House of Commons, Official Report column 721, 22 October 2012.

³ Statement on Police Integrity, House of Commons, Official Report, column 713, 12 February 2013.

⁴ *Ibid*, column 714.

Extension of IPCC oversight of private sector contractors

4. At present, the IPCC's oversight of private contractors is limited to employees of contractors who have been 'designated' by chief officers to perform detention or escort functions for police forces.⁵
5. However, the police (whether chief officers or Police and Crime Commissioners⁶) increasingly enter into agreements with private sector contractors to carry out other types of function, including operating emergency call centres, providing front counter services (dealing with members of the public who call at police stations or offices) and providing business support services such as finance and procurement or human resources. Private contractors who perform these other roles do not fall within the oversight of the IPCC.
6. This situation poses a risk to the credibility of the complaints system because the IPCC cannot, for example, investigate a complaint made by a member of the public against contractors carrying out these further functions.
7. The Bill, therefore, extends IPCC oversight to cover private sector contractors performing these other functions on behalf of the police in England and Wales and ensures that the IPCC is able to investigate complaints and conduct matters associated with them. It will ensure that private sector contracting organisations cooperate with IPCC directions and recommendations where appropriate.

Extension of the IPCC's ability to obtain information from third parties

8. During the course of an investigation, IPCC investigators regularly seek information from third parties, including individuals, and private and public bodies. This information is necessary for the IPCC to effectively investigate the serious matters which come before it. However, it is sometimes difficult to obtain this information from third parties due to their fears about breaching data protection legislation.
9. The information sought by the IPCC is often, but not always, 'personal data' for the purposes of the Data Protection Act 1998 and can include the following:
 - travel information and evidence of passenger movement held by, for example, Transport for London;
 - video footage (including unbroadcast material) held by broadcasting companies which may cover particular events which are related to a matter under investigation by the IPCC.

⁵Section 39 of the Police Reform Act 2002.

⁶ In London, the Mayor's Office for Policing and Crime and the Common Council of the City of London.

10. To remedy this situation, this new power will enable the IPCC to serve an information notice (a document setting out the information required and by when) on a person or organisation, where the information is reasonably required for the purposes of an independent investigation carried out by the IPCC.
11. There are a number of safeguards attached to this power to ensure that its use is proportionate, necessary and justified. These safeguards include a right of appeal to a tribunal if a notice is not issued lawfully and a right to withhold information from disclosure which would amount to self-incrimination.
12. A further set of safeguards balances the need for the IPCC to obtain information necessary to carry out its statutory functions, with the need to ensure that particular types of information that it receives are adequately protected. These protections include a prohibition on the IPCC disclosing, without consent, 'sensitive'⁷ material received from the security or intelligence agencies – or the fact that it has received such material. The same prohibition and consent requirement also extends to material which is not intelligence or intercept material but which, in the opinion of the relevant Secretary of State (or Minister of the Crown), could be damaging to national security, international relations or the economic interests of the United Kingdom if disclosed.

Creation of a statutory framework to require a response to IPCC recommendations

13. At the conclusion of an investigation, the IPCC notifies bodies of any "institutional failings" it has identified. It does this by issuing recommendations (mostly to police forces and Police and Crime Commissioners but sometimes to other public bodies and private sector organisations). At present, there is no clear regulatory framework or mechanism to ensure these recommendations are properly followed up, enforced or monitored for progress.
14. This is often the focus of criticism by families and community groups, when the police or other bodies take no action and a similar incident occurs subsequently.
15. The effect of this new power, therefore, is to establish a statutory framework requiring recipients of such recommendations to respond within a specified time period (56 days). A response must state what

⁷ 'Sensitive' information for the purposes of this power relates to intelligence service information or intercept material received directly or indirectly from, or relating to, an intelligence service. In practice, this means material from the Security Service, the Secret Intelligence Service, the Government Communication Headquarters, any part of Her Majesty's forces or the part of the Ministry of Defence which engages in intelligence activities

action is proposed or has taken place, or alternatively why it is not proposed to take any action in response to a recommendation. To promote further transparency within the police complaints system, responses to IPCC recommendations will be published and accessible to the public.

Provision of additional powers under the Police and Criminal Evidence Act 1984 to the IPCC

16. Where the IPCC conducts an independent investigation that includes suspicions that a criminal offence may have been committed, the power of arrest is available to an IPCC investigator just as it is available to a police constable. However, some powers under the Police and Criminal Evidence Act 1984 (“PACE”) require additional authorisation from a police officer of a particular rank, which members of IPCC staff are unable to provide. For example, this authorisation would be needed to interview a suspect who wants legal advice but has not yet received it, or to search premises. In practice, this rarely occurs, but as and when this authorisation is required under PACE, it undermines IPCC independence as it has to go to a police force to obtain the necessary authorisation.
17. The effect of this new power is to enable certain senior appointed members of the IPCC staff to authorise the use of PACE powers which would otherwise need to be authorised by a senior police officer.

Provision of a power to recommend and direct Unsatisfactory Performance Procedures following a Death or Serious Injury Matter

18. Death and Serious Injury (DSI) matters following police contact account for some of the most high profile and grave investigations that the IPCC undertakes. Where the IPCC concludes that there has been misconduct, there are clear procedures for dealing with it. However, these investigations sometimes conclude that there have been failings by persons serving with the police that do not amount to misconduct but are examples of unsatisfactory performance.
19. Under changes made by the Police Reform and Social Responsibility Act 2011, the IPCC was provided with the power to recommend and direct unsatisfactory performance proceedings following an investigation into a complaint or conduct matter. This power did not, however, extend to DSI matters and this has created an anomaly.
20. The Bill remedies this position by ensuring parity with the power the IPCC already has in relation to complaints and conduct matters, and recognising the importance of DSI matters as the most grave and serious cases the IPCC investigates.

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