

Written evidence submitted by the Home Office (PCO0036)

Introduction

1. An effective independent, police “watchdog” organisation is essential for public confidence in and our model of policing by consent. The Independent Office for Police Conduct (IOPC) plays a crucial and integral role in both the police complaints and discipline systems, investigating the most serious and sensitive matters involving the police, including deaths and serious injuries (DSIs) and allegations of serious or criminal wrongdoing by police officers.

Recent progress in reforming the police complaints (and discipline systems), including speeding up decision making

2. The Government introduced a wide-ranging, extensive package of reforms on 1 February 2020 to both the police complaints and discipline systems. This included measures to increase the powers and effectiveness of the IOPC.

Summary of the aims of the February 2020 reforms

3. A key aim of these recent reforms was to make the police complaints and discipline systems work better for the public and the police by enabling forces and the directly elected Police and Crime Commissioners (PCCs) to deal with complaints in a more proportionate manner; encouraging quick resolution for the majority of matters; reserving formal processes for serious allegations; whilst also refocussing the police discipline system on serious misconduct. They were also designed to streamline decision-making and reduce investigation timescales
4. The reforms were also designed to increase public confidence – introducing greater transparency and independence within the systems, with, for example, an enhanced role for PCCs in the system and for independent legally-qualified chairs (LQCs) at police misconduct hearings.
5. Collectively, the reforms are intended to encourage a significant change in culture within policing – providing more scope for policing to focus on learning when things go wrong and reserving the formal discipline system for the most serious matters. The Home Office expects their benefits to be compounded in light of the additional 20,000 police officers being recruited since 2019 in its three-year programme of police expansion in England and Wales.
6. The reforms were cited by witnesses at the recent HASC inquiry into “Macpherson 20 years on” as positive steps to help reduce disproportionality in the police discipline system on the basis of race.

Background

7. The 2020 legislation comprises an extensive package of changes to the existing legislative framework. As well as bringing into force uncommenced parts of the 2017 Act, it replaced the existing four sets of Regulations (complaints, conduct, performance, appeals tribunals)¹ under the Police Reform Act 2002 and the Police

Act 1996. They were accompanied by comprehensive new statutory guidance on complaints by the IOPC and on conduct and performance by the Home Office.

8. As set out in detail in the House of Commons Library paper, “*Police Complaints and Discipline*”,² the measures in February build on a series of radical policing and policing integrity reforms by the Coalition Government, 2010-2015 and continued after 2015. They include the creation of Police and Crime Commissioners (PCCs) to increase local accountability in 2012.
9. As the *Police Complaints and Discipline* paper³ also explains, the reforms to the discipline system and complaints systems have their roots in the independent Chapman review on police discipline and an internal review of police complaints in 2015. The systems were found to be too complex, bureaucratic and process-driven.
10. These reforms were developed in close consultation with a range of delivery partners whom the Home Office worked closely to implement the reforms, including National Police Chiefs Council (NPCC) leads, PCCs, the Independent Office for Police Conduct (IOPC), the Police Federation and other staff associations. There has been strong support from these organisations for the aims of these reforms and continuing commitment to implementation.

Police discipline reforms

11. Central to the reform of the discipline system in February 2020 is the establishment of a process for line managers to deal with lower level breaches of professional standards, mistakes and performance issues away from Professional Standards Departments (PSDs) - a new Reflective Practice Review Process centred on identifying (and sharing) learning and reflection. The process has been created to deliver a culture change in policing; encouraging officers to reflect on mistakes and performance issues. With no disciplinary sanctions and no blame, it provides a safe space for officers to be honest and open about any shortcomings and to discuss improvement
12. The new February 2020 regulations amend the definitions and thresholds in the disciplinary system, so they are clear that only serious breaches of the standards of professional behaviour that would justify at least a written warning will be referred to misconduct proceedings.
13. This aspect of the reforms has been widely welcomed by all policing partners as helping to move away from a system that tends to encourage line managers to opt

