House of Commons
Home Affairs Committee

Independent Police Complaints Commission

Eleventh Report of Session 2012–13

Report, together with formal minutes, oral and written evidence

Additional written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/homeaffairscom

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Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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The following Member was also a member of the Committee during the Parliament.

Rt Hon Alun Michael MP (Labour & Co-operative, Cardiff South and Penarth)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom.

Committee staff

The current staff of the Committee are Tom Healey (Clerk), Richard Benwell (Second Clerk), Ruth Davis (Committee Specialist), Eleanor Scarnell (Committee Specialist), Andy Boyd (Senior Committee Assistant), Michelle Garratty (Committee Assistant), Iwona Hankin (Committee Support Officer) and Alex Paterson (Select Committee Media Officer).

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Key facts

- In March 2012 there were 134,101 police officers in England and Wales. A total of 31,771 officers were subject to a complaint during 2011–12.

- During 2011–12, when appeals were made against the way police forces handled a complaint, the IPCC found that the police had been wrong in 31% of all cases. It decided against the police in almost two thirds of appeals where police had decided not to record someone’s complaint.

- In 2011–12, the following fatalities occurred involving the police: 18 road traffic fatalities; 2 fatal police shootings; 15 deaths in custody; 47 other deaths following police contact; and 39 apparent suicides following police custody.

- In 2011, 38% of all those who died in police custody were from black or minority ethnic communities.

- Almost half of those who died in, or shortly after leaving police custody in 2011–12 were identified as having mental health problems.

- Since 1990, inquests into deaths in police custody have resulted in 9 unlawful killing verdicts, none of which has yet resulted in a conviction.

- From 2008–2011, 8,542 there were allegations of corruption. 837 were referred to the Commission, which independently investigated 21 cases. 18 officers were prosecuted following IPCC investigation and 13 found guilty.

- Every year, around 200 police officers facing disciplinary panels retire or resign in order to avoid misconduct proceedings.

- The IPCC has a smaller budget than the Professional Standards Department of the Metropolitan Police alone.

- Over the past two years, 63 Commission employees have been made redundant (approximately 15% of the workforce in 2009–10) because of spending cuts.

- About 11% of staff and 33% of investigators are former police officers.
1 Introduction

1. When the public go to the police, they expect each case to be handled quickly, honestly and professionally to get to the bottom of the matter and ensure that justice is done. But when the complaint is about the police, people need to be even more sure that the truth will be told and any wrongs put right.

2. In many cases, people are right to look to Chief Constables and forces’ own Professional Standards Departments for a settlement—for example, often a simple apology is all that is needed to set right police misconduct, without tedious and costly bureaucratic procedures. In future, people will also look to Police and Crime Commissioners, especially where a complaint involves a Chief Constable. It will be up to PCCs to ensure that there is exacting public oversight of the way forces operate.

3. However, in the most serious cases—those involving deaths in custody or police corruption for example—it is vital to have a body that is truly independent and competent to get to the truth of the matter and ensure that misconduct and criminality in the police force cannot go unpunished. After all, this is why the IPCC was established.

4. Police officers are warranted with powers that can strip people of their liberty, their money and even their lives and it is vital that the public have confidence that those powers are not abused. In this report, we conclude that the Independent Police Complaints Commission is not yet capable of delivering the kind of powerful, objective scrutiny that is needed to inspire that confidence.

5. Compared with the might of the 43 police forces in England and Wales, the IPCC is woefully underequipped and hamstrung in achieving its original objectives. It has neither the powers nor the resources that it needs to get to the truth when the integrity of the police is in doubt. Smaller even than the Professional Standards Department of the Metropolitan Police, the Commission is not even first among equals, yet it is meant to be the backstop of the system. It lacks the investigative resources necessary to get to the truth; police forces are too often left to investigate themselves; and the voice of the IPCC does not have binding authority. The Commission must bring the police complaints system up to scratch and the Government must give it the powers that it needs to do so.

6. In this inquiry, we have heard evidence from those involved in police complaints, from the IPCC and from the police themselves. It is the first of a pair of inquiries into police integrity and will be followed by our report on leadership and standards in the police later in the spring.
2  The purpose of the IPCC

7. The police continue to inspire confidence and pride, from their contribution to the Olympic Games to the everyday assurance of seeing officers on the beat. Yet public faith in the police has been tested in recent years: the deaths of Jean Charles de Menezes and Ian Tomlinson, the report of the Hillsborough Independent Panel and the circumstances following officers’ altercation with Rt Hon Andrew Mitchell MP are perhaps the most high-profile examples. Behind these highly publicised cases lie thousands more in which members of the public complain about the conduct of police officers for many reasons: oppressive behaviour, assault, malpractice, discrimination, neglect of duty, unfairness, and simple rudeness amongst others.

8. The main purpose of the Independent Police Complaints Commission (IPCC) is to increase public confidence in policing by ensuring that justice is done where the police are accused of this kind of wrongdoing. It does this by:

   i. its oversight of the functioning of the police complaints system;

   ii. considering appeals where people believe that a police investigation has got it wrong; and

   iii. conducting its own investigations into the most serious matters, referred to it by the police or under its own initiative.

9. Our witnesses were sceptical of its record.1 The Newham Monitoring Project described the Commission oversight as “a system that falls woefully short in its ability to be independent, accessible or effective”;2 The Police Action Lawyers Group reported that its clients’ experiences with the Commission were “rarely positive, often frustrating and sometimes utterly demoralising”;3 and Doreen Lawrence told the Committee that she had “no confidence in [the Commission] whatsoever”.4

10. We heard significant concerns that the processes and procedures maintained by the Commission were not robust enough. As the Police Action Lawyers Group put it, “our clients can expect islands of good practice scattered amongst a sea of ineffective conduct in respect of the IPCC’s investigatory, supervisory and appellate functions”.5 Our inquiry raised the following issues:

   a) failure to locate evidence and propensity to uncritically accept police explanations for missing evidence (including forensic, CCTV and other evidence from the scene);6

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1 Ev w21 [StopWatch], para 10
2 Ev w15 [Newham Monitoring Project], para 4
3 Ev 101 [Police Action Lawyers Group], para 2
4 Q 34 [Doreen Lawrence]
5 Ev 101 [Police Action Lawyers Group], para 3; Ev 111 [Inquest], para 18
6 Ev w10 [CAMPAIGN4JUSTICE]; Ev 112 [Inquest], para 29
b) lack of “investigatory rigour” and “thorough investigation”;7

c) slowness in responding to complaints and conducting investigations;8

d) reliance on scene of crime officers from the force under investigation; 9

e) lack of skills and experience of qualified lawyers and prosecutors;10

f) failure to critically analyse competing accounts, even with inconsistencies between officers’ accounts or an compelling account from a complainant;11

g) the Department of Professional Standards in the force being investigated was allowed to summarise the complaint (without consulting the complainant) and then proceed directly to investigating it on these terms;12 and

h) the requirement for a complainant to attend the police station where the offence may have taken place, after a traumatic experience in custody.13

11. Inquest noted “dismay and disillusionment” at “the consistently poor quality of decision-making at all levels of the IPCC” and unsuccessful attempts to raise concerns through the IPCC Advisory Board, where “follow-up on agreed action points has been pitifully poor”.14

12. In an inquiry of this nature, we recognise that we were unlikely to hear many “good news” stories, where complainants were satisfied with the outcome of their contact with the IPCC. It is important to bear in mind that the fact that a complainant was not satisfied with the outcome does not in itself demonstrate that the outcome was wrong.

The basis of mistrust

13. At the core of public mistrust lies the suspicion that police are getting away with misconduct and criminality. We found three main causes for this mistrust:

1. complaints are often investigated by the force about which a complaint or referral has been made;

2. the IPCC continues to employ a significant number of former police officers, some who held senior posts in the force, who may naturally favour their former colleagues; and

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7 Ev w10 [CAMPAIGN4JUSTICE]; Ev 113 [Inquest], para 31; Ev w16 [Newham Monitoring Project], section 5
8 Ev 112 [Inquest], para 29
9 Ev 112 [Inquest], para 29
10 Ev w51 [Anton Venter]
11 Ev 105 [Police Action Lawyers Group], para 39; Charles Kirk believed the Commission would “rubber stamp” the Police’s version of events “without cursory inquiry or scepticism”, Ev w24 [Charles C Kirk], para 11; Ev w13 [Netpol], para 8
12 Ev w16 [Newham Monitoring Project], section 5
13 Ev 95 [BMH UK], para 24
14 http://www.guardian.co.uk/politics/2008/feb/25/police.law1 ; Ev 111 [Inquest], para 19
3. The police often do not interview officers after cases involving death and serious injury, although they would routinely do so for ordinary members of the public.

We will return to each of these points in the body of this report, but for now we note that Commissioners themselves ought to be the pillars of trust in the IPCC. The twelve Commissioners who served during 2011–12 are set out in Annex I, along with the five new commissioners who were recently recruited. Most Commissioners received a salary of £75,000–£80,000 and the Chief Executive received a salary of £130,000–£135,000.15

14. Nick Hardwick, former Chair of the IPCC, expressed his regret that Commissioners had been given a managerial role and separated from the investigatory process. No one who has served as a police officer can become a commissioner and so oversight by a Commissioner would be a significant guarantee of independence.16 The Police Action Lawyers Groups agreed that Commissioners should have more direction and control over investigations instead of leaving critical decision making in the hands of investigators who are often ex-police officers. It proposed that improved accountability for those Commissioners could be secured through Commissioners being answerable to external reference groups.17

15. The public do not fully trust the IPCC and without faith in the Commission, the damaged public opinion of the police cannot be restored. Unfortunately, too often the work of the Commission seems to exacerbate public mistrust, rather than mend it.

16. The independence and oversight offered by Commissioners is at the heart of the role of the IPCC. It is wrong that their day-to-day work is frequently far removed from the cases being investigated. Commissioners should be given a more active role in overseeing major cases and take personal responsibility for ensuring that a clear process and timetable is laid out for anyone involved in a complaint or an appeal.

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15 IPCC, Annual report and statement of accounts 2011/12, HC 292, July 2012

The terms of six operational Commissioners are coming to an end in 2012. The Commission has recently recruited five new Commissioners to replace those departing. In addition, the Home Office is undertaking a recruitment campaign to appoint both a new Commissioner for Wales and another Commissioner to reflect the increased workload of the Hillsborough investigation.

16 Q 268

17 Ev 109 [Police Action Lawyers Group]
3 Police complaints procedures

17. In 2011–12, 31,771 police officers were subject to a complaint, out of a total of 134,101 officers in England and Wales. The table below shows the ranks of these officers:

<table>
<thead>
<tr>
<th>Police Officer Ranks</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Officer Ranks (all ranks above Chief Superintendent)</td>
<td>31</td>
</tr>
<tr>
<td>Chief Superintendent</td>
<td>41</td>
</tr>
<tr>
<td>Superintendent</td>
<td>75</td>
</tr>
<tr>
<td>Chief Inspector</td>
<td>152</td>
</tr>
<tr>
<td>Inspector</td>
<td>1,024</td>
</tr>
<tr>
<td>Sergeant</td>
<td>3,965</td>
</tr>
<tr>
<td>Constable</td>
<td>21,567</td>
</tr>
<tr>
<td>Other police officer ranks</td>
<td>3,291</td>
</tr>
<tr>
<td>Rank unknown</td>
<td>1,625</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>31,771</strong></td>
</tr>
</tbody>
</table>

Source: IPCC, Police complaints: statistics for England and Wales 2011/12

18. The Commission only investigates a small proportion of ordinary police complaints (usually when a decision made by a police force is appealed) and deals with automatic referrals of the most serious cases. The vast majority of complaints are investigated by the police force involved or by a neighbouring force: in 2011–12 the Commission completed 130 independent investigations.19

19. Of course, the IPCC could not be called upon to investigate all police complaints. However, many of our witnesses believed that the Commission ought to take on a greater proportion of the more serious cases. One witness said that her complaint had been “recycled by the IPCC back to the original people who abused the system in the first place”.20 Frustration that the police were left to investigate themselves even in relatively serious cases was widespread.

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18 Ev 99 [IPCC]
19 Ev 73 [Home Office], para 19; IPCC, Police complaints: statistics for England and Wales 2011/12
20 Ev w38 [Donna M Gardner], para 3; Ev w13 [Netpol], para 4
**Modes of investigation**

When the Commission receives a complaint or a referral, it decides how it should be dealt with. This is referred to as a “mode of investigation” decision.

a) **Local Resolution**, carried out entirely by the police with the complainant’s consent. There is a right of appeal to the Commission.

b) **Supervised investigations**, where the IPCC sets out terms of reference for the police. There is a right of appeal to the Commission.

c) **Managed investigations**, carried out by police forces under the direction and control of the Commission.

d) **Independent investigations**, carried out by the Commission’s own investigators and overseen by a Commissioner.

**The IPCC’s ability to get to the truth**

20. It is crucial that the IPCC is able to get to the truth in serious cases involving police corruption or deaths in custody. Many witnesses were concerned that the IPCC’s involvement in death and serious injury cases involving police officers was far too remote. Serious questions were raised about the capacity of the Commission to conduct a proper investigation into the circumstances surrounding the cases referred to it. Without a proper investigation, those involved cannot be confident that the truth has been told.

21. A major obstacle was the IPCC’s access to specialists who could analyse a possible crime scene. Inquest suggested that the Commission should have a panel of independent experts, rather than rely on police investigators and that investigators should be cautious about including untested police versions of events in their instructions and take note of new developments. The Police Action Lawyers Group and Inquest believed that there should be an IPCC team to attend scenes of death very quickly following police contact in order to take control of the scene and begin the process of gathering evidence. Securing evidence quickly and independently is vital in these cases to provide the public with assurance that justice is done.

22. The impact of the IPCC’s lack of investigative resources is illustrated in some of the stories we heard from families like the Riggs. Marcia Rigg told us that her family had “basically been conducting the investigation ourselves because we have absolutely had no faith in the IPCC’s investigation at all from the very outset” and suggested that “the evidence quite clearly showed quite the opposite of what the IPCC’s conclusion was in their report”. Deborah Coles, Director of Inquest, believed that this demonstrated the

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21 Ev 113 [Inquest], paras 38–39
22 Ev 109 [Police Action Lawyers Group], para 3
23 Q 95
Commission’s lack of capacity, skills and expertise to run an effective investigation. The IPCC’s announcement of a review of its own investigation in this case is a welcome sign that the Commission is aware of the magnitude of the effects of this kind of investigation for the families of those involved and for improving police practices where fault is found.

23. More cases should be investigated independently by the Commission, instead of referred back to the original force on a complaints roundabout. “Supervised investigations” do not offer rigorous oversight of a police investigation, nor do they necessarily give the public a convincing assurance that the investigation will be conducted objectively. This kind of “oversight-lite” is no better than a placebo.

24. The IPCC owes it to the families of those who die in cases involving the police to get to the truth of the matter—a botched job is an offence to all concerned. When the IPCC does investigate it often comes too late and takes too long. The trail is left to go cold. IPCC investigators should be able to take immediate control of a potential crime scene during the crucial “golden hours” and early days of an investigation into deaths and serious injury involving police officers.

**Police complaints statistics**

25. The following table shows the number of complaints received by each force, along with the percentage change from 2010–11 to 2011–12. A positive value in the fourth column shows that the number of complaints has risen, while a negative value indicates a fall in the number of complaints. Hampshire experienced the highest percentage increase in the number of complaints—26%—while the number of complaints fell in Warwickshire by 37%.

<table>
<thead>
<tr>
<th>Police force</th>
<th>Complaints in 2010–11</th>
<th>Complaints in 2011–12</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hampshire</td>
<td>648</td>
<td>819</td>
<td>26</td>
</tr>
<tr>
<td>Durham</td>
<td>199</td>
<td>243</td>
<td>22</td>
</tr>
<tr>
<td>Derbyshire</td>
<td>506</td>
<td>581</td>
<td>15</td>
</tr>
<tr>
<td>Lincolnshire</td>
<td>430</td>
<td>490</td>
<td>14</td>
</tr>
<tr>
<td>Gloucestershire</td>
<td>314</td>
<td>353</td>
<td>12</td>
</tr>
<tr>
<td>Northumbria</td>
<td>608</td>
<td>680</td>
<td>12</td>
</tr>
<tr>
<td>Wiltshire</td>
<td>408</td>
<td>421</td>
<td>3</td>
</tr>
<tr>
<td>Cleveland</td>
<td>436</td>
<td>443</td>
<td>2</td>
</tr>
<tr>
<td>Devon and Cornwall</td>
<td>1,028</td>
<td>1,048</td>
<td>2</td>
</tr>
<tr>
<td>British Transport Police</td>
<td>418</td>
<td>419</td>
<td>0</td>
</tr>
<tr>
<td>Dyfed-Powys</td>
<td>287</td>
<td>287</td>
<td>0</td>
</tr>
</tbody>
</table>

24 Q 101
<table>
<thead>
<tr>
<th>Location</th>
<th>Complaints 2019</th>
<th>Complaints 2018</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lancashire</td>
<td>807</td>
<td>795</td>
<td>-1</td>
</tr>
<tr>
<td>Merseyside</td>
<td>761</td>
<td>753</td>
<td>-1</td>
</tr>
<tr>
<td>Avon and Somerset</td>
<td>924</td>
<td>905</td>
<td>-2</td>
</tr>
<tr>
<td>Leicestershire</td>
<td>471</td>
<td>451</td>
<td>-4</td>
</tr>
<tr>
<td>Surrey</td>
<td>672</td>
<td>648</td>
<td>-4</td>
</tr>
<tr>
<td>Essex</td>
<td>880</td>
<td>838</td>
<td>-5</td>
</tr>
<tr>
<td>Kent</td>
<td>778</td>
<td>742</td>
<td>-5</td>
</tr>
<tr>
<td>Nottinghamshire</td>
<td>476</td>
<td>452</td>
<td>-5</td>
</tr>
<tr>
<td>South Wales</td>
<td>675</td>
<td>640</td>
<td>-5</td>
</tr>
<tr>
<td>Sussex</td>
<td>745</td>
<td>706</td>
<td>-5</td>
</tr>
<tr>
<td>North Yorkshire</td>
<td>525</td>
<td>496</td>
<td>-6</td>
</tr>
<tr>
<td>Norfolk</td>
<td>550</td>
<td>498</td>
<td>-9</td>
</tr>
<tr>
<td>Thames Valley</td>
<td>1,147</td>
<td>1,045</td>
<td>-9</td>
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<tr>
<td>City of London</td>
<td>120</td>
<td>108</td>
<td>-10</td>
</tr>
<tr>
<td>Dorset</td>
<td>410</td>
<td>363</td>
<td>-11</td>
</tr>
<tr>
<td>Cheshire</td>
<td>476</td>
<td>421</td>
<td>-12</td>
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<tr>
<td>Greater Manchester</td>
<td>1,155</td>
<td>1,021</td>
<td>-12</td>
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<tr>
<td>Metropolitan</td>
<td>7,493</td>
<td>6,610</td>
<td>-12</td>
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<tr>
<td>West Yorkshire</td>
<td>940</td>
<td>819</td>
<td>-13</td>
</tr>
<tr>
<td>Gwent</td>
<td>387</td>
<td>330</td>
<td>-15</td>
</tr>
<tr>
<td>Humberside</td>
<td>526</td>
<td>449</td>
<td>-15</td>
</tr>
<tr>
<td>Staffordshire</td>
<td>437</td>
<td>368</td>
<td>-16</td>
</tr>
<tr>
<td>West Midlands</td>
<td>1,871</td>
<td>1,536</td>
<td>-18</td>
</tr>
<tr>
<td>Hertfordshire</td>
<td>414</td>
<td>326</td>
<td>-21</td>
</tr>
<tr>
<td>South Yorkshire</td>
<td>528</td>
<td>419</td>
<td>-21</td>
</tr>
<tr>
<td>Cambridgeshire</td>
<td>455</td>
<td>354</td>
<td>-22</td>
</tr>
<tr>
<td>North Wales</td>
<td>382</td>
<td>298</td>
<td>-22</td>
</tr>
<tr>
<td>Suffolk</td>
<td>336</td>
<td>261</td>
<td>-22</td>
</tr>
<tr>
<td>Cumbria</td>
<td>293</td>
<td>216</td>
<td>-26</td>
</tr>
<tr>
<td>Northamptonshire</td>
<td>535</td>
<td>376</td>
<td>-30</td>
</tr>
<tr>
<td>West Mercia</td>
<td>987</td>
<td>693</td>
<td>-30</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>-------</td>
<td>-------</td>
<td>---</td>
</tr>
<tr>
<td>Bedfordshire</td>
<td>355</td>
<td>229</td>
<td>-35</td>
</tr>
<tr>
<td>Warwickshire</td>
<td>306</td>
<td>193</td>
<td>-37</td>
</tr>
<tr>
<td>Total</td>
<td>33,099</td>
<td>30,143</td>
<td>-9</td>
</tr>
</tbody>
</table>

Source: IPCC, Police complaints: statistics for England and Wales 2011/12

The IPCC can’t afford to do more

26. In order to take on investigation of the most serious cases, it is necessary for the Commission to have the manpower and finance, but we found that the Commission is currently under-resourced. This was both because of a lack of funding and the severe drain on resources caused by the volume of appeals into decisions made by police forces themselves.

