

Policing and Crime Bill

The Independent Police Complaints Commission (IPCC): investigations, powers and jurisdiction

Introduction

1. The role of the IPCC is crucial in a robust system of police scrutiny and complaints that functions well and commands public confidence. The Policing and Crime Bill includes a package of measures which will strengthen the powers of the IPCC and the independence of the investigative process.
2. In addition, the Government is also legislating in this Bill to reform the organisational structure and corporate governance of the IPCC, in order to deliver a more capable and resilient organisation with clear lines of accountability and decision-making. To reflect these changes, the IPCC will be renamed as the Office for Police Conduct. See separate factsheet on the IPCC governance reforms for further detail.
3. The significant changes to the IPCC's structure and powers will be enhanced by the wider reforms to the police disciplinary and complaints systems in this Bill, details of which are provided in separate factsheets¹.

Background

4. The IPCC was set up under Part 2 of the Police Reform Act 2002 ("the 2002 Act") and began operating on 1 April 2004, replacing its predecessor, the Police Complaints Authority. The IPCC oversees the police complaints system in England and Wales, assesses appeals against decisions made by police forces relating to complaints and claims of police misconduct, and investigates serious matters involving the police, including deaths and serious injuries (DSI) following police contact².
5. The IPCC sets the standards by which the police should handle complaints, and has a statutory responsibility to establish and maintain public confidence in the police complaints system. The majority of complaints raised by the public are dealt with by the police, but serious and sensitive matters must be referred to the IPCC if they meet the mandatory referral criteria set out in the Police (Complaints and Misconduct) Regulations 2012.
6. Under the previous Government, the then Home Secretary committed³ to a major change programme to ensure that the IPCC has increased capacity and

¹ 'Police discipline' and 'Police complaints and whistle-blowing'

² The IPCC's statutory guidance defines a DSI as:

"any circumstances in which a person has died or sustained serious injury and:

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

³ HC Deb. 12 February 2013. Vol 558 Part 115 Col 713.

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

funding to investigate all serious and sensitive matters involving the police. The IPCC has increased the number of cases that it deals with year on year and the speed with which it closes them.

Increasing the independence of the IPCC's investigations

Policy aims and background

7. Under the 2002 Act, the IPCC must have regard to the seriousness of a case and the public interest before it decides how and by whom a complaint, conduct matter or DSI matter should be investigated. The IPCC has powers to: refer cases back to the police force; to investigate cases independently; to exert direction and control over an investigation (a 'managed' investigation); or to have the police investigate within prescribed terms of reference (a 'supervised' investigation).
8. As the previous Government noted in its response to the *Improving Police Integrity* public consultation in 2015⁴, this range of options can be “*confusing for the complainant, blurring the lines between cases investigated by the police and those investigated by the IPCC*”. In managed and supervised investigations, a police officer makes the key decisions, not the IPCC. These investigations are therefore perceived by the public to be more independent than they are.
9. A majority of respondents to the public consultation agreed with the principle that police involvement should be kept to an absolute minimum to ensure greater clarity about the independence of the IPCC's investigations, as well as the practical impact such involvement can have on police resources. But others, including the IPCC and the National Policing Lead for Complaints and Misconduct, felt that some form of police involvement was still needed, including, for example, cases needing forensic specialisms or covert intelligence. The Government's aim is to increase public confidence by increasing the IPCC's control over investigations undertaken on its behalf.

What changes are being made?

10. The Bill repeals existing provisions in the 2002 Act which allow the IPCC to carry out 'managed' and 'supervised' investigations under which the police carry out the investigative work with oversight by the IPCC. In their place, a new mode of investigation will be created – IPCC-directed investigations.

⁴ Improving police integrity: reforming the police complaints and disciplinary systems. Summary of consultation responses and next steps. 12 March 2015. ISBN: 978-1-47411-6-411.
<https://www.gov.uk/government/consultations/improving-police-integrity-reforming-the-police-complaints-and-disciplinary-systems>

11. This new framework will increase the independence of the IPCC's investigations by ensuring that the IPCC can exert greater direction and control over investigations that police forces undertake on its behalf. IPCC-directed investigations will see the IPCC making the key decisions on how a case is conducted.
12. The new framework also introduces a new presumption: that the IPCC should undertake an independent investigation wherever possible, unless it would be more appropriate for the investigation to take the form of an 'IPCC-directed' investigation. This might be because the investigation will require covert surveillance of an officer, a capability that the IPCC does not possess.
13. This new presumption means that there will be a higher threshold to meet when the IPCC opts for an IPCC-directed investigation than there was for managed and supervised investigations. The IPCC will also be required to be more accountable and transparent about its reasons for not undertaking an independent investigation by communicating its reasons to complainants and interested parties.

Power of initiative

Policy aims and background

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

What changes are being made?

17. The Bill amends Schedule 3 to the 2002 Act to enable the IPCC to treat a complaint, conduct matter or DSI matter that comes to its attention as having been referred to it immediately, without the need for a referral. If the IPCC chooses to treat a matter as referred, it will then notify the police force, who will then record the matter, if it has not already done so.