¹ The Police (Complaints and Misconduct) Regulations 2020 <https://www.legislation.gov.uk/uksi/2020/2/made>
 The Police (Conduct) Regulations 2020 <https://www.legislation.gov.uk/uksi/2020/4/made>
 The Police (Performance) Regulations 2020 <https://www.legislation.gov.uk/uksi/2020/3/contents/made>
 The Police Appeals Tribunal Rules 2020 <https://www.legislation.gov.uk/uksi/2020/1/contents/made>

² “Police Complaints and Discipline”, House of Commons Library Briefing Paper Number 2056, by Jennifer Brown, published on 2 September 2020 <https://commonslibrary.parliament.uk/research-briefings/sn02056/>

³ “Police Complaints and Discipline”, House of Commons Library Briefing Paper Number 2056, by Jennifer Brown, published on 2 September 2020 <https://commonslibrary.parliament.uk/research-briefings/sn02056/>

for the formal, punitive system rather than focus on improvement. Evidence given by the National Black Police Association¹ and HMI Matt Parr² as part of “*The*

Macpherson Report: Twenty Years On” inquiry by HASC provided support for this change as a means of tackling racial disproportionality in the misconduct system.

The complaints reforms: simplification, flexibility and strengthening independence

14. The law in force since February 2020 established the general duty to handle complaints in a ‘reasonable and proportionate’ manner, thereby providing for flexibility for range of approaches from ‘no further action’ to a full investigation. The new general duty allowed bureaucratic and confusing elements to be stripped away (for example: ‘non recording’, ‘disapplication’, ‘discontinuance’). The appeal process is similarly streamlined (a single review point replaced the five points of appeal in the 2012 regime). The definition of a complaint has been amended to encompass “any expression of dissatisfaction with a police force”. This is designed to move away from a focus on finding who is to blame towards redressing grievances (with an emphasis on resolution outside the formal complaints system) and identifying where organisational improvements are needed.
15. The reforms also provide for greater independence in the system, for example, providing PCCs with greater role in oversight of the local complaints system (as outlined in the *Police Complaints and Discipline* paper ³) and ending the practice of the police “marking their own homework” by ensuring that all complaints’ reviews are dealt with outside of the police either by the IOPC or by the local PCC.

Improving timeliness

16. Some police complaints and discipline investigations - both by forces by the IOPC and by the Independent Police Complaints Commission (IPCC), as IOPC was previously called – as well as DSI investigations have in the past taken a long time to conclude, sometimes several years. This leads to considerable distress to complainants or to bereaved families, to officers under investigation, and may impact on the operational effectiveness of forces.
17. The governance reforms to IOPC implemented in 2018 have enabled significant improvements in timeliness. The IOPC has already made major inroads, under the

¹ “We have welcomed changes aimed at; strengthening the police disciplinary system...” Written evidence submission (MPR0004 from Police Sergeant Tola Munro, President National Black Police Association And, Tola Munro’s oral evidence, Q61, 5 February 2019, “[what would be the most important change to these procedures to ensure fairness in the system] It is difficult, because sometimes it starts with poor supervision. Sometimes it is a performance issue that should be dealt with by a supervisor, but the supervisor doesn’t feel able to deal with it or thinks, “I’ve got a black member of staff, and this might get difficult.... They might throw in a little bit of something that might seem to be misconduct, and then it goes to a professional standards department. In the past, pretty much once it’s gone, it’s not coming back. I know that the Police Superintendents’ Association has taken the same view.” <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/the-macphersonreport-twenty-years-on/oral/96153.html>

² HASC oral evidence session, Tuesday 9th July 2019. Q381 HMI Matt Parr CB, Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services. “There are a couple of points worth mentioning here. First of all, a new internal complaints procedure is inbound. That was due to go through legislation this year; it has not squeezed through yet, but forces are already being encouraged to follow some of its principles. We used to have gross misconduct and misconduct as the two categories; this introduces a new category of serious misconduct, with the idea that anything below serious misconduct can be handled locally and resolved without going through the whole formal process. There is a hope, which seems to me a fair hope, that that will in some way lessen the disparity that we referred to earlier.” <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/the-macphersonreport-twenty-years-on/oral/103657.html>

