

Written evidence submitted by the IOPC (PCO0069)

IOPC Evidence to the Home Affairs Committee on the extent of the IOPC's oversight of the Police Complaints System and the work of Professional Standards Departments in Police Forces.

1. Independent oversight of the police complaints system is about more than just the IOPCs function as an independent investigatory body. The system of referral, review and appeal to the IOPC offers powerful independent scrutiny of the police complaints system that goes beyond this role. Submissions to the Committee regarding the complaints system from Dr Graham Smith, Dr Clare Torrible and the Police Superintendents Association have understated the extent of the IOPC's role in relation to complaints, conduct matters and DSI matters outside of those that are independently investigated.
2. Further, Dr Smith's evidence erroneously suggests Professional Standards Departments (PSDs) are responsible for the investigation of all conduct matters, and wrongly interprets the policy intention of the Home Secretary regarding what constitutes a serious and sensitive matter. Dr Smith's interpretation fails to account for the important role played by DSI matters in the police complaints system and proposes a definition that relies on the identification of a conduct matter related to the complaint or incident.
3. This submission will set out the extent of IOPC oversight of the police complaints system and explain how this brings independent oversight to serious and sensitive matters considered through the police complaints system. It will also explain how the Statutory Guidance to the Police Complaints System, which has been approved by the Home Secretary in advance of its commencement, reflects the intentions of the Government in what matters should be considered serious and sensitive, and how they should be overseen.
4. In addition, the submission will address comments made by Phill Matthews of the Police Federation during oral evidence to the Committee regarding (i) complaints regarding the IOPC and (ii) the provision of witness evidence to the IOPC by Police Federation members.

Key Points:

5. The IOPC considers over a thousand police DSI investigations through review every year. These reviews improve police handling of investigations. They provide a powerful independent backstop to police investigations in circumstances where a member of the public has died or been seriously injured following police contact and the IOPC is not investigating itself. These

reviews also provide a source of learning and improvement for the police service.

6. The IOPC considers over a thousand appeals/ reviews every year. Around 1/3 of those appeals/reviews are upheld.¹ These appeals/reviews provide detailed scrutiny of a large proportion of the handling of serious complaints by professional standards departments where complainants are dissatisfied, ensuring the PSD/LPB investigations are independently considered.
7. The IOPC considers more than 4000 referrals every year.² Referrals provide the IOPC with an overview of all matters that must be referred to us under primary and secondary legislation. We have ongoing oversight of some of the matters that are referred, and that we do not investigate, through conditions we place on re-referral and through subsequent reviews.
8. The IOPC investigates, through independent and directed (and prior to the changes to the complaints system, managed and supervised) investigations around a quarter of all recordable conduct matters referred to it.
9. Intelligence from all of this work, and the IOPCs independent investigations, alongside dip sampling, the collection of complaints data and work with PSD's through our oversight function gives the IOPC a strong understanding and oversight of the work of all PSDs and LPBs with complaint handling responsibility throughout England and Wales.

What is meant by the Police Complaints System?

10. The police complaints system comprises more than just public complaints about police actions. It includes incidents where members of the public have died or been seriously injured either during or following contact with the police and no complaint has been made (known as Death or Serious Injury matters (DSI)). It also includes conduct matters (issues where someone serving with the police may have breached the standards of behaviour or committed a criminal offence without a complaint having been made), particularly, but not exclusively, those where the public have been adversely affected.
11. The IOPC has an important role to play in all three of these:
 - **In complaints**, police forces are required to refer complaints that meet the mandatory referral criteria to the IOPC³. We act as the appellate

¹ See Further paragraphs 28- 31 of this submission for in year figures from the IOPC case management system

² [Independent Office for Police Conduct Annual report and statement of accounts 2019/20](#) P14 for previous financial years; in year figures to the end of February 2021 included at Annex A. Full year figures will be published as part of the IOPC Annual Report and Statement of Accounts.

³ [Statutory guidance on the police complaints system \(policeconduct.gov.uk\)](#) paragraph 9.5 page 57

body for all serious complaints investigated by PSDs or Local Policing Bodies (LPB), including any complaints that have been referred to the IOPC. In addition, we can require referral of any complaint to us.

