

INDEPENDENT POLICE COMPLAINTS COMMISSION RESPONSE TO THE FINAL REPORT OF THE CRE FORMAL INVESTIGATION INTO THE POLICE SERVICE

Introduction

1. The IPCC welcomes this opportunity to respond to the final report of the CRE formal investigation into the Police Service in England and Wales (the report). The Commission considers the report to be the most in depth examination of the impact of race issues on policing since Sir William Macpherson's report of the Stephen Lawrence Inquiry in 1999. It hopes that the report's recommendations will provide a basis for effecting significant improvements in the way the police deal with these issues in future.
2. The IPCC is mentioned throughout the report and a number of CRE recommendations suggest that the Commission should undertake certain actions and assume additional roles. The IPCC's primary interest is in the report recommendations which fall under three broad categories and which make up the three main sections of this response:
 - Guardianship over police discipline
 - Conduct matters raised by police officers
 - Inspection
3. For ease of reference, the relevant recommendations are listed by category in an appendix to this response.

Guardianship over police discipline

4. The most significant recommendation for the IPCC in relation to police discipline is that the 'Home Office should consider extending the guardianship role of the

IPCC to cover the operation of the disciplinary procedure for police officers'¹. On balance, the IPCC supports this recommendation because it believes that, as with police complaints, enhanced independent oversight for police discipline will help to raise standards and effectiveness, and promote public confidence in the system.

5. In relation to standards and effectiveness, the report expresses concern about the apparent lack of consistency in the application of disciplinary procedures with particular reference to ethnic minority police officers. Given the importance of the disciplinary system in ensuring that police officers are properly held to account for their actions, it is vital that the necessary arrangements are in place to detect and address any other shortcomings in its operation. Enhanced independent oversight would help ensure that, on the whole, the proper decisions are made when deciding how cases of misconduct should be dealt with once they have been investigated, and that the proportionate sanction is applied when officers are found guilty.
6. The IPCC also believes that its current responsibility for promoting public confidence in the complaints system is closely linked to levels of confidence in the disciplinary system. A complainant's interest in the matter he or she has raised does not end on the completion of an investigation into that matter and if they have a negative experience at the disciplinary stage it is likely to colour their perception of the earlier complaints process as well. It is therefore logical that the IPCC's responsibility for promoting public confidence should be extended to police discipline.
7. To an extent this is already acknowledged in the IPCC's current role in regard to the disciplinary system - in particular the Commission's powers in relation to the discipline of officers whose conduct has been the subject of investigation following a public complaint, and its responsibility for collating and publishing force data on complaints and discipline. This role would need to be expanded considerably to be properly termed guardianship.

¹ Recommendation 79.

8. The Commission does not consider that its role in relation to discipline should be as extensive as its guardianship of the complaints system. Only relevant elements of complaints guardianship would apply. The principal focus would be on promoting public confidence by setting standards for the police, and monitoring and inspecting performance.
9. Moreover, any guardianship role for the IPCC in regard to discipline would also need to reflect the fact that responsibility for the system lies with a number of different bodies. Assuming that the police disciplinary system will remain subject to regulation, the Home Office and Parliament will continue to be responsible for deciding on the content of these regulations including the police Code of Conduct². The Home Office (and possibly ACPO) will also be responsible for producing guidance which supplements the Code of Conduct such as that recommended by the CRE on understanding racial discrimination³. The IPCC would expect to be fully consulted on the drafting of the Code and any associated guidance.
10. The IPCC's role would focus on setting procedural standards for the disciplinary system itself. This would include, for example, the power to issue guidance (subject to the approval of the Secretary of State) on the sanctions which should be applied in cases where particular types of disciplinary charge are found to have been proven. The IPCC therefore considers that it should be responsible for providing 'comprehensive guidelines on sanctions for racial misconduct' as recommended by the CRE⁴.
11. To measure the performance of forces against these standards the IPCC would carry out data collection and other monitoring. Given this role, it might also be appropriate for the IPCC to take responsibility for commissioning research such as that recommended by the CRE on the 'nature and extent of any

² See recommendation 71.

³ Recommendation 72.

⁴ Recommendation 73 – the CRE recommend that the Home Office produce these guidelines but the IPCC believes that this should be part of its responsibility in relation to police discipline.

disproportionate impact on ethnic minority police officers that may exist in the operation of the police disciplinary procedure⁵.

12. It is the IPCC's firm view that this role should in no way undermine that of police managers who would still be responsible for making decisions on how to deal with the vast majority of conduct cases. The IPCC also agrees with the CRE recommendation that it should work together effectively with the Association of Police Authorities in monitoring police discipline⁶.
13. In responding to these recommendations it is important to acknowledge that the government is expected to announce substantial changes to the police disciplinary system in response to this report and those of Taylor Review and the Morris Inquiry. While these proposals apply to the system as it currently stands, the IPCC does not expect to take on any new role until the system is introduced. Therefore, more detailed work on what form the guardianship role should take will not be possible until more is known about the nature of the new disciplinary system.
14. Given this context, it will be important to ensure that, as far as possible, under the new system the IPCC's powers and the rights of complainants in relation to police disciplinary proceedings are retained. However, if the Taylor Review recommendations are followed, more disciplinary matters will be dealt with on an informal basis. This strengthens the case for independent oversight to ensure that the interests of complainants and the wider public are properly represented.

