

**Written evidence submitted by Dr Clare Torrible (PCO0054)**

1. I am a Lecturer in Law at the University of Bristol having spent most of my professional life working in the areas of criminal justice and police regulation. I worked as a prosecutor at the Crown Prosecution Service. I was also Senior Solicitor at the Avon and Somerset Police Authority handling civil actions against the Chief Constable in which capacity I liaised daily with professional standards officers. I subsequently moved into academia and my research interests include police accountability and regulatory mechanisms. My doctoral research examined the relationship between civil actions against the police and police complaints. Published work includes "Police complaints and discipline: integrity, lesson learning, independence and accountability: some implications of the reforms under the Policing and Crime Act 2017" Torrible, C. (2020) *Policing and Society*.  
<https://www.tandfonline.com/doi/full/10.1080/10439463.2020.1838516> and "Reconceptualising the police complaints process as a site of contested legitimacy claims." Torrible, C. (2018) *Policing and Society*, 28(4), pp.464-479.,  
<https://www.tandfonline.com/doi/full/10.1080/10439463.2016.1191486>
2. Public confidence in the police is important. But public confidence measures tend to include a cross section of the public and thereby 'dilute' the views of individuals and communities that have most contact with the police. Further, methodologically, public confidence measures frequently fail to capture the homeless and vulnerable; those without the time, ability or means to access online surveys. There is therefore a danger that too much reliance on public confidence measures without a fuller conception of accountability can be divisive and engrain existing inequalities and biases. It is important not to conceive the police complaints process in tripartite terms: the police, the public, and complainants. Complainants are the public.
3. This evidence is largely concerned with the impact of the reforms under the Policing and Crime Act 2017 (the reforms) on police accountability in relation to the majority of complaints that are handled within forces. However, internal and external

elements of the system operate on a continuum and the concerns raised here are relevant to broader discussions. This is particularly so because the definitions of misconduct and gross misconduct are circular.<sup>1</sup> Therefore, if forces undertake an inappropriately lenient assessment of lower-level complaints (for example failing to recognise or understating the significance of an allegation of racism) this may impact how officers, Professional Standards Departments (PSDs) and senior officers conceive the line at which an incident might include misconduct or gross misconduct. Consequently, transparency and scrutiny of lower-level complaints is imperative in encouraging across all ranks the shared goal of promoting a culture of accountability, integrity and lesson learning that is grounded in the public interest.

4. This submission focuses on: (1) How accountability is understood within the reforms (including the role of PCCs and the position of complainants); (2) Embedding a culture of integrity and accountability that can address conscious and unconscious bias; (3) Transparency and accountability of PSDs' decision making; (4) Improving accountability of PDSs via links with the civil claims process.

#### [Preliminary points in relation to accountability, transparency, and lesson learning.](#)

5. Police **accountability** is crucial to legitimate policing. However, 'accountability' is used in several different ways and in assessing the reforms, clarity is crucial concerning: who is accountable to whom; what they are accountable for; through what processes accountability is to be assured; by what standards the accountable behaviour is judged and the potential effects of finding that those standards have been breached.<sup>2</sup>
6. **Transparency** is important to securing and encouraging accountability. The effectiveness of the police complaints process in holding the police to account

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<sup>1</sup> Misconduct is conduct that is sufficiently serious to result in disciplinary action and disciplinary action is appropriate when misconduct has occurred. Similar circularity arises in the definition of gross misconduct.

<sup>2</sup> Mulgan, R., 2003. Holding power to account: accountability in modern democracies. Springer.

therefore hinges on the quality of data it makes available to allow scrutiny and inform public debate.<sup>3</sup>

7. Unless it is embedded in a culture of integrity that is grounded in the public interest, applying a **lesson learning** approach to policing can limit transparency and accountability. Nobody wants an aircraft to crash or a patient to die unnecessarily. The labelling of human errors which result in a 'near-miss' in these sectors is therefore uncontroversial. In contrast, the police are a unique and complex institution and direct translation of institutional learning from other sectors fails to recognise the importance of citizens' rights and the limits of legitimate state power. People *choose* to fly and/or to consult medics when illness strikes. Law-abiding citizens subjected to police powers when legitimately enforcing the law do not choose to be stopped and searched, detained or subjected to the use of force. The application of the lesson learning model therefore has to be treated with caution in a policing context because police officers may use their powers in illegitimate or arbitrary ways and police views of what amounts to oppressive conduct may be very different to those of the communities they serve.