- **In DSI matters**, these require mandatory referral to the IOPC. Some are independently investigated; those that are returned for local investigation are subject to review by the IOPC following their conclusion.
- **In conduct matters**, police forces or Local Policing Bodies (LPB) are required to refer “recordable conduct” that meets the mandatory referral criteria to the IOPC⁴. The full criteria can be found in our Statutory Guidance, but it includes any conduct that appears to have resulted in death or serious injury, any conduct that has had an adverse effect on a member of the public, any alleged criminal behaviour or potential misconduct that is aggravated by discriminatory behaviour, sexual offences, serious assaults and serious criminal offences, including police corruption and abuse of position. The IOPC independently investigates, directs investigation or returns these matters to police forces and LPBs to investigate.

12. The IOPC therefore has close oversight of all matters in which someone has died or been seriously injured following contact with the police⁵, and oversight of all serious criminal and misconduct allegations at referral stage. Where a serious matter has been complained about, we are the appellate body.

Referrals:

13. The referral criteria set out those matters the Home Secretary considers are of sufficient seriousness and sensitivity to merit immediate referral to the IOPC. Police forces are also encouraged to voluntarily refer matters that do not meet the referral criteria but for reasons of gravity or public confidence, should be referred. These criteria, alongside the test to determine who should act as relevant review body represent the view of the Secretary of State, as the signatory to the regulations.

14. The Police Reform Act 2002 has always contained discretion for the independent body to consider referrals and determine whether a matter should, in its opinion, be investigated, and if so, by whom.

15. Alongside this discretion, the IOPC and its predecessor body have never been resourced to a level that would permit the organisation to investigate all

⁴ *ibid*, for the recordable conduct criteria see paragraph 8.15

⁵ *ibid*, for the definition of a serious injury see paragraph 7.1 or section 29 of the Police Reform Act 2002

the matters referred to it independently. Guidance has always stipulated that cases should be handled at the most appropriate level with a view to Police PSDs continuing to investigate a sizable proportion of the matters requiring referral. Continuing independence is provided through recourse to review for complainants in referred matters, or through death and serious injury reviews. The number of referrals and disposals by the IOPC are set out in annex A.

16. Annex A contains indicative information regarding the referrals received and the mode of investigation decisions made by the IOPC between 1 April 2020 and 28 February 2021.⁶ As this information demonstrates:

- We receive the highest levels of referrals in relation to DSI matters
- The highest number of decisions to independently investigate are made in relation to death and serious injury matters
- Approximately a quarter of recordable conduct matters referred are investigated with a high degree of IOPC oversight.

17. The referrals to the IOPC provide us with significant intelligence on the operation of police forces, and emerging issues and trends in complaints and conduct matters. In addition, where it is considered appropriate, police forces or local policing bodies are instructed to re-refer a matter if there has been a substantial change in a local investigation.

18. Independent scrutiny of the police's investigation into complaints and DSI matters does not end with consideration of the referral. The Police Reform Act 2002 has also always contained mechanisms beyond independent investigation that allow independent scrutiny to be brought to a greater number of issues. Below we outline how the IOPC provides further oversight to death and serious injury matters and complaints investigated by police professional standards departments or LPBs.

IOPC oversight of Death and Serious Injury Matters:

19. DSI matters are incidents in which a member of the public has died or been seriously injured either during or following contact with the police. The full definition of a DSI matter can be found in Chapter 7.1 of the Statutory Guidance to the Police Complaints systems. The level of injury requiring referral is a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function.⁷ DSI referrals can cover a wide range of issues, but would include:

- Fatal and non fatal police shootings
- Deaths in custody and serious injuries in custody
- Police related road traffic incidents
- Deaths following police contact

⁶ Indicative information on referrals taken from IOPC case management systems.