³ “Police Complaints and Discipline”, House of Commons Library Briefing Paper Number 2056, by Jennifer Brown, published 2 September 2020 <https://commonslibrary.parliament.uk/research-briefings/sn02056/>

leadership of Michael Lockwood, since its launch in January 2018. Of the cases received since the launch, over 90% have been completed within 12 months. The IOPC's overall rate is to close 79% of its cases within 12 months. As at the end of 2019/20, it had 19 "legacy" cases still open from the IPCC. Its performance on timescales exceeds the IPCC's and that of some police forces.

18. The 2020 package of reforms is designed to further encourage swift resolution of cases. Besides changes to make the systems more proportionate, relevant measures include:
 - a requirement on forces and the IOPC, in cases where an investigation is not completed within 12 months, to provide a written explanation, including a summary of planned steps to progress the investigation (This is intended to enable greater accountability but also provide more information on factors that create delay.);
 - giving the IOPC the ability to make the decision as to whether to refer to misconduct proceedings in the first instance in cases where it investigates (as opposed to the 'appropriate authority', that is to say usually the police force (This is designed to avoid lengthy exchanges between the IOPC and force that have previously held up cases.);
 - a new duty of co-operation under the Standards of Professional Behaviour for police officers to participate openly and professionally in line with expectations when identified as a witness in an investigation; and
 - greater powers introduced for LQCs, who are now able to hold pre-hearings for Misconduct Hearings and be responsible for overall timeliness of hearings, giving them greater ability to manage any cases and ensure they are completed in a timely manner'.
19. We expect these changes to help further reduce the timescales for dealing with cases and the Home Office will closely monitor progress being made by forces and the IOPC. Recognising that investigation timescales are falling, part of this work will include building up a better evidence around factors that can cause delays proceedings in complex cases, such as new evidence emerging, pausing investigations for reasons of sub-judice and delays to scheduling hearings. This includes hand-offs with the CPS and Coroners. The Government's cross-departmental programme of work on deaths in custody, set up in response to the Angiolini Report and overseen by the Ministerial Board on Deaths in Custody, has considered the issue.⁴ As a result, a Memorandum of Understanding is being agreed between the IOPC, Chief Coroner and the CPS to improve processes.
20. As part of this ongoing monitoring of timeliness, the Home Office recognises that the IOPC is dealing with the most complex referrals and thorough investigations will take time. Cases involving multiple or historical allegations can be particularly complex. These investigations, such as "Operation Linden" about events in Rotherham, may take longer to conclude than others due to the challenges of sourcing evidence from years ago and the particular sensitivities involved in engaging with survivors. Such cases illustrate why it is not possible or desirable to try to cap investigation timescales.

⁴ The latest update on the Angiolini review was published in December 2018 (<https://www.gov.uk/government/publications/deathsin-police-custody-progress-update>). We are currently consulting on whether another update would be appropriate later this year (2020).

21. In summary, the IOPC is making good progress in reducing investigation timescales – a longstanding concern amongst policing stakeholders – and further improvement is expected as a consequence of recent reforms. Future work will focus on identifying efficiencies in the end-to-end process.

The role and remit of the IOPC

22. IOPC's statutory responsibilities⁵ include the independent investigation of the most serious and sensitive matters involving the police, including deaths and serious and injuries (DSIs) occurring during or immediately following contact with the police and other serious allegations, including assault and corruption.
23. IOPC also oversees the police complaints system and has a statutory duty to establish and maintain public confidence in these systems.⁶ Its other key roles include: acting as the appellate body for police complaints and, where appropriate, investigating criminal allegations against PCCs. It has powers to issue guidance to the police (and to make learning recommendations arising from its investigations).
24. The IOPC's remit extends to all the 43 territorial police forces in England and Wales and to the activities of various other bodies of constables, law enforcement agencies and others exercising powers under the PACE⁷ in England and Wales and its territorial waters, including the National Crime Agency and the British Transport Police.⁸ The IOPC has similar counterparts in the devolved administrations: the Office for Police Ombudsman for Northern Ireland (OPONI) and the Police Investigations and Review Commissioner (PIRC) in Scotland.

