

Policing and Crime Bill

Police Discipline

“These proposals are a key step of the government’s reform of the policing landscape, ensuring that, where the public have concerns about their contact with the police, these will be dealt with in a transparent, fair and effective way. These reforms are vital for securing confidence in this system and in the work of the police.”

Home Secretary Theresa May launching public consultations on the police discipline and complaints system, 11 December 2014

Background

1. The vast majority of police officers in this country do their job honestly and with integrity. In carrying out their duties, members of police forces (including civilian staff) are expected to maintain the highest standards of professional behaviour. These standards are set out in the Police (Conduct) Regulations 2012 and detailed in the College of Policing’s Code of Ethics¹.

Headline Standards of Professional Behaviour

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| 1. Honesty and Integrity | 4. Use of Force | 8. Fitness for Duty |
| 2. Authority, Respect and Courtesy | 5. Orders and Instructions | 9. Discreditable Conduct |
| 3. Equality and Diversity | 6. Duties and Responsibilities | 10. Challenging and Reporting Improper Conduct |
| | 7. Confidentiality | |

2. The police disciplinary system² is designed to deal with circumstances where these standards are not met, arising from a complaint from a member of the public, an internal complaint, or from an incident such as a death or serious injury amounting to misconduct or gross misconduct.

Discipline definitions

Misconduct	<i>a breach of professional standards.</i>
Gross misconduct	<i>a breach so serious that dismissal (being sacked) would be justified.</i>

3. Where behaviour falls short of these standards, it is the responsibility of the police force to conduct a formal investigation and take forward disciplinary action where appropriate. This may include a public misconduct hearing (before a three-person panel where an individual can be dismissed).
4. Where allegations arise that are serious or sensitive, the police force must refer those cases to the Independent Police Complaints Commission (“IPCC”), which

¹ <http://www.college.police.uk/What-we-do/Ethics/Pages/Code-of-Ethics.aspx>

² <https://www.gov.uk/government/publications/circular-0212015-changes-to-home-office-guidance-on-police-misconduct-unsatisfactory-performance-and-attendance-management-procedures>

then decides how the investigation should be carried out and to what extent the police force should be involved.

The 2014 Chapman Review

5. The Home Office published a review of the police disciplinary system led by Major-General Chip Chapman³ in 2014. The review concluded that the current police disciplinary system is **too complex** and often difficult for police forces to understand. It also lacks **transparency and independence**, with much of the system being managed almost entirely by police forces themselves.
6. The Chapman Review set out a number of recommendations for improving the police disciplinary system.
7. The Home Office has already implemented a number of these recommendations. In particular, police misconduct hearings and appeals are now held in public, which has enabled the public to see first-hand how the system operates. Further, from January 2016, independent legally-qualified chairs are being introduced, replacing senior police officers as chairs of misconduct hearing panels, **to ensure that decisions are objective** and made **independently** of the police.
8. The law has also been changed to prevent officers from resigning or retiring to avoid investigation for gross misconduct.

“The current system is seen as opaque. Opaqueness in language used in the regulations was a contributing factor to a lack of overall transparency.”

Major-General (Retd.) Chip Chapman in his Independent Review of the Police Disciplinary System in England and Wales

9. The further changes in Part 2 of the Bill represent a major overhaul of the disciplinary system which will **increase accountability, transparency and independence** within the system. Together with the wider reforms to policing, this will deliver **greater public confidence** in the systems that hold the police to account.

Provisions in the Bill

Extension of disciplinary system to former officers

10. It is important that serious allegations can be fully investigated and resolved even if the officer involved is no longer serving with a police force. If any officer has committed an act so serious that it would have warranted dismissal, then they should be held to account for their actions. The Bill **extends the police**

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385911/An_Independent_Review_of_the_Police_Disciplinary_System_-_Report_-_Final...pdf

disciplinary system, which currently applies only to serving police officers, to former officers.

11. If an officer resigns or retires from a force while subject to investigation or disciplinary proceedings, the Bill **will enable that investigation to continue to conclusion and, if gross misconduct is proven, the officer will be struck-off, preventing him or her from again serving in a police force.**
12. Similarly, where a serious allegation is made (which would have amounted to gross misconduct) in relation to conduct whilst that officer was serving, the force will be able to investigate the matter to conclusion and, if gross misconduct is proven, the officer can be struck-off. This provision will be subject to a time limit, starting with the date an officer leaves the force, which will be set in regulations.
13. The Government intends to set this at 12 months. This is judged to be sufficient in ensuring that if an officer resigns or retires in advance of an allegation coming to the attention of the force, an investigation and appropriate disciplinary proceedings can still commence.
14. However, the need for disciplinary action must be balanced against a test of fairness and proportionality. Any investigations and disciplinary action must be taken in a timely manner. It would not be right for officers to remain subject to disciplinary action indefinitely.
15. It is also important to recognise the distinction between matters amounting to criminal conduct, which can be investigated and prosecution brought at any stage, versus non-criminal matters which do not meet this threshold to which some kind of limit must be applied.