#### The meaning of 'accountability' within the reforms.

8. The framework created by the reforms deprioritises the importance of accountability to individual citizens. Of the 9 occasions 'accountability' is raised in the "Improving police integrity" consultation document<sup>4</sup>, 8 are in relation to the role of PCCs, and *democratic* accountability via PCCs is also emphasised in the Government's response.<sup>5</sup> However, application of the accountability questions noted above demonstrates the limits of PCCs' ability to provide a meaningful accountability mechanism *for complainants*.

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<sup>3</sup> Terrible 2018.

<sup>4</sup> Cm 8976 December 2014.

<sup>5</sup> Cm 9031 March 2015.

9. PCC's *answerability* to complainants and their communities in relation to specific complaints is valuable. But this *does not equate with accountability of officers or PSDs* (to either complainant or their local communities) in relation to the incident giving rise to the complaint. Instead, the form of accountability the reforms envisage via PCCs is at a 'macro-level' i.e., it is to the electorate regarding how the force handles complaints generally. Further even this macro-level accountability "via the ballot box" may have limited practical value. PCC areas cover broad demographics and PCCs perform multiple functions. Consequently, save for the most egregious of circumstances PCCs' oversight of how complaints are handled by their force is unlikely to be significant to their re-election. Moreover, PCCs work closely with their chief constables across all aspects of policing in their area which includes constant negotiation of the line between policy and operational matters. They do not have the same form of independence from their chief Constables as the IOPC.
10. **The challenge is to ensure that PCCs and IOPCs combined oversight of the internal complaints handling process is sufficiently robust to enhance accountability of forces and PSDs for complaints handling.**
11. The aim of encouraging an environment where mistakes can be acknowledged as positive learning opportunities is to be welcomed. However, the lesson learning approach focuses on service improvement generally (and in the future) and therefore also operates predominantly at a macro-level. Lesson learning contributes to *but does not address* the imperative of the police institution or individual officer being held to account for how citizens are treated.
12. While the idea of supercomplaints has merit, it is also indicative of a structural shift away from *individual* complainants. If complaints are conceived primarily as sources of data which can be mined to inform future police practices, the vital connection between police and the public that is at the heart of policing by consent is lost.
13. **The concern is that 'the baby has been thrown out with the bathwater' and that individual complainants' experiences and their rights as citizens may be**

**overlooked in the quest for a lesson learning approach. This shift in emphasis may undermine the development of a learning culture that is citizen focused.**

Embedding a culture of integrity and accountability.

14. Claims of institutional racism continue 20 years after the Macpherson enquiry. Similarly, the concerns expressed by INQUEST and PALG in their evidence mirror those made to the Committee's predecessors on several occasions over the last 40 years. Much very good work has been undertaken within forces, but it is clear that more needs to be done.
  
15. The introduction of the Code of Ethics is an excellent step. However, under the subheading '*The Lack of Culture of Challenging Performance Infractions at every Level*' the Chapman Review noted that while the aspiration of such a culture is 'now embedded in the Code of Ethics, the reality remains to be seen'.<sup>6</sup> Chapman observed how misalignment between 'stated values and the organisational or individual culture operating in practice can lead to cynicism and disengagement'.<sup>7</sup> In line with this he expressed concern that behaviours were 'defended at the expense of values' such that 'techniques and tools were used in an attempt to keep people in the force in relation to behaviours that would not be acceptable in recruiting'.<sup>8</sup> He also referred to a 'values deficit' noting that in many of the cases he studied, serving personnel failed to recognise that they had done anything wrong'.<sup>9</sup>
  
16. Aspects of the police role can foster conscious and unconscious bias in officers<sup>10</sup> and acknowledgment of this is a *fundamental preliminary* to unlocking issues of institutional racism and embedding the College of Policing Code of Ethics. An NPCC study found *significant bias against BAME officers* within the internal complaints

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<sup>6</sup> Chapman 2014, p.19

