

Title: Increasing the power of the Independent Police Complaints Commission to investigate whistleblowing reports, increasing the rights of police whistleblowers, and providing police whistleblowers with immunity from prosecution and a guarantee of anonymity. IA No: HO0180 Lead department or agency: Home Office Other departments or agencies:	Impact Assessment (IA)			
	Date: 04/03/2015			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary Legislation			
Contact for enquiries: Andrew Johnson andrew.johnson9@homeoffice.gsi.gov.uk				

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, Two-Out? Measure qualifies as
NK	£0	£0	No N/A

What is the problem under consideration? Why is government intervention necessary?

It is important, given the power they hold, that the police maintain the highest standards of integrity. A key way in which wrongdoing or poor practice in the police can come to light is when the police themselves report it. However these reports are not always made. Police officers and staff may choose not to come forward because they do not believe anything will be done, they do not trust the reporting routes available, or they fear consequences for their career. Government intervention is necessary so that wrongdoing and poor practice in the police are brought to light and can therefore be tackled.

What are the policy objectives and the intended effects?

The Government aims to increase the confidence of police officers and staff to come forward and report wrongdoing by colleagues and poor practice by their force. The intended effect of this policy is that a greater proportion of potential whistleblowers will come forward with their concerns.

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: Strengthen reporting routes for whistleblowers by increasing the power of the Independent Police Complaints Commission to investigate whistleblowing reports.
 Option 2: Increase the rights of whistleblowers by giving them the right to be consulted on the way an investigation is conducted and how their identity is protected, the right to receive feedback and the right to request an independent review of any decision taken by their force to initiate misconduct proceedings against them.
 Option 3: Increase protection for whistleblowers by providing them with immunity from prosecution and an additional legal guarantee of anonymity.
 Option 4: Implement the proposals in Option 1 and Option 2.

These proposals have been subject to a public consultation. The Government has considered the feedback obtained, and as a result the preferred action is to implement Option 4.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 2019

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

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible : Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Strengthen reporting routes for whistleblowers by increasing the power of the IPCC to investigate whistleblowing reports. Achieve this by allowing the IPCC to record conduct matters and to conduct sealed investigations.

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NK	High: NK	Best Estimate: NK

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	NK	NK	NK

Description and scale of key monetised costs by 'main affected groups'

No costs have been monetised as precise data is not currently available.

Other key non-monetised costs by 'main affected groups'

Police forces could need to carry out additional investigations if a greater proportion of potential whistleblowers come forward to report wrongdoing, due to the ability of the IPCC to record their claims and examine them via sealed investigation. Although we are not able to estimate the increase in volume that might occur, the cost of each additional investigation is estimated to be £1,400.

The Independent Police Complaints Commission could face costs in carrying out preliminary work on whistleblower reports, and conducting additional investigations if a greater proportion of potential whistleblowers come forward with information regarding serious and sensitive matters. The cost of each additional IPCC investigation is estimated to be £120,000.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	NK	NK	NK

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised as precise data is not currently available.

Other key non-monetised benefits by 'main affected groups'

The wider public may benefit if greater police integrity is achieved.

Police forces may benefit by detecting wrongdoing or poor practice earlier if a greater proportion of potential whistleblowers come forward to make a report. There is also a benefit in reducing the likelihood of employment tribunals arising as the result of unfair treatment of whistleblowers by their organisation or colleagues. Legal action may be avoided in identifying wider failings.

Police whistleblowers may benefit from a reduced likelihood of unfair treatment by their organisation.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

It is not possible to determine the exact number of whistleblowers that will come forward, or how many more examples of wrongdoing or poor practice will come to light, as a result of implementing these policies. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice. Using sensitivity analysis we provide an indicative estimate of the increased investigation costs that might arise from a 5% increase.

The exact extent of the impact whistleblowers have on maintaining police integrity or the public perception of the police is also difficult to assess precisely.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: Increase the rights of whistleblowers by giving them the right to be consulted on how an investigation is conducted, the right to receive feedback, and the right to request an independent review of any decision made by the force to bring misconduct proceedings against them.

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NK	High: NK	Best Estimate: NK

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	NK	NK	NK

Description and scale of key monetised costs by 'main affected groups'

No costs have been monetised as precise cost data is not currently available.

Other key non-monetised costs by 'main affected groups'

Police forces could need to carry out additional investigations if a greater proportion of potential whistleblowers come forward to report wrongdoing due to greater rights to feedback, consultation and independent review. Although we are not able to estimate the increase in volume that might occur, the cost of each additional investigation is estimated to be £1,400. Forces may have to carry out independent reviews if requested by whistleblowers, with an estimated cost of £235 - £1,175 per review.

The Independent Police Complaints Commission could face costs in carrying out preliminary work on whistleblower reports, and conducting additional investigations if additional whistleblowers come forward with serious and sensitive matters. There may also be minimal increased cost due to more frequent contact with whistleblowers. The cost of each additional IPCC investigation is estimated to be £120,000.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	NK	NK	NK

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised as precise data is not currently available.

Other key non-monetised benefits by 'main affected groups'

The wider public may benefit if greater police integrity is achieved.

Police forces may benefit by detecting wrongdoing or poor practice earlier if a greater proportion of potential whistleblowers come forward to make a report. There is also a benefit in reducing the likelihood of employment tribunals arising as the result of unfair treatment of whistleblowers by their organisation or colleagues. Legal action may be avoided through identifying wider failings.

Police whistleblowers may benefit from a reduced likelihood of unfair treatment by their organisation.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

It is not possible to determine the exact number of whistleblowers that will come forward, or how many more examples of wrongdoing or poor practice will come to light, as a result of implementing these policies. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice. Using sensitivity analysis we provide an indicative estimate of the increased investigation costs that might arise from a 5% increase.

The exact extent of the impact whistleblowers have on maintaining police integrity or the public perception of the police is also difficult to assess precisely.

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Increase protection for whistleblowers by offering them immunity from prosecution and providing them with a guarantee of anonymity

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: NK

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	NK	NK	NK

Description and scale of key monetised costs by 'main affected groups'

No costs have been monetised as precise cost data is not currently available.

Other key non-monetised costs by 'main affected groups'

Police forces could need to carry out additional investigations if a greater proportion of potential whistleblowers come forward to report wrongdoing due to potential anonymity and immunity from prosecution. Although we are not able to estimate the volume that might occur, the cost of each additional investigation is estimated to be £1,400.

The Independent Police Complaints Commission could face costs in carrying out preliminary work on whistleblower reports, and conducting additional investigations if a greater proportion of potential whistleblowers come forward with information regarding serious and sensitive matters due to anonymity and immunity from prosecution. The cost of each additional IPCC investigation is estimated to be £120,000.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	NK	NK	NK

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised as precise data is not currently available.