27. Like all public bodies, it is expected that the IPCC should play its part in efforts to reduce public spending, but under current plans the Commission would not have sufficient resources to deal with an increased number of independent investigations. The Commission’s activities are primarily funded through Grant-in-Aid from the Home Office. This funding falls from £35.365 million in 2010−11 to £30.741 million in 2014−15, a cut in cash terms of 13%. The Commission calculated that this equated to a real-terms budget reduction in excess of 21% over the Comprehensive Spending Review period.

28. Dame Anne Owers, Chair of the IPCC, and Jane Furniss, its Chief Executive, both denied that resource constraints were currently preventing the Commission from undertaking an independent investigation in cases where it was really necessary. However, they believed that the possibility was not far away, which Dame Anne thought could become a particular concern in cases of alleged corruption or racism. Others believed that funding limitations were already affecting mode of investigation decisions, pointing to inconsistencies in the decision making of the Commission about which cases were suitable to be independently investigated. It appeared to the Police Superintendents’ Association that these decisions were often made on the basis of available resources rather than the details of the case.

29. The IPCC provided us with an estimated cost for an independent investigation based on an average investigation. Some independent investigations may cost as little as £45,000 while more complex investigations can reach up to £300,000. The figures provided for managed and supervised investigations relate only to the IPCC cost and do not take account of the majority of costs which fall to the appropriate authority, usually the relevant police force.

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26 Ev 76 [PSAEW], para 3.1; Ev 82 [IPCC], para 21
27 IPCC, Annual report and statement of accounts 2011/12, HC 292, July 2012
28 Ev 78 [PSAEW], para 9.2
### Mode of investigation

<table>
<thead>
<tr>
<th>Mode of investigation</th>
<th>Illustrative cost (incurred by the IPCC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent</td>
<td>£120,000</td>
</tr>
<tr>
<td>Managed</td>
<td>£14,000</td>
</tr>
<tr>
<td>Supervised</td>
<td>£3,000</td>
</tr>
</tbody>
</table>

30. The Commission told us that a backlog of appeals had begun to build since the need to make financial savings had obliged it to reduce its complement of temporary staff.28 It concluded that “the Commission does not currently have sufficient resources to enable it to meet its statutory responsibility or the public’s growing expectations of its role”.29 As the Association of Chief Police Officers noted, “any real or perceived delay in holding individuals or the Service to account can undermine confidence in the IPCC, and by association, the Service”, so any delay in responding to cases is damaging to the Commission’s main objective.30 We note the statement on the IPCC website that it currently takes up to 26 weeks for an appeal to be completed and that the commission is currently processing appeals received before 30 July 2012.

31. Individual forces have significant resources invested in their Professional Standards Departments—the IPCC has a smaller budget than the Professional Standards Department of the Metropolitan Police alone.31 Rather than rely on forces to conduct their own investigations, or borrow teams of crime scene investigators, in the most serious cases some of those funds could be redirected to fund independent work by the IPCC.

32. It is deeply worrying that the Commission now feels that its level of resourcing has dropped below a level at which it can properly discharge its statutory functions and meet public expectations, to the extent that a backlog of appeals is now building up. We recognise that it will not be easy to find significant additional resources. We recommend that the Home Office work with the Commission to identify innovative ways in which the backlog might be cleared, for example by using temporary secondments of staff from other public authorities with relevant expertise, such as the Parliamentary Commissioner for Administration or HM Inspectorate of Constabulary. More robust procedures should be put in place at the permission stage of appeals in order to filter out more minor cases in order to allow the IPCC to focus on the most serious.

33. Important cases are under-investigated because of a lack of access to independent specialists. The Home Office should provide the IPCC with a specific budget for a serious cases response team. The resources within individual forces for investigating complaints dwarf the resources of the Commission. It is notable that the IPCC is

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28 Ev 82 [IPCC], para 20
29 Ev 82 [IPCC], para 21
30 Ev 120 [ACPO], para 21
31 Q 87 [Dame Owers]
smaller than the complaints department of the Metropolitan Police alone. In the most serious cases, therefore, there should be a system for transfer of funds from individual forces to the IPCC to cover an investigation. This model is already in place for the IPCC’s investigations into HMRC and UKBA.

34. These issues particularly affect minorities. There is ongoing concern about racism in the police and the IPCC. Black people account for 2.9% of the population, but 20% of those who die in custody. Over 33% of cases in which a black detainee had died occurred in circumstances in which police actions may have been a factor, compared with only 4% of cases where the detainee was white. In 2008 black and minority ethnic communities deaths accounted for 32% of all deaths in police custody, a figure which is broadly consistent with other recent years. Tackling the issue of proper oversight of a potential crime scene involving officers could therefore be an important step in increasing confidence among minority communities.

35. Applying non-discriminatory practices is crucial as a disproportionate number of the cases that cause the most serious public concern involve the black and minority ethnic (BME) communities. All Commissioners, investigators and caseworkers should be trained in discrimination awareness and relevant law, including all the protected characteristics under the Equality Act 2010. Again, leadership in this respect should come from Commissioners themselves, of whom three of thirteen will be from BME communities when the new Commissioners take up office.

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32 Ev w68 [Natasha Sivanandan]
33 Ev 94 [BMH UK], para 14
34 Ev 110 [Inquest], para 7
4 Refocusing the Commission’s work

36. The IPCC’s resources are prioritised between different kinds of cases and, at the moment, the Commission devotes more attention to issues that impact on people’s lives directly than to counter-corruption activity.

Corruption in the police

37. However, given current concerns about corruption in the police force, it is worrying that the Commission’s capacity to deal with cases involving “fitting people up”, “withholding evidence” and “covering up” is limited.35

38. Irregularity in relation to evidence and perjury are the most prevalent form of corruption allegation recorded by the police, with 3,758 allegations between 2008 and 2011. In its second report on Corruption in the police service in England and Wales, the IPCC noted that it would require a significant transfer of resources and powers to the IPCC if it were to assume a much more prominent role, particularly in cases that require covert operations. The Commission referred officers to the Crown Prosecution Service in 45% of the cases independently investigated or managed between 2008 and 2011, suggesting that where the Commission has been involved, it has regularly found a case to be answered where corruption allegations have been made. However, the IPCC only independently investigated 3% of corruption cases and managed 12%.36

Rt Hon Andrew Mitchell MP

39. Following the altercation between Rt Hon Andrew Mitchell MP and police officers on 19 September 2012, we were concerned that the IPCC opted to supervise the investigation into the circumstances surrounding a police officer’s claims to have witnessed the incident in Downing Street, rather than to mount an independent investigation. The Metropolitan Police is carrying out the investigation—Operation Alice—with the lightest of supervision from the Commission. The allegation that a serving police officer may have fabricated an account and concealed that he was an officer is an extremely serious matter and raises broad questions about the integrity and honesty of some officers. When we took evidence on this matter from the Commissioner of the Metropolitan Police, Sir Bernard Hogan-Howe, we asked him why the investigation had not been passed on to the Commission for independent investigation. He responded that “we did try. We did ask them; of course, they concluded they either could not or would not”.37

40. We also wrote to Sir Jeremy Heywood who claimed that his role had been heavily circumscribed. However, investigations may have proceeded more expeditiously either had the Metropolitan Police been more forthcoming with certain details (such as Mr Mitchell’s request to see the police log book) or if Sir Jeremy had shared with the police the e-mail purporting to be from a member of the public and other issues arising from his

35 IPCC, Corruption in the police service in England and Wales, May 2012
36 IPCC, Corruption in the police service in England and Wales: second report, May 2012
37 Oral evidence taken before the Home Affairs Committee on 8 January 2013, HC 617-ii, Q 154
investigation. A simple sharing of information could have helped to alleviate whatever problems had been caused, in this as in many other, lower-profile cases.

41. This case raises fundamental questions about police integrity. We will return to the implications of the September 2012 episode following the conclusions of Operation Alice, when we will be taking evidence from Deputy Assistant Commissioner Patricia Gallan. This will form part of our investigations into leadership and standards in the police. DAC Gallan wrote to us on 11 January to update us on the progress of the investigation, telling us that that the Metropolitan Police had so far spent £82,500 to staff an investigation into events that lasted less than 60 seconds.38

42. Public confidence in the police has been shaken: Operation Yewtree, Operation Alice, the Hillsborough Inquiry, Operation Elveden and Operation Pallial all cast doubt on police integrity and competence. It is in these circumstances that the public ought to be able to turn to the IPCC to investigate and we believe that the Commission ought to have a more prominent role in each of these operations.

43. Some kinds of complaint are simply not appropriate for Police Complaints Departments to investigate themselves. Cases involving serious corruption, such as tampering with evidence, should be automatically referred to the IPCC for independent investigation. The Government has committed itself to provide more resources for the IPCC to investigate the Hillsborough disaster. Once that investigation is complete, that funding should be maintained and dedicated to anti-corruption cases.

44. Allegations following the altercation between Rt Hon Andrew Mitchell MP and police officers raise fundamental questions about police honesty and integrity. The alleged unauthorised disclosure of information to the press on the night of 19 September 2012 and the alleged fabrication of an eye-witness account on Thursday 20 September 2012 are extremely serious; if officers could do this in a case involving the protection of the Prime Minister’s own home, it raises the question how often might this be happening outside the gaze of the national media. As Mr Mitchell said, “if this can happen to a senior government minister, then what chance would a youth in Brixton or Handsworth have?”.

45. We support the Commissioner’s “relentless pursuit of the truth” in this matter and believe that the West Midlands Police Federation were wrong in calling for the resignation of a cabinet minister. However, it was clearly hasty of the Commissioner to tell the media that he was 100% behind his officers and to say to Rt Hon David Davis MP that the investigation had been closed when it had not been investigated with any rigour.

46. We note the Commissioner’s intention to ask another force to independently review the investigations underway in Operation Alice—while this is a welcome safeguard, it is no substitute for independent investigation by the IPCC. The IPCC should investigate this case independently and the Government should additional provide funds, if necessary, as it has for Hillsborough.

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38 Ev w75 [DAC Patricia Gallan]
Redirecting the Commission’s work

47. There are several avenues for redirecting Commission resources to better uses. When a referral or complaint is received, a commission casework officer makes a “mode of investigation” decision, with the power to investigate cases independently, manage or supervise an investigation by the force concerned, or decide that cases can be investigated locally by the police without oversight. The Police Superintendents’ Association did not believe that the provision for supervised investigations added value. In supervised investigations, the Commission sets the terms of reference but the investigation is conducted by the police and the complainant has a right of appeal to the IPCC against the findings. The Association believed that this could be confusing to complainants who were told that the investigation was being “supervised” by the Commission and yet in reality there was no active supervision of the case.39

48. We heard from two expert mediators, who suggested that substantial cost-savings could be achieved at the same time as increasing public satisfaction by applying mediation and restorative justice techniques to certain kinds of police complaints. Lawrence Kershen QC described how mediation was “faster than most investigative processes. It is certainly cheaper” and said that “it […] has the potential to build a relationship; and the outcomes that are possible through the mediation process are far richer than that which might be possible through an adjudicative process”.40 He cited work that was taking place at Thames Valley Police, where mediation was being used to deal with certain complaints.41 Anthony Glaister argued that in typical complaints procedures “the panoply of the process […] takes over the complaint” and that mediation could offer a much more direct and satisfying route.

49. Mediation and restorative justice present rich avenues for improving the handling of police complaints. The Commission should set out best practice protocols for their use in appropriate cases and the use of informal or local resolution systems should be independently monitored to ensure that it is not used inappropriately in relation to conduct that would justify criminal or disciplinary proceedings.

Appeals upheld: the frontline is failing

50. The most serious call on Commission resources that could be cut back was the number of appeals from individual police forces.

51. To ensure that these cases do not undermine confidence in the police and ensure that malpractice is rooted out, a well-functioning police complaints system is essential. However, the frontline of the police complaints system is not working effectively. In the past year, the number of appeals to the Commission about police forces’ handling of complaints has grown and the proportion of appeals upheld has increased significantly. During 2011–12, 31% of appeals into investigations conducted by police forces were upheld and 61% of appeals into a police force’s decision not to formally record a complaint

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39 Ev 78 [PSAEW], para 9.4
40 Q 408 [Lawrence Kershen QC]
41 Q 414 [Lawrence Kershen QC]
were also upheld: in other words, the police do not appear to be very good at investigating
themselves. 42

52. Dame Anne Owers believed that “what we need to do is have more resources to dig
into what is going on at the front end of the system, as well as to be able to deal with the
very serious cases and the appeals at the back end of the system”. 43 She said that she “would
want to see a decrease in the number of appeals coming to us, which represented good
work earlier on”. 44

53. There is clear evidence that cases are often handled poorly. Last year, the Commission
upheld 60% of appeals made against forces’ decisions not to record complaints for
investigation and it upheld over 30% of complaints into local investigations and the
outcomes of local investigations. 45 Errors in the decision about whether to record a
complaint are particularly deleterious, as they give the complainant the impression from
the outset that a case is not being taken seriously, or even that the force is trying to cover up
misconduct.

54. We heard that many officers were also unhappy with the way that complaints were
dealt with at the level of the Professional Standards Department (PSD) within a police
force. The Police Federation of England and Wales said that the IPCC did not intervene in
cases in which PSDs had “allegedly conducted a poor, biased or even corrupt
investigation”. It believed that the Commission should investigate such allegations, as the
perception among officers was that PSDs were “a law unto themselves, without the
independent scrutiny afforded to all other officers”. 46

55. The Commission has a duty to improve public confidence and oversee the
performance of the complaints system—its “guardianship” role. The Commission told us
that it carried out its guardianship role in relation to “priority areas” to seek to ensure that
improvements are delivered across the system. 47 The IPCC’s current priority areas are
deaths and serious injury involving the police, serious police corruption, police use of stop
and search powers and other issues affecting young people’s confidence in the police and
policing of protests and public order incidents. In 2011, the Commission launched the
*Right First Time* campaign, designed to improve the way forces handle complaints. 48

56. The IPCC is now publishing complaints data about individual forces which reveals
significant variation both in the number of complaints made and in the number of appeals
directed to the IPCC that are upheld. In Dyfed Powys just 15% of appeals to the IPCC were
upheld last year, but in North Wales and Northumbria over 50% of appeals to the IPCC
were upheld.

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43 Q 51 [Dame Anne Owers]
44 Q 90 [Dame Anne Owers]
45 Q 51 [Dame Anne Owers]
46 Ev 91 [PFEW]
47 Ev 80 [IPCC], para 6
48 Ev 82 [IPCC], para 19
57. We note the Commission’s clear analysis of individual forces’ complaints statistics and its endorsement of 38% of the appeals it received—a welcome indication that the Commission is willing to call forces to account in many cases.49

**Police complaints statistics**

58. The following table shows the number of appeals completed by the IPCC into each force, the number that were upheld and, in the third column, the percentage of cases that were upheld. In Northumbria and North Wales, the IPCC decided that the police force had made the wrong initial decision in over half of all cases. Again, Warwickshire showed the best record—the IPCC upheld 15% of cases, the same percentage as it upheld in Dyfed Powys.

<table>
<thead>
<tr>
<th>Police force</th>
<th>Total appeals completed</th>
<th>Total appeals upheld</th>
<th>Percentage upheld</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northumbria</td>
<td>146</td>
<td>78</td>
<td>53</td>
</tr>
<tr>
<td>North Wales</td>
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<td>38</td>
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<td>Greater Manchester</td>
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<tr>
<td>Devon and Cornwall</td>
<td>137</td>
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<td>Merseyside</td>
<td>139</td>
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<td>Lancashire</td>
<td>158</td>
<td>72</td>
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<tr>
<td>Northamptonshire</td>
<td>59</td>
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<tr>
<td>Suffolk</td>
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<td>Staffordshire</td>
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49 IPCC, *Police complaints: statistics for England and Wales 2011/12*
<table>
<thead>
<tr>
<th>Region</th>
<th>Complaints</th>
<th>Recorded</th>
<th>Overturned</th>
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<td>Gwent</td>
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<td>Leicestershire</td>
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<tr>
<td>Dyfed Powys</td>
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<tr>
<td>Warwickshire</td>
<td>34</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>4,926</td>
<td>1,866</td>
<td>38</td>
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</table>

59. Nick Hardwick, who was the first Chair of the IPCC from 2002 to 2010, said he hoped that Police and Crime Commissioners (PCCs) would look at that data and hold Chief Constables to account for the number of complaints, the number of overturned recording
decisions and the number of appeals upheld.\textsuperscript{50} The IPCC could play an important role in helping PCCs to interpret its statistics and develop actions for improvement.

