

Title: New Offence of Police Corruption IA No: Lead department or agency: Home Office Other departments or agencies: Ministry of Justice, Crown Prosecution Service	Impact Assessment (IA)		
	Date: 13/6/2014		
	Stage: Final		
	Source of intervention:		
	Type of measure: Primary Legislation		
Contact for enquiries: Andrew Alexander, Police Integrity & Powers Unit, Crime & Policing Group, Home Office			

Summary: Intervention and Options **RPC Opinion:** N/A

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?
£NK	£0m	£0m	No N/A

What is the problem under consideration? Why is government intervention necessary?
 Police corruption is a serious offence which can cause severe harm to the public trust necessary for the police to function effectively. The existing law covering police corruption does not cover the abuse of the broader 'privileges' of a constable, focusing instead on the broadly understood definition of misconduct. Only primary legislation can rectify this shortcoming in the law.

What are the policy objectives and the intended effects?
 The policy intent is to send a clear message that police corruption is a serious matter and will be severely punished. We also intend that offenders are punished and face the appropriate penalty for their crime, to deter police corruption and to show the public clearly that this offence will be dealt with. The overall objectives of the policy are to reduce the incidence of police corruption and increase public trust in the police.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Option 0: Do Nothing
 Option 1 (Preferred): Introduce a new criminal offence of police corruption aimed at the most serious acts of police corruption, for which only a criminal penalty is appropriate. The proposed offence carries a maximum custodial sentence of 14 years' imprisonment. Introducing the new corruption offence will ensure that offenders are punished and face the appropriate penalty for their crime.

Will the policy be reviewed? It will be reviewed as part of the Law Commission's consideration of the common law offence. **If applicable, set review date:** 2015

Does implementation go beyond minimum EU requirements?					
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: David Green Date: June 16th 2014

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NK
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low					
High					
Best Estimate				N/K	
Description and scale of key monetised costs by 'main affected groups'					
N/A					
Other key non-monetised costs by 'main affected groups'					
The policy <i>may</i> lead to additional prosecutions which would increase costs across the criminal justice system (by approximately £25,000 per case). The potential increase in the number of cases is not known but it is expected that prosecution levels will not change significantly as a result of this policy – the 'abuse of privileges' issue identified above has only been an issue in a very small number of cases.					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low					
High					
Best Estimate				N/K	
Description and scale of key monetised benefits by 'main affected groups'					
N/A					
Other key non-monetised benefits by 'main affected groups'					
The policy <i>may</i> act as a deterrent and lead to fewer incidences of police corruption. It <i>should</i> also ensure that those police officers who act corruptly are punished appropriately.					
The policy <i>may</i> increase public trust in the police by demonstrating to them that corruption in the police is being punished effectively. This would be a benefit to society in itself but may also allow more effective policing.					
However, there is no clear evidence that this will necessarily be the case.					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5
The impact of this policy on the criminal justice system is unknown but unlikely to be significant. All downstream CJS cost estimates depend on various assumptions, details of all assumptions/associated risks can be found in the risks and assumptions section below.					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net: N/A	No	N/A

Evidence Base

A) Background

Those who hold the office of constable (and those officers of the National Crime Agency who have the powers and privileges of a constable) are in a special position of public trust. Constables swear an oath to act:

“...with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.” [Police Act 1996, Schedule 4]

In recognition of that oath, police officers are given extensive powers and privileges to uphold the criminal law on behalf of the public.

However, there has been a number of high profile cases identified recently where it has been alleged that police officers have not acted with integrity and honesty. These include the historic cases of Hillsborough, the investigations into the murders of Stephen Lawrence and Daniel Morgan and the wrongful conviction of three men for the murder of Lynette White, as well as the conviction of former Metropolitan Police Commander Ali Dizaei. In addition, at least one case has been identified where the broader ‘privileges’ of a constable have been abused to obtain significant financial benefit and it was not possible to bring that behaviour within the common law offence.

As the Home Secretary described in her statement of 6 March 2014, some of these acts of corruption are currently within the scope of the common law offence of misconduct in public office, for which the maximum sentence is life imprisonment. However, because the offence is not defined in statute, there are a number of limbs that must be proved to obtain a conviction. The CPS’ Charging Guidance states that “the offence is committed when:

- a public officer acting as such [i.e. an officer on duty];
- wilfully neglects to perform his duty and/or wilfully misconducts himself;
- to such a degree as to amount to an abuse of the public's trust in the office holder;
- without reasonable excuse or justification.”