Other key non-monetised benefits by 'main affected groups'

The wider public may benefit if greater police integrity is achieved.

Police forces may benefit by detecting wrongdoing or poor practice earlier if a greater proportion of potential whistleblowers come forward to make a report. There is a benefit in reducing the likelihood of employment tribunals as the result of unfair treatment of whistleblowers by their organisation or colleagues, and subsequent compensation payments. Legal action may be avoided through identifying wider failings.

Police whistleblowers may benefit from a reduced likelihood of unfair treatment by their organisation, including protection from prosecution where appropriate.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
-------------------------------------	--------------------------	------

It is not possible to determine the exact number of whistleblowers that will come forward or how many more examples of wrongdoing or poor practice will come to light, as a result of implementing these policies. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice. Using sensitivity analysis we provide an indicative estimate of the increased investigation costs that might arise from a 5% increase.

The exact extent of the impact whistleblowers have on maintaining police integrity or the public perception of the police is also difficult to assess precisely.

BUSINESS ASSESSMENT (Option 3)

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

Summary: Analysis & Evidence

Policy Option 4

Description: Implement the proposals in Option 1 and Option 2

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: NK

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate		NK		NK	NK

Description and scale of key monetised costs by 'main affected groups'

No costs have been monetised as precise cost data is not currently available.

Other key non-monetised costs by 'main affected groups'

Police forces could need to carry out additional investigations if a greater proportion of potential whistleblowers come forward to report wrongdoing due increased confidence from extending IPCC abilities and improving whistleblower rights. Although we are not able to estimate the volume that might occur, the cost of each additional investigation is estimated to be £1,400. Forces may have to carry out independent reviews if requested by whistleblowers, with an estimated cost of £235 - £1,175 per review.

The Independent Police Complaints Commission could face costs in carrying out preliminary work on whistleblower reports, and conducting additional investigations if a greater proportion of potential whistleblowers come forward with information regarding serious and sensitive matters due to increased confidence from the range of proposals. There may also be minimal increased cost due to more frequent contact with whistleblowers. The cost of each additional IPCC investigation is estimated to be £120,000.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate		NK		NK	NK

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised as precise data is not currently available.

Other key non-monetised benefits by 'main affected groups'

The wider public may benefit if greater police integrity is achieved.

Police forces may benefit by detecting wrongdoing or poor practice earlier if a greater proportion of potential whistleblowers come forward to make a report as a consequence of extending IPCC abilities and improving whistleblower rights. There is also a benefit in reducing the likelihood of employment tribunals arising as the result of unfair treatment of whistleblowers by their organisation or colleagues, and subsequent compensation payments. Legal action may be avoided through identifying wider failings.

Police whistleblowers may benefit from a reduced likelihood of unfair treatment by their organisation.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<p>It is not possible to determine the exact number of whistleblowers that will come forward or how many more examples of wrongdoing or poor practice will come to light, as a result of implementing these policies. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice. The IPCC will continue to make the final decision about whether or not it should investigate a matter reported to it directly.</p> <p>The exact extent of the impact whistleblowers have on maintaining police integrity or the public perception of the police is also difficult to assess precisely.</p>		

BUSINESS ASSESSMENT (Option 3)

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

A. Problem under consideration

1. Whistleblowing¹ occurs when police officers or staff raise a concern about wrongdoing or poor practice in their force, whether with a line manager, the force Professional Standards Department (PSD), the Independent Police Complaints Commission (IPCC), or occasionally, when necessary, elsewhere. Whistleblowing is not just about addressing misconduct. Individuals may come forward with concerns about wider poor practice, allowing the force to pick up potential problems at an early stage and to learn and improve as an organisation.
2. The Standards of Professional Behaviour set out in the Police (Conduct) Regulations 2012² and the Code of Ethics³, launched by the College of Policing in July 2014, include a positive obligation for police officers and staff to challenge or report the conduct of colleagues that falls below the expected standards.
3. Many police officers and staff are already prepared to take a stand and become whistleblowers. Police PSDs receive an estimated 3,900 reports a year⁴ from concerned officers and staff. There is currently no data available on the outcome of each report but approximately 88% of cases against police officers that are investigated as gross misconduct arise from internal reports, without a public complaint having been made⁵. However, there are likely to be times when officers choose not to come forward.
4. In January 2015, Her Majesty's Inspectorate of Constabulary (HMIC) published their report 'Integrity matters: An inspection of arrangements to ensure integrity and to provide the capability to tackle corruption in policing'.⁶ The report found that although the overwhelming majority of those within policing were aware of their responsibility to report wrongdoing, and 87% were aware of the methods available to them to do so, there will still cases where officers and staff feared that making a report would have adverse consequences for them. In addition to this, a survey which HMIC carried out as part of this inspection indicated that some officers and staff who have challenged or reported wrongdoing have indeed suffered detriment as a result of reporting wrongdoing.
5. A key finding of HMIC's report was that a significant proportion of police officers and staff do not trust the confidentiality of the reporting methods available to them. Discussing the findings of their survey, the report said that 'This could suggest that a large proportion of the respondents do not trust the confidentiality of the reporting methods, and so may not be using them to report suspected wrongdoing. This is likely adversely to affect reporting rates, and forces may not be receiving intelligence about misconduct and corruption that might otherwise be available.'
6. The proposals put forward by the Government and detailed in this impact assessment have been subject to a public consultation, which ran from 11 December 2014 to 5 February 2015. The Police Federation, Superintendents Association and Chief Police Officers Staff Association issued a joint response to this consultation, which recognised that some officers choose not to come forward because of the fear of disciplinary action or other detrimental treatment. Although the National Black Police Association did not respond to this consultation, they did respond to another, separate consultation, which closed on 5 February. That response stated that the National Black Police Association had supported 'many' officers and staff who had reported wrongdoing and bad practice, who had then been subjected to 'bullying, harassment, and have had misconduct proceedings wrongly brought against them'.

¹ Based on the definition in the Public Interest Disclosure Act (PIDA) 1998:

<http://www.legislation.gov.uk/ukpga/1998/23/contents>

² Police (Conduct) Regulations 2012: http://www.legislation.gov.uk/uksi/2012/2632/pdfs/uksi_20122632_en.pdf

³ Code of Ethics: <http://www.college.policing.uk/en/20972.htm>

⁴ Data from a 2014 Home Office survey of Police Forces. This data has not previously been published and is unverified.