The IOPC's governance

25. The 2018 reforms aimed to streamline decision-making and improve accountability, replacing the Commission structure and with a new single head of the organisation, the Director General (DG), with a unitary board ("the Office") with a majority of non-executive directors (NEDs) to provide corporate governance, challenge and oversight, including requirements to publish its strategy and annual accounts.

The Home Office's sponsorship of the IOPC

26. The IOPC's operational and investigative decision making under the 2002 Act is entirely independent of the police and the Government, but, for its use of public funding is accountable to Parliament through Home Office Ministers. In practice this means the Home Office has put in place robust oversight mechanisms, designed to minimise risks and provide appropriate assurance.
27. These are outlined in detail in a Protocol document¹² agreed by the Department and IOPC in July 2018, and includes requirements for the Home Secretary or

⁵ As primarily set out in the Police Reform Act 2002 (as amended) and in some detail in the "Police Complaints and Discipline", House of Commons Library Briefing Paper Number 2056, by Jennifer Brown, published 2 September 2020 <https://commonslibrary.parliament.uk/research-briefings/sn02056/>

⁶ Police Reform Act 2002, Section 10, General Functions of the Director General

⁷ The Police and Criminal Evidence Act 1984

⁸ Others are: the Ministry of Defence Police; HM Revenue and Customs; the Gangmasters' Labour Abuse Authority; borders and immigration enforcement; the Civil and Nuclear Constabulary. ¹² https://policeconduct.gov.uk/sites/default/files/Documents/Who-weare/OurPolicies/IOPC_HomeOffice_Framework_Agreement.pdf

delegated Minister to meet routinely with the DG of the IOPC and for annual reporting requirements. The Home Office has recently launched new open competition⁹ for the NEDs on the board. They are appointed for a three-year term.

28. The DG is also required by law to provide ad hoc reports on the carrying out of his/her functions at the Home Secretary's/Ministers' request. The Home Secretary requested such a report in October 2019 on plans to improve performance and increase capacity in the wake of adverse publicity about the IOPC's handling of the Operation Midland cases in 2019. The IOPC's response sets out its work to improve on performance, build capacity and increase transparency.¹⁰

IOPC powers and other reforms (in force since February 2020)

29. Alongside the wider changes to the discipline and complaints systems, the Government gave the IOPC new powers and responsibilities as part of package of reforms implemented in February 2020, including the sole responsibility for investigating allegations of misconduct against chief officers.
30. These measures include the 'power of initiative', which allows the IOPC to treat matters that come to its attention as having been referred without having to wait for a formal referral from the police. Although the IOPC had existing "call in" powers to require a referral, the new power was seen (by Chapman) as increasing its independence and could be practically valuable in saving time waiting for a referral.
31. The Government has also legislated to give the IOPC an express power in law to reopen investigations it has closed in cases where there is a compelling reason to do so. The rationale was to prevent the IOPC having to resort to a costly judicial review process if compelling new evidence came to light following the closure of a case.

Systems working together to improve policing

32. The critical function of the police complaints system is to explore why things have not worked as they should and to identify improvements. This is why the recent reforms focus on reflection and improvement. Similarly, the IOPC are focused on learning and developing thematic investigations. To ensure that learning is then shared and acted on, the Government wants to see close working between the key players, including the IOPC, NPCC, the College of Policing and Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS).
33. These organisations have worked closely together, with the Home Office, over the past few years to develop and deliver the reforms. Such partnership working has been evident in response to the COVID19 pandemic. The DG IOPC, Michael Lockwood, and NPCC lead on Complaints and Misconduct, Chief Constable Craig Guildford, put out joint communications and advice to forces about the handling of matters under the police complaints and discipline systems during the COVID19 crisis. This initiative also included constructive input from the Police Federation and

⁹ <https://publicappointments.cabinetoffice.gov.uk/appointment/the-independent-office-for-police-conduct/>

¹⁰ "Response to the Home Secretary on the efficiency, effectiveness and profile of the IOPC" (IOPC, December 2019) <https://www.gov.uk/government/publications/iopc-efficiency-effectiveness-and-profile>

Police Superintendents' Association representatives and advised a proportionate and pragmatic approach.