Conduct matters raised by police officers

15. Another CRE recommendation with far-reaching implications for the IPCC is that police officers should have a right to complain about racism in the same way as members of the public, subject to their having first pursued the matter through

⁵ Recommendation 69.

⁶ Recommendation 93.

their force's internal procedures⁷. The preceding text suggests that, while the recommendation makes an explicit reference to racism, the intention is that officers would be able to complain to the IPCC about any matter.

16. Section 29(4) of the Police Reform Act 2002 prevents police officers from making a complaint unless they are off duty at the time when the subject of the complaint occurred and the complaint is not made against a member of their own force.

17. However, as the report notes, there are already a number of ways in which a police officer can raise concerns about the conduct of his colleagues. These include force-based confidential and non-confidential reporting mechanisms, internal grievance procedures, protected disclosures under the Public Interest Disclosure Act 1998 (PIDA)⁸, or by bringing a case to employment tribunal. The force in question must then decide whether to record these as conduct matters.

18. There have also been attempts to circumvent section 29(4) of the PRA. In a number of cases members of a police officer's families have made complaints about a police force's treatment of that officer. In these cases individuals have sought to use the provision in the 2002 Act which allows complaints to be made by individuals who, while not the subject of alleged police misconduct, claim to have been adversely affected by it.

19. The IPCC believes that this creates an unwarranted level of complexity and it would be more open and honest to remove the bar on police officers bringing a complaint under the PRA.

20. However, the IPCC's experience to date suggests that a disproportionate number of concerns raised by police officers relate to employment matters which can be dealt with through forces' internal grievance procedures or, in cases of discrimination, at an employment tribunal. It is therefore proposed that constraints should be placed on the matters that may be the subject of a

⁷ Recommendation 88.

⁸ It should be noted that the IPCC is not the only body to which persons serving with the police can make disclosures protected under PIDA – they can also approach representatives of the force's professional standards department or a nominated 'whistle-blowing officer'.

complaint made by a police officer. A precedent for this approach is the Parliamentary Commissioner Act 1967 which allows civil servants to bring a complaint against their department but bars them from complaining about employment matters.

21. In the meantime the IPCC plans to develop its procedures and systems for dealing with recordable conduct matters which have been reported by police officers and to make the process easier and more transparent. The current draft of the IPCC's statutory guidance for police forces⁹ emphasises the importance of identifying conduct matters which officers have raised internally, under PIDA or at employment tribunals.
22. It may also be useful to produce guidance targeted at officers which explains when conduct matters reported through force-based confidential reporting mechanisms and internal grievance procedures will be referred to the IPCC and how the IPCC is likely to deal with such referrals. This guidance could advise officers to contact the IPCC directly when they are concerned that their force has not recorded a conduct matter or referred it to the IPCC when it should have done so.
23. The report's recommendation 89 suggests that the force-based confidential reporting services should have a mechanism for 'onward reporting to the IPCC in compliance with PIDA'. It then suggests that the IPCC should report 'on the use of the system' to various stakeholders and 'monitor the system's use and accessibility, taking appropriate action in response to any findings'. The IPCC has sought clarification of this recommendation and the CRE has confirmed that it is intended to require the IPCC to provide a comprehensive report on all PIDA cases within police forces, whether the disclosures were made to the IPCC directly or referred on the force itself. The IPCC therefore supports this recommendation.

⁹ To be issued under section 22 of the Police Reform Act 2002

Inspection

24. The report proposes that the IPCC and Her Majesty's Inspectorate of Constabulary (HMIC) 'conduct a joint thematic review into the performance standards and practice of all PSDs' including handling of racial discrimination cases and the treatment of 'ethnic minority officers in the investigation and disciplinary process'¹⁰.
25. The IPCC considers that inspection is a key lever for improvement in the police complaints system and agrees that it should work with other relevant agencies in exercising its own statutory inspection powers. Indeed, under section 10(5) of the PRA, the Commission has a duty to "enter into arrangements with the chief inspector of constabulary for the purpose of securing co-operation, in the carrying out of their respective functions ...".
26. However, there are two issues which need to be dealt with when considering the proposal that the IPCC and HMIC carry out a joint inspection. First, the IPCC has not yet set out the standards for handling complaints and conduct matters against which police forces will be judged. These are contained in statutory guidance which will be published, subject to the Home Secretary's approval, in the late summer or early autumn. Police forces will be given an opportunity to implement the guidance before being inspected on their performance.
27. Second, the government is currently consulting on proposals for a single Inspectorate for Justice and Community Safety which would amalgamate a number of existing bodies, including HMIC, from 2007. The ultimate shape and functions of the new Inspectorate will clearly have an influence on the IPCC's inspection role and so it is appropriate to delay plans for carrying out joint inspection until the government's plans are finalised.
28. The IPCC is very clear that it wishes to add value rather than complication to the inspection regime. To this end the Commission is working with HMIC, the APA

¹⁰ Recommendation 77.

and others to develop its approach to inspection. This work will include a stock take of what is already being done to monitor police performance in order to avoid duplication.

29. The IPCC has, nonetheless, undertaken to co-operate closely with HMIC on the latter's baseline inspection of police Professional Standards Departments (PSDs) in Autumn 2005. This will also help to inform the approach which the IPCC ultimately takes in regard to its own inspectoral powers.

30. On a related matter, the report recommends that the IPCC and CRE should be included on the list of organisations which may trigger interventions from the Police Standards Unit¹¹. The IPCC strongly supports this recommendation.

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¹¹ Recommendation 122.