⁵ Data returned to the Home Office for the period November 2012 – November 2013

⁶ <https://www.justiceinspectorates.gov.uk/hmic/publication/integrity-matters/>

B. Rationale for intervention

7. There are a number of reasons why officers may choose not to come forward, including the quality and clarity of the reporting options available to them, a lack of confidence that anything will be done, the fear of disciplinary action, career damage or reprisals by colleagues, and the culture of the organisation⁷.
8. A reluctance to come forward and report wrongdoing is not unique to the police: similar reluctance can be found in other organisations. Research into whistleblowers across all professions by the charity Public Concern at Work shows that the response individuals most commonly say they fear is dismissal. At the first time of reporting a concern, 66% of those who feared a specific type of response feared dismissal.⁸ The same research found that 24% of individuals are actually dismissed after raising a concern once.
9. Whistleblowers in the police will usually report their concerns internally, to a line manager or the force PSD. However there will be occasions when an external route is needed. This could be because the force system did not address the issue when raised originally, or because the whistleblower lacks confidence in the ability of the force system to address the issue or to protect their identity. Some concerns, for example those relating to senior officers or to a widespread problem, may be harder to raise and address internally. The IPCC currently provides a reporting line. This line received 30 reports in 2013, of which only one related to a conduct matter.
10. It is essential that officers and staff have confidence that the reporting routes available to them will deal with their concern effectively, and that reporting wrongdoing will not result in detrimental treatment by their force. If officers do not come forward it may be more difficult to resolve problems, which in turn may harm public confidence and trust in the police.

C. Policy objective

11. Our objective is to increase the proportion of potential whistleblowers that come forward with their concerns. To achieve this objective, it is necessary to increase the confidence of police officers and staff to come forward and report wrongdoing by colleagues and poor practice by their force.

12. D. Description of options considered

Option 0: do nothing

13. Current reporting routes and disciplinary processes will remain unchanged.

Option 1: Strengthen reporting routes for whistleblowers by increasing the power of the IPCC to investigate whistleblowing reports

(i) Allow the IPCC to record conduct matters

14. This is an enabling power. This will strengthen the existing route for whistleblowers to go directly to the IPCC by allowing the IPCC, rather than the force, to record the conduct matter raised. The IPCC will have the power to choose to record the matter instead of the force, in those cases where they consider it necessary to have greater independence. This will allow the IPCC to direct the initial assessment, preliminary inquiries and take a referral decision on the whistleblower's allegation, rather than the force.

⁷ Loyens, K. (2013) Why police officers and labour inspectors (do not) blow the whistle: A grid group cultural theory perspective. *Policing: An International Journal of Police Strategies & Management*, Vol. 36 No. 1.

⁸ Whistleblowing: the inside story. <http://www.pcaaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf>

(ii) Allow the IPCC to conduct sealed investigations

15. Enable the IPCC to carry out an independent investigation, with assistance from designated force contacts, without formally notifying the force. This is an enabling power, allowing the IPCC to take an operational decision to limit who is told about the investigation.

Option 2: Increase the rights of whistleblowers by giving them the right to be consulted on how an investigation is conducted, the right to receive feedback, and the right to request an independent review of any decision made by the force to bring misconduct proceedings against them

(i) Give whistleblowers a right to be consulted

16. Give whistleblowers that go directly to the IPCC a right to be consulted on how they, and their complaint, are dealt with at certain points in the process. This might include consulting the whistleblower on any action that might reveal their identity, on whether the matter should be recorded by the force or by the IPCC, on any part of the force that should not be involved in the investigation, and giving the whistleblower a right of reply on the findings of the final investigation. The IPCC will make the final decision in each instance, considering the views of the whistleblower alongside all other relevant factors.
17. Give whistleblowers that report a concern confidentially to their force PSD the right to be consulted before any action that might reveal their identity. The force will make the final decision in each instance, considering the views of the whistleblower alongside all the other relevant factors. This proposal was added following the consultation, because of the strong support from respondents for giving whistleblowers more assurance their identity can be protected, whilst accounting for concern from forces about the lack of flexibility offered by the guarantee proposed under Option 3.

(ii) Give whistleblowers a right to feedback

18. Give whistleblowers that report concerns to their force, or directly to the IPCC, a right to feedback on progress at regular intervals and at key points in the process.

(iii) Independent reviews

19. Give whistleblowers the right to request an independent review of the force's decision to bring misconduct proceedings against them in cases of contention between the whistleblower and the force. This will involve a paper based review of the case file on completion of the investigation, providing a second opinion on the force's decision. An individual who can prove they blew the whistle prior to the allegation being made against them, and who believes the force will make an unfair decision about disciplinary action, will be able to request a review. In most cases, the review function will be carried out by one of the independent legally qualified panel chairs the Government intends to introduce in response to the recommendations made by the Chapman Review of the Police Disciplinary System (see the Government response to the consultation on Reform of the Police Disciplinary System). However, the legally qualified chair need not carry out the review. Where both whistleblower and force agree, the review could be carried out by another independent party, for example the PCC or another police force. By making the system independent of the whistleblower's police force, we will ensure that there is no bias in the review process.

Option 3: Increase protection for whistleblowers by offering them immunity from prosecution and providing them with a guarantee of anonymity

i) Immunity from prosecution

20. The public consultation on these proposals sought views on whether it might be appropriate for the CPS to consider making special provision in guidance, offering police whistleblowers immunity from prosecution if they come forward with information about serious wrongdoing. Although the CPS can already offer immunity from prosecution, they do so very rarely (only seven times between 2006 and 2012, across all crime types⁹). Special provision for police whistleblowers to receive immunity from prosecution would take the form of guidance, setting out the circumstances under which the CPS would consider offering immunity to police whistleblowers.

⁹ http://www.cps.gov.uk/publications/docs/dpp_letter_ag_on_socpa.pdf

(ii) Protecting whistleblowers' identity

21. The public consultation on these proposals sought views on whether police whistleblowers should be offered a guarantee that their identity will not be revealed if they come forward with information about serious wrongdoing. This could take the form of guidance or legislation preventing any action being taken by the police or the Crown Prosecution Service (CPS) that would reveal the whistleblower's identity. There could be exceptions, to allow identity to be revealed if there is a risk of harm or of damaging an investigation or prosecution. Alternatively, an absolute guarantee could be offered.

Option 4: Introduce the proposals outlined in Options 1 and 2

22. As a result, Option 4 includes:

- Allowing the IPCC to record conduct matters.
- Allowing the IPCC to conduct sealed investigations.
- Giving whistleblowers a right to be consulted.
- Giving whistleblowers a right to feedback.
- Give whistleblowers the right to request independent reviews in the event of a misconduct hearing involving them and their force.

The details of these proposals are discussed above.

E. Consultation

23. The policy proposals were subject to a public consultation, which ran from 11 December 2014 to 5 February 2015. These proposals were also subject to a consultation with policing partners via a series of stakeholder meetings.

24. The consultation asked for views relation to the proposals listed under the different Options:

25. **Option 1:** The consultation asked for views as to whether the IPCC should have the power to manage the early stages of an investigation relating to a matter brought directly to their attention by a whistleblower, what should happen to cases below serious and sensitive reported to the IPCC by whistleblowers, and for views as to whether the introduction of sealed investigations would increase the ability of the IPCC to carry out investigations and prevent the possibility of collusion, the destruction of evidence or pressure being applied to the investigation.