<sup>7</sup> Ibid, p.15

<sup>8</sup> Ibid, p.49

<sup>9</sup> Ibid, p.17

<sup>10</sup> Bowling, Sheptykci and Reiner, 2018, Politics of the Police, Oxford. P.179

handling function.<sup>11</sup> It is therefore important to be alive to and guard against the strong possibility that similar bias may impact the assessment and handling of complaints made by complainants from BAME backgrounds. A robust internal investigation of a complaint may gather all the potential evidence but the rationale behind independent oversight is the concern that PSDs may exhibit conscious or unconscious bias when *weighing the evidence*.<sup>12</sup> Similarly while the introduction of a system that encourages street level officers to admit mistakes has the potential to be extremely valuable, the introduction of the Reflective Practice Review Process (RPRP), cannot of itself impact the enculturated assumptions or conscious or unconscious biases of senior officers. Oversight and accountability of PSDs is therefore vital to ensure the development of a lesson learning culture that fully reflects the Code of Ethics.

**17. The challenge is to build on the determination of the police, the IOPC and PCCs to collaboratively support ongoing improvement in policing services and accountability. Greater external scrutiny of and support for PSDs is one essential starting point.**

Transparency and accountability of PSDs decision making.

18. Prior to the reforms, forces were required to determine whether (if proved) the behaviour alleged in a complaint might result in disciplinary action.<sup>13</sup> There were rights of appeal in relation to the recording of a complaint, the force determination concerning its potential seriousness, and any subsequent investigation. The appeal processes were considered cumbersome but aided transparency and accountability. IPCC and IOPC appeal statistics have over several years confirmed substantial

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<sup>11</sup> A significantly higher proportion of allegations for officers from a BAME background were initially assessed to be misconduct or gross misconduct compared to those for white officer – in both complaints (33.1% for BAME and 12.4% for White) and conduct (92.6% for BAME and 84.6% for white) processes.

<https://www.npcc.police.uk/documents/NPCC%20Understanding%20Disproportionality%20in%20Police%20Complaint%20Misconduct%20Cases%20for%20BAME%20Police%20Officers%20and%20Staff%202019.pdf> p.5

<sup>12</sup> See IPCC Statutory Guidance (2015 p.176) reminding PSDs that the existence of conflicting evidence does not of itself indicate that there is no case to answer.

<sup>13</sup> This distinguished local resolution and local investigation as the mode of handling a complaint.

differences of opinion between the oversight body's and forces' assessments of; whether complaints should be categorised as vexatious or frivolous;<sup>14</sup> the seriousness of the conduct complained about;<sup>15</sup> the level of investigation required;<sup>16</sup> the interpretation of the evidence that was gathered,<sup>17</sup> and the appropriateness of the response.<sup>18</sup> Importantly this appeals data has informed IOPC initiatives to help PSDs better perform their role.

19. The reforms streamline the system so that now all complaints have to be recorded (if the complainant insists)<sup>19</sup> and handled in a "such reasonable and proportionate way as the appropriate authority determines" (which may be no action at all). In addition, the right of appeal has been removed and instead complainants can ask for a *review* of whether the *outcome* of the complaint was *reasonable and proportionate*.
20. It is important to recognise that marginalised complainants may find it extremely difficult to insist that their complaint is recorded. Furthermore, following the reforms four key decision making processes (the force's initial assessment of seriousness, the evidence to be gathered, the weighing of that evidence and the appropriate response) are all 'reviewed' in the round within the limited remit of whether the *outcome is 'reasonable and proportionate'*.
21. IOPC statutory guidance indicates that 'reasonable and proportionately *handling* of complaints requires "weighing up the matter's seriousness and its potential for learning, against the efficient use of policing resources". Moreover, assessments of 'seriousness' require regard to "the nature of the incident, any actual or potential

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<sup>14</sup> IPCC dip sampling in 2013/14 revealed that 36 per cent of the cases sampled had been incorrectly categorised as fanciful, vexatious, oppressive or an abuse of procedure. 16 out of the 18 cases sampled had been incorrectly identified as fanciful and 50% of cases classified as vexatious were wrong (IPCC Annual Report 2013/14: 33).

<sup>15</sup> In 2018/19 over a third of non-recording appeals were upheld by the IOPC 68% of which were because the recording decision was wrong (IOPC Annual statistics 2018/19).

<sup>16</sup> Hagger-Johnson and Hipkin-Chastagnol, 2011, p. 11.

<sup>17</sup> In 2018/19 the IOPC upheld 38% of the investigation appeals it completed, 84% of which on the findings of the investigation (IOPC Annual statistics 2018/19 pp 14-15).