60. The root of the problem is that the front line of the police complaints system is not working. It is unacceptable that Police Standards Departments had made the wrong decision in 38\% of appeals. The number of appeal upheld varies wildly from force to force, as does the proportion of appeals upheld by the IPCC and Police and Crime Commissioners must take decisive action where a force is shown to be failing. The Commission’s robust handling of appeals is welcome, but it is costly. Far more effort should be made to ensure that correct decisions are made in the first instance at the level of individual forces. We have written to each chief constable to ask for the staff complement and budget of their Professional Standards Departments.

61. Where a threshold of 25\% of appeals are upheld, the Commission must demand a written explanation from Chief Constables and Police and Crime Commissioners, which should be followed by a six month probation period. After that time, if the proportion of appeals upheld is not reduced below the threshold, a “complaints competency investigation” must be held into the reasons for the inaccuracy of decisions made at the local level. This should involve a joint report by the IPCC, HMIC and the local Police and Crime Commissioner, which would lead to proposals that would be binding on Chief Constables. If applied now, these measures would affect all but four forces.

**Learning the lessons: giving the IPCC authority**

62. The IPCC’s prioritised could be refocused on the most serious cases if its day-to-day work genuinely led to improvements in policing practices. This is also vital for ensuring public confidence.

63. However, we received evidence that the IPCC’s investigations do not always result in improvements in police practice. As Natasha Sivanandan put it, “the failure to learn lessons from previous incidents leads many members of the public to feel a lack of confidence in the IPCC and the police: why are the lessons of earlier police shootings not learnt and new guidelines and laws not developed?”\textsuperscript{51} The National Police Improvement Agency said that the Commission could improve policing practice by analysing common contributory factors to adverse police events, to highlight national priorities for improvement.\textsuperscript{52}

64. The Commission had been involved in the scrutiny of key policing areas such as custody detention, police use of firearms, command and control and the response to issues concerning vulnerable people.\textsuperscript{53} The Commission produced a series of bulletins called *Learning the Lessons* (now at edition 16) to ensure that lessons learnt in one police force area were shared with other forces.\textsuperscript{54} The Police Federation agreed that the Learning the

\textsuperscript{50} Q 274

\textsuperscript{51} Ev w72 [Natasha Sivanandan], para 30

\textsuperscript{52} Ev w53 [NPIA], para 11

\textsuperscript{53} Ev 75 [PSAEW], para 2.2

\textsuperscript{54} Ev 75 [PSAEW], para 2.3
Lessons programme had been successful, in particular in the area of custody. Recent editions included advice on dealing with people who are drunk and incapable, recognising when a person needs medical attention, protocols with the health and ambulance services. However, the advice was not reaching all police officers.

Moreover, the decision whether to implement Commission recommendations remains that of the respective force—there was no mechanism to ensure recommendations were enforced. A statutory framework in which Commission’s recommendations require a published response by the responsible authority within a specific period of time could help to reinforce public confidence, particularly following high profile cases of public concern. It could also allow the new Police and Crime Commissioners to follow up on the issues raised. The Commission said that the public did not understand why it could not “make the police take action”.

The Commission reports on the outcome of investigations and makes local and national recommendations to help to ensure that the same thing does not go wrong again. The Commission also publishes investigation reports, research studies and complaint statistics on its website. At the moment, however, IPCC recommendations are merely advisory. The frustration at the system felt by some witnesses was apparent. One witness said:

Each time, following an appeal, the complaint was sent back to the West Midlands Police. This beggars belief in this case. The IPCC advise the Force have a legal duty to comply with their directions and Statutory guidelines, but there appears to be absolutely no enforcement, or enforcement mechanism. It is clear in my case that the Force knows this and is exploiting the system.

The Police Superintendents’ Association believed that the Commission’s ability to make recommendations should be enhanced with a power similar to the Rule 43 power available to coroners, which provides coroners with the power to make reports to a person or organisation where the coroner believes that action should be taken to prevent future deaths. Such a power could apply to police-wide practices or to particular forces.

In one case, the Commission “requested” that the Metropolitan Police Service reconsider a request for personal data to be expunged and “informed” the service that a copy of a compulsory form “should” be provided. This kind of light-touch recommendation is a long way from the kind of clear instructions for improvements that Dame Anne Owers said: “there should be a requirement formally to respond with an

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55 Ev 91 [PFEW]
56 Ev 117 [Inquest], para 66
57 Ev 88 [IPCC], para 74
58 IPCC, Corruption in the Police Service in England and Wales, Report 2, 24 May 2012; Ev w22 [StopWatch], para 15; Ev 116 [Inquest], para 64; Ev 75 [PSAEW], para 1.5
59 Ev 73 [Home Office], para 16
60 Ev w42 [Donna M Gardner], paras 77-79
61 Ev 75 [PSAEW], para 2.4; this refers to Rule 43 of the Coroners Rules 1984;
62 Ev w44 [David Mery], para 14
She suggested that Police and Crime Commissioners could contribute by ensuring that the Commission’s work led to improvement across the service:

we need to work on [...] mechanisms to check whether what we have done has made a difference [...] Police and Crime Commissioners do form a place where I would envisage discussions going on between Commissioners, heads of casework and themselves about what is happening and if it is not happening why isn’t it happening?\(^{64}\)

69. It is a basic failing in the system that there is no requirement for forces to respond to recommendations from the IPCC, still less to implement them. We recommend that the Commission be given a statutory power to require a force to respond to its findings. In the most serious cases, the Commission should instigate a “year on review” to ensure that its recommendations have been properly carried out. Any failure to do so would result in an investigation by HMIC and the local Police and Crime Commissioner, as a professional conduct matter relating to the Chief Constable.

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\(^{63}\) Q 89 [Dame Anne Owers]

\(^{64}\) Q 74 [Dame Anne Owers]
5  A second home for police officers

71. In those cases where the IPCC is able to run an independent investigation, there is an enduring impression that this is still tantamount to the police investigating themselves because of the significant number of former officers employed by the Commission.

72. One of the most significant challenges faced by the Commission has been its ability to demonstrate independence from the police service. Under the Police Reform Act 2002, the Commission is required to maintain an “appropriate degree of independence”, but that level of independence is not defined. Nick Harwick, former Chair of the IPCC, told us that in the case of Jean Charles de Menezes the then Commissioner of the Metropolitan Police had sought to intervene to prevent the Stockwell investigation from taking place. This level of interference is clearly unacceptable.

What can the IPCC do?

The Commission can make recommendations to the Crown Prosecution Service in criminal matters, or recommend that a police force begin misconduct proceedings. In 2011–12:

a) 28 cases were referred to the Crown Prosecution Service (CPS) after independent investigation, which have so far led to 6 prosecutions;

b) 18 managed cases were referred to the CPS, which have so far led to 8 prosecutions;

c) 33 misconduct cases were raised after independent investigations; and

d) 22 misconduct cases were raised after managed investigations.

73. The number of former officers employed by the Commission was a continuing source of concern. About 11% of all staff and 33% of investigators are former police officers. As a result, several witnesses believed that the police thought that they were “untouchable”.

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65 Ev w7 [Women Against Rape]
66 See Police Reform Act 2002, section 10
67 Q 263
68 Ev w18 [Newham Monitoring Project], section 6; Ev w20 [StopWatch], para 2
69 Ev 80 [IPCC], para 5
70 Ev w51 [Anton Venter]; Ev w24 [Charles C Kirk], para 8
number of organisations raised concerns that the Commission was biased in favour of the police; or that it was perceived by complainants to be so.

74. Under Dame Anne Owers, the Commission has begun to respond to these criticisms. In 2011, it established a training scheme to help candidates from a range of backgrounds become Commission investigators. Five trainee investigators were initially recruited and the scheme has recently been extended further. Dame Anne told the Committee that the Commission "would like to bring in more people from outside, and that is why we are doing a recruitment drive in the autumn and why also we are training up some of our own case workers, who come from non-police backgrounds, to be investigators".

75. We appreciate that former officers bring investigative skills and can improve the effectiveness of the Commission. It is natural that an organisation whose principal role is to investigate the police should recruit former officers, both for their investigative skills and their familiarity with police practices and procedures, but it must make every effort to cultivate its own investigative capabilities and to avoid becoming too dependent on former police officers to fill these roles.

76. There may be other sources of independent expertise where the IPCC and police forces could turn. For example, there is already some overlap between the role of the IPCC and the role of HM Inspectorate of Constabulary. If a Police and Crime Commissioner decides to instigate gross misconduct proceedings against a Chief Constable, one of Her Majesty’s Inspectors (HMIs) must be present at the ensuing hearing. Similarly, if an officer above the rank of Chief Superintendent decides to appeal against the outcome of a misconduct hearing, the appeal is referred to the Police Appeals Tribunal where an HMI may sit on the panel if asked by the Secretary of State.

77. As part of HMIC’s role in assessing police force efficiency and effectiveness, it also has a statutory duty to keep itself informed of how police forces handle complaints and misconduct.

78. If the Commission’s primary statutory purpose is to increase public confidence, then it must act to rectify the impression that the police are investigating the police. The Commission must improve its in-house investigative resources and move to a target of 20% of investigators who have moved directly from a career as a police officer, or fewer, so that the number of former officers investigating the police is significantly reduced.

79. Her Majesty’s Inspectorate of Constabulary must play a more prominent role in investigations of the most serious cases. In cases involving serious police corruption, for example, one of Her Majesty’s Inspectors should review the IPCC’s findings and be tasked with ensuring the implementation of any IPCC recommendations. HMIC’s responsibility for forces’ effectiveness make it a natural candidate for involvement in the “complaints competency investigation” described above and the inspectorate
should ensure that any findings for a particular force are taken up by other forces where necessary.
6 Treating officers differently from the public

80. The impression that the Commission tends to favour officers is amplified by practices which treat officers differently from other members of the public. In our interim report, Powers to investigate the Hillsborough disaster: interim Report on the Independent Police Complaints Commission, we noted that police officers are rarely interviewed under caution in circumstances in which an ordinary member of the public would be.\(^75\) This risked losing important evidence and was of particular concern to the families of people who die in custody.

81. When someone dies in custody, and in other serious cases where an officer may be implicated, a referral must be made to the IPCC for investigation. The Commission must assess at the outset whether officers “may have” committed criminal or misconduct offences. If so, the matter should be recorded as a “conduct” matter with special requirements and the investigator has the power to interview relevant officers under caution. If the case is not recorded as a “conduct” matter, the investigator will not have the power to interview those officers under caution.\(^76\)

82. An interview under caution provides safeguards for the officers concerned and ensures that any evidence obtained in that interview is admissible in any subsequent legal proceedings. The Police Action Lawyers Group and Inquest suggested that interviews that were not taken under caution might not be admissible in court in a case against the officers involved. The Group said that it had experience of cases where the threshold that officers “may have committed criminal and/or misconduct offences” had clearly been met—for example in restraint-related deaths—but the decision was not made to proceed with a conduct investigation under “special requirements”. Often relevant officers were not interviewed at all, or interviews did not take place until an inquest, which could be many months after the event. This was a major issue of concern to the families of individuals who die in police custody. The Police Action Lawyers Group argued that

Families [...] feel that such a decision, which [...] means that investigators do not have the power to interview officers under caution, shows a lack of impartiality on behalf of the investigator, who will often be a former police officer.\(^77\)

83. The Police (Complaints and Conduct) Bill would introduce new powers to compel officers to attend an interview in cases being investigated directly by the Commission. However, as we noted in our interim report, this may not be an adequate substitute for an interview under caution and should not be allowed to exacerbate the Commission’s tendency not to investigate serious cases as conduct matters with special requirements. Witnesses suggested that legislative reform may be required to ensure that officers are interviewed under caution in serious cases, except where it is “beyond reasonable doubt”

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\(^{26}\) Ev 102 [Police Action Lawyers Group], para 5

\(^{27}\) Ev 127 [Bhatt Murphy Solicitors], para 5
that a misconduct or criminal offence has not been committed that officers should not be interviewed under caution.

84. We also noted in our interim report that the Police (Complaints and Conduct) Bill did not solve the problem that retired officers involved in the Hillsborough disaster could not be obliged to attend an interview. One way to achieve the co-operation of retired officers would be to amend officers’ contracts to include a clause that requires them to have a continuing duty, even after retirement, to assist in any police or IPCC or other investigation, since evidence of police misconduct can often surface years after a police officer has retired.78

85. The issue of interviewing officers in cases involving death and serious injury is indicative of a culture of treating officers differently from members of the public. Where officers are not interviewed promptly under caution, this can lead to weaker evidence and loss of confidence in the process of investigating serious matters such as deaths in custody. The application of the threshold test for special requirements should be reviewed, so that officers are routinely interviewed under caution in the most serious cases, exactly as a member of the public would be.

86. The Government should revise the legislative definition of the threshold. One option would be that death and serious injury cases should be treated as “conduct” matters with special requirements and officers interviewed under caution except where it is “beyond reasonable doubt” that a misconduct or criminal offence has not been committed.

Communications

87. Several of the shortcomings of the Commission that we have explored so far were as much about public perception as they were about practice. These concerns could be allayed to some extent by an effective communication strategy. However, the Commission’s outreach and engagement work with media, public and police has been a source of further criticism.

88. StopWatch suggested that there was a need to raise awareness of the Commission’s work by communicating some of the positive results. Prosecution outcomes, misconduct and recommendations could be more widely publicised in a format which was easy to understand and accessible.79

89. Commission guidance provides that contact on the progress of an investigation should be made every 28 days. In 2008, the National Audit Office found that this was being done effectively.80 However, families felt they were not kept up to date on the progress of investigations. Others were dissatisfied because the information given was inadequate. The

78 Ev w68 [Natasha Sivanandan]
79 Ev w20 [StopWatch], para 5
80 National Audit Office, The IPCC, November 2008, para 26
Police Federation argued that officers under investigation were also given updates that were often uninformative.  

90. The Federation also cited “ill-considered and provocative press releases”, which it said were “often quite biased and prior to sufficient evidence being gathered” and believed that Commission communications ought to be more neutral in tone until a clear picture had emerged.  

91. Inquest pointed to a pattern where partial and untested information about initial post-mortem findings was reported by the media as fact. It believed that the Commission should ensure that any misinformation was corrected immediately.  

92. The Commission said that it would be producing a “suite of communications products” aimed at ensuring the changes to the complaints system and the revised statutory guidance were communicated to all relevant audiences, including potential complainants, in the most accessible and appropriate way. This would include a range of documents available in both hard copy and on the Commission’s website explaining the various stages of the complaints process and signposting individuals to where they can get more information.  

93. The adequacy of communications between the IPCC and the public can have serious implications. Some of the violence that raged across London in the summer riots of 2011 may have been avoided if anger had not been intensified by inaccurate statements made by the IPCC.  

94. Accurate and timely information is also vital in retaining confidence in the complaints process. The Commission should be required to set out a timetable for an investigation for complainants and to write to them to explain any deviation. If the Commission orders a police complaints department to reinvestigate, it should also set a timetable for that investigation and any deviation should be explained to both the complainant and the Commission. There should be sanctions if the process and timelines are not followed.
95. The Commission should communicate positive outcomes through different channels, including social media. Prosecutions, misconduct findings and recommendations to forces must be more widely publicised in a way that openly demonstrates the scrutiny of the police.
7 Scrutiny in the new landscape of policing

96. The Home Office stated in its evidence that “the IPCC is [...] set up to investigate complaints against the police and those exercising police-like powers”.88 However, we are concerned that, at the moment, the Commission has only limited powers to scrutinise private contractors employed to deliver policing services.

Widening remit

97. The Government has already widened the remit of the Commission to include new bodies. In April 2006 the IPCC’s supervisory role was expanded to include HM Revenue and Customs and the Serious Organised Crime Agency (SOCA). This oversight will now be extended to the National Crime Agency. In April 2008 this role was expanded further to cover the UK Border Agency and now also the Border Force.

98. The Police Reform and Social Responsibility Act 2011 has extended the IPCC’s remit further. Since January 2012, the IPCC has been responsible for deciding whether any criminal allegations relating to the occupant of the Mayor’s Office for Policing and Crime (MOPAC) or his Deputy should be investigated. The IPCC will have a similar remit over Police and Crime Commissioners (PCCs) and their deputies following their election in November 2012. Several witnesses believed that a change in name would be helpful, especially now that the Commission’s remit included UKBA and HMRC.89

99. The Government should be aware of the potential crossover between the role of the IPCC and other institutions in the new landscape of policing. The Police Superintendents’ Association believed that the Commission would benefit from being involved in the training exercises of operational staff in specialist areas such as the police use of firearms and the management of critical incidents, which would naturally dovetail with the work of the new College of Policing.90 However, the Police Superintendents’ Association believed that if the Commission were given a strengthened remit for improving policing there could be a blurring of the lines between the role of the Police and Crime Commissioner, HMIC and that of the Commission. This could compromise the Commission’s independence in future investigations where those practices were challenged.91

100. The Police Federation considered that the improvement of police services should remain under the HMIC and potentially the College of Policing.92 The Association suggested that a requirement could be created for the Professional Policing Body to take account of any recommendation by the Commission to change police policies or require

88 Ev 72 [Home Office], para 7
89 Ev 76 [PSAEW], para 3.2
90 Ev 75 [PSAEW], para 2.6
91 Ev 77 [PSAEW], para 5.5
92 Ev 90 [PFEW]
Chief Officers and/or Police and Crime Commissioners to implement such changes in their police forces.\textsuperscript{93}

101. The National Policing Improvement Agency (NPIA) said that “it is important that, in the new policing landscape, following the close-down of the NPIA, the work of the Learning the Lessons Committee continues and a constructive relationship is built between the IPCC and the new policing professional body that will be responsible for setting standards across policing as well as developing the evidence-base and professional practice”.\textsuperscript{94}

102. We note that although the IPCC is allowed to hear complaints about the Serious Organised Crime Agency (SOCA), the position regarding the new National Crime Agency (NCA) is less clear. We recommend that the NCA be subject to IPCC procedures in the same way as police forces generally.

Private firms

103. Private firms contracted by the police are not necessarily within the remit of the Commission, yet firms such as G4S, Serco, Mitie and Capita are increasingly being called upon to deliver services that would once have been performed by the police themselves.