⁷ Section 29 Police Reform Act 2002

- Injuries sustained following a police use of force (such as a serious dog bite).
20. These are serious and sensitive matters in which the starting point is to consider the circumstances of the death or injury. Sometimes investigations will progress to examine the conduct of individual officers, but often all those involved will be considered witnesses. Investigations into the circumstances surrounding a death assist coroners in their work.
21. Where the IOPC determines, following consideration of a referral, that a DSI matter should be locally investigated, and no conduct is identified during the course of the local investigation, we carry out a review following the investigation.
22. These reviews ensure independent scrutiny of all DSI matters that are investigated by PSDs. The review examines whether, in the IOPC's view, any person serving with the police may have committed a criminal offence or acted in a way that would justify the bringing of disciplinary proceedings.⁸ The review scrutinises all the evidence obtained as part of the investigation and the investigators report. IOPC casework managers enter into dialogue with the investigators and can request further lines of enquiry be pursued when they consider there are significant gaps in the evidence. As part of the consideration of the investigation, the IOPC will look at whether the case contains any local or national learning.
23. In the financial year 2020/21 (up to end of February 21), the IOPC received 1,111 cases for review and completed 1,032 DSI reviews.⁹ In light of this independent scrutiny, our casework managers report significant improvements in the quality and depth of the DSI investigations carried out locally by PSDs. These reviews have led to 22 formal learning recommendations with examples as follows:
- A national recommendation that the College of Policing amend the Authorised Professional Practice on rousing to make clear the expectations on officers when detainees cannot be roused. This followed a near miss in custody in Greater Manchester Police.¹⁰
 - A recommendation to the National Police Chief's Council to ensure all custody staff at all police forces are made aware of the risk of leaving detainees with unsupervised access to cutlery, and to Hampshire Constabulary to review their procedures and clarify the guidance

⁸ Police Reform Act 2002, Schedule 3,

⁹ Information taken from IOPC case management system. For published 2019/20 figures, see [Independent Office for Police Conduct Annual report and statement of accounts 2019/20](#) p23

¹⁰ [Recommendation - Greater Manchester Police, September 2020 | Independent Office for Police Conduct](#)

surrounding the provision of cutlery following a near miss in which a Spork was left in the possession of a detainee for over two hours, sharpened, and used in an attempt to cut wrists and to fashion a ligature.¹¹

- A recommendation to Suffolk Constabulary they stop the practice of recording multi cell observation records on individual detainee's custody records. This resulted in the College of Policing updating the Detention and Custody Authorised Professional Practice¹².

The role of the IOPC as relevant review body:

24. The IOPC is the relevant review body for:

- all complaints where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of criminal or disciplinary proceedings or would not involve an infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights;
- all complaints relating to a matter that has been referred to the IOPC, or ought to be referred;
- all complaints about the conduct of a senior officer (above the rank of Chief Superintendent)¹³.

This role means over a thousand complaints per year that have not been investigated independently by the IOPC receive independent scrutiny where the complainant is dissatisfied.

25. In reviews, we can commission further work from investigating officers before full consideration of the review to ensure a comprehensive case file. This new power, brought in through the legislative reforms, allows cases to be considered on the full facts and ensures cases can be concluded in a timely manner to the benefit of all concerned.

26. Where, following consideration of a review, the IOPC determines the outcome is not reasonable or proportionate, it can:

- make its own findings (in place of, or in addition to, findings of the investigation)
- direct that the complaint is re-investigated, and determine the mode of investigation
- make a recommendation (and, if necessary, a direction) to the appropriate authority about anyone serving with the police about

¹¹ [National recommendation - National Police Chiefs Council, November 2020 | Independent Office for Police Conduct](#)

¹² [Recommendations - Suffolk Constabulary, October 2020 | Independent Office for Police Conduct](#)

¹³ The full relevant review body criteria are set out at 18.6 of the Statutory Guidance to the police complaints system.

whether or not they have a case to answer for misconduct, whether their performance is satisfactory, and whether and what form misconduct proceedings should take.

- make a recommendation with a view to remedying the dissatisfaction of a complainant¹⁴
- send the report to the Crown Prosecution Service for consideration whether to charge for a criminal offence.

27. These powers provide a strong backstop to Professional Standards Department's (PSDs) consideration of public complaints. In addition, the knowledge that a complaint could result in a review to the IOPC also provides a strong incentive to police forces to ensure they get it right first time.

28. Between 1 April 2020 and 28 February 2021, the IOPC completed 552 valid review applications and upheld 30% of these.¹⁵ We are currently working to update our systems following the February 2020 changes to the police complaints system in order to report further information on the directions resulting from upheld reviews.

Appeals considered under the old system:

29. Because it takes time for appeals and reviews to work their way through the complaints system, the IOPC has continued to consider appeals under the old legislative framework throughout this financial year.