34. The “super-complaints” system for policing integrity matters, implemented in November 2018, is designed to promote cross-sector collaboration to address broad, systemic, issues within policing. The scheme provides for organisations designated by the Secretary of State to raise concerns on behalf of the public about *“a feature, or combination of features, of policing in England and Wales by one or more than one police force is, or appears to be, significantly harming the interests of the public”*.¹¹
35. A super-complaint must be submitted to HMICFRS who work in partnership with the College of Policing and the IOPC to consider, and investigate, the matters raised. As at the beginning of September 2020, five super-complaints have so far been submitted to HMICFRS by designated bodies.

Next steps

36. The Home Office is now engaging with the policing stakeholders that it worked with to implement the extensive February 2020 police integrity reforms to review their effectiveness and issues arising. This engagement includes seeking feedback from police Professional Standards Departments and other practitioners. The Home Office is re-vamping its data collection to take account of the reforms and, among other elements, expects to collect more data on the protected characteristics of those in the police discipline system. In due course, it is expected that HMICFRS will conduct an inspection relating to the police complaints and discipline systems – including the progress forces are making in adopting the reforms.
37. It is anticipated that the role of IOPC will be reviewed in 2021/22 under the Government’s Arm’s-Length Bodies (ALBs) Tailored Review Programme. Such reviews are aimed to provide robust challenge to and assurance on the continuing need for an ALB, in its functions and form; and review its effectiveness, efficiency and governance. The Government aims that all ALBs should be reviewed in this way approximately every five years. The timing for the IOPC’s review should allow additional time for the 2020 reforms to take hold.
38. More widely on policing, as announced in the Queen’s Speech in December 2019, the Government intends to introduce later in this Session legislation to better protect the police and ensure that they have the powers they need to keep the public safe.¹² This will include a measure to clarify the driving standards on which police drivers should be judged. The reform will allow for account to be taken of a police driver’s skills and training when deciding whether his or her driving was careless or dangerous. The IOPC has considerable experience of investigating road accidents involving police drivers. It has welcomed the Government’s move to address this issue, whilst stressing that there will still be a need, in cases of fatal accidents, to hold officers to account for decision-making and risk assessments

¹¹ Section 29A of the Police Reform Act 2002 (as inserted by Section 25 of the Policing and Crime Act 2017)

¹² Plans for legislation on police powers and protections were announced in the Queen’s Speech on 19 December 2019 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839370/Queen_s_Speech_Lobby_Pack_2019_.pdf

when in hot pursuits and driving at speed.¹³ The new legislation will also include enshrining a Police Covenant in law, recognising the bravery, commitment and sacrifices of those who work or have worked in policing. The Government response to the Police Covenant consultation was published on 8 September and sets out that a key focus of the Police Covenant should be health and wellbeing as well as physical protection and support for families.¹⁴

39. In July 2020, the Government announced a review of the PCC model.¹⁵ Part one of the review is currently taking place and is looking at strengthening the visibility, accountability and scrutiny of PCCs and will set the direction on fire governance and mayoral devolution.¹⁶

September 2020

¹³ <https://policeconduct.gov.uk/news/iopc-welcomes-aim-proposed-changes-law-governing-police-driving>

¹⁴ The Police Covenant consultation response is available at <https://www.gov.uk/government/consultations/police-covenant-forengland-and-wales>.

¹⁵ Written Ministerial Statement by the Minister of State for Crime and Policing, 22 July 2020 -

<https://hansard.parliament.uk/Commons/2020-07-22/debates/20072232000015/PoliceAndCrimeCommissionerModelReview>

¹⁶ <https://www.gov.uk/government/news/priti-patel-to-give-public-greater-say-over-policing-through-pcc-review>