104. Last year, forces such as Cleveland and Lincolnshire were front runners in their consideration of large-scale contracts with private firms for the delivery of policing services, though several negotiations contracts have since been terminated. We requested information from the Mayor’s Office of Policing and Crime showing a list of contracts with private firms (over a variety of terms from several months to a number of years), which amounted to £3,555,994,161.\textsuperscript{95}

105. Commission powers are limited to supervision of those designated as detention officers or escort officers under the Police Reform Act 2002. Contracted-out staff performing other roles do not fall directly within its remit.\textsuperscript{96} The Commission was concerned that this gap in oversight could damage public confidence and affect its ability to carry out thorough investigations. Given the likelihood of a growth in the use of contracting out arrangements, our witnesses argued that there was a “clear and urgent” need to extend the Commission’s remit to include these staff in relation to all types of investigation.\textsuperscript{97}

106. We heard that recent investigations had raised questions about the role of private contractors in:

a) The provision of police custody suites (e.g., the death of Gary Reynolds in March 2008 in Brighton Police Custody Centre where Reliance provided custody assistants; the
death in May 2010 of Sharon McLaughlin in the Reliance-run Worthing Custody Centre; the March 2012 inquest into the death of Bogdan Wilk following his detention in Preston Police Custody Centre, where care was provided by Medacs); 98

b) Forensic analysis by privately contracted Scene of Crime Officers; and

c) UK Border Agency escorting services (for example, the October 2010 death of Jimmy Mubenga whilst being escorted by G4S staff, an issue we highlighted in our report on Rules governing enforced removals from the UK). 99

107. The Commission has investigated incidents in which private staff worked alongside police officers, but cannot collate complaints about private firms. At the moment the Commission has no power to discipline private staff, even if misconduct or failures contribute to a death. There is no statutory requirement for contracted staff to co-operate with any investigation being conducted by the police or Commission other than when asked to assist in a criminal investigation. 100 For the Commission to investigate such staff on corruption matters under the current legislative regime there would need to be an Commission criminal investigation already underway in relation to police officers or staff and any investigation could apply only to criminal allegations, not wider complaints or conduct matters. 101

108. G4S said that it had informed the Commission in 2010 that its employees would be subject to checks. However, other private providers were not subject to scrutiny. 102 The CPS said it would welcome clarification of the IPCC’s powers to deal with third parties because this would make investigations involving non-police suspects easier to handle. 103 As Natasha Sivanandan pointed out, such contractors carry out functions of a public nature for the purposes of the Human Rights Act 1998 and the Equality Act 2010. 104 Nick Hardwick was of the opinion that “in terms of the public, if it looks like a police officer, talks like a police officer, walks like a police officer, the IPCC should investigate it”. 105

109. The landscape of policing is changing and the IPCC must change with it. Increasingly, companies like G4S, Capita, Mitie and Serco are involved in delivering services that would once have fallen solely to the police (we described the involvement of G4S in the Jimmy Mubenga case in our report on Rules governing enforced removals from the UK), yet the public cannot call on the IPCC to investigate their delivery of those services.

98 For full details see www.independent.co.uk/news/uk/crime/a-force-for-good-the-rise-of-private-police-7561646.html.
99 Ev 117 [Inquest], para 68
100 Ev w1 [G4S]
101 Ev 79 [IPCC]
102 Ev w1 [G4S]
103 Ev 122 [CPS]
104 Ev w70 [Natasha Sivanandan], para 20
105 Q 272
110. The Commission’s jurisdiction should be extended to cover private sector contractors in their delivery of policing services and appropriate funding should be available for it to undertake all the functions which we consider it should have responsibility for.

111. The Commission should be renamed to reflect its broader remit and functions, covering appeals and complaints for police, UKBA, HMRC and the NCA. “The Independent Policing Standards Authority” is one possibility.
Conclusions and recommendations

Introduction

1. Police officers are warranted with powers that can strip people of their liberty, their money and even their lives and it is vital that the public have confidence that those powers are not abused. In this report, we conclude that the Independent Police Complaints Commission is not yet capable of delivering the kind of powerful, objective scrutiny that is needed to inspire that confidence. (Paragraph 4)

2. Compared with the might of the 43 police forces in England and Wales, the IPCC is woefully underequipped and hamstrung in achieving its original objectives. It has neither the powers nor the resources that it needs to get to the truth when the integrity of the police is in doubt. Smaller even than the Professional Standards Department of the Metropolitan Police, the Commission is not even first among equals, yet it is meant to be the backstop of the system. It lacks the investigative resources necessary to get to the truth; police forces are too often left to investigate themselves; and the voice of the IPCC does not have binding authority. The Commission must bring the police complaints system up to scratch and the Government must give it the powers that it needs to do so. (Paragraph 5)

The basis of mistrust

3. The public do not fully trust the IPCC and without faith in the Commission, the damaged public opinion of the police cannot be restored. Unfortunately, too often the work of the Commission seems to exacerbate public mistrust, rather than mend it. (Paragraph 15)

4. The independence and oversight offered by Commissioners is at the heart of the role of the IPCC. It is wrong that their day-to-day work is frequently far removed from the cases being investigated. Commissioners should be given a more active role in overseeing major cases and take personal responsibility for ensuring that a clear process and timetable is laid out for anyone involved in a complaint or an appeal. The independence and oversight offered by Commissioners is at the heart of the role of the IPCC. It is wrong that their day-to-day work is frequently far removed from the cases being investigated. Commissioners should be given a more active role in overseeing major cases and take personal responsibility for ensuring that a clear process and timetable is laid out for anyone involved in a complaint or an appeal. (Paragraph 16)

The IPCC’s ability to get to the truth

5. More cases should be investigated independently by the Commission, instead of referred back to the original force on a complaints roundabout. “Supervised investigations” do not offer rigorous oversight of a police investigation, nor do they necessarily give the public a convincing assurance that the investigation will be conducted objectively. This kind of “oversight-lite” is no better than a placebo. (Paragraph 23)
6. The IPCC owes it to the families of those who die in cases involving the police to get to the truth of the matter—a botched job is an offence to all concerned. When the IPCC does investigate it often comes too late and takes too long. The trail is left to go cold. IPCC investigators should be able to take immediate control of a potential crime scene during the crucial “golden hours” and early days of an investigation into deaths and serious injury involving police officers. (Paragraph 24)

The IPCC can’t afford to do more

7. It is deeply worrying that the Commission now feels that its level of resourcing has dropped below a level at which it can properly discharge its statutory functions and meet public expectations, to the extent that a backlog of appeals is now building up. We recognise that it will not be easy to find significant additional resources. We recommend that the Home Office work with the Commission to identify innovative ways in which the backlog might be cleared, for example by using temporary secondments of staff from other public authorities with relevant expertise, such as the Parliamentary Commissioner for Administration or HM Inspectorate of Constabulary. More robust procedures should be put in place at the permission stage of appeals in order to filter out more minor cases in order to allow the IPCC to focus on the most serious. (Paragraph 32)

8. Important cases are under-investigated because of a lack of access to independent specialists. The Home Office should provide the IPCC with a specific budget for a serious cases response team. The resources within individual forces for investigating complaints dwarf the resources of the Commission. It is notable that the IPCC is smaller than the complaints department of the Metropolitan Police alone. In the most serious cases, therefore, there should be a system for transfer of funds from individual forces to the IPCC to cover an investigation. This model is already in place for the IPCC’s investigations into HMRC and UKBA. (Paragraph 33)

9. Applying non-discriminatory practices is crucial as a disproportionate number of the cases that cause the most serious public concern involve the black and minority ethnic (BME) communities. All Commissioners, investigators and caseworkers should be trained in discrimination awareness and relevant law, including all the protected characteristics under the Equality Act 2010. Again, leadership in this respect should come from Commissioners themselves, of whom three of thirteen will be from BME communities when the new Commissioners take up office. (Paragraph 35)

Rt Hon Andrew Mitchell MP

10. Public confidence in the police has been shaken: Operation Yewtree, Operation Alice, the Hillsborough Inquiry, Operation Elveden and Operation Pallial all cast doubt on police integrity and competence. It is in these circumstances that the public ought to be able to turn to the IPCC to investigate and we believe that the Commission ought to have a more prominent role in each of these operations. (Paragraph 42)
11. Some kinds of complaint are simply not appropriate for Police Complaints Departments to investigate themselves. Cases involving serious corruption, such as tampering with evidence, should be automatically referred to the IPCC for independent investigation. The Government has committed itself to provide more resources for the IPCC to investigate the Hillsborough disaster. Once that investigation is complete, that funding should be maintained and dedicated to anti-corruption cases. (Paragraph 43)

12. Allegations following the altercation between Rt Hon Andrew Mitchell MP and police officers raise fundamental questions about police honesty and integrity. The alleged unauthorised disclosure of information to the press on the night of 19 September 2012 and the alleged fabrication of an eye-witness account on Thursday 20 September 2012 are extremely serious; if officers could do this in a case involving the protection of the Prime Minister’s own home, it raises the question how often might this be happening outside the gaze of the national media. As Mr Mitchell said, “if this can happen to a senior government minister, then what chance would a youth in Brixton or Handsworth have?”. (Paragraph 44)

13. We support the Commissioner’s “relentless pursuit of the truth” in this matter and believe that the West Midlands Police Federation were wrong in calling for the resignation of a cabinet minister. However, it was clearly hasty of the Commissioner to tell the media that he was 100% behind his officers and to say to Rt Hon David Davis MP that the investigation had been closed when it had not been investigated with any rigour. (Paragraph 45)

14. We note the Commissioner’s intention to ask another force to independently review the investigations underway in Operation Alice—while this is a welcome safeguard, it is no substitute for independent investigation by the IPCC. The IPCC should investigate this case independently and the Government should additional provide funds, if necessary, as it has for Hillsborough. (Paragraph 46)

**Redirecting the Commission’s work**

15. Mediation and restorative justice present rich avenues for improving the handling of police complaints. The Commission should set out best practice protocols for their use in appropriate cases and the use of informal or local resolution systems should be independently monitored to ensure that it is not used inappropriately in relation to conduct that would justify criminal or disciplinary proceedings. (Paragraph 49)

**Police complaints statistics**

16. The root of the problem is that the front line of the police complaints system is not working. It is unacceptable that Police Standards Departments had made the wrong decision in 38% of appeals. The number of appeal upheld varies wildly from force to force, as does the proportion of appeals upheld by the IPCC and Police and Crime Commissioners must take decisive action where a force is shown to be failing. The Commission’s robust handling of appeals is welcome, but it is costly. Far more effort should be made to ensure that correct decisions are made in the first instance at the level of individual forces. We have written to each chief constable to ask for the staff
complement and budget of their Professional Standards Departments. (Paragraph 60)

17. Where a threshold of 25% of appeals are upheld, the Commission must demand a written explanation from Chief Constables and Police and Crime Commissioners, which should be followed by a six month probation period. After that time, if the proportion of appeals upheld is not reduced below the threshold, a “complaints competency investigation” must be held into the reasons for the inaccuracy of decisions made at the local level. This should involve a joint report by the IPCC, HMIC and the local Police and Crime Commissioner, which would lead to proposals that would be binding on Chief Constables. If applied now, these measures would affect all but four forces. (Paragraph 61)

Learning the lessons: giving the IPCC authority

18. It is a basic failing in the system that there is no requirement for forces to respond to recommendations from the IPCC, still less to implement them. We recommend that the Commission be given a statutory power to require a force to respond to its findings. In the most serious cases, the Commission should instigate a “year on review” to ensure that its recommendations have been properly carried out. Any failure to do so would result in an investigation by HMIC and the local Police and Crime Commissioner, as a professional conduct matter relating to the Chief Constable. (Paragraph 69)

A second home for police officers

19. If the Commission’s primary statutory purpose is to increase public confidence, then it must act to rectify the impression that the police are investigating the police. The Commission must improve its in-house investigative resources and move to a target of 20% of investigators who have moved directly from a career as a police officer, or fewer, so that the number of former officers investigating the police is significantly reduced. (Paragraph 78)

20. Her Majesty’s Inspectorate of Constabulary must play a more prominent role in investigations of the most serious cases. In cases involving serious police corruption, for example, one of Her Majesty’s Inspectors should review the IPCC’s findings and be tasked with ensuring the implementation of any IPCC recommendations. HMIC’s responsibility for forces’ effectiveness make it a natural candidate for involvement in the “complaints competency investigation” described above and the inspectorate should ensure that any findings for a particular force are taken up by other forces where necessary. (Paragraph 79)

Treating officers differently from the public

21. The issue of interviewing officers in cases involving death and serious injury is indicative of a culture of treating officers differently from members of the public. Where officers are not interviewed promptly under caution, this can lead to weaker evidence and loss of confidence in the process of investigating serious matters such as deaths in custody. The application of the threshold test for special requirements
should be reviewed, so that officers are routinely interviewed under caution in the most serious cases, exactly as a member of the public would be. (Paragraph 85)

22. The Government should revise the legislative definition of the threshold. One option would be that death and serious injury cases should be treated as “conduct” matters with special requirements and officers interviewed under caution except where it is “beyond reasonable doubt” that a misconduct or criminal offence has not been committed. (Paragraph 86)

Communications

23. The adequacy of communications between the IPCC and the public can have serious implications. Some of the violence that raged across London in the summer riots of 2011 may have been avoided if anger had not been intensified by inaccurate statements made by the IPCC. (Paragraph 93)

24. Accurate and timely information is also vital in retaining confidence in the complaints process. The Commission should be required to set out a timetable for an investigation for complainants and to write to them to explain any deviation. If the Commission orders a police complaints department to reinvestigate, it should also set a timetable for that investigation and any deviation should be explained to both the complainant and the Commission. There should be sanctions if the process and timelines are not followed. (Paragraph 94)

25. The Commission should communicate positive outcomes through different channels, including social media. Prosecutions, misconduct findings and recommendations to forces must be more widely publicised in a way that openly demonstrates the scrutiny of the police. (Paragraph 95)

Widening remit

26. We note that although the IPCC is allowed to hear complaints about the Serious Organised Crime Agency (SOCA), the position regarding the new National Crime Agency (NCA) is less clear. We recommend that the NCA be subject to IPCC procedures in the same way as police forces generally. (Paragraph 102)

Private firms

27. The landscape of policing is changing and the IPCC must change with it. Increasingly, companies like G4S, Capita, Mitie and Serco are involved in delivering services that would once have fallen solely to the police (we described the involvement of G4S in the Jimmy Mubenga case in our report on Rules governing enforced removals from the UK), yet the public cannot call on the IPCC to investigate their delivery of those services. (Paragraph 109)

28. The Commission’s jurisdiction should be extended to cover private sector contractors in their delivery of policing services and appropriate funding should be available for it to undertake all the functions which we consider it should have responsibility for. (Paragraph 110)
29. The Commission should be renamed to reflect its broader remit and functions, covering appeals and complaints for police, UKBA, HMRC and the NCA. “The Independent Policing Standards Authority” is one possibility. (Paragraph 111)

Annex I: The Commissioners

i. **Dame Anne Owers**, Chair (appointed on 2 April 2012 for a five-year term)
   following Len Jackson, Interim Chair (retired 30 April 2012)

ii. **Deborah Glass**, Deputy Chair

iii. **Amerdeep Somal**, Commissioner

iv. **Mike Franklin**, Commissioner

v. **Naseem Malik**, Commissioner

vi. **Nicholas Long**, Commissioner

vii. **Rachel Cerfontyne**, Commissioner

viii. **Rebecca Marsh**, Commissioner (on loan to the Office for Nuclear Regulation)

ix. **Tom Davies**, Commissioner

x. **Sarah Green**, Commissioner

xi. **Jonathan Tross**, Non-operational Commissioner

xii. **Ruth Evans**, Non-operational Commissioner

There are also five new Commissioners:

xiii. **Mary Cunneen** (from November 2012)

xiv. **Jennifer Izekor** (from November 2012)

xv. **Cindy Butts** (from December 2012)

xvi. **James Dipple-Johnstone** (from December 2012)

xvii. **Derrick Campbell** (from January 2013)
Annex II: The complaints & appeals process

1. If you think a police officer has behaved incorrectly then you have a right to complain. You should give details of when, where, what happened, what was said, the police officers and witnesses involved, and whether any proof exists of any damage or injury.

*There is no time limit on making a complaint, but if a year goes by the incident may not be investigated.*

2. If your complaint is about a chief constable you should contact your Police and Crime Commissioner. ¹⁰⁶

3. If your complaint is not about a chief constable, contact the police force involved, by e-mail, telephone or in person. A solicitor or your local MP can also make a complaint on your behalf.

4. All valid complaints against the police must be recorded, which means that it has formal status under the Police Reform Act 2002. Each police force in England and Wales has a duty to either record your complaint or tell you why it has decided not to record your complaint.

5. The IPCC does not have the power to record complaints. This must be done by the chief officer or the Police and Crime Commissioner responsible. You can send a complaint to the IPCC but it will be forwarded to the relevant police force and the IPCC will not read or see your complaint.

Complaints are usually resolved by local resolution or local investigation by the police force involved. There is no limit on an investigation or local resolution, but you should be updated every 28 days. Complaints can lead to an agreed resolution (such as apology), internal misconduct proceedings, or criminal proceedings. The IPCC only investigates the most serious complaints referred to it by the police.

6. You may be able to appeal if you are not happy with the outcome. Appeals may be directed to the IPCC, the chief constable, or the police and crime commissioner. You cannot appeal if the investigation into your complaint has been managed or carried out independently by the IPCC.

7. You can appeal against a recording decision. The IPCC will look at your case to see whether or not recording your complaint was justified.

8. You can appeal against a local resolution. In most circumstances, appeals against the outcome of the local resolution process will be handled by the chief officer of the police force.

9. You can appeal against a decision to disapply a complaint, or the action taken after a decision to disapply, either to a chief officer or to the IPCC, which must receive your

¹⁰⁶ For London, read the Metropolitan Police Commissioner and the Mayor’s Office for Policing and Crime.
appeal within 29 days of the date of the letter telling you about the outcome of the complaint.

10. You can appeal against a decision to discontinue a complaint.

11. You can appeal against the police force’s decision about your complaint, either to a chief officer or to the IPCC. Again, you will need to write within 29 days.

Your appeal will either be “upheld” or “not upheld”. If your appeal is upheld, the appeal body will tell you any instructions it has given to the police force involved. If your appeal is not upheld, it will write to you and explain why it did not uphold your appeal.107

107 http://www.ipcc.gov.uk;
http://www.dorset.police.uk/default.aspx?page=1026#hoddoicomplain
Formal Minutes

Tuesday 29 January 2013

Members present:

Keith Vaz, in the Chair

James Clappison
Lorraine Fullbrook
Julian Huppert

Bridget Phillipson
Mark Reckless

Draft Report (Independent Police Complaints Commission), proposed by the Chair, brought up and read.
Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 111 read and agreed to.

Annexes agreed to.

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of
Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that
ordered to be reported for publishing on 10 July, 18 September, 23 October, 6 and 20 November, and 4 and 11
December 2012, and 8 January 2013.

[Adjourned till Tuesday 29 January at 2.30 pm]
Witnesses

Tuesday 17 July 2012

Shamik Dutta, Police Action Lawyers Group and Megan Phillips, Police Action Lawyers Group

Doreen Lawrence OBE

Dame Anne Owers DBE, Chair, Independent Police Complaints Commission

Tuesday 23 October 2012

Deborah Coles, Co-Director, INQUEST and Marcia Rigg, sister of Sean Rigg

Matilda MacAttram, Director, Black Mental Health UK

Tuesday 6 November 2012

Chief Superintendent Derek Barnett, President, The Police Superintendent’s Association of England and Wales and Paul McKeever, Police Federation

Tuesday 13 November 2012

Keir Starmer QC, Director of Public Prosecutions and Nazir Afzal OBE, Chief CrownProsecutor, North West Area

Nick Hardwick, former Chair, Independent Police Complaints Commission

Dame Anne Owers DBE, Chair, Ruth Evans, Commissioner, and Jane Furniss, Chief Executive, Independent Police Complaints Commission

Tuesday 27 November 2012

Chief Constable Mike Cunningham, ACPO Lead for Professional Standards, and Bernard Hogan-Howe QPM, Metropolitan Police Commissioner

Lawrence Kershen QC, Commercial Mediator, Tooks Court Chambers, and Anthony Glaister, Dispute Resolution Adviser

Damian Green MP, Minister of State for Policing and Criminal Justice
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10. Bhatt Murphy Solicitors  
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Oral evidence

Taken before the Home Affairs Committee
on Tuesday 18 July 2012

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert

Alun Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witnesses


Q1 Chair: Order. Can I call the Committee to order, and could I refer all those present to the Register of Members’ Interests where the interests of members of this Committee are registered. Are there any more declarations to be made other than on the register? Mr Michael?