Striking-off police officers found guilty of gross misconduct from any policing and law enforcement activity

16. Members of a police force who commit serious wrongdoing and are dismissed for misconduct should not be able to serve in any law enforcement capacity in the future.
17. In December 2013, the College of Policing introduced a new national 'disapproved register' of officers struck-off from the police, which is available for use by vetting and anti-corruption officers. This information is held privately by the College for police vetting purposes⁴. **The Bill gives the College of Policing the power to maintain and publish a 'struck-off list' to expand and strengthen its existing disapproved register. Within the Bill the list is known as the "Police Barred List".**
18. **Police forces will be required to report the dismissal of any members of the police to the College of Policing**, who will collate and maintain this information for vetting purposes. The information will be shared with police forces and other

⁴ <http://www.college.police.uk/News/College-news/Documents/Disapproved%20Register.pdf>

law enforcement bodies to assist with vetting and recruitment. Police forces will also be required to report members who have left the force but are subject to disciplinary proceedings. **Police forces will have a duty to consult the list** so that officers cannot be re-employed by the same or another force.

19. The College of Policing will publish a version of this list which will include details of police officers who have been dismissed for misconduct or gross misconduct. The list will also include officers who resign or retire but are subsequently struck-off following disciplinary proceedings.
20. Officers will be placed on the public “struck-off list” for five years. All names will be permanently retained on the private register.
21. The Bill also includes provisions for a Police Advisory List, which will not be published but will include details of officers who resign or retire whilst under investigation or disciplinary proceedings, as well as former officers under investigation, pending the outcome of those proceedings. This will be available for vetting purposes and does not carry a statutory bar but it will ensure during recruitment that police forces are aware of any ongoing proceedings. The advisory list will also include policing volunteers who have been dismissed or had their designated status withdrawn for wrongdoing.

Police (Disciplinary) Appeals Tribunals

22. Disciplinary appeals are presently arranged and administered locally by the local policing body or the Secretary of State (for senior officers), and are chaired by an independent legally-qualified individual appointed through the Judicial Appointments process. The Chapman Review set out a number of recommendations to improve Police Appeals Tribunals and how they are administered.
23. The appeals process is largely currently set out in primary legislation. The Bill **gives the Home Secretary the power, by regulations, to change how the Tribunals are appointed and administered, including the composition of the Panels.**
24. This will enable greater flexibility to be introduced to the management of the Tribunals by, for example, enabling forces to collaborate on the administration of appeal hearings. Greater collaboration will help achieve consistency in appeal outcomes and raise standards across all forces, as well as enabling savings and efficiencies to be made. In the future, the changes would also allow the Secretary of State to appoint another body (for example the College of Policing) to administer the Tribunals and implement the Chapman Review recommendation to move away from local hearings altogether. The changes will also enable implementation of the Chapman Review recommendation to replace the retired senior officer panel member with a lay person, to align more closely with the panel composition for police misconduct hearings.

IPCC Disciplinary Powers

Chief Officer investigations

25. At present, the IPCC investigates most Chief Officer misconduct allegations. However, there is no statutory requirement for all Chief Officer allegations to be referred to the IPCC, nor for the IPCC to investigate such cases. Where a misconduct allegation about a Chief Officer is investigated by the IPCC, it is usually investigated by the Chief Officer of a different police force.
26. This arrangement lacks independence and transparency, which is crucial for public confidence, especially at the most senior level of the police. The Chapman Review therefore recommended that the IPCC should investigate all Chief Officer allegations. With that in mind, the Bill **requires the IPCC to independently investigate all Chief Officer misconduct allegations (including gross misconduct).**

Case to answer decisions

27. The IPCC can already “direct proceedings” to ensure that its findings, such as whether an officer has a “case to answer” for gross misconduct or whether a hearing should be held, are acted upon. However, where the police force disagrees with the IPCC’s finding, there can be significant debate – and delay – in reaching a final decision, before ultimately the IPCC makes a direction. This delay negatively impacts upon both the officer concerned and the complainant.
28. The reforms will clarify and streamline the current system. The police force will be able to make representations to the IPCC in advance of its decision but the decision as to whether or not there is a ‘case to answer’ and then whether a disciplinary hearing must be held will be made by the IPCC. The Bill therefore **gives the IPCC the power to make ‘case to answer’ decisions in all cases where it carries out an independent investigation, and the form of proceedings.**

Power for the College of Policing to issue guidance on police discipline

29. The College of Policing, as the professional body, sets standards for police officers on a range of issues and supports the profession by providing the tools, skills and knowledge they need. It should therefore be for the College, rather than the Home Office (as now), to issue guidance in respect of disciplinary matters.
30. The Bill **therefore gives the College the power to issue statutory guidance, with the approval of the Home Secretary, on the police disciplinary system for police officers and special constables.**
31. The Bill also includes powers for the Home Office to issue guidance in relation to disciplinary matters for police staff and police volunteers, who performance and misconduct proceedings are separate to the regulated officer system.