While Ali Dizaei was convicted of misconduct in public office, there have been other high profile cases where it has not been possible to secure convictions, as the existing law covering police corruption does not cover the abuse of the broader ‘privileges’ of a constable, focusing instead on the broadly understood definition of misconduct. For example, we are aware of one case where a police officer sought to abuse the privileges of his office by inappropriately seeking a discount on the purchase of a private car and the common law offence was insufficiently broad. As part of its work to professionalise the police in England and Wales, the Government considers that it is right that those who hold the office of constable (police officers) should conduct themselves to the highest standards and that if they fail to do so they should be upheld by means of the criminal law.

The high profile nature of cases does not mean that this offence is widespread. According to Ministry of Justice statistics, there were 52 convictions (in total, not just police officers) for the existing offence of misconduct in public office in 2012.

The Home Secretary’s statement to Parliament of 6 March 2014 set out a range of measures, both specific and general, in response to the report of the Stephen Lawrence Independent Review that was carried out by Mark Ellison QC [HC1038].

As well as the new offence, the Home Secretary also announced that:

- i) Work is on track to deliver measures announced in February 2013 to address corruption and misconduct, to ensure greater transparency, to provide clearer rules on conduct, and to improve standards of professional behaviour.
- ii) The College of Policing, which has a clear remit of enhancing police integrity, is delivering a number of these measures, as well as a new code of ethics.

- iii) The Independent Police Complaints Commission (IPCC) is being expanded and emboldened so that it will have responsibility for dealing with all serious and sensitive cases involving the police – and the Home Secretary is reflecting on whether further proposals are needed on the IPCC.
- iv) HM Inspectorate of Constabulary (HMIC) has been commissioned to look specifically at the anti-corruption capability of police forces, including professional standards departments.
- v) From autumn 2014, Direct Entry to the police at Superintendent level, and accelerated promotion to Inspector, will bring a fresh perspective and approach and will open up policing culture.

Acts of misconduct that do not amount to corruption are already subject to the well-established police misconduct system, governed by the Police (Conduct) Regulations 2012, and can be punished by a range of sanctions up to and including dismissal. The misconduct system is being examined with a view to reform in parallel with this legislation.

B) Rationale for Intervention

Shortcomings in the law mean that corrupt police officers are not always being appropriately prosecuted and punished for corrupt acts. This undermines public trust in the police and fails to deter other police officers from acting in a similar way. The only way to address these shortcomings is through primary legislation.

C) Objectives

The policy should send a clear message that police corruption is wrong and will be severely punished. This is intended to deter police corruption and clearly show the public that this offence will be dealt with.

The overall objectives of the policy are to reduce the incidence of police corruption and increase public trust in the police.

D) Description of Options Considered

Option 0 (Do Nothing)

Police officers will continue to be prosecuted and punished under the misconduct in public office offence, although there will be a risk that not all corrupt behaviour will be covered by the common law. The Law Commission is in the early stages of a project to look at this offence which may possibly lead to revision of the offence. However, while the Law Commission work should clarify the general law on misconduct across the public sector, it will not address the specific issue of police corruption because this is outside of the Law Commission's scope.

Option 1

This option will introduce a new offence aimed at the corrupt use of the powers and privileges of police officers, for which only a criminal penalty is appropriate. It will also cover cases where an officer fails to act for corrupt reasons (e.g. where he knows that a suspect did not commit a particular crime but conceals that knowledge because of a corrupt relationship with the person who did commit the offence) or where an officer threatens to act, or not to act, for corrupt reasons.

The new statutory offence is clearer than the common law outlined above as corrupt behaviour by a police officer will always "amount to an abuse of the public's trust"; under the common law, it must be proved in each case that the misconduct is to "such a degree as to amount to an abuse of the public's trust in the office holder". Some of the concepts that must be proved to make out the common law offence are complex. The new offence replaces those with a concept of 'benefit or detriment', which should be much easier for juries to understand.