63% of respondents were in favour of allowing the IPCC to record conduct matters reported by whistleblowers, with only 26% disagreeing. The remainder neither agreed nor disagreed. Police forces were split over the issue, with 45% agreeing and 41% disagreeing, whereas other groups of respondents were clearly in favour of the proposal.

The most common answer to the question asking how cases below serious and sensitive reported to the IPCC should be dealt with was that they should be referred back to the force. Other respondents proposed they should be investigated independently, or that PCCs should have a role.

54% of respondents agreed that the introduction of sealed investigations would have the intended effect. Police and Crime Commissioners and individual police officers were strongly in favour of this proposal, whereas police forces were not.

26. **Option 2:** The consultation asked for views as to which points in the process a whistleblower should have a right to feedback, which issues whistleblowers should have a right to be consulted on, and whether whistleblowers should be given the opportunity to request an independent review of any decision made by their force to bring disciplinary/misconduct proceedings against them.

Responses to the question asking for views as to when whistleblowers should be given feedback were categorised according to themes. This analysis indicated that the most popular option was to provide feedback as often as was practically possible, and in particular at key stages of the

investigation. The consultation identified four key points/decisions where it might be appropriate for the IPCC to consult a whistleblower who had reported directly to them. These were:

- i. Whether they wish to make their report anonymously, in confidence, or overtly.
- ii. Whether the matter is referred back to the force to be recorded, or recorded by the IPCC.
- iii. Whether there are any parts of the force that, if involved in the investigation, might compromise its effectiveness or lead to the whistleblower's identity being exposed.
- iv. The right to comment on the findings of the final investigation, and the force's response to those findings, and receive a reply.

108 respondents answered this question, 65 of whom thought it would be appropriate to consult at all four stages. This constituted an overwhelming majority: other respondents answered with some combination of the four options, with the next most popular category containing seven respondents. Where respondents said that one or more of the options were not suitable for whistleblowers to be consulted on, the most common option rejected was (iv), with 22% of respondents stating that they did not believe that whistleblowers should be consulted at this stage. Some respondents suggested the duty to consult should be extended to police forces, rather than just the IPCC.

65% of 107 respondents were in favour of giving whistleblowers the right to request an independent review of any decision made to bring disciplinary/misconduct proceedings against them, whereas 24% were opposed. Both forces and police and crime commissioners were divided on this proposal, other groups of respondents including police officers and the public were very strongly in favour. All three staff associations approved of this proposal.

27. **Option 3:** The consultation also asked whether the identity of police whistleblowers should be protected by law, and whether there were circumstances where guidance should recommend that prosecutors consider the SOCPA (Serious Organised Crime and Police Act 2005) provisions for police whistleblowers with information about serious criminality in their force.

65% of 110 respondents were in favour of some form of protecting the identity of police whistleblowers (including the proposals contained in option 2). Although only 31% of police forces which responded (26 forces) were in favour, all other major groups of respondents were strongly in favour (83% of police officers and members of the public, all staff associations, 68% of police and crime commissioners).

51% of respondents believed that there may be circumstances under which it might be appropriate for prosecutors to consider the SOCPA provisions for police whistleblowers with information about serious criminality in their force. 41% of respondents did not believe that this was the case. Very few respondents were able to identify any specific circumstances where SOCPA should be considered.

28. The consultation further made a general appeal for any data or financial information, or any further, relevant information, which would enable assessment of the affordability of the Options presented in this Impact Assessment. The consultation did not yield any such information. Further to this, separate evidence collection exercises with stakeholders were undertaken to aid the quantification of impacts. A series of questions regarding the impacts of the policy options were responded to by eight PSDs, while the IPCC provided information on a range of different costs. The responses to these exercises have been informative. However, it is clear that, in many cases, the data that would assist in the monetisation of impacts is not currently collected (particularly where volumes are concerned). Contributions from these engagement exercises are highlighted where found in Section F.

29. **Option 4** is the combination of option 1 and 2. The results of consultation on these are set out above.

F. Appraisal

30. The following appraisal considers the costs and benefits associated with the implementation of Options 1 and 2 in comparison with the baseline 'do nothing' option.
31. We have attempted to identify all of the relevant costs and benefits of these proposals. The consultation was used to seek further information about the likely impacts of the proposals. Separate stakeholder engagement with the IPCC and with a sample of ten PSDs was also undertaken, with a number of questions asked to aid the monetisation of costs and benefits. The responses to this have been informative, but we have been unable to obtain sufficiently detailed information to fully monetise the costs and benefits of these policy proposals.
32. This policy has no impact on business and so is not in scope for One-In-Two-Out.

Option 0: Do nothing

33. There will be no impact.

Option 1: Strengthen reporting routes for whistleblowers by increasing the power of the IPCC to investigate whistleblowing reports

Costs

34. Costs will be borne by the public sector.

(i) Allow the IPCC to record conduct matter

35. This will be an enabling power, allowing the IPCC to take greater control from the point an allegation is received from a whistleblower by recording the matter instead of referring the matter to be recorded by the force. Where the IPCC decide to record a matter themselves, they will need to direct any preliminary inquiries that are necessary to ascertain whether the conduct matter should be subject to a full investigation. Directing these inquiries would incur a cost to the IPCC. There will be no additional cost to forces. It is not possible to assess the exact cost to the IPCC, due to insufficient information surrounding the extent and nature of preliminary inquiries - such inquiries are subject to significant variation.
36. There will be limited training costs for the IPCC, who will need to familiarise themselves with the change in process. No training or familiarisation will be required for the police, who will continue to access information to investigate the allegation as they do already, but under the direction of the IPCC.
37. From the point where a conduct matter would usually be referred by the force to the IPCC, there will be no additional cost to the IPCC as the IPCC already deals with cases from this point on. The cost to the IPCC of assessing the initial evidence gathered and the cost of investigating are therefore not affected.
38. Given that this is an enabling power, any costs arising as a result of implementing this policy would not be directly *imposed* upon the IPCC, since the IPCC will continue to retain its ability to decide whether it should begin an investigation into any matter reported it receives. Therefore, the costs that may arise as a result of implementing this policy are not counted in the cost of this proposal.

(ii) Sealed investigations

39. This will be an enabling power, allowing the IPCC to take an operational decision to carry out an independent investigation without formally notifying the force as a whole. This method of investigating will not incur any additional costs to forces or the IPCC over an ordinary independent investigation. The same techniques will be applied, with the IPCC working with the force to get the information they require, but with a smaller number of people aware of the investigation. Where covert techniques are required to investigate a suspect, this is currently done by the host force, or

another force, on behalf of the IPCC. This will continue if covert techniques are required as part of a sealed investigation.