Alun Michael: Chair, my current interest is being a candidate for the election of Police Commissioner in South Wales.

Chair: This is the first session in the Committee’s inquiry into the IPCC, the Independent Police Complaints Commission. The Committee has wanted to do this for some time, so this is our opportunity to look at the history of the IPCC and also to look at ways in which the organisation can be improved. Can I thank you, Mr Dutta and Ms Phillips, for submitting written evidence and for coming before the Committee as our first witnesses? As our first witnesses you have a real opportunity to shape the Committee as our first witnesses? As our first evidence?

Shamik Dutta: Thank you for inviting us. I think the first point to make is that it takes great courage on the part of our clients, who are the victims of police misconduct, to bring police complaints. Unfortunately, in their experience that courage is not necessarily reflected in the manner in which the IPCC has operated. I think that the cultural issues that arise from the specific points that we have made in the dossier are, first of all, we are witnessing a lack of courage on the part of the commission both from investigators and case workers. Secondly, there is quite often a lack of transparency, which does nothing to give confidence to our clients—the victims of police misconduct. Thirdly, there is an issue where our clients often find that the IPCC confuses its duty of independence with neutrality—they are two different things and they affect all of the functions that we have provided in our written submissions. Finally, over the years, in the past at least—and we have raised this with the IPCC—we have found that there have been times when our constructive criticism and those of our clients, based upon their own experiences, have been met in an overly defensive manner, which prevented the IPCC from learning from our clients’ experiences. I think those are the key cultural issues that our clients have identified and that we have identified, and we welcome the appointment of Anne Owers in this regard, because she has a strong track record of affecting cultural change in very difficult and challenging environments.

Q2 Chair: Yes, we will hear from Dame Anne Owers later this morning. Ms Phillips, if you were looking at a percentage of your clients that were satisfied or dissatisfied with the operation of the IPCC, what would that percentage be, or if you want to give them marks out of 10?

Megan Phillips: I think it would be hard to give a percentage in terms of clients. I think from my personal clients’ perspective, I think I have seen two very good IPCC independent investigations out of over 20 to 25, so I think the percentage is probably very low.

Q3 Chair: So, it is a pretty low percentage?

Megan Phillips: Yes, I am afraid that it is.

Q4 Chair: Are your clients saying to you, “This has to change”, they are clearly not satisfied with the status quo? Is that right, Mr Dutta?

Shamik Dutta: Absolutely. They often find that the route to accountability does not lie in the police complaints process, it lies through civil litigation, and something has to change, where our clients cannot rely on the police complaints system as a whole, over which the IPCC has guardianship. They are utterly demoralised quite often at the end of cases and feel that the complaints system has not served their best interests, or even their most basic expectations.

Q5 Chair: Ms Phillips, who do they think the system benefits? If it does not benefit the client, when the clients come to you and they are dissatisfied with what
the organisation has done, who do they think is behind the expectations that have been so sadly dashed?  

Shamik Dutta: Well, I think what they see is, as Mr Dutta mentioned, a lack of courage to try and hold police officers to account. As we put it in our written submissions, where there is no independent corroborating evidence there is a tendency on the part of investigators to always agree with police officers’ accounts of events, as opposed to our clients’. Even though what we see, in terms of that evidence, is real difficulties with that officer’s evidence. I think that what our clients see, in subsequent civil claims, is the same evidence and those civil claims are settled. Accountability is achieved but not as against the individual officers. What our clients were striving for was to bring those officers to account through the complaints process.

Chair: You may have to speak up just a little bit louder; the acoustics in this room are not very good.

Megan Phillips: Sorry.

Q6 Michael Ellis: Well, first of all can I say that I think the work that you do is a very valuable work, and I congratulate you on it, in acting to represent people in these issues. The IPCC has called for new investigatory powers. Your evidence has described the failure of case workers, I think you were just referring to that, to grasp the extent of the powers that are already available. Do you believe that the commission has adequate powers now to properly investigate allegations of misconduct or misfeasance in public office? Does it have the resources that it should have in order to properly investigate these issues and to be an effective watchdog?

Shamik Dutta: In respect of the powers, I think there are two different issues. One is in respect of the power of investigators when they are tasked to investigate death and serious injury matters. The second is in respect of the powers available to case workers when they are dealing with the IPCC’s appellate function. In respect of the investigator’s powers, that is something I think that my colleague, Ms Phillips, will be able to talk about. I will start off by talking about the appellate function. Quite often in our experience, those case workers who are dealing with the appeals process do not grasp that they are able to depart from the view that has been taken by the local force investigating. As we have explained in some of our evidence, we have given some cases where there have been instances where the case workers have failed to appreciate that they are able to uphold complaints, even in the absence of independent or corroborative evidence. Also there has been a case that has come to light, and there have been other examples as well that we have heard, where a case worker has failed to appreciate his or her role within the process: for example, by saying it is not our job to look at whether an arrest was lawful or not. That ignores the clear breach of codes of conduct on the part of individual officers, which is likely to have taken place in any claim for false imprisonment or unlawful arrest.

Q7 Michael Ellis: Would you say that is always invariably relevant—those issues? Because there may have been an initial breach in the due course for arrest, it does not necessarily follow that later misconduct can be proven.

Shamik Dutta: Well, it would be very rare circumstances where an individual officer does not have reasonable grounds to suspect an arrest is necessary, yet goes ahead, if that is the arrest, that would not amount to some form of misconduct. There are some cases where, for example, an individual officer would not necessarily be liable, because it would have been in the briefing or something of that nature. Generally speaking, most unlawful arrests would necessarily engage codes of conduct and misconduct. In respect of the individual investigator’s powers perhaps I can pass over to Ms Phillips on that.

Megan Phillips: I think what our clients—and I know our members’ clients—have seen in the past is a reluctance on the part of investigators in death and serious injury investigations to see those matters as conduct matters in which officers may have committed a criminal offence or may have acted in a way that would justify bringing disciplinary proceedings, therefore, despite the available evidence that we see, not using their powers to interview those officers. I think what is difficult from our clients’ point of view is comparing that situation with a situation in which members of the public were involved in, say, a fight or a restraint, and the lack of parity with an ordinary criminal investigation, if you can call it that.

Q8 Michael Ellis: You seem to be saying, correct me if I am wrong, that you feel the IPCC has adequate powers and resources, but there is a mindset issue that you both are unhappy with. You take the view that investigators come in and they have the mindset that they are going to uphold the earlier investigation of the local force in question—am I right with that characterisation of your beliefs?

Megan Phillips: Yes.

Shamik Dutta: I think it is difficult for us to say, in terms of whether it has adequate resources. You know, we are not privy to decisions that are made, in terms of why some decisions are made on the basis of resources and whether they are made on another basis. Certainly, there have been instances where we have seen decisions that seem to be made on the basis of resources as opposed to the right decision on the basis of the evidence. Without the will, without the culture of courage in the face of conflicting evidence, in the face of death and serious injury cases where there is evidence that conduct matters arise, without that will, increased resources would not necessarily be put in the right place. I think that is the point we are trying to make.

Q9 Alun Michael: You have already referred to the question of interview. Normally with a criminal event, you have a first-hand account taken from whoever is alleged to have committed the offence, in an interview under caution. Now, that does not always happen in IPCC investigations. There appear to be reasons for that, but what are the implications and what are your comments on it?
Megan Phillips: There are implications if officers were not interviewed under caution in matters where we say there was the available evidence to treat death and serious injury investigations as a conduct matter.

The most stark practical consequence of that is when you come to an inquest some several years later and officers give evidence to that inquest that is heard by the jury, in compliance with article 2—the ability to have gained that available evidence that we have from an interview has been lost. So, officers give evidence on the basis of prepared statements, quite often having conferred with their colleagues.

Q10 Alun Michael: Do you accept that there are sometimes reasons for not taking an interview under caution and are you calling for a change in practice?
Megan Phillips: Our clients accept that there are, of course, cases where officers may not have—there may not be evidence—

Q11 Alun Michael: But your clients may or may not understand this. I am asking what you are recommending.
Megan Phillips: Oh, quite. Yes, there are cases where there may not be evidence that officers committed a criminal offence or misconduct offence, but what we are seeing is there is a reluctance to identify where that is a possibility at the outset.

Q12 Alun Michael: So what are you suggesting?
Megan Phillips: I think, like Mr Dutta said, that a sea change needs to be made, in terms of an unwillingness to identify that evidence and to then interview.
Shamik Dutta: As things stand, the powers exist to interview under caution where there is a conduct matter, where there is evidence that offences may have been committed.

Q13 Alun Michael: So you are saying that ought to be universally the case?
Shamik Dutta: Well, we are saying that it needs to be enforced properly on the basis of the evidence and at the moment we find that it is not. Quite often decisions are made which are not based on the evidence available, or where it is clear to us that the evidence dictates that they should be interviewing under caution, but it is simply not being enforced. That is where we come back to the cultural issue. There is a cultural issue within the organisation in respect of lack of courage in these circumstances.

Q14 Nicola Blackwood: As I understand it, and correct me if I am wrong, is your argument that if a member of the public were to become involved in some kind of situation where lethal force had been involved, they would routinely be interviewed under caution, and the concern here is that that does not occur routinely with police officers? Can you explain how the IPCC would normally explain that?
Shamik Dutta: Well, the IPCC have explained in the past that officers have the ability in law to use lethal force in self defence. However, this obviously overlooks the fact that all of us have the right to use lethal force in self-defence. Although officers have been given greater powers, in terms of arrest, and so on, this issue in relation to lethal force should be universally applied and the test should be universally applied. That is what we are saying. There should be parity in relation to the manner in which criminal investigations are conducted, and investigations into death resulting from the use of lethal force with police officers.

The interviewing of officers under caution point is just part of the jigsaw. There are also other issues where we have found that there is a disparity. For example, in disclosure provided to officers prior to interviews. There is an issue where we have found that disclosure provided to officers is often much greater than that which would be provided to a defendant in a criminal investigation. There are also issues in relation to timeliness where a decision is taken to interview police officers. Quite often the interview takes place many months down the line, whereas in criminal proceedings you would find the decision to arrest and to interview are almost instantaneous. There are various aspects of the investigatory process where we are seeing a disparity, and one that cannot be justified in law, as far as we are concerned.

Q15 Nicola Blackwood: What do you think the impact of this disparity has on public confidence? Shamik Dutta: Well, I think it goes without saying that the disparity, where it cannot be logically and rationally explained, will lead to complainants refusing to accept, quite justifiably, that the Independent Police Complaints Commission is fulfilling its functions, that there is going to be a thorough investigation through which they will discover how their loved ones died. Without these procedures in place there is no other conclusion they could come to, particularly where they see the disparity between ordinary criminal proceedings and those against police officers.
Megan Phillips: I think it is quite common for our clients to feel very much, “Why should they be treated differently than I would be?”

Q16 Nicola Blackwood: A recent case where this occurred was the case involving Mark Duggan. What is your assessment of the way in which the IPCC handled that case?
Shamik Dutta: I think we have to be fair to the family and also the lawyers acting for the family there. If you have specific questions relating to that particular case we are happy to communicate those back, but because we are not acting in that case it would probably be inappropriate for us to comment. Also, there are obviously rules in respect of ongoing cases and the extent to which we can actually speak about them in public and before this Committee.

Q17 Mr Clappison: Just very briefly on your view as to how the police are seeing these matters, I think you make some very good points about the need for
full investigation. From the point of view of the police, when you are saying the police are in the same position as the rest of us, the police are called upon by the nature of their duty and their oath to intervene in situations that are very difficult, where a member of the public would not intervene. Also what you are saying, would it not put the police on the same basis as a suspect in a case, if they were to be regarded as under suspicion from the beginning? If there was evidence that a policeman had behaved improperly, that would make them a suspect. Without that evidence, should you not draw a distinction between somebody who is a suspect because of the circumstance that make them a suspect—involvement in criminal activity—and a police officer who is carrying out their duties?

**Shamik Dutta:** The problem that we have found is that it is where there is evidence that officers should be treated as suspects, they are not being treated as suspects—where there is available evidence as well as where evidence arises in the course of an investigation. For example, where an investigation begins on the basis that it is not a conduct matter—where the officers are not suspects—further evidence emerges that might suggest that there are discrepancies, or disputes of facts, and evidence arises where they should be treated as a suspect. The review is not taking place that would lead to the different type of investigation taking place thereafter. It is only once we arrived at inquest proceedings, many months or even years down the line, where the officer’s evidence can be tested at all, so that is the nub of the issue that we have identified.

**Q18 Chair:** There is a number of private security firms involved in the administration of justice. I do not know whether you have seen the Committee’s report into the death of Jimmy Mubenga. Should we look at powers to deal with firms that are involved, such as G4S and others, within the criminal justice system, or should they just be left to one side, Mr Dutta?

**Shamik Dutta:** I think, given that it seems there is going to be much greater privatisation of policing functions—and there already has been—we would adopt the submissions made by INQUEST in this regard. Clearly an investigation into a death in custody, into a death following police contact or any other circumstance that make them a suspect—involvement in criminal activity—and a police officer who is carrying out their duties. The problem is enforcement quite often, and those cultural changes, we hope, can be remedied.

**Chair:** Do you think the organisation should be reorganised, or can it be reformed, in your opinion, to give the public the confidence that you believe is lacking at the moment?

**Shamik Dutta:** Our clients desperately need a strong organisation that is independent and an independent body overseeing police complaints, whether that is in relation to the appellate function or whether it is in relation to the investigatory function or guardianship. It is absolutely necessary that an independence exists. There have been, as I say, islands of good practice. There have been instances where guidance, in relation to disclosure for example, has been brought in that could have had a great effect on public confidence, as well as the quality of investigations. The problem is enforcement quite often, and those cultural changes, we hope, can be remedied.

**Q19 Mr Winnick:** The IPCC was of course created, as we know, in 2004 to have public confidence, first and foremost, in the police system when it came to complaints. Do you feel that the number of former police officers makes it more difficult for that impartiality to be seen?

**Shamik Dutta:** It would affect public confidence, yes. I think that in relation to investigators, it depends on there being systems in place to ensure that, whoever the investigator, the right job is being done, that the evidence is being followed and gathered, and the law is being applied as it should be. Clearly if there are a large number of former police officers acting in these roles within the IPCC there will necessarily be a cultural issue in relation to how the organisation operates. It is understandable why members of the public would be disappointed in relation to cases of this nature involving death and serious injury. There may be a large number of former police officers involved, particularly given that they would expect the Independent Police Complaints Commission to be separate in every possible way. I think that the lack of public confidence is understandable, but what I would focus on more is whether or not systems are in place within the organisation to ensure that whoever the investigator, they are doing the right job.

**Q20 Mr Winnick:** Do you think it is practical for an organisation looking into complaints about the police and having some knowledge of the day-to-day matters that the police must be involved in to be able to do such a job without employing former police officers, and in some cases pretty senior ones?

**Shamik Dutta:** This is why I am talking about systems—systems of oversight and systems of accountability within the organisation. Those are the systems that are required to ensure that whoever the investigator, the correct job is done. It is these systems that need to be honed in order to ensure that investigations follow the correct course.

**Q21 Mr Winnick:** Do you take the view that the organisation should be reorganised, or can it be reformed, in your opinion, to give the public the confidence that you believe is lacking at the moment?

**Shamik Dutta:** Our clients desperately need a strong and independent body overseeing police complaints, whether that is in relation to the appellate function or whether it is in relation to the investigatory function or guardianship. It is absolutely necessary that an independence exists. There have been, as I say, islands of good practice. There have been instances where guidance, in relation to disclosure for example, has been brought in that could have had a great effect on public confidence, as well as the quality of investigations. The problem is enforcement quite often, and those cultural changes, we hope, can be remedied.

**Q22 Lorraine Fullbrook:** I would like to ask if you think the expansion of the IPCC into Her Majesty's Revenue and Customs—SOCA is understandable, but the UK Border Agency as well—is causing a problem in this regard, with officers not knowing the parameters of their function.

**Shamik Dutta:** It is not a question that we have addressed. It is not something that we as a group, in the Police Action Lawyers Group, have dealt with at
all or discussed. So, it would not be proper for me to give you my own personal view on it, I think.

Q23 Dr Huppert: In your evidence you say that, "The most common failing our clients experience is refusal by an investigating police force to uphold a complaint simply on the basis the account provided by a complainant conflicts with the accounts provided by the officer complained against or his colleagues". That is rather unusual, clearly, because the police must be used to the idea that different people say somewhat different things. Do you have evidence, and is there any way of getting evidence, to suggest this is actually bias, as opposed the problems with investigating something where ultimately there are just two sides to a story?

Shamik Dutta: I think that, as we have said in the submission, there is a failure to critically analyse conflicting accounts, which would not be evident in relation to ordinary criminal proceedings. Having said that, in those ordinary criminal proceedings you would ordinarily have interviews taken under caution and that quite often does not happen in IPCC investigations. The failure to critically analyse accounts is something that we think is systemic, and that the balance of probabilities is the same standard of proof in relation to those and also civil proceedings. Quite often matters that are torts—that are unlawful in common law—also involve conduct issues, yet where police complaints will be considered not capable of proof, in the words of the investigators and also the appeal case workers, those individuals subsequently go on to secure apologies, damages and quite often admissions of liability from the police force in question.

From our clients’ perspective, and from our perspective, it is very difficult to reconcile those two positions: where on the one hand the IPCC have considered that a complaint is not capable of proof, even after an appeal, but when the matter falls into the hands of the police force in question it is able to take action by way of restitution and redress. That disconnect is very hard to explain and very difficult to understand. We certainly cannot understand it from the basis of the justifications that have been put forward so far.

Q24 Dr Huppert: I follow what you are saying, and it does seem rather hard to see how it worked like that. Ultimately we have to make recommendations on how the IPCC should change its behaviour to fix it. What exactly would you like them to change to take account of this, while still leaving that space where there is genuine lack of evidence?

Shamik Dutta: I think the IPCC has drafted new guidance for case workers. I think that, as with the guidance on disclosure, it comes down to enforcement. I think part of that is where institutional themes are identified, the first step in addressing those, on the part of the IPCC, is to accept that they exist—to accept that there is a problem. That first step is sometimes not taken in our view. Once that first step is taken, supervision of case work can have that at the forefront—have it as a live issue at the forefront. From there, we would hope that further improvements could be made. Obviously, the IPCC is answerable to committees such as yourselves.