30. Between 1 April 2020 and 28 February 2021, the IOPC:

- Completed a total of 964 valid appeals, of which 315 were upheld (33%)
- Of the 738 valid investigation appeals, we upheld 243 (33%).
- We made 138 directions to police forces in relation to the 243 upheld investigation appeals. Further information on these is provided in the table below:

Upheld Investigation Appeal Directions (1 April to 28 February 2021)	
Directions made	Number
Appropriate Authority (AA) should conduct a re-investigation into the complaint	106
AA advised that the IOPC will conduct an independent re-investigation into the complaint	6
AA should notify the CPS of the IOPCs determination & send them a copy of	2

¹⁴ [Statutory guidance on the police complaints system \(policeconduct.gov.uk\)](#) see paragraphs 17.9 - 17.21

¹⁵ Information for paragraphs 28 -31 taken from IOPC case management systems. Full year figures on the number of reviews and appeals carried out by the IOPC will form part of the Police Complaints Statistics.

the report	
AA should provide information to the complainant (subject to the harm test)	14
AA should substitute its findings with the findings of the IOPC	7
AA should take disciplinary action (a recommendation should be made prior to a direction)	3
Total	138

31. As the data shows, we uphold appeals/reviews in around a third of cases. Where we disagree with the Appropriate Authority, we use our powers to intervene in order to remedy those issues we identify during the course of our appeal or review. Most often, we require the Appropriate Authority to do a better job of investigating the complaint. However, in some cases, our review has resulted in us redetermining the mode of investigation decision, requiring the report is sent to the Crown Prosecution Service or directing disciplinary proceedings.

Feedback from complainants:

32. The independent scrutiny brought to complaints through our appeal/ review function can have a positive impact on a complainant's view of both the police and the IOPC. It provides an opportunity to ensure thorough examination of the issues, explain decisions better or to ensure a different conclusion is reached.

33. Some of the feedback we receive on our decisions illustrates this. In relation to one appeal, the appellant said:

"Dear [CWM] , We received your decision last night. THANK YOU. To know that someone else has listened and agreed that it was unacceptable to leave our house in such a state and be poor communication wise after the event means such a lot. At times we thought we were going mad! You read, you considered and made a decision. That was all we could ask for. After the review report from the [police force]we were a little sceptical but you have proven to be as your word and give an independent review. On reading the word upheld it did take a while to read anything else, but a weight has been lifted and for that again THANK YOU"

In relation to another appeal, the appellant said:

"Firstly I just want to say thank you very much... That is much better I feel happy with the outcome [of the police complaint investigation] now it's explained properly and put in the correct manner. I just want to say thank you for taking the time to review all of evidence and review the complaint."

The Appropriate Authority said:

“Thank you for your report and letter... We appreciate the thoroughness of the rationale and the recommendations you make, which were outside of the issues that formed the basis of the initial investigation. I will provide an update on the action taken as per your recommendations.”

34. Whilst we are aware that not every complainant's experience of the complaints system is positive, these comments show that we do receive positive feedback for our work in this area.

Oversight

35. Insights from our work, including referrals, appeals/reviews and our death and serious injury reviews, are logged by our oversight team. These insights are considered by our oversight liaison officers in advance of force meetings and are used to produce a quarterly report analysing concerns and trends across PSDs. This intelligence is used, alongside other means such as regular dip sampling of complaint files, to evaluate and improve the performance of PSDs complaints handling, and to ensure they are handling matters that fall within the police complaints system in the right way. Further information regarding our oversight and interventions with police forces is available in our written submission published as PCO0029.

Conclusion

36. The IOPCs consideration of referrals, reviews and death and serious injury reviews provides it with a deep understanding of the full spectrum of issues considered under the police complaints system. The IOPC provides independent consideration to thousands of cases beyond those that are investigated independently, and has strong powers to change the outcome to matters considered on review.
37. Information from this scrutiny of cases improves police handling of complaints and allows the IOPC, alongside the use of other intervention measures, to closely consider how well forces are doing at handling complaint matters.
38. Contrary to the assertions made by Dr Graham Smith, the IOPC plays a significant role in the investigation of recordable conduct matters, bringing independent scrutiny to a broad spectrum of criminal and serious misconduct matters.

Other matters dealt with in evidence:

39. There are a number of other matters that have been considered in evidence that I am pleased to provide further evidence on:

Phill Matthews – complaints against the IOPC, Q22 oral evidence 27 January 2021:

40. In answer to Q22 during oral evidence on 27 January 2021, Phill Matthews said:

“If you look at their own complaint statistics, they get a huge number: the last ones I have say they had 450 complaints in 2017-18, but they only deal with about 500 or 600 investigations, so that is an absolutely horrific level of complaints about them, and they uphold a large number of those.”