<sup>18</sup> In 2017/18 18 % of appeals and in 2018/19 11 % of appeals were upheld in relation to the determination of misconduct or gross misconduct (ibid p.16).

<sup>19</sup> Complaints must be recorded if (if proved) it might constitute a criminal offence or justify the bringing of disciplinary proceedings.

harm to, individual(s), communities or the wider public and the potential impact on confidence in the police or the police complaints system".<sup>20</sup> A single and limited review of the *outcome* in relation to these multiple and complex decision-making processes increases the challenges to oversight bodies in helping forces recognise and address conscious and unconscious bias within PSDs.

**22. The concern is to ensure that the correct lessons are being learned. The challenge is to find ways of enhancing the transparency of PSD operations to ensure oversight is meaningful.**

Improving accountability of PSDs: links with the civil claims process.

23. Civil actions can be brought in relation to unlawful arrest, false imprisonment, assault, and malicious prosecution, and importantly can include claims for aggravated<sup>21</sup> and exemplary damages.<sup>22</sup> While compensation is a factor, a crucial aspect of civil actions is that they demarcate the line between lawful and unlawful treatment of citizens and provide formal legal *public* acknowledgement and vindication when citizens have been wronged.<sup>23</sup> The significance of this public vindication is underscored by the unusual procedural rule that when cases go to trial the facts may be determined by a civil jury.

24. A landmark ruling in 1997 limited awards of exemplary and aggravated damages thereby encouraging settlement and avoiding the costs of trial.<sup>24</sup> However, the nature of the civil claims process continues to encourage force legal officers to *weigh*

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<sup>20</sup> IOPC Statutory Guidance, 2020, pp20-21.

<sup>21</sup> Available as additional compensation for humiliation and injury to pride as a consequence of malicious motives, spite or arrogance on the part of the police (see fn 24 below at 512 E.)

<sup>22</sup> Available when oppressive, arbitrary or unconstitutional action is alleged. This award is punitive with three aims: punishment, the marking of disapproval of police conduct and deterrence in relation to future conduct. *Rooke v Barnard*. [1964] A.C.1129.

<sup>23</sup> *Ashley v Chief Constable of Sussex* [2008] 1 AC 962.

<sup>24</sup> *Thompson v Commissioner of Police of the Metropolis, Hsu v Commissioner of Police of the Metropolis* [1998] Q.B. 498. This also resulted in less publicity concerning civil actions, reducing the opportunity for public scrutiny of forces' responses.

*evidence through the lens of how a jury might interpret the facts.* Consequently, while they are very different procedures, data from forces' handling of civil claims provides an important means of supporting PCC and IOPC oversight functions in relation to PSDs weighing of evidence. Arguably this is particularly important following loss of more nuanced appeals data as noted above.

25. Comparison between police complaints and discipline functions and the civil claims process is complex and it is not suggested that settlement of a civil action equates with officer misconduct. However, substantial sums are spent in settlement and PCCs hold the purse strings. It is therefore appropriate for PCCs to be required to give some account in relation to cases where a civil claim is settled, and any related complaint is not upheld.<sup>25</sup>

26. In the longer-term, formal routes for managing and reviewing 'claims and complaints' data should be developed by the IOPC to augment its overall oversight of the complaints process and inform the lesson learning framework. In the shorter term the following recommendations could be implemented relatively easily as a means of facilitating that ongoing work by the IOPC.

## 27. Recommendations

PCC duties extended to include:

- Collating and publishing police civil actions data in a standardised form which includes the ethnic background of claimants.
- Providing civil claims data to the IOPC.
- Reviewing civil claims for which sums are agreed as part of the settlement (or awarded at trial) in relation to
  - (i) malicious prosecution and/or
  - (ii) exemplary or aggravated damages

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<sup>25</sup> Legitimate concerns that this may reveal general settlement policies and thereby increase the vulnerability of forces to spurious claims, can be overcome by the requirement being in appropriately generalised terms.

and provide a report confirming that they approve the PSD decision(s) concerning disciplinary action (or otherwise) in relation to officers in connection with the incident that gave rise to the claim(s).<sup>26</sup>

IOPC's duties extended to include:

- Collation and publication of national civil claims data that permits comparison between forces.

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<sup>26</sup> This would augment both PCCs fiscal accountability to electorates and their accountability regarding complaints handling.