40. Given that this is an enabling power, any costs arising as a result of implementing this policy would not be directly *imposed* upon the IPCC. Any sealed investigation is assumed to be in replacement of another type of investigation, and therefore the cost of these are not counted in the cost of this proposal.

Costs applicable to both parts of this proposal (i) & (ii)

41. The ability of the IPCC to record conduct matters and to undertake sealed investigations could increase the confidence of police officers and staff to come forward and report wrongdoing, and as a result police forces may need to carry out additional investigations.
42. We estimate that each additional investigation will cost the police approximately £1,400 on average¹⁰. This estimate is based on the estimated average number of man hours that go into conducting an investigation: 40 hours¹¹, and on an estimated weighted average cost per man hour: £34. This cost per hour is calculated using the standard costs per hour for police staff, police officers of rank Sergeant and below and senior police officers¹² and weighted by the average proportion of overall time which is spent on complaints functions by each of these groups¹³.
43. Multiplying the estimated length of an investigation with our weighted hourly cost allows us to come to an estimated cost of an investigation of approximately £1,400.
44. In addition, should the reports pertain to serious or sensitive matters then the IPCC may need to conduct additional investigations. The IPCC estimate that the average cost of conducting an independent investigation is £120,000¹⁴. Any matters below serious and sensitive will be referred back to the force, therefore only serious and sensitive matters reported by whistleblowers might result in an increased number of investigations by the IPCC.
45. It is not possible to determine the exact number of whistleblowers that will come forward and therefore how many additional investigations forces might carry out response to reports of wrongdoing or poor practice. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice. We did ask forces to estimate the potential increase, but none could provide an estimate (see paragraph 45 below). For this reason, we have not been able to fully monetise these costs. Indicative costs of a percentage increase in the additional investigations due to additional whistleblowing are presented in sensitivity analysis in Section H.

Benefits

Benefits applicable to both parts of this proposal (i) & (ii)

Proportional to costs

46. A greater proportion of potential whistleblowers may come forward as a result of implementing this policy option, in particular to the IPCC, as a result of increased confidence given the ability of the IPCC to record their claims and investigate them via sealed investigations. The Government would consider any increase in the proportion of potential whistleblowers coming forward to be a beneficial outcome, as they

¹⁰ This is assuming that the investigation is conducted by a Police Professional Standards Department.

¹¹ This is based on a range of estimates provided by 16 Professional Standards Departments to the Home Office during both previous and current stakeholder engagement in 2014 and 2015.

¹² These standard costs per hour are £21.38, £38.43 and £58.16 respectively. The estimated hourly cost of a police officer includes salary, expenses, regional allowance, training and employer contributions to pension and national insurance. The estimates were calculated using the Annualised Survey of Hours Earnings (ASHE), Chartered Institute of Public Finance and Accounting (CIPFA) Police Actuals and Association of Chief Police Officers (ACPO) Mutual Aid Rates.

¹³ This is estimated through data provided by 3 PSDs to the Home Office in 2015, which provided a breakdown of the time spent on complaints by their staff and officers. From this the overall time spent and relative proportions were calculated.

¹⁴ Information provided by the IPCC to the Home Affairs Select Committee;

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/494/494.pdf>.

would be expected to allow forces to address problems. This benefit is proportional to costs, as it is dependent on the volume of additional whistleblowers coming forward as a result of the reforms.

47. During the consultation period, we asked ten PSDs for their views on how far this proposal might increase whistleblowing. Whilst none were able to give a quantified estimate as part of their response, five of the eight PSDs that responded indicated an expectation of some increase in the number of whistleblowers through increased whistleblower confidence. Three of these stated that they expected that the reforms would have a greater impact in forces where whistleblower confidence, and resultant reporting rates, are currently low, while one expected any increase to be minimal. It has not been possible to otherwise obtain a meaningful estimate of the potential increase in numbers. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they may react to different scenarios before they exist in practise, creating marked difficulty in making any valid predictions. Given this, we are unable to exactly monetise the benefits of this Option.
48. Any costs incurred by the IPCC, should they choose to use their new powers to investigate additional whistleblowing reports they receive, will equate to a saving made by police forces, which would otherwise need to conduct these investigations. These policies may therefore have additional financial benefits for police forces. Four of the eight PSDs consulted expected a greater number of whistleblowers to go to the IPCC as opposed to their force as a result of the proposals, with one stating that 100% may now prefer go to the IPCC.

Wider Impacts

49. The measures may increase the integrity of the police by deterring wrongdoing, thereby reducing the impact that wrongdoing in the police has upon the confidence that the public place in the police. These measures are therefore expected to increase the trust that the public place in the police, enabling them to carry out their role with greater efficacy. If the policies act as a deterrent to wrongdoing it may also mean fewer investigations are required in the long run, reducing investigation costs. This is a wider benefit of the policy, and is not dependent on the any increase in whistleblowing.
50. Some costs may be avoided as a result of the proposals. The three areas where costs could be avoided are as follows:
- i. Failure to deal with wrongdoing and poor practice;
 - ii. Failure to prevent other colleagues from treating whistleblowers fairly;
 - iii. Compensation paid to whistleblowers who bring Employment Tribunals against the force.

Details on each of (i)-(iii) are set out below.

51. There is a cost associated with not dealing with wrongdoing and poor practice and with failing to treat whistleblowers fairly. Avoiding these costs could be a benefit of this policy option. Legal action is taken against forces for the actions of their officers and for wider failings to meet the force's statutory duties. Where a police failing is allowed to escalate and become widespread, rather than being reported and dealt with early, there may be a cost to the IPCC in carrying out a major investigation, to HMIC in carrying out an inspection into the failing, or to the Home Office in carrying out a public inquiry. This is a wider benefit of the policy, and could be the result of a change in practices that the policy brings, rather than being dependent on increased whistleblowing.
52. In addition, if other colleagues treat a whistleblower unfairly, and the force has failed to take sufficient measures to prevent this from happening, whistleblowers may bring Employment Tribunals against their force. Employment Tribunals may potentially award the whistleblower compensation. There is no upper limit placed on the level of compensation an Employment Tribunal may award a whistleblower. The cost of holding tribunals could be avoided by treating whistleblowers with greater fairness. The cost of a tribunal will vary depending on which 'track' the tribunal is on. For cases involving whistleblowers it is assumed that the tribunal will be either standard track, typically for unfair dismissal cases, or open track, typically for more complex cases such as those involving alleged discrimination. The average cost of standard and open track employment tribunals are £3,310 and

£3,820 respectively¹⁵. During engagement with PSDs, six of the eight responses detailed never having held an employment tribunal due to unfair treatment of a whistleblower. Of those that had, one indicated that unfair treatment as a whistleblower only formed part of the tribunal claim. Insufficient data exists on the number of whistleblowers currently partaking in tribunals due to unfair treatment, the relative proportions following each track, and the proportion which may be avoided, to fully monetise this benefit. This is a wider benefit of the policy, and could be the result of a change in practices that the policy brings rather than being dependent on increased whistleblowing.