41. In his response, Mr Matthews only referenced independent investigations and omitted reference to the IOPCs appellate function, and the thousands of judicially reviewable decisions that our casework managers make each year.¹⁶

42. I am pleased to be able to provide the Committee with the figures for complaints against the IOPC in 2020.¹⁷

- In 2020, we received 315 complaints regarding our service. 223 complaints were lodged by appellants.
- In total, 22 complaints were upheld, and 21 were partially upheld.
- 28 were lodged by police officers, former officers or federation representatives; 2 were lodged by police staff- so members of a police staff association.
- Of those 30, 5 were upheld, one was partially upheld and two are ongoing.

43. We work in an adversarial environment where people challenge what we do. However, I do not recognise the picture painted by Mr Matthews of an organisation beleaguered by complaints about its service, and falling short.

Phill Matthews – Provision of evidence to the IOPC

44. In answer to questions 25 and 26 from Tim Loughton MP on 27 January 2021, regarding the provision of witness accounts, Mr Matthews stated that in his experience, witness statements are turned around in 10 days.

45. It is the experience of the IOPC that in recent cases, even those that are being investigated as death and serious injury matters without any conduct matters identified, police officers and federation representatives still delay providing evidence to the investigation. Below are some recent examples of delay:

- In an investigation relating to South Yorkshire Police, the Appropriate Authority delayed the initial provision of evidence. Following this, attempts to engage with witness officers 3 months after incident were hampered by an insistence on them being given legal advice, it then took a further 3 months to receive their accounts. In total, we estimate the delay to the investigation of these issues totalled 4.5 months.

¹⁶ See paragraphs 28 – 31 of this submission for appeals and reviews, and paragraph 23 of this submission for the number of DSI reviews. For previous years, see the IOPC Annual Report and Statement of Accounts.

¹⁷ Figures taken from IOPC systems

- In another investigation in the North East, officers delayed providing witness accounts from May 2020, when they were first requested, until October 2020 when they were received.
- In an investigation in Wales, a number of written accounts were requested from police officers in August 2020. The last of the accounts was received in January 2021.
- Some branches of the Police Federation continue to insist officers who are witnesses and are requested to attend witness interviews offer no comment in the interview and subsequently provide written accounts. The Metropolitan Police Federation have stated that this is their policy, as they consider their members are “professional and expert witnesses”. This policy runs contrary to the guidance provided by the IOPC to police witnesses, published in February 2020, and can cause significant delay.¹⁸

April 2021

¹⁸ [Guidance for police witnesses in investigations.pdf \(policeconduct.gov.uk\)](https://www.policeconduct.gov.uk/guidance-for-police-witnesses-in-investigations.pdf)

Annex A: Referrals 1 April 2020 to 28 February 2021:

Referrals Received by referral type		
Referral type	Number	Percentage
Voluntary	264	6%
Mandatory	3949	94%
Called In	6	less than 1%
TOTAL	4219	100%

Referrals Received by Case type		
Case Type	Number	Percentage
DSI	2339	55%
Recordable Conduct	930	22%
Complaint	950	23%
TOTAL	4219	100%

*Case type is relevant to the case, not the referral.

Referrals Completed by Mode Of Investigation (MOI) decision		
MOI Decision	Number	Percentage
Independent	523	12%
Managed	7	0%
Supervised	26	1%
Directed	41	1%
Local	2533	60%
Return to Force	1068	25%
Invalid	28	1%
TOTAL	4226	100%

Referrals Completed by Case type and MOI decision						
	Case Type					
MOI Decision	Complaint (number)	% of complaint MOI	Death or serious injury	% DSI MOI	Recordable conduct matter	% Recordable Conduct matter MOI
Independent Investigation	160	17%	196	8%	167	18%
Managed Investigation	2	0%	0	0%	5	1%
Directed Investigation	5	1%	0	0%	36	4%
Supervised investigation	3	0%	0	0%	23	2%
Local investigation	698	73%	1,175	50%	660	71%
Return to Force	77	8%	965	41%	26	3%
Invalid	11	1%	5	0%	12	1%
TOTAL	956	100%	2341	100%	929	100%