The proposed offence is indictable only, that is, it may only be tried in the Crown Courts,¹ and the maximum penalty is 14 years imprisonment. We propose to set the maximum custodial sentence length at 14 years as, while the common law offence carries a maximum sentence of life imprisonment, this is because the sentence is undefined rather than because of a conscious decision to set it at this length. We consider that the maximum sentence length needs to be significant so as to act as a deterrent to even the most egregious acts of corruption and have therefore selected 14 years as a proposed maximum as the highest customary maximum short of life imprisonment.

¹ All proceedings will start in the Magistrates' Courts but cases will be sent straight for trial in the Crown Court.

Other acts of misconduct will remain subject to both the common law criminal offence (for serious misconduct that is not corruption) and the well-established police misconduct system, which can issue a range of sanctions up to and including dismissal. In parallel with this legislation, the misconduct system is being examined with a view to reform.

Affected Groups/Sectors

The offence will apply specifically to police officers (including special constables) of the 43 police forces in England and Wales, as well as officers of the British Transport Police, Ministry of Defence Police and the Civil Nuclear Constabulary in England and Wales. It will also apply to officers of the National Crime Agency who are designated with the powers and privileges of a constable.

The proposed offence will have an impact on the Crown Prosecution Service (CPS), HM Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA), prison services and probation services.

The offence will only apply to corrupt behaviour taking place in England and Wales or the adjacent territorial waters.

E) Costs and Benefits

The costs and benefits outlined below are non-monetised or presented for illustrative purposes. As a result, the net cost of the measure is deemed unknown. Any potential costs would fall on the criminal justice system whilst any potential benefits would arise to both the criminal justice system and wider society.

Costs:

Transition costs

There might be some one-off costs associated with the preparation of new training or guidance material for the police, Crown Prosecution Service and judiciary. A minority of police officers, those in professional standards departments, will require training on the new offences. The offence also builds upon the ethical behaviours embedded through the College of Policing's Code of Ethics, to be laid before Parliament shortly under section 39A of the Police Reform Act 2002 (as amended). Training costs are therefore not expected to be significant. CPS training costs should also be very limited, as cases of this nature are dealt with centrally by their Special Crime Division. The judicial training requirement, which will be delivered via the Judicial College in the normal manner, is not expected to be significant; we expect the Sentencing Council will produce sentencing guidelines for the new offence in due course, which should also help to reduce judicial training costs.

Ongoing costs

As police officers are already in scope of the offence of misconduct in public office, there could be a shift in prosecution from the existing (common law) offence to the proposed offence. However, there will be no net additional costs associated with the shift from one offence type to another; investigation and prosecution of a case would incur the same costs for both the offence types. There would however be additional costs if there were any new prosecutions of cases that would not otherwise have been prosecuted. The cost to the Criminal Justice System² per *additional* case is approximately £25,000 in 2013/14 prices.

The introduction of the proposed new offence is *not* expected to increase the number of investigations, because the conduct covered by the new offence would already be investigated, even if it could not be prosecuted. Nor is the introduction of the new offence expected to significantly increase the number of prosecutions, because the new offence covers much of the same ground as the common law offence. The scope of the new offence is wider than that of the common law offence, as it applies specifically to *any* improper use of an officer's powers or privileges that is intended to give rise to a benefit or detriment. However, the number of potential *additional* prosecutions in this area is judged to be very low.

However, if the introduction of a new offence aimed specifically at police corruption does increase the number of investigations or makes prosecution more successful, judicial and penal costs will increase. The below analysis outlines the impact per additional case, were this to occur.

² Costs to the Criminal Justice System (CJS) consist of costs to the Crown Prosecution Service (CPS), Legal Aid, Her Majesty's Courts and Tribunals Service (HMCTS), Prison and Probation.

In order to estimate the costs to the Criminal Justice System, we use the existing common law offence of misconduct in public office as a proxy to estimate the proportion of defendants that are sentenced to each disposal and the average custodial sentence length (ACSL) given to offenders sentenced to immediate custody.