53. Finally, there is a cost in making compensation payments to whistleblowers who are successful in their employment tribunals. This cost may be avoided by treating whistleblowers with greater fairness. Her Majesty's Courts and Tribunals Service do not collect information about the amount of compensation awarded to whistleblowers at employment tribunals. Of the two PSDs that had experienced an employment tribunal brought about by a whistleblower, only one had ever paid compensation as a result. The saving is therefore likely to be small, reflective of a small cost. Indicatively, a police force responded to the public consultation with an example of a case where £5000 was paid in compensation following detrimental treatment due to whistleblowing. This is a wider benefit of the policy, and could be the result of a change in practice that the policy brings, rather than being dependent on increased whistleblowing.

Option 2: Increase the rights of whistleblowers by giving them a right to be consulted on how an investigation is conducted, the right to receive feedback, and the right to request an independent review of any decision made by the force to bring misconduct proceedings against them.

Costs

(i) Give whistleblowers a right to be consulted by the IPCC

54. There is minimal additional cost to the IPCC, because a whistleblower going directly to the IPCC under the existing process would already be consulted informally as best practice. These proposals will provide certainty for the whistleblower and ensure contact is made at particular points, but they will not introduce any new processes for the IPCC. These proposals will not impose any requirements on how the IPCC undertake the consultation, allowing existing processes to be used. There may be a minimal additional cost associated with having to contact the whistleblower more frequently and record the outcomes of the consultation.

(ii) Give whistleblowers a right to be consulted by their force over their identity

There is minimal additional cost to the force, because a whistleblower reporting confidentially to their PSD would already be consulted informally as best practice. These proposals will provide certainty for the whistleblower and ensure contact is made whenever there is a risk of the whistleblower's identity being exposed, but they will not introduce any new processes for the force. These proposals will not impose any requirements on how the force undertake the consultation, allowing existing processes to be used. There may be a minimal additional cost associated with having to contact the whistleblower more frequently and record the outcomes of the consultation.

(iii) Give whistleblowers a right to feedback

55. There is minimal additional cost to forces or the IPCC, because a whistleblower going to their force or directly to the IPCC under the existing process would already be given some form of feedback. During engagement with PSDs, one stated that it is standard procedure for their force to engage with those who have made reports on a frequent basis. However, these proposals will provide certainty for the whistleblower and ensure contact is made at particular points. Forces and the IPCC already have mechanisms in place to meet their statutory requirements to give members of the public who make a complaint feedback. These proposals will not impose any requirements on how the IPCC or forces deliver the feedback to whistleblowers, allowing existing processes to be used. Therefore there may be a minimal additional cost associated with having to contact the whistleblower more frequently.

¹⁵ These costs assume that an employment tribunal consists of the two core processes of receipt & allocation and hearing only; http://www.legislation.gov.uk/ukia/2013/1039/pdfs/ukia_20131039_en.pdf.

Costs applicable to both parts of this proposal (i) & (ii)

56. The right to be consulted and the right to feedback could increase the confidence of police officers and staff to come forward and report wrongdoing then, as a result the police may need to conduct additional investigations. Please see paragraphs 41 to 43 for further detail on these costs.

(iv) Independent review

57. Currently, following an investigation of a contentious case, the head of Professional Standards may refer the case file to another force to review, before confirming their decision about whether the officer under investigation has a case to answer for misconduct. There will be an increased cost to the originating forces if this review function is moved from other forces to legally qualified panel chairs. Here we consider the possible net increase in the overall cost of these reviews.

58. Police forces estimate that the time taken for peer review of a case is between 4 hours and 10 days, depending on the complexity of the investigation. The maximum length of an investigation handed to an independent panel is likely to be 5 days as only an extremely complex investigation, inappropriate for an independent panel, would run beyond this. One day is taken as the most likely estimate of the amount of time for an average investigation.

59. The additional cost per review of using independent panel chairs, rather than the police to carry out reviews is £235. This is calculated by subtracting the opportunity cost of using a Superintendent for one day (£430)¹⁶ from the independent panel chair daily rate of £665¹⁷. The most likely cost per case is therefore £235 but the shortest case (estimated at 4 hours) will only require half a day costing an additional £118 whilst the longest cases (estimated at 5 days) will cost an additional £1,175 per case.

60. It is not possible to fully monetise this cost because it is not known how many of the cases which are currently reviewed by another force might need to be sent to an independent panel chair instead, incurring the additional cost calculated above. The number of contentious cases sent for review under the current process is not recorded by forces.

61. In addition the number of cases reviewed may increase. Giving whistleblowers the right to request a review may result in more cases being sent for review than at present. It is not possible to estimate how many whistleblowers subject to disciplinary proceedings would request a review. However an independent review will not produce an improved outcome for the whistleblower unless they are genuinely being treated unfairly by the force, which may limit the numbers who apply. There will be further consultation with stakeholders before implementing to ensure a full review is only carried out when necessary.

62. The proposal will allow for an alternative to a legally qualified chair to carry out the review, where both parties agree. This is an enabling power for the force. Options proposed during the consultation were the PCC, or another force. These options would have no cost to the force in cash terms. In resource terms, the hourly rate of the PCC will be less than that of a legally qualified chair. The hourly rate of another force is the baseline used in the calculation above.

Benefits

Benefits applicable to all parts of this proposal (i), (ii) (iii) & (iv)

Proportional to costs

63. A greater proportion of potential whistleblowers may come forward as a result of implementing this policy option, due to the increased confidence given through the right to receive feedback, the right to be consulted and the right to request review of any decision to bring misconduct proceedings against them. The Government would consider any increase in the proportion of potential whistleblowers coming forward to be a beneficial outcome, as they would be expected to allow forces to address problems. This

¹⁶ Based on average salaries for 2013, including a 17.8% adjustment for non-wage labour costs in line with Eurostat average.

¹⁷ Based on the fees of legally qualified chairs at Police Appeals Tribunals for a three day hearing.

benefit is proportional to costs, as it is dependent on the volume of additional whistleblowers coming forward as a result of the reforms.

64. During the consultation period, we asked ten PSDs for their views on how far this proposal might increase whistleblowing. Whilst none were able to give a quantified estimate as part of their response, five of the eight PSDs that responded indicated an expectation of some increase in the number of whistleblowers through increased whistleblower confidence. Three of these stated that they expected that the reforms would have a greater impact in forces where whistleblower confidence, and resultant reporting rates, are currently low, while one expected any increase to be minimal. It is not been possible to otherwise obtain a meaningful estimate of the potential increase in numbers. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they may react to different scenarios before they exist in practise, creating marked difficulty in making any valid predictions. Given this, we are unable to monetise the benefits of this Option.