It would be important, I think, to look at the reports that are produced by the IPCC, but to do so with a degree of healthy concern about some of the statistics that are produced. For example, I was looking at their submission on appeals and they have referred to over 50% of those who replied to their satisfaction survey being satisfied. Now, if we look at where that comes from, that comes from their most recent report. They say that 6,476 appeals have been lodged. Now, of those, only 789 people responded to the questionnaire. Of those 789, 54% said they were satisfied. So, we are looking at, in total out of all the appeals received, 6.5% of people wrote back to the IPCC to say, "We are satisfied with what you have done"—less than 7%.

Q25 Chair: At the end of the day you want this organisation to be reformed and improved and given more powers and more resources. If that happens you are happy with it to stay, are you?

Shamik Dutta: Our clients need an independent body. They cannot rely on the force whose conduct has been called into question to investigate adequately in some instances and it is important that the IPCC is independent. I think that in terms of enforcement powers, there needs to be improvement; in terms of cultural change there needs to be a great deal of improvement. But it cannot be improved without the right mindset and the right cultural changes.

Megan Phillips: Yes, I think, as we said at the beginning, that it is about using the powers and resources that they already have available to them, and I think that is through the cultural change that is needed.

Q26 Chair: One of the concerns we have heard over a number of years has been the delay in producing reports. Nicola Blackwood mentioned the Mark Duggan case, and of course, you have to be cautious about what you say about that. But it just takes so long, doesn’t it? In the middle of all this families are very worried about it. Is delay an issue that you need to see resolved?

Megan Phillips: Delay is certainly an issue, particularly in relation to death and serious injury investigations that then obviously impact on an already creaking coronial system to get the inquests heard. There is tension between ensuring that the investigation is thorough, at the same time as insuring that it is done in a timely fashion. But there is a real significant delay which our clients—

Q27 Chair: Is there anything that you have uncovered that indicates that the race of the complainant is an issue, in the way in which the IPCC deals with complaints?

Shamik Dutta: I think we would need to go back to our members with that question. In terms of complainants generally, yes. Black and minority ethnic members of the public are disproportionately complainants, I think it is fair to say. In terms of how they are dealt with by the IPCC, that is something we need to take back to our members and ask about that, and we are happy to provide further evidence on that.
Chair: Mr Dutta and Ms Phillips, thank you very much for opening our inquiry into the IPCC. We will obviously want to hear from you through the course of this inquiry. If you have any information that is relevant to us, please do write in to the Committee. Thank you very much.

Shamik Dutta: Thank you.

Megan Phillips: Thank you.

Examination of Witness

Witness: Doreen Lawrence OBE, gave evidence.

Q28 Chair: Mrs Lawrence, thank you very much for coming to give evidence to this Committee. You have obviously been before and we are most grateful to you. As you probably heard me say at the beginning, this is our new inquiry into the IPCC and we are very keen to hear from you on a number of aspects of this. Do you think the organisation is failing?

Doreen Lawrence: Yes, because as a member of the public, I do not feel like they are as independent as they should be. Over the years in many high profile cases, especially for the black community—and I presume from my perspective, when I think about it—it is still police officers investigating police officers, even though those officers are retired. So, for me, it gives the air that they are still protecting each other.

Q29 Chair: In respect of your son’s case, the death of your son, you complained to the IPCC, how do you feel they dealt with those issues?

Doreen Lawrence: None of our complaints have been upheld. All the reports have come back that there is no case to answer. I feel that sometimes they have not delved deep enough, because the latest thing that has been coming out recently is about police corruption around from the start of Stephen’s case. That continues to be, that there is some underlying—where officers are concerned. I think it is twice we have been to the IPCC and twice they have said there is no case to answer for those officers.

Q30 Chair: Turning to the issue of police corruption and the call that you made for a public inquiry into the latest allegations that have surfaced, and the new information, were you pleased or disappointed that the Home Secretary has instituted a review as a result of your son’s case?

Doreen Lawrence: None of our complaints have been upheld. All the reports have come back that there is no case to answer. I feel that sometimes they have not delved deep enough, because the latest thing that has been coming out recently is about police corruption around from the start of Stephen’s case. That continues to be, that there is some underlying—where officers are concerned. I think it is twice we have been to the IPCC and twice they have said there is no case to answer for those officers.

Q31 Chair: You would like a public inquiry?

Doreen Lawrence: Yes.

Q32 Chair: You still would like a public inquiry, but you have accepted what the Home Secretary has set up, and you feel this is a first stage that might indeed lead to a public inquiry at the end of the process?

Doreen Lawrence: Yes. That is what I feel.

Q33 Chair: Are you or your family involved in the review process that Mr Ellison will lead?

Doreen Lawrence: I have had a first meeting with Mark Ellison and he has said that on any questions that we have, he is open for us to come and speak to him. I can only take him at his word, because he was involved in the prosecution of those two individuals. I think in the early stages, as prosecutor, he was a little bit closed where the family was concerned, but as the trial went on he became a lot more open and was willing to discuss things with us. So, on that, I am taking him at his word.

Q34 Chair: Do you think you have reached the stage where you have had to call for a public inquiry, because organisations like the IPCC have failed to deliver what you expected of them? Would you be calling for a public inquiry if you felt the organisation had your confidence?

Doreen Lawrence: No, I would not be calling for that. When we saw the Home Secretary, as one of the things she was saying about the IPCC—and I had to point out to her that I had no confidence in them because of what has happened over the years. I feel that if the IPCC was as independent as I think they were meant to be, I would have a lot more confidence. But at the moment I have no confidence in them whatsoever.

Q35 Chair: You mentioned police investigating police, would you prefer it if this organisation had no investigators who were police officers? That all the investigations ought to be conducted by people who had no connection to the police force?

Doreen Lawrence: Definitely so. I remember when the IPCC was first set up and one of my questions was about ex-officers. I was told at the time that because of the new organisation and because people would not have the experience in investigating incidents they had to use ex-police officers, but as time goes on they would look to change that. Over the years that has not changed. I know recently I have heard on the news that they are looking to bring in independent people who are not police officers. I think time will tell on that, but at the moment, I do not think that they are doing what they were set up to do.
Q36 Mark Reckless: Ms Lawrence, as I am sure you are aware, the majority of complaints against the police are investigated by the police force concerned—generally it is the professional standards directorate. What do you think of the robustness or otherwise of that process?
Doreen Lawrence: I have no confidence. I can only go by my own experience of what happened around Stephen’s case, but I have lost count of the number of different investigations that have happened and different police who have come in to investigate. I think the primary example is that during the private prosecution when we had officers who were leading us to believe that the first investigation was wrong. Then when we had the inquest, when one of the officers got up and said that I felt the first investigation went well and the only problem was between the family and liaison officers. Now, that just makes me—in fact it made me very angry at the time, because they were making me believe that the first investigation was so flawed, but then when it is time for him to get up and speak out against those officers he chose not to.

Q37 Mark Reckless: I served as a member until last year of the Kent Police Authority. To try and give ourselves and the public some assurance as to how complaints were investigated, we instituted a random dip sample of different complaints and we would go through the whole file, and then come to our view on whether we thought the complaint had been properly dealt with. Do you think that with the elected Police and Crime Commissioners coming in from November, they might be able to play a similar role perhaps in overseeing complaints, and seeking to assure the public that they were being dealt with rather than merely as the police themselves would want?
Doreen Lawrence: I think where the new Commissioners are coming in, we have no idea of the background of those officers and where they are coming from. So, to say that—I suppose I have doubts about that, because you don’t know who these Commissioners are going to be—they could be an BNP for all we know—so that doesn’t fill me with any confidence either.

Q38 Mark Reckless: But the fact that they are elected by the public rather than merely being from the police themselves, would that not be something that would give you any confidence?
Doreen Lawrence: But how is the public going to be able to elect these Commissioners? I do not understand the procedure of how that is going to work. I think until we are quite clear about the procedure and how these Commissioners are going to be elected, I will reserve my views at the moment.

Q39 Mr Winnick: Without your and Mr Lawrence’s determination, there would have been, as we know, no Macpherson inquiry, and we praise you for the manner in which you fought so well to make sure that following the terrible murder of your son there should be a thorough inquiry into all the circumstances and certainly what happened as far as the police are concerned. Mrs Lawrence, you were faced with incompetence, corruption and racism arising from what occurred after Stephen was brutally murdered in April 1993. The question that I want to ask you is: do you feel that as a result of what happened, the Macpherson inquiry, the changes that have undoubtedly occurred, the IPCC, there is a different culture, and what you had to face would no longer be the position?
Doreen Lawrence: Definitely. There is a different culture, I would agree with that, but families are still facing difficulty. Families still feel that they have not been given—or their concerns have not been addressed in the way in which they would like. At the trust, we get so many families coming in complaining that this is—

Q40 Chair: This is the Stephen Lawrence trust?
Doreen Lawrence: The Stephen Lawrence Charitable Trust. Families are complaining about their experience of the police officers, and what has happened to them within the family. Things may have moved on quite a bit, but I still feel that families are still experiencing difficulty and racism from the police force.

Q41 Mr Winnick: But less? As you were indicating?
Doreen Lawrence: Can I say less? It is difficult to say whether—you can only go by what those families are experiencing. There is a lot of change within the force I would say. My experience of the force is completely different from what it was back in 1993. I have experienced a load of officers who are very genuine and very supportive, but there is still an element there that needs to be addressed.

Q42 Bridget Phillipson: Mrs Lawrence, you have talked about the lack of independence of the IPCC as you see it, and you have talked about the fact that many of those carrying out investigations are former police officers. Are there any other reasons that you feel the IPCC are not as independent as you would like them to be, and perhaps are not as fair a watchdog of the police as they should be?
Doreen Lawrence: Apart from talking about the retired officers in there, I don’t know that much more about them. All I can talk about is my experience of it when we went to them with our complaints around Stephen’s case, but until they change the culture of who is investigating and who they have, then I don’t think anything will be any different. The culture needs to change.

Q43 Bridget Phillipson: Just returning to the issue of complaints that are dealt with internally by the police, where they are not referred or where the complaint doesn’t take the case to the IPCC, it seems sometimes to be the case that when a complaint is made internally to the police there is a lack of transparency about the process, with the emphasis that that should be dealt with, with the complainant and perhaps a senior officer in that police station or on that force. What are your views on that? How do you think we might make people more aware of their right to complain to the IPCC and to take that complaint further if they are not happy with how a force has dealt with that complaint?
Doreen Lawrence: At the moment, there is a family over in Nottingham who have been experiencing, you would probably call it harassment from some police officers within the force there. I think they went to the force itself with their complaint and nothing happened, and they have taken their complaints to the IPCC and still nothing happens. People don’t have any confidence, and it is like, “Where do we go?” Years ago, they used to have local Race Equality Council’s if there was anything, and they would focus on case workers, but that has gone, so families and people are left with nowhere to go. I think sometimes this is why—and this is like the family I am talking about, one of my big worries for that family, especially as they have some young boys, is that whatever complaints they are making because nobody is addressing them, they feel it is something they have to do themselves. That is just creating a culture of young people getting themselves into trouble because they feel that no one is addressing the problem that they are experiencing. I am not saying that is happening to everybody, but at the moment that is what I am hearing. All I can do—the last email I had from the family I sent over to the CPS. I just think somebody needs to do something, somebody needs to listen to what the family is saying. The IPCC is not listening.

Q44 Chair: But do you endorse the view of Ms Phillipson that if it is dealt with right at the start efficiently and effectively, and somebody listens to the complaint at the local police force, that the number of complaints that go to the IPCC would be reduced? Is it the way in which the front line deal with these people?

Doreen Lawrence: Yes. Well, definitely. But then if the front line is not dealing with it where do they go?

Q45 Chair: So, even a robust internal system would not be enough? You would need to go somewhere else?

Doreen Lawrence: If the internal has not been robust enough in order to support what the complainant is saying then they need to have somewhere they can take it to. I presume that the IPCC was set up for families and individuals to be able to do that.

Q46 Lorraine Fullbrook: Just following on from that, Mrs Lawrence. You said earlier that you have no confidence in the IPCC, and that you are looking forward to the time when independent case officers come in rather than retired police officers. For other families to have confidence and for confidence to be restored by the IPCC what other reforms do you think are necessary?

Doreen Lawrence: I sometimes wonder if the IPCC has enough teeth to deal with things. Okay, the IPCC was set up by the Government, but did they give them enough powers in order to deal with things? I do not know the answer. Sometimes I think that is what is necessary, because if you do not have the teeth to deal with things when something occurred then what do you do? You may just have retired police officers as investigators, but is the IPCC allowed to take on independent people? I have no idea, but that is something that needs to be looked into.

Q47 Chair: Mrs Lawrence, as well as taking up the issue of your son, on which you have campaigned on so many years, you have become a spokesperson as far as racism in this country is concerned. Do you think it is getting better—as far as the way in which the police are dealing with these issues?

Doreen Lawrence: In some cases, yes. I think people feel that they can challenge racism a lot better than they were able to do before, because I think people never talked much about it, but it is more out in the open. They will not tolerate it as much as the used to. So, racism has moved on, but I still feel that we need to be able to challenge it at every level when it happens, and don’t let people get away with it.

Q48 Chair: I noticed the fact that you attended the first day of the hearing of the John Terry case. Do you think the issue of role models is very, very important in the way in which they deal with this issue?

Doreen Lawrence: Definitely, definitely. I am possibly speaking out of turn here, but somebody like John Terry, I must say, is held up so high by young people. Regardless of what was the outcome of that judgment I felt that his behaviour is something that should not be seen as anything more than—he said a racist thing and that should have been addressed straightaway and not left for however many months. I do not think it has been dealt with in a way in which it should have been, because young people still see him and hold him up as one of their heroes, and that is not right.

Q49 Chair: Going back to the IPCC, you were present when there were convictions in the case of Stephen Lawrence. Is that ongoing? Is that still being investigated? Are there more prosecutions on the way as far as you are aware?

Doreen Lawrence: Yes. I am told there are more lines of inquiry that police have followed up on. I understand there are some officers who feel that enough time has been spent on Stephen’s case already, and that they should draw a line rather than following up the lines of inquiry that are still outstanding.

Chair: Mrs Lawrence, thank you very much for coming in. If there are any other cases that you know about, such as the Nottingham case, which you feel would be interesting to this Committee and our inquiry, we would be most grateful if you could send them to us.

Doreen Lawrence: Okay. Thank you.
Examination of Witness

Witness: Dame Anne Owers DBE, Chair of the Independent Police Complaints Commission, gave evidence.

Q50 Chair: Dame Anne, welcome back to the Home Affairs Committee, and on behalf of the Committee can I congratulate you on your appointment? I am not sure whether “congratulate” is the right word in view of the evidence we have heard so far, but we do congratulate you on your appointment as the new chair of the IPCC. Why did you take on this job, knowing full well there were all these criticisms of this organisation, and you yourself in the foreword to the annual report said that it lacked resources and powers?

Dame Anne Owers: Because it is a job that needs doing, and a job that needs doing well. I believe very strongly that there are people who are doing it and who need more support to do it. It is a crucially important job, particularly in view of what is happening in policing generally at the moment. That was the reason.

Q51 Chair: But the two key issues that you highlighted in your report were resources and powers. If we turn to resources first of all, you have a budget of about £34 million, as I understand it. How much more do you need to regain the confidence of people like Doreen Lawrence, Mr Dutta and others?

Dame Anne Owers: That is almost a piece of string question. I think the point is that there are two areas of work where the public expect the IPCC to be more visible and the IPCC needs to be more visible. The first is the ability to take on more independent investigations. We do more than we did. This year we will have completed 130 independent investigations, which is a lot more than we used to do. However, there are areas—as we pointed out to the Home Secretary—such as police corruption, where the public would expect independent investigations or at least the IPCC to have a role in investigation of that kind.

That is one area. The other is what is loosely referred to as oversight or guardianship. Part of that is the appeals jurisdiction, which has been referred to in your earlier evidence. Part of it is our ability to dig into what is happening at the police level of complaints. The structure that Parliament has set in place has the IPCC very much at the top of the pyramid, but what we are finding, even in our appeals, is that all is not well at the bottom of the pyramid.

Last year, we upheld 60% of appeals against not recording complaints at all. We upheld over 30% of complaints into local investigations and the outcomes of local investigations. We know that there is not confidence at the bottom end, and what we need to do is have more resources to dig into what is going on at the front end of the system, as well as to be able to deal with the very serious cases and the appeals at the back end of the system.

Q52 Chair: Because the Government took a long time to fill your job.

Dame Anne Owers: They did.

Q53 Chair: I think there was a long wait; this Committee was very anxious that it should be filled. When you met the Home Secretary and she offered you this job, did you say, “I am only taking it on if these things are sorted out”, you surely couldn’t have taken on this job knowing that the problems existing in the IPCC would not be resolved? Because you applied—you weren’t head-hunted I assume; you applied for this.

Dame Anne Owers: I did apply for it, yes, I did. Certainly in my first meeting with the Home Secretary after I had taken on the appointment I indicated to her that there was a capacity problem: capacity in terms of resources and capacity in terms of powers and those conversations are ongoing with the Home Secretary and her officials as we speak.

Q54 Chair: Was it a conditional appointment? You said, “Well, I will do this job but I want to make sure these things change” or were you just accepting what you were given?

Dame Anne Owers: I didn’t make it a condition of taking on the job, no, partly because I didn’t know until I got into it exactly what was going on. What I knew was being reported, what I knew was on the face of it but it is only when you get into a job that you discover what you really need.

Q55 Chair: You have started a recruitment drive—we have heard about it earlier—and one of the main concerns of people who complain to the IPCC is that there are too many police officers investigating other police officers—obviously not serving officers but former officers; it is that connection that is a problem for people. Do you have any vision that you want to set out today that basically says, “No more police officers. We need independent people to do these investigations”?

Dame Anne Owers: The position I have always set out—and I have set out publicly twice already—is that we need both. We do need some ex-police officers because of the skills that they bring, because of their capacity to understand what is going on, to ask questions, because of their previous experience. When I was chief inspector of prisons around half of my inspectors had been governor grades in prisons. They were among some of the strongest and most robust of my inspectors, which is why we chose them, because they hated to see people doing the job badly.

That is the kind of police officers we need to have but we also need to have them as a minority of our investigators and we need to balance that with people who have experience in other areas and who can ask why do you do it that way, as well as knowing how best to do it. It is that balance that I am seeking.

Q56 Chair: You would like to see the majority of people who work for the IPCC and conduct investigations to be non-police officers.

Dame Anne Owers: That is already the case. The majority of our investigators—

Q57 Chair: But are you going to make that an even bigger balance or—
Dame Anne Owers: Yes, we would like to bring in more people from outside, and that is why we are doing a recruitment drive in the autumn and why also we are training up some of our own case workers, who come from non-police backgrounds, to be investigators. I think getting the balance right is important. However, as your previous speakers have said, it is not just about the people you take in, it is the way they do the job; it is the culture.

Q58 Chair: A final question that is quite parochial, you just closed the East Midlands IPCC branch.
Dame Anne Owers: Yes.