Power to reinvestigate cases

Policy aims and background

18. There is legal uncertainty over the IPCC's ability to reinvestigate a matter once an investigation report has been issued and a final decision taken, even if new evidence or failings in the original investigation subsequently comes to light. Following recent challenges in the courts⁵, the Government considers that the circumstances in which the IPCC may reinvestigate a matter should be put beyond doubt, in order to avoid future legal challenges on this issue, with all the distress they can cause, for example to the families involved in a death in police custody.
19. The Bill is clear that the IPCC should only be able reinvestigate where it is satisfied that there is a "compelling reason" to do so: for example, where new evidence has come to light which, in the IPCC's opinion, casts doubt on the accuracy of the findings of the original investigation.

What changes are being made?

20. The Bill amends Schedule 3 to the 2002 Act in order to provide a clear power for the IPCC to reinvestigate, regardless of whether the underlying issue is a complaint, recordable conduct matter or DSI. However, the power is limited to only those cases that were conducted as independent or IPCC-directed investigations.

Determinations and remedies

Policy aims and background

21. Current law does not allow the IPCC to provide a clear outcome for every type of complaint allegation that it investigates. The IPCC already has the power to make certain determinations. For example, it can give an opinion on whether there is a case to answer following allegations on the conduct of an officer. Similarly, on matters involving criminal allegations, the IPCC can make a judgement on whether there is sufficient evidence to warrant referral to the Director of Public Prosecutions (DPP), who determines whether criminal charges should be brought.
22. However, for complaint allegations which fall short of criminal or disciplinary issues (service failure⁶ for example) there is no express legal power for the IPCC to make a determination on the merits of the complaint.

⁵ e.g. R (on the application of Demetrio) v Independent Police Complaints Commission and R. (on the application of Commissioner of Police of the Metropolis) v Independent Police Complaints Commission. Queen's Bench Division (Administrative Court) 06 March 2015. [2015] EWHC 593 (Admin). Appeal lodged 1 April 2015.

⁶ A service failure is where the service provided does not meet the expectations of those using the service e.g. being dealt with in a discourteous manner, receiving an unreasonably slow response, or not being kept informed of progress

23. Similarly, the IPCC already has a number of powers to recommend and direct remedies, such as: direct a case to answer⁷; direct disciplinary proceedings; and make organisational learning recommendations. However, the IPCC's powers to recommend alternative remedies to a complainant are limited.

What changes are being made?

24. The Bill amends the 2002 Act to provide the IPCC with the power to make a determination regarding non-criminal or non-misconduct cases. This will ensure that, following an investigation, the IPCC can provide a determination for complaints which do not amount to a recordable conduct or criminal matter.
25. Where the reviewing body, be it a Police and Crime Commissioner (PCC) or the IPCC, recommends a change in the outcome of the complaint or states that further work is required (for example a reinvestigation), they will be able to clearly determine the outcome of the review.
26. The Bill expands the powers of the IPCC to recommend alternative remedial action following a complaint and/or review.
27. This will enable the IPCC to have a broad range of additional statutory powers regarding remedial action, such as to recommend:
- an apology;
 - an explanation from a force; or
 - that the complaint is referred for formal mediation.
28. Providing these additional powers of remedy will address concerns around the limitations on the IPCC's ability to provide a clear resolution to a complainant. This should also help reduce repetitious complaints in providing a definitive outcome for complaints raised.

Seizure and retention of evidence

Policy aims and background

29. Under the 2002 Act, IPCC investigators have the powers of a police constable, which include powers to seize and retain evidence under the Police and Criminal Evidence Act 1984 ('PACE'). However, these powers apply only in relation to the IPCC's investigations of criminal allegations against the police.

⁷ Defined by the IPCC's statutory guidance as there being "sufficient evidence, upon which a reasonable misconduct meeting or hearing could, on the balance of probabilities make a finding of misconduct or gross misconduct"

30. Although the possibility of a criminal offence can be the starting point for an IPCC's investigation, this is a gap in the law and there is a risk that when IPCC seizes or retains vital evidence in important cases, such as a DSI, that this decision could be challenged and the IPCC would have to relinquish important evidence.

What changes are being made?

31. The Bill amends the 2002 Act to provide the IPCC with additional powers to seize and retain items of evidence.
32. The changes include provisions that the IPCC must inform the owner of any items it seizes, and that it must only retain the item for as long as is necessary to complete its investigations.

Adjacent territorial waters of England and Wales

Policy aims and background

33. The adjacent territorial waters of England and Wales are defined by the United Nations Convention on the Law of the Sea as extending 12 miles out to sea from the adjacent land mass. The law is clear that the activities of the 43 territorial police forces of England and Wales fall within the jurisdiction of the IPCC when they are operating in these waters.
34. The 2002 Act is less clear on whether other law enforcement bodies that the IPCC oversees fall under the jurisdiction of the IPCC when they exercise police powers in these waters. Other law enforcement bodies that the IPCC oversees include the National Crime Agency, the College of Policing, the Ministry of Defence Police and the British Transport Police.

What changes are being made?

35. The Bill amends the 2002 Act, the Commissioners for Revenue and Customs Act 2005 and the Police and Justice Act 2006 to put beyond doubt that the activities of all law enforcement bodies which the IPCC oversees continue to fall within its jurisdiction when they undertake these activities in the adjacent territorial waters of England and Wales.

**Home Office
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