Wider Impacts

65. The measures may increase the integrity of the police by deterring wrongdoing, thereby reducing the impact that wrongdoing in the police has upon the confidence that the public place in the police. These measures are therefore expected to increase the trust that the public place in the police, enabling them to carry out their role with greater efficacy. If the policies act as a deterrent to wrongdoing it may also mean fewer investigations are required in the long run, reducing investigation costs. This is a wider benefit of the policy, and is not dependent on the any increase in the whistleblowing.
66. Some costs could be avoided as a result of the proposals. These are seen as wider benefits of the policy, as they are not dependent on the any increase in the whistleblowing but on changes in practices and other effects. Firstly, there is a cost associated with bringing disciplinary proceedings against an individual. If an independent review means disciplinary proceedings do not take place, or that they are re-assessed as misconduct, rather than gross misconduct which requires a full hearing, there will be a saving to the force.
67. Secondly, this policy may also deter misconduct charges being brought in retaliation to whistleblowing, given that forces can expect an independent review of their decisions. If so, the cost of such hearings could be saved. This is considered a wider benefit of the policy as it is not dependent on the volume of additional whistleblowers, but on the number of whistleblowers who have misconduct proceedings brought against them and choose to request a review.
68. Thirdly, there is a cost associated with not dealing with wrongdoing and poor practice. Legal action is taken against forces for the actions of their officers and for wider failings to meet the force's statutory duties. By encouraging whistleblowers to come forward we expect that forces will be more able to deal with wrongdoing and poor practise, reducing these costs.
69. Lastly, there is a cost associated with failing to treat whistleblowers fairly. If other colleagues treat a whistleblower unfairly, and the force has failed to take sufficient measures to prevent this from happening, then employment tribunals may award the whistleblower uncapped compensation. For further information regarding these costs, see paragraphs 52 and 53.

Option 3: Increase protection for whistleblowers by offering them immunity from prosecution and providing them with a guarantee of anonymity (SOCPA provisions)

70. The cost and benefits of Option 3 have been assessed below but the Option is not being taken forward. The outcome of the consultation showed insufficient evidence to justify special consideration of immunity from prosecution for police whistleblowers, with existing arrangements providing sufficient benefit to whistleblowers. Forces' response to the consultation identified a risk that a guarantee of anonymity's lack of flexibility might limit the ability to investigate so the more flexible proposal to consult whistleblowers over their identity (included in Option 2) is being taken forward instead.

Costs

(i) Offering immunity from prosecution

71. It is already possible to offer immunity from prosecution, so familiarisation costs for the CPS associated with introducing special provision for police whistleblowers would be small. It is not possible to separate the cost to the CPS of carrying out work to grant immunity from the wider consideration made by the CPS in every case over whether and how to prosecute offenders, witnesses and accomplices.

(ii) Providing a guarantee of anonymity

72. Protecting the identity of intelligence sources is standard practice in the police and the Criminal Justice System as a whole, and would already be considered in any case where an individual has concerns regarding the protection of their identity. Therefore there would be no significant additional cost to the police, or the CPS, in a requirement to apply existing practice to cases involving police whistleblowers. As noted above, a further cost is that guaranteeing anonymity might limit the ability for proper investigation.

Costs applicable to both parts of this proposal

73. The ability of the CPS to provide whistleblowers with immunity from prosecution and a guarantee of anonymity could increase the confidence of police officers and staff to come forward and report wrongdoing, and as a result police forces may need to carry out additional investigations. We estimate that each additional investigation will cost the police approximately £1,300 on average, as set out in paragraphs 41-43 above.

74. In addition, should the reports pertain to serious or sensitive matters then the IPCC may need to conduct additional investigations. The IPCC estimate that the average cost of conducting an independent investigation is £120,000.¹⁸ Any matters below serious and sensitive will be referred back to the force, therefore only serious and sensitive matters reported by whistleblowers might result in an increased number of investigations by the IPCC.

75. As already mentioned above, it is not possible to determine the exact number of whistleblowers that will come forward and therefore how many additional investigations forces might carry out response to reports of wrongdoing or poor practice. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice. Engagement with stakeholders has not enabled us to estimate any increase in volumes. For these reasons, we have not been able to fully monetise these costs.

Benefits

Benefits applicable to all parts of this proposal (i) & (ii)

Proportional to costs

76. A greater proportion of potential whistleblowers may come forward as a result of implementing this policy option, as a result of increased confidence given through the potential for immunity from prosecution and

¹⁸ Information provided by the IPCC to the Home Affairs Select Committee <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/494/494.pdf>

a guarantee of anonymity. The Government would consider any increase in the proportion of potential whistleblowers coming forward to be a beneficial outcome, as they would be expected to allow forces to address problems. This benefit is proportional to costs, as it is dependent on the volume of additional whistleblowers coming forward as a result of the reforms. The volume of additional whistleblowers may be limited with the proposal to introduce immunity given existing SOCPA provisions.

Wider Impacts

77. The measures may increase the integrity of the police by deterring wrongdoing, thereby reducing the impact that wrongdoing in the police has upon the confidence that the public place in the police. These measures are therefore expected to increase the trust that the public place in the police, enabling them to carry out their role with greater efficacy. If the policies act as a deterrent to wrongdoing it may also mean fewer investigations are required in the long run, reducing investigation costs. This is a wider benefit of the policy, and is not dependent on the any increase in the whistleblowing.
78. Some costs could be avoided as a result of the proposals. These are seen as wider benefit of the policy, as they are not dependent on the any increase in the whistleblowing but on changes in practices and other effects. Firstly, costs to the police and the CJS could be reduced if, in order to protect the identity of a whistleblower who would have come forward regardless, an investigation or prosecution is curtailed or stopped.
79. Secondly, this policy may also act as a deterrent to misconduct charges being brought in retaliation to whistleblowing, given that forces can expect an independent review of their decisions. If so, the cost of disciplinary hearings in cases of retaliation against a whistleblower could be saved. This saving is not dependent on the volume of additional whistleblowers, but on the number of whistleblowers who have misconduct proceedings brought against them and choose to request a review.
80. Thirdly, there is a cost associated with not dealing with wrongdoing and poor practice. Legal action is taken against forces for the actions of their officers and for wider failings to meet the force's statutory duties. By encouraging whistleblowers to come forward we expect that forces will be more able to deal with wrongdoing and poor practise, reducing these costs.
81. Lastly, there is a cost associated with failing to treat whistleblowers fairly. If other colleagues treat a whistleblower unfairly, and the force has failed to take sufficient measures to prevent this from happening, then employment tribunals may award the whistleblower uncapped compensation. For further information regarding these avoided costs, see paragraphs 49 and 50.

G. Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

82. These proposals have been subject to a public consultation process, and consultation with policing partners via a series of stakeholder meetings. Engagement has also taken place with a sample of PSDs and the IPCC in an attempt to aid monetisation.
83. Obtaining cost data for many of these proposals would require information on the time taken to conduct specific stages of whistleblowing investigations, for example, initial report assessment stages. The IPCC do not record the cost or the time taken to conduct specific stages of the assessment/investigative process, partially because there are significant variations from case to case. Even if any data were available, this variation could prevent us from obtaining a useful estimate. To date, the IPCC have only progressed a small number of cases reported by whistleblowers. The methods of assessing the allegation and liaising with the whistleblower also vary too widely to draw any meaningful estimate.
84. Where cost data is available, there remains insufficient data on expected volumes in order to monetise the impact of the proposals. While the sample of PSDs were, in a number of instances, in agreement that the proposals would have the desired impact of increasing whistleblowing, none were able to quantify the potential increases. This highlights that it is not possible to determine the exact number of whistleblowers that will come forward, or how many more examples of wrongdoing or poor practice will come to light, as a result of implementing these policies. This is because whistleblowing

can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice.

H. Risks and sensitivities

85. It has not been possible to reliably assess how many more whistleblowers will come forward, or how many more misconduct matters will come to light, as a result of implementing these policies. There is therefore a risk that these policies will not affect the number of whistleblowers who are willing to come forward, though the environment for whistleblowing will be improved.
86. The exact extent of the positive impact which whistleblowing has on police forces is not known. It is an important part of ensuring that the public place their trust in the police, but the economic benefit of each *additional* whistleblower is not known.
87. We have looked for evidence from comparable reforms to inform this impact assessment, particularly regarding the increase in numbers of whistleblowers coming forward. In 2012, the United States Government introduced the Whistleblower Protection Enhancement Act. The measures in this act enhanced protection for federal employees by increasing protection from reprisals, and as such, these reforms are more comparable to the measures to protect whistleblowers which the Government has already announced it will implement within this Parliament. However, these still represent the most comparable reforms we could find: the policy proposals detailed within this impact assessment are specific to the British model of policing and the organisations within policing in England and Wales.
88. The Office of Special Counsel are responsible for whistleblowing in the public sector of the United States, but given that these reforms were introduced in November 2012, and their latest annual time series data are for the fiscal year 2013¹⁹, it is too early to reliably determine whether these reforms have had an impact on the number of whistleblowers prepared to come forward. However, evidence given to a US Senate subcommittee by the head of the Office of Special Counsel indicates that they expect increased numbers of reports to be made, with the first quarter of financial year 2013 seeing the greatest number of filings in the agency's 35-year history. This is promising, but the US evidence can only provide an illustrative indication of what could be possible for UK policy, rather than an accurate model of the probable impact.
89. In order to provide an indication of the potential cost implications of additional whistleblowing, a sensitivity analysis is presented below on the cost of additional investigations. This analysis does not facilitate monetisation in the central, upper or lower bound estimates because the assumed increase in whistleblowing and subsequent investigations is arbitrary and only included to provide indication.

Sensitivity Analysis

90. Whilst we have not been able to assess the probable increase in whistleblowing reports resulting from these reforms, we can consider what the impact of a given increase in the number of whistleblowers might be. Here we present an indicative estimate of the impact of a 5% increase.
91. The current number of police whistleblowers per annum is assumed to be 3,000. This is based on the only available published data on the number of police whistleblowers in 2013, provided in Freedom of Information Request responses by two forces during 2014. Figures have been scaled nationally through force size by police officer numbers²⁰. Of these cases, 99% are assumed to be investigated by PSDs and 1% are assumed to be investigated by the IPCC. This is based on current estimates of approximately 30 whistleblowers per year going directly to the IPCC.
92. Therefore the current cost of whistleblowing investigations is estimated to be £7.5m per annum²¹. Table H1 used this information to give an indication of what a 5% increase in the number of whistleblowing reports would be.

¹⁹ <https://osc.gov/Resources/6%2027%2014%20ANNUAL%20REPORT.pdf>.

²⁰ According to the Police Workforce Statistics 2014 publication, excluding the British Transport Police and Central Service Secondments. Rounded to the nearest 1,000. We recognise that the data from two forces has been scaled by a significant factor and may be nationally unrepresentative. However, this is in line with the attempt of this analysis to provide indicative costs with limited information.

²¹ (2,970 PSD investigations x £1.4k) + (30 IPCC investigations x £120k). Rounded to nearest £100k.

Table H1: the indicative cost implication for each 5 percentage point increase in the number of police whistleblowing reports and subsequent investigations

Percentage increase in the volume of whistleblowing reports (per annum)	Number subsequently investigated by PSDs	Number subsequently investigated by the IPCC	Overall cost of additional investigations	Additional 10 Year NPV ²²
5%	149	2	£0.4m ²³	£3.8m

93. The figures in the table can present some indication of some of the potential costs for each 5% increment if the proposals create additional whistleblowing volumes. As already stated, we do not have the information to enable to form a reliable estimate of the increase in volumes, and so we have not used this figure to form headline estimates of the costs of the options.

I. Wider impacts

94. These changes may have a wider impact on police culture, by sending a clear message on how whistleblowers should be treated by the disciplinary system and by their force in general.

95. These proposals are specific to the reporting and disciplinary mechanisms in place for the police. The wider impact beyond the police will be any benefit arising to the public from greater police integrity.

J. Preferred option and implementation

96. The Government's preferred option is to implement Option 4. This is because, at this time, the Government does not intend to implement Option 3 relating to the SOCPA provisions (immunity from prosecution) and a guarantee of anonymity. The consultation asked for views as to whether there may be circumstances under which guidance should recommend that prosecutors consider the SOCPA provisions for police whistleblowers with information about serious criminality in their force. These provisions relate to immunity from prosecution. The Government has reflected carefully on the responses received during this consultation. On the basis of these responses, the Government does not believe there is sufficient evidence at this time to justify the need for special consideration of immunity from prosecution or guaranteed anonymity for police whistleblowers. There was some support for protecting whistleblowers' identity, but a significant proportion of forces raised concerns about offering a guarantee, because the lack of flexibility might impact their ability to investigate and prosecute. The proposal for forces to consult whistleblowers when their identity is at risk of being exposed, which forms part of Option 2 (and therefore Option 4), will therefore be taken forward instead.

97. The implementation of these proposals will require primary legislation, to be introduced in the next Parliament.

98. A review of these policies will take place four years after implementation. This review would be expected to be proportionate to the likely impact of the policies, with the aim of establishing that the policies were adopted as expected and, where possible, assessing what actual impact the policy had on whistleblowing practice in the police.

²² At a 3.5% discount rate.

²³ (149 PSD investigations x £1.4k) + (2 IPCC investigations x £120k). Rounded to nearest £100k.