Q59 Chair: I am not sure whether it was timed because of your appearance before this Committee, but why have you done that?
Dame Anne Owers: It was led by budgetary requirements. We have had to make significant budgetary cuts, as have the rest of the public sector. We had to take some tough decisions. We also had leases coming up for renewal that were not going to be renewed at that point, so that is the background to that decision.

Q60 Mr Clappison: Can I support what you have just said about police officers? To say that there are no police officers who should be employed would be to imply that there are no police officers who are decent, hard-working, law-abiding people. We know the vast majority of them are public-spirited and do an excellent job.
There are, however, cases of police corruption from time to time, and I know that the research you have carried out shows that the public expect you to investigate those cases and you have said that you stand ready to do so. What would be the advantages for you of taking on that role particularly, and do you think it would help to reduce police corruption if you are more active in dealing with it?
Dame Anne Owers: I think it is an area where our survey showed that the public are least confident about the police investigating themselves, for obvious reasons. It is also, of course, the case that good police, not just in the IPCC but throughout the country, hate corruption because it affects them all, it tarnishes every single police officer every time there is one of these cases.
I think we would like to be able to take on more cases. We would not be able to take them all on independently because some of it obviously involves the covert gathering of evidence, which we would need to supervise, but we are doing quite a bit, particularly in terms of the Metropolitan Police at the moment. It is an area that we would want to look to be able to take on—

Q61 Mr Clappison: We can expect to see you do more then, broadly.
Dame Anne Owers: That is subject to resources.
Chair: Thank you, are you done, Mr Clappison?
Mr Clappison: Yes.

Q62 Alun Michael: You said that the system remains complex for both the citizen and the police to understand. What do you think can be done to simplify the process?
Dame Anne Owers: I think that is something that we are going to be looking at in the coming months. One of the things, as I said, is that we are set up to have oversight over the whole complaints system. One of the practical things we are doing at the moment is issuing new statutory guidance to police forces and appropriate authorities about how they should deal with complaints under the new Act.

Q63 Alun Michael: So, clearer operations and the police force—
Dame Anne Owers: Clearer, and that is going to be part of a suite of documents, some of which will be aimed at the public and complainants.

Q64 Alun Michael: Could I just try on three particular aspects, firstly, performance improvement, the suggestion is that people, in many cases, don’t want people to be sacked, they just want things to be put right. Is that going to be part of your philosophy?
Dame Anne Owers: It is now part of our powers. We now have the power, under the new Act, to recommend performance improvement, as well as disciplinary matters.

Q65 Alun Michael: I am aware of that—it is something I argued for—but is it going to be part of the philosophy?
Dame Anne Owers: Well, we hope so, yes. The whole aim ought to be to settle things at the right level and in the right way.

Q66 Alun Michael: The second thing you referred to was sometimes things not being recorded locally or being recorded as resolved and they haven’t been. Is that a big issue?
Dame Anne Owers: It is clearly an issue, given the percentage of those cases that we overturn on appeal. Hopefully it will be a bit less of an issue now that the distinction between direction and control and conduct has been changed under the new Act. Basically, the message that we are sending out to forces, the message we hope forces will hear is if someone complains it is a complaint.

Q67 Alun Michael: Finally, with the Lynette White case we have seen something where the Commissioner has been extremely robust over a very long period of time but seems to have been defeated by the court system, if I can put it that way. Is there a need for reform there too?
Dame Anne Owers: In what way? I am not quite clear why—

Q68 Alun Michael: It seems to have got tied up in bureaucracy after all these years.
Dame Anne Owers: I haven’t really got enough information on that case, Mr Michael, to be able to answer you sensibly.

Q69 Alun Michael: Okay. Perhaps you could write to me about it.
Q70 Dr Huppert: Dame Anne, you will know that the Police Reform and Social Responsibility Act makes a few changes to the way complaints are dealt with within forces. In particular, it gives greater discretion to the police service in the recording of complaints and decisions to dispense with a complaint or discontinue an investigation. I don’t think those provisions have yet come into force. When they do, do you think they will be helpful or unhelpful to your role and public confidence in the system?

Dame Anne Owers: The idea is to reduce some of the bureaucracy—some of the toing and froing that currently happens between ourselves and police forces. Of course, the whole idea of a complaint system, of any good complaint system, is that you resolve it and you resolve it properly as close to the source of the complaint and as quickly as you can, so that is the aim.

One of the things that the Act does clearly is to pass more to police forces, including some appeals, which would currently come to the IPCC. That is one of the reasons why, in my earlier answer to the Chairman, I was saying that I think that gives us both the responsibility and the necessity to be very alert to what is going on at local level and to be feeding back to Chief Officers and to the new Police and Crime Commissioners, the way in which their forces are dealing with complaints.

Q71 Dr Huppert: Will you have the ability to at least scrutinise in some way what happens within the police forces or will it be essentially a black box that you can’t access?

Dame Anne Owers: No, we have the ability. In law, we have the ability to do it. Clearly, we don’t want to turn ourselves into an inspectorate, but we do have the ability to look. What we don’t have are the resources to do it because what are we not to do? Are we not to do independent investigations? Are we not to do appeals and do them well? It does come down to an issue of whether we have the resources to do it.

Q72 Dr Huppert: Can you just confirm that there is no way that any complainant would be barred from having access to you, that they would still have appeal rights outside the police service initially?

Dame Anne Owers: If their complaint is dealt with by way of local resolution, which means that that can only happen if there are no issues of misconduct, no issues of criminality and no issues of human rights that could come from that. If it is dealt with by way of local resolution then those cases will not come to us—that is the structure of the Act—and the appeal will be to the Chief Officer or his or her delegate.

Q73 Dr Huppert: If the complainant is alleging that there are issues of criminality, misconduct and so forth, then they would be able to take it further through you.

Dame Anne Owers: Then there must be a local investigation, that is what is said and, in those cases, the outcome of that would be appealable to us, yes.

Q74 Mark Reckless: You mentioned the Police and Crime Commissioners. Clearly the IPCC are at the apex of the complaint system, but what role would you envisage for those Police and Crime Commissioners in the complaints building?

Dame Anne Owers: I think that in practice they are probably going to get complaints that ought to go to police forces, and dissatisfied complainants who ought to come to us, so we will need to have some very clear protocols in place with the PCCs so that those complaints that fall within the Police Reform Act go through the right gateway. I also think that at the other end one of our big problems—and it has been referred to before this Committee and in evidence to you—is how do we make sure that the things that we have said need to happen as a result of a complaint actually are happening?

Yes, you can resolve things for the individual complainant, but the whole idea is that then forces, in general, take on the message and do things better. One of the things that we need to work on is the way in which we can develop mechanisms to check whether what we have done has made a difference because that is the point. The Police and Crime Commissioners do form a place where I would envisage discussions going on between Commissioners, heads of casework and themselves about what is happening and if it is not happening why isn’t it happening?

Q75 Chair: In respect of private security firms that are now very much part of the criminal justice system, what kind of powers would you want to deal with them? The Committee has produced a report into the death of Jimmy Mubenga, who was escorted by two G4S guards onto a plane. Are you seeking more powers over the private sector in respect of the new powers you are seeking over the police?

Dame Anne Owers: Yes, we are. At the moment, we have powers over private sector contractors, but only if they are designated and certified as custody officers. If they have that then we can investigate just in the same way as you would the police, but if they are not so designated we don’t. I take a very simplistic view that if people are doing the job of the police then they should be subject to the same complaints procedure as the police, so what we are seeking is power over that. That can be provided and should be provided in legislation, but it would also be possible to include it in contracts being let and that is part—

Q76 Chair: That is what you would like to see happen, you would like to see an inclusion in private sector contracts with the Home Office and the Ministry of Justice, a reference to an appeal to the IPCC.

Dame Anne Owers: A reference to our jurisdiction in relation to complaints that are equivalent to those under the Police Reform Act. That would be a quick fix but I would like to see it embedded in legislation for the avoidance of any doubt in the future.
Q77 Chair: In respect of your powers to be able to see police officers, which I know you are concerned with—if they don’t wish to co-operate, that is the end of it—you would like to make sure that that is also enshrined in legislation.

Dame Anne Owers: I would. I have the same aim as your witnesses from PALG, in the sense that I want to get to the truth of what happened. I want to get police officers to come in for interview and to make that as effective, as expeditious as possible. At the moment we have a system that is about as effective as pigeon post, to be honest. It is a bit like playing blind man’s bluff. You get a statement, okay, so you need to ask questions. You produce a series of questions, hundreds of questions, pass them through a lawyer to the police, months later they come back with the answers, you then need to ask supplementary questions. This is no way to do business. It is not a way of getting to the truth.

I would like police officers to come for interview in the same way that in conduct matters the regulations state that they must attend for interview. It is a significant lacuna that if we are just beginning an investigation into death and serious injury where we don’t yet know whether there are issues of criminality and conduct—and I take absolutely the point that where those emerge we need to be absolutely robust in dealing with them—there isn’t any power at all.

Q78 Chair: To be fair, there is a lot of criticism from police officers about the way in which the IPCC do their job. The federation, in particular, has been very concerned because they don’t believe that you are being fair. Do you take that on board? Have you met them to see what their concerns are?

Dame Anne Owers: We meet them regularly and, yes, I am very aware of their concerns. The important thing is that we are accurate, objective, credible and independent.

Q79 Chair: Because they don’t think you are independent. It is not just the complainants—it’s also the police who have criticisms.

Dame Anne Owers: Some police, the federation, in some areas, have criticisms, yes.

Q80 Alun Michael: Could I just explore one area? In relation to the police, there is the Independent Police Complaints Commission—a very robust system that has been tested over the years, but very often in individual cases the police are involved and so are the Crown Prosecution Service, who have an inspectorate but they don’t have anything like the same sort of clarity in terms of complaints.

Would you accept that sometimes it is difficult to know who decided what between those two if, wisely, police engage the Crown Prosecution Service at a fairly early stage? Is that something you are going to look at in terms of an equity of investigation, particularly when there is an overlap between the responsibilities of the two?

Dame Anne Owers: I am reluctant to get into thinking out loud about what the CPS might need by way of inspection.

Q81 Alun Michael: Are you going to think about it quietly then?

Dame Anne Owers: Yes, certainly in the review of article 2 of deaths that follow police contact we are looking at the whole range of what happens. It is certainly a problem for us that we don’t have any powers at all about the outcomes of what happens, in the sense that where we feel that there may have been criminal conduct we pass it over to the CPS who, quite rightly, as an independent prosecuting authority must make their own decisions. Where we decide there is a case to answer for misconduct the police carry out the misconduct proceedings as they choose and we are not responsible for the outcome. I think very often in the public mind there is dissatisfaction with the eventual outcome that backtracks to dissatisfaction with the IPCC, and I think we need to make clear where our jurisdiction begins and ends and also to look at those joins.

Q82 Alun Michael: I appreciate that sometimes it is the people looking for a specific outcome and if they don’t get that they are not satisfied. However, in other cases it is a question of being satisfied that they have been listened to and that somebody has got to the bottom of what went wrong.

Dame Anne Owers: Absolutely.

Alun Michael: Would you accept that there is a need to look at systems widely, not just the way that police officers operate but the way police officers operate within the wider criminal justice system?

Dame Anne Owers: Absolutely, and I think that is where some of the dissatisfaction with our appeals jurisdiction comes from—that we are a paper-based appellate authority. We do need to get beneath that to how complainants are handled—it is very often, as you say, the way in which police deal with a less serious complaint but a complaint that is nevertheless important to the citizen and goes to the whole issue of the relationship between citizens and the police.

That is what we need to get to.

Q83 Michael Ellis: Dame Anne, you have launched this review into how the Commission deals with serious cases and I’m just wondering why you feel that review is necessary. Do you think that that is going to uncover issues that need urgent remedial action and what has it uncovered so far?

Dame Anne Owers: Two preliminary points. First of all, I didn’t start the review, it was already in train before I was appointed and, secondly, it hasn’t yet started. The reason it hasn’t started is because I have had a few other things to do since I was appointed, like the process for appointment of new Commissioners, so it will kick off properly in the autumn.

I think the impetus for the review, which is a review into the way deaths following police contact are looked at and investigated—not all serious cases—comes from some of the concerns that you have already heard from witnesses and that you have heard in evidence. There is a desire to have a proper conversation with those affected—with families and communities and with those representing them; some of the people who have been critical of the IPCC—
about the way in which we carry out those investigations and then to decide what we need to do better.

**Q84 Michael Ellis:** Is this review going to uncover some attitudinal problems within the IPCC? Some of the evidence that we have heard indicates a belief in some quarters that it is not a question of resources or powers available to the IPCC, but it is an attitude issue. It is a culture of accepting what investigators from the IPCC are told by local police forces when they go and inquire into matters. It is something that is an inbuilt cultural acceptance of police accounts of what has gone wrong. Is that something you are confident that you can deal with?

**Dame Anne Owers:** It is something that I, like you, have heard. I have to say it is not something that I have observed in my conversations with people who are doing those investigations—quite the contrary; there is a healthy scepticism very often about the first account. I think one of the things that we have talked about quite a lot internally in the IPCC is the fact that the first account you get is very often the police account, by definition, and you must treat that as something that is alleged, in the same way that you would treat anything else that was told to you at that point. You must start off with a blank page. I think that in general that is how we need to do our work, and it is certainly an approach that I am seeing.

**Q85 Michael Ellis:** Do you accept that just because one set of accounts gives one account and the other gives a diametrically opposite account, that is something that is invariably going to result in a finding of no case to answer, as far as the IPCC are concerned?

**Dame Anne Owers:** No, no, it isn’t—it isn’t at all. First of all, distinguishing between investigations and appeals, in investigations, we have a chance to dig into that a great deal, which is precisely what we do, why we need powers to compel people to come for interview, for example. In the Ian Tomlinson death, that is why we looked at 1,200 hours of CCTV. In investigations, we have the resources and we have the ability to dig in.

In appeals it is more complicated because we get 6,500 appeals a year. We can’t do 6,500 mini-investigations but, having said that, following discussions with people like your early witnesses, we have issued new guidance to our case workers, which does remind them what the balance of probabilities means and the lawfulness issue that was brought earlier. We do listen; we are not always as defensive as it may seem.

**Q86 Nicola Blackwood:** You mentioned earlier concerns about resources and you weren’t sure what you could not do, but most of us think the IPCC merely supervises police authorities. We were quite surprised to read that you also supervise UKBA, SOCA, HMRC and, of course, we have the NCA coming online as well. I just wonder if you could tell me what proportion of your work involves supervision of those other bodies and what sort of supervisory roles does that involve.

**Dame Anne Owers:** I am afraid I can’t give a quantitative answer to that, but I can certainly provide evidence in writing to the Committee. Basically, any work that we do for them is paid for separately. The £34 million budget includes the money that will be paid to us by those other authorities for doing work for them and on their behalf.

**Q87 Nicola Blackwood:** But with the same number of staff and the same resources that you have in physical terms?

**Dame Anne Owers:** No, it would be in addition to the budget that comes from the Home Office. It is still, given that, a small budget. As we have said many times in many forums, we have fewer resources than the Professional Standards Department of the Metropolitan Police alone.

**Q88 Nicola Blackwood:** Have you been involved in discussions about exactly how it will work when the NCA comes online and how that will change the way that you are working?

**Dame Anne Owers:** Not yet, no, but those discussions are beginning to happen.

**Q89 Chair:** Dame Anne, there is no regulatory framework at the moment to ensure that your recommendations are followed up or enforced. You can make your recommendations, but Chief Constables and, indeed, the Commissioner don’t need to implement them. Are you seeking legislation to ensure that that happens as well?

**Dame Anne Owers:** Yes, one of the statutory powers that we are asking for is that there should be some formal response to our recommendations. There should be a requirement formally to respond with an action plan and so on. Having said that, I think if that exists then that does put a responsibility on us to check what is happening. One of the most effective things I was able to do as Chief Inspector of Prisons, having absolutely no regulatory power whatsoever over any prison, was year on year to report on how many of our recommendations had been achieved or partially achieved.

That is really important for an independent regulatory body—to be able to show that you have made a difference. I think there should be a requirement to report back on recommendations and indeed on other findings. Why is it, for example, that there is such inconsistency among police forces in the number of complaints recorded and the number of complaints upheld?

**Q90 Chair:** But this goes back to the problem raised by Ms Phillipson with Doreen Lawrence. If it is dealt with in the first place in a way that reassures people without delay, the need for people to complain to the IPCC will diminish. Do you feel you have a role in training police officers and police forces as to how they should deal with these complaints, because there doesn’t seem to be an organisation doing this at the moment? It could save people a lot of time and the taxpayer a lot of money.

**Dame Anne Owers:** Yes, I think if we were to become a police training body that would be entirely different.
I do think that that has to be a responsibility for the police services, but what we are doing, as I was saying to Mr Michael, is reissuing our statutory guidance. I will be looking to our Commissioners and to the others with contacts in forces to press Chief Officers and their representatives, and the new Police and Crime Commissioners, as to how that guidance is being used. At the moment, we are getting more appeals rather than fewer. It has started to flatten out, but I would want to see a decrease in the number of appeals coming to us, which represented good work earlier on.

**Q91 Chair:** In terms of the number of ethnic minority investigators you have, the number of women investigators, what is the percentage?

**Dame Anne Owers:** I can tell you in terms of black and minority ethnic, I can’t tell you in terms of women, but I can let you have that in writing. It is about 13% of our investigators from black and minority ethnic backgrounds as we speak.

**Q92 Chair:** Thank you. What you have set out today in this first session of the Committee’s inquiry is quite a long wish list and having heard from Mrs Lawrence and from others today that is going to get much longer. It may well end up the organisation that you chair is going to get much different from the organisation that you took over so very recently. Are you ready for this?

**Dame Anne Owers:** I don’t think it is going to be that different. I think what I am seeking is the ability to do what the IPCC was set up to do and what people within the IPCC, in my experience, want to be able to do. I am not talking revolution, what I am talking about is an organisation that has been operating for eight years, that has learned a lot, that has made some mistakes along the way but has made a difference along the way: fewer deaths in custody, fewer road-traffic deaths from police contact, a lot of work on domestic violence, as well as individuals whose cases have been able to be investigated properly. What I am looking for is the ability to take that on for the next period and be able to do what we need to do.

**Q93 Chair:** In a year’s time, when you come back before us to tell us the progress that has been made, what is your headline figure that you would like to tell the Committee, well, we have made these improvements?

**Dame Anne Owers:** In a year’s time I would want in some of those areas that we have talked about for us to be developing ways of dealing with it. I would want to be able to tell you that not only do we have a grip on our own investigations and appeals, which has already been happening, but that we have a better sense of what is happening in police forces. I would want to be able to tell you that we have or are about to get sufficient resources and powers for us to be able to do the job that we want to do.

**Chair:** Dame Anne, thank you very much for coming today on the first day of our inquiry into the IPCC.

**Dame Anne Owers:** Thank you.

**Chair:** We will be writing to you in the course of our inquiry and if you have any information that will be of assistance to the Committee I would be most grateful if you could send it to us. Thank you very much.