Although the offence of misconduct in public office has a maximum penalty of life imprisonment, we use it as a proxy to estimate proportions for disposals, including the average custodial sentence length (ACSL) for the proposed offence. This is because 1) there are no corruption/misconduct offences with a maximum of penalty of 14 years imprisonment, which could be used as an alternative; 2) the proposed offence is carved out of the proxy offence, applying specifically to police officers; 3) the ACSL of misconduct in public office was 21.2 months in 2012, which is substantially below the maximum of life; and 4) in 2012 there were no offenders sentenced to more than five years in custody (in 2011, only six offenders were sentenced to more than four years and less than 10 years).³

The proposed offence will have an impact on the Crown Prosecution Service (CPS), HM Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA), prison services and probation services.

Each additional case is estimated to cost the CPS around £2,900.⁴ HMCTS costs are estimated to be approximately £2,600 per case. Costs to the Legal Aid Agency, prison services and probation services have been estimated at approximately £4,800, £15,000 and £2,100 per case respectively. All agency-specific costs are in 2013/14 prices and are rounded to the nearest £100. The estimated total additional cost per case is approximately £25,000 in 2013/2014 prices.⁵ Further information can be found in the Assumptions and Risks section.⁶

Benefits:

The new offence *may* have a possible deterrent effect on police officers as the offence is more clearly linked to police officers and has a slightly wider scope, though there is no clear evidence to support this. The risk of punishment following a criminal act may not increase significantly but, given the introduction of the new offence and its attendant publicity, the policy may deter the police from committing this type of offence.

The new offence *should* also benefit the public by ensuring that those police officers who act corruptly are brought to justice and are punished appropriately.

Behaviour that the new offence would cover, and possibly help to deter, would include crimes with a significant cost to the public purse, such as procurement or expenses fraud. Where any misconduct is deterred, including those with a direct cost but extending to other forms of misconduct such as the formation of inappropriate relationships, there would also be savings of the entire cost of reporting, investigating and potentially prosecuting that misconduct (the cost to the judicial system per case is outlined above). As the evidence for any potential deterrence is unclear, we have not quantified this impact.

Given the Peelian principle that “the police are the public and the public are the police”, it is imperative that the police are trusted by the public at large, as the public must acquiesce to the operation of the police for the basic tenet of policing by consent to operate. The creation of the new offence may increase the level of the public’s trust in the police by making it clearer that police corruption is being addressed directly and that the police are being held to account more generally. This could then have the effect of improving the efficiency of policing more widely as members of the public gain further trust in the police and more readily cooperate with them in the course of their investigations.

Rationale and evidence that justify the level of analysis used in the IA

As both the potential number of cases and the range of appropriate options are limited, we have not carried out an exhaustive level of analysis in compiling this Impact Assessment.

³ Ministry of Justice, Criminal Justice Statistics. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used

⁴ CPS costs could be higher, as the costs used exclude any ancillary costs associated with complex cases.

⁵ Rounded to the nearest £5,000. MoJ estimates – see risks and assumptions section.

⁶ As the costs for the different agencies may not be based on the same assumptions or methodologies, comparisons of costs across agencies are not robust and should not be made.

Risks and assumptions

For the analysis of the potential impact to the criminal justice system, a number of assumptions were made. There are several risks associated with these, primarily related to availability and robustness of data which underpin estimates of volumes.

Assumption	Risk
<p>Volumes of cases:</p> <ul style="list-style-type: none">• According to Ministry of Justice statistics, there were only 52 convictions across the public sector, not just police officers, for the existing offence in 2012. We have been able to find no evidence of how many police officers were convicted for Misconduct in Public Office.• We assume that a very small number of cases will fall under this new offence and not the MIPO offence.• Source: MoJ internal analysis, 2014.	<ul style="list-style-type: none">• With any new offence, there are no historical figures that provide a clear basis for estimating accurately the number of cases.• There is therefore a risk that more/fewer offenders may be prosecuted and/or sentenced to custody, and that the custodial sentences given may be longer/shorter.• This means our assessment of costs may be an over/under-estimate.• There is a risk that more/fewer offenders may be sentenced to custody, and that the ACSL given may be longer/shorter.
<p><u>Progression of a case through the CJS</u> (eg, proportion proceeded in the Magistrates v. Crown courts, proportion sentenced to immediate custody):</p> <ul style="list-style-type: none">• We use MoJ data on the existing common law offence of misconduct in public office.• As the proposed offence is indictable only, it means that it will only be tried in the Crown Court – although all proceedings will start in the Magistrates courts these will be sent straight for trial in the Crown Court.)• As there are no misconduct/corruption offences with a maximum penalty of 14 years imprisonment, and as the proposed offence is carved out of the existing offence of misconduct in public office, we use data on the latter.• We assume the ACSL given will be the same as for the proxy offence (21.2 months in 2012).	<p>This means our assessment of costs may be an over/under-estimate.</p> <ul style="list-style-type: none">• Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.
<p><u>CPS costs:</u></p> <p>The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks). The costs reflect the different ABC and advocacy costs for guilty plea and effective trials. The offence category for advocacy costs considered is Category I – Offences against public justice and similar offences.</p>	<ul style="list-style-type: none">• The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance

(CPS, 2012):

http://www.cps.gov.uk/publications/finance/abc_guide.pdf.

HMCTS costs:

Crown Courts Costs

Timings data for types of case (eg, indictable only, triable either way) were applied to Crown court costs per sitting day. This was added to the cost of the initial hearing in the Magistrates, as all criminal cases start in the Magistrates courts. Crown Court cost is £1,600 per sitting day in 2013/14 prices, assuming a sitting day is 5 hours. The type of case considered is Indictable Only - £2,600.

The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13 and uprated in line with the GDP deflator of 2%

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls).

Legal Aid costs:

We assume an eligibility rate of 100% in the Crown Court.

The average legal aid cost in the Crown Court (based on Crime Higher Report, Legal Aid Agency) for offence category I - Offences against public justice and similar offences is estimated at £4,800.

We use an average cost including all offence types from the dataset that includes both standard and non-standard fees to estimate the cost to the Legal Aid Agency.

Prison costs:

- We assume that 50% of a prison sentence over 12 months is served on probation and that there is no element of licence for a sentence under 12 months. The

Timings data for types of cases:

- The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing.
- Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate.
- The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results.
- Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences.

HMCTS average costs per sitting day:

- HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.
- Variance in the Legal Aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.
- Assuming 100% eligibility for Legal Aid in the Crown court carries several risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary. This could mean that the costings provided are an overestimate.
- The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in

proportions of offenders who are sentenced to probation are determined by the proportion of those who receive an over 12 month sentence. The average cost per prison place is £29,000 in 2013/14 prices (NOMS management accounts addendum (2012/13)).

- Prison places are calculated by taking into account half the ACSL and the number of offenders sentenced to custody. For example, 2 offenders each sentenced to 12 months (each serving 6 months) would represent 1 prison place, as would 1 offender sentenced to 2 years (serving 1 year).

Probation costs:

Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices.

The probation costs are based on national costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and updated in line with the GDP deflator of 2% (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls).

Source: MoJ internal analysis, 2013.

terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.

- Costs represent the national average fully apportioned cost based on delivery by 35 Probation Trusts in 2012/13.
- Unit costs are calculated from the total fully apportioned cost of relevant services divided by starts in that year and do not consider which elements of cost are fixed and which will vary based on service volumes. Major changes to the volume, length or content of community sentences or the characteristics of the offender population could affect the unit cost.
- The costs consist of costs for both (a) managing the sentence and (b) delivering court-ordered requirements. Excludes centrally managed contract costs for Electronic Monitoring and Sentence Order Attendance Centres.

Wider impacts

The impact to the criminal justice system has been included in the main evidence base of the IA.

Summary and preferred option with description of implementation plan

At present, because of the failings in the common law offence of misconduct in public office set out above, police corruption is not being tackled effectively. Option 1 aims to do this by ensuring the corrupt abuse of powers and privileges is a specific offence, simplifying the issues to be considered by investigators, prosecutors and jurors alike. It will also give greater clarity to police officers of the type of conduct that the law prohibits. The result will be improved public trust in the police, deterrence and, where the new offence is still committed, corrupt police officers will be held publicly to account in court.

This option will be implemented by way of an amendment to the Criminal Justice and Courts Bill at Report stage in the House of Commons. Assuming that the Bill successfully completes its passage through the legislative process, it will be available once commenced to the police, NCA and IPCC to investigate with a view to asking the CPS for a charging decision before cases proceed into the Crown Court in the normal way.