**Dame Anne Owers:** Certainly, thank you very much.

**Chair:** Thank you.
Tuesday 23 October 2012

Members present:
Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Steve McCabe

Mark Reckless
Mr David Winnick

Examination of Witnesses

Witnesses: Deborah Coles, Co-Director, INQUEST, and Marcia Rigg, sister of Sean Rigg, gave evidence.

Q94 Chair: I refer everyone present to the Register of Members’ Interests, where the interests of members of this Committee are noted, and can I welcome Deborah Coles and Marcia Rigg, our current witnesses in the Committee’s inquiry into the Independent Police Complaints Commission. Thank you very much for coming. I apologise for the delay in welcoming you to the dais. Can I start with you, Deborah Coles? You have a lot of interest and a lot of experience in dealing with these matters. I was perplexed with a figure that I was given, that in the last 20 years no one has been prosecuted for a death in police custody even though there were nine verdicts of unlawful killing. That is a surprise to me. Why do you think that is?

Deborah Coles: Just to clarify that, there have been prosecutions. There has never been a successful prosecution, just to clear that up, and obviously most recently there was the prosecution of the officer in the Ian Tomlinson case. But, quite rightly, there have been nine unlawful killing verdicts following deaths in police custody or following police contact, which means that an inquest jury have decided beyond reasonable doubt and using the criminal standard of proof that there has been either gross negligence, manslaughter or excessive force used.

I think the issue about prosecutions goes to the heart of the problems with the way in which the deaths are investigated from the outset and the robustness and effectiveness of that investigation, which means that the CPS make a decision on the evidence collected as part of that investigation not to prosecute, leaving the family with the inquest as the public forum and the first opportunity for that evidence to be tested. You then have a family legally represented, and indeed all the other parties represented, at inquests that can last several weeks, if not longer; an inquest jury deciding on the evidence that they believe this is an unlawful killing, and yet further decisions not to prosecute.

Q95 Chair: Marcia Rigg, can I, on behalf of the Committee, give the condolences of this Committee following the death of your brother? I think we are all familiar with this case and it must have been a tragic death for you and you must be still grieving for the loss of your brother.

Marcia Rigg: Absolutely. The family have not had much time to grieve for the last four years. We have basically been conducting the investigation ourselves because we have absolutely had no faith in the IPCC’s investigation at all from the very outset. At the last Committee, I gave evidence in February 2010 when Nick Hardwick also gave evidence. You will recall that he did say that the IPCC has a clear picture of what happened to Sean Rigg on the night of his death and that he had done what Parliament have asked of him. I am still surprised as to what he felt was a clear picture of what happened to Sean, because the evidence quite clearly showed quite the opposite of what the IPCC’s conclusion was in their report.

Q96 Chair: As you know, what the Committee is doing is looking at this organisation. It is considering its powers, and the evidence that you give today and the evidence of others will be very helpful to us in deciding what we recommend to the Government. As you have also seen, the IPCC is very much in the public’s mind at the moment following the Hillsborough Independent Panel’s decision. But you were very critical. I just take one of your quotes. You said, “This is absolutely ridiculous and unacceptable. I have no faith in the IPCC whatsoever. There needs to be an independent investigation into their Mickey Mouse investigation, which found no wrongdoing.” That is a very serious indictment of a body that is set up to help people like you. Why did you come to that conclusion?

Marcia Rigg: I came to that conclusion, and I still stand by that conclusion, because the Independent Police Complaints Commission was very stagnant in the beginning of the investigation that we had in terms of interviewing the officers immediately. The family had to make a complaint to the IPCC in order to force the officers to be interviewed, the sealing-off of the arrest scene, looking at CCTV evidence and not corroborating them properly with officers’ statements that they had given under taped interview, and the evidence and what the officers were saying on interview and on oath were completely the opposite as to what happened. Therefore, I have absolutely no faith in the IPCC whatsoever. As you will see from the jury’s narrative verdict, they completely vindicated the family, and there was a strong contrast as to the IPCC’s findings and the true facts of the actual evidence that was heard.

Q97 Chair: Of course, the Committee has noted the very critical narrative verdict of the jury. Can this organisation, in your view, be reformed and, if it was given more powers in order to do the kinds of work that you would like it to do, do you think that the idea of an Independent Police Complaints Commission is a good one? You are just critical of its efficiency in the powers that it has used. Is that right?
Marcia Rigg: Yes, that is correct. Before the IPCC was effected, families had fought for an independent commission to take over the PCA, and so families were very happy when the IPCC first came on board in April 2004. I believe. But, unfortunately, it does not seem to be fit for purpose or for what it was originally brought for, because evidently they are very biased in favour of the police. They seem to find no wrongdoing of the police, and this is the problem that families have.

Q98 Chair: Is this your main concern—that they are not independent, they are not fair?
Marcia Rigg: Yes. The main concern is that they do not appear to be independent. They are not fair. They are biased towards the police. There is a lack of communication between the families. Their first press release is usually incorrect. They do not interview the officers, seizing CCTV evidence and such like. This is the very reason why the IPCC is not independent.
Chair: Thank you, that is very helpful. We will explore some of those other comments with Members of the Committee.

Q99 Steve McCabe: Can we just follow that point up a little? You say you are pretty disillusioned with the IPCC and their inability to effectively follow things up, and I think you say that the advisory board is pretty poor even on agreed points that are supposed to be for further action. I just wonder, from your experience, what is the core of the problem? Is it the people or is it the structure of this organisation itself?
Marcia Rigg: I think perhaps it is the people because I believe that there is a structure that is put in place and the IPCC should be able to work effectively, but I think on some of the controversial deaths, in my experience and in speaking as to other families’ experiences, they tend to have ex-police officers from the very outset involved in the case. The CPS and the Police Federation are first involved as soon as a death has happened, before the IPCC is called in, and I think at that point there is a possibility that evidence can be contaminated and that there is nobody that is independent that is immediately called into the police station, for instance, in order to secure that evidence.

Q100 Steve McCabe: I do not want to put words into your mouth, but should I conclude from that that you are saying the basic structure of the organisation could be made to work but you need people who are much more independent and much more open-minded in the way they carry out their responsibilities?
Marcia Rigg: Yes, I believe so. I am an ordinary member of the public and my family conducted a very robust and effective investigation, which was laid out in the inquest, and found there to be wrongdoing by the officers. In fact their actions or inaction more than minimally caused the death of my brother. I am oblivious as to why investigators were not able to see the same evidence that an ordinary member of the public can and, in my opinion, the reason for that is perhaps that there were certain people at the beginning of the case who were biased, I believe. Therefore, the evidence stagnated. For instance CCTV, the IPCC was unaware of there being an outside camera that would have picked up an overview of what happened to my brother within the caged area and it was the family that insisted that that camera did exist. After that, the IPCC admitted that the camera did exist, but that it had not been working for a period of three months, and I found that to be quite unbelievable.

Q101 Mark Reckless: From next month Police and Crime Commissioners are going to be directly elected to hold the police to account. Do you think a way forward might be to put those elected commissioners in charge of the complaints process to ensure it is democratically and publicly accountable?
Marcia Rigg: Yes. I think that, outside members of the IPCC, there needs to be a kind of watchdog who is overlooking what the IPCC are doing. Evidently they are categorically not independent because their findings are completely the opposite as to the facts. I think that commissioners from the police committee would be a help and would be a start.
Deborah Coles: Can I just add something to the previous question—
Chair: Yes, please feel free to chip in.
Deborah Coles: It is about the Sean Rigg investigation. I think it is quite telling that following the inquest and following the jury verdict the IPCC themselves have now commissioned a review of their investigation into the death of Sean Rigg. That tells us something about the fact that the supposed independent investigation into this death is now to be reviewed because it was so clearly poor. It was poor from the outset, and I think what it highlighted to the Rigg family is that the people conducting that investigation did not have the skills or expertise to do an honest, fair investigation and there was not a proper testing of those police officers’ evidence. There was not proper seizure of the relevant CCTV. There was not an attempt from the outset to treat this death as a potential crime or misconduct issue, and I think that very much set the tone and it should not be for a bereaved family to have to, in a sense, be their own investigators.
It took that family’s legal representation at that inquest four years later to properly test the police version of events and I think it did expose the IPCC in terms of the absolutely poor nature of their investigation. That raises really important questions for your inquiry, because this is not an individual case, and INQUEST are working on about 20 other deaths in police custody or following police contact. We are seeing the same systemic problems and the most contentious issue for these families is the failure to interview police officers. Just like anybody else, if they were in a situation where somebody died following contact, they would be interviewed in the first instance, and that is an extremely important evidence base from which the investigation can be conducted.
Chair: Indeed. We will explore more of this in a moment.

Q102 Steve McCabe: I just wanted to ask about this review. Are they going to conduct a review themselves into their own investigation?
Deborah Coles: No, in terms of Sean’s death they are—we are slightly frustrated because they
announced this on the back of the inquest nearly two-and-a-half months ago and they still have not given us the name of the person who is going to be conducting the review. It is going to be external to the IPCC and we welcome that.

Marcia Rigg: I would also like to add that there is also an internal investigation. A new set of commissioners in the IPCC is now conducting an investigation into their original investigation, particularly concerning two of the officers, Sergeant White and PC Harratt, who gave evidence both on oath and in taped interview. They perjured themselves because Mr White said that he went to the van and spent the morning telling the coroner and the jury details about what he saw in the van—that he saw my brother, that he spoke to him, that he looked him in the eyes—but the CCTV proved categorically that he never went anywhere near the van and so the IPCC is conducting an investigation into those two particular officers because the other officer colluded and backed up Mr White’s story that he went to the van.

Q103 Chair: Yes. Before we go to Mr Clappison, I understand, Ms Coles, you are also acting on behalf of the Mark Duggan family and there has been a development in that.

Deborah Coles: Yes.

Marcia Rigg: Yes, absolutely. My sister and I had a meeting with the Commissioner in June of this year regarding having cameras in the back of police vehicles, and he promised that he would do that and he has done so. In fact, myself and my sister had a meeting with Scotland Yard and visited the piloting of the cameras in the back of police vans. There are going to be four cameras in the vans, which show two inside and two at the back of the van and the front of the van. I think it is absolutely imperative that these cameras are there in order to safeguard both the police and the prisoner for any wrongdoing. My concern will be that it is imperative that these cameras are working at all times and I believe that they should be overlooked by a completely independent body of the police in order for there to be no tampering with evidence.

Q104 Chair: What exactly has happened in respect of the IPCC inquiry into that?

Deborah Coles: The family and their lawyers attended the pre-inquest review in front of the coroner, Andrew Walker, this morning, and I am pleased to say that an inquest date has now been set for 28 January next year. But what is absolutely essential, and the request that was made in open court today, is that there is full and open disclosure as soon as possible of all the evidence that the IPCC have that can assist the coroner and other parties in the preparation of this very important inquest.

Q105 Chair: Is that unusual or is that a normal state of affairs, that the IPCC discloses all its information to the coroner?

Deborah Coles: The coroner depends upon the investigation conducted by the IPCC as part of his or her ability to conduct the inquest, but—and I think this is another problem—there are systemic problems with disclosure in most of the cases that INQUEST are dealing with. It was a problem at the Sean Rigg inquest with drip-drip disclosure or documents suddenly coming to light during the course of the inquest. What we absolutely hope in this case is, and the coroner has requested, that there is full disclosure to help him decide what witnesses need to be called and to help structure the scope of the inquest and there is a further pre-inquest review coming up on 30 November, which will be another opportunity for us to set the terms of the forthcoming inquest.

Q106 Mr Clappison: Perhaps I can move on to just a slightly different area and ask both witnesses if they have any suggestions as to practical steps that could be taken to reduce harm to people in police custody. Perhaps we will start with Deborah.

Deborah Coles: The first thing I would say is stop using police stations and police cells as a place of safety for people who have mental health problems. This has come up time and time again. There has been a catalogue of reports, of coroner’s recommendations, all pointing to the fact that police custody is a dangerous place for people with mental health problems and yet they are still being taken there. That would be a very good way of reducing the harm and also the deaths.

Q107 Mr Clappison: No doubt, Marcia, you would agree with that.

Marcia Rigg: Yes, I would have to reiterate that. A police cell is not a place of safety for a vulnerable person, and vulnerable people like my brother should not be treated as criminals. They are each somebody that is not well and there is a duty of care that should be given to them by the officers, and at the moment it doesn’t appear that they are getting that.

Q108 Chair: The Metropolitan Police Commissioner has told us that there was going to be a £4 million refit of all police vans to ensure that they had CCTV. Do you think that that would go far enough to meet the issues that you have raised about the way in which Sean was treated inside the van?

Marcia Rigg: Yes, absolutely. My sister and I had a meeting with the Commissioner in June of this year about the Mark Duggan case, when there is a shooting, when Mr Sanders was apprehended by the police he had a gun in his hand for six hours. I believe that if that was a black person he would not have lasted six seconds. I believe that if your brother had been of a different colour, of a better word, but it is a word that I will use—kill black people; they also kill white people. I think it is a class issue and that the matter should be looked at much more generally. However, for instance in the Mark Duggan case, when there is a shooting, when Mr Sanders was apprehended by the police he had a gun in his hand for six hours. I believe that if that was a black person he would not have lasted six seconds before he was shot. I do believe that there is concern about the colour. Nonetheless, I do think there is also a wider issue and that it is a class issue, not just a race issue.
Deborah Coles: It is a very important question because our casework monitoring in terms of the numbers of people who die have shown an absolute disproportionality when we look at the most contentious deaths in police custody and following police contact. What I mean by that is that people from black and minority ethnic communities are over-represented in those deaths that follow the use of force, be it restraint techniques or fatal shootings. I think we have to ask some quite important questions about the role that racism plays and it is something that obviously is outside the scope of inquests, but, following the Stephen Lawrence inquiry, there was a recognition about institutionalised racism.

I certainly think that there are certain attitudes and assumptions that are made about certain groups of people, and another group here that are over-represented are people with mental health problems. I do think it is a very important issue that we need to address and, as part of that, we have to look at issues around when these deaths happen. What is the investigation exploring? Of course, it is exploring wrongdoing—criminal wrongdoing, disciplinary wrongdoing—but it is also exploring issues about treating people as human beings and we are talking very often about very vulnerable people. I think it is an important issue that the Committee wants to consider.

Q110 Mr Winnick: On the question of independence of the IPCC, is it your view that there are too many investigators who are former police officers?
Marcia Rigg: Absolutely.

Q111 Mr Winnick: The figure that I have is that 33% of investigators for the Commission are former police officers and, moreover, eight out of nine Commission senior investigators and 38% of deputy senior investigators were or are police officers. Do you consider that inappropriate?
Marcia Rigg: Absolutely. There is no public confidence whatsoever in an Independent Police Complaints Commission that employs ex-police officers. Evidently, in my brother’s case and in other cases, this has proved to be unsatisfactory because there appears to be corruption and cover up of the evidence and these are from ex-police officers.

Q112 Mr Winnick: What do you say, Ms Coles, to the view that the Commission relies on people who are professionally trained to investigate and to exclude former police officers—this is the argument that is advanced, as you are obviously very familiar with—would be unfair and it would not help the process of investigation?
Deborah Coles: I am not of the view that there should be no police officers involved in the IPCC at all, but I think there are two issues here. One is the fact that eight out of nine of the senior investigators are ex-police officers.

Mr Winnick: The figure I have just pointed to.

Deborah Coles: The figure that you have given. I think that is very important because in a sense we have to remember that they direct the investigation and, whether or not there is perceived cover up or real cover up or too-close relationships with the police, the perception is a very damaging one, particularly when you are talking about families whose relative has died. I also think that when the IPCC were first set up there was much more of an understanding about needing perhaps the skills and expertise of police officers, but they have been going a long time now and there should be now training of people to do investigations.

We need to have more independent investigators, people with the skills and expertise to conduct investigations. What I feel, from working with lawyers who are working with families, it is very often the family lawyers who are telling the IPCC investigators what they should be doing. They are directing the investigation, and that is an absurd state of affairs and it should not be happening.

Q113 Mr Winnick: Ms Rigg, presumably all that is what you would say yourself, the view that has just been expressed?
Marcia Rigg: Absolutely. I do agree that in some circumstances you may need the advice of a police officer because of his experience.

Mr Winnick: A former police officer?
Marcia Rigg: Former police officers. I am not a police officer. I have worked in law, but I am not an officer. But I was able to conduct, along with my family, a proper, effective investigation into my brother’s death and I think that an ordinary layperson can be trained within the IPCC. I believe that some of the commissioners or investigators may go through some kind of training process within the IPCC, and I don’t see why an ordinary member of the public can’t do that.

Mr Winnick: They can’t be trained accordingly?
Marcia Rigg: Absolutely. They can be trained accordingly.

Q114 Chair: Are you telling the Committee that you would prefer that there should be no former police officers in the IPCC, or it depends on their role?
Marcia Rigg: I think there needs to be public confidence. There needs to be a drastic drop in the employment of ex-police officers within the IPCC.

Q115 Chair: But you are saying it is perfectly possible for someone who is not a police officer, as you have shown with your family over the last four years, to go and find CCTV evidence and to investigate a case?
Marcia Rigg: Yes. I think that a lot of it based on common sense. Eleven ordinary members of the public came to the same conclusion that I did and that was the evidence. Also the IPCC had that evidence, but they came up with a different conclusion.

Q116 Chair: Ms Coles, on the Jimmy Mubenga case, I think your organisation represented Jimmy Mubenga. The Committee, of course, has looked at this case. We have produced a report. Do you think that the powers of the IPCC should be extended to the private sector—those like G4S who work within the system, who at the moment are not subject to investigation?
Deborah Coles: Absolutely. I was pleased to see that in Anne Owers’ evidence she also recognised that there is a serious lack of accountability and I think particularly when we are seeing the very depressing outsourcing of more and more functions of the police to private companies it is absolutely vital as a matter of urgency.

Q117 Chair: Ms Rigg, it must have been a terrible four years for you to get to the stage where you are today; first of all to have had to suffer the death of your brother, but then to go through all this four years later to get some kind of justice. For your family, what will represent closure in respect of this issue?
Marcia Rigg: Yes. The last four years have been very traumatic for myself and my family, not being able to grieve but just wanting to find out the truth of what happened to Sean, and we found that we had to depend on ourselves in order to do that. I do believe that the officers acted inappropriately and did nothing to help my brother. The only form of contentment that I will have, and I think I speak on behalf of my family, is that there needs to be criminal charges of those officers and there needs to be proper accountability as if they were an ordinary member of the public.

Q118 Chair: Do you feel that the way in which the IPCC has operated has delayed that closure? It has certainly not enhanced it, has it?
Marcia Rigg: No, it has certainly not enhanced it at all. In fact it has done quite the opposite, and we as a family had to fight tooth and nail in order to get disclosure from the IPCC and had to have a number of pre-inquest reviews. We were able to get an order from the coroner to enter the IPCC’s offices to look at what they called unused material. They said that they had unused material there because they found that the evidence was not relevant at the time. In fact that is where we found the best evidence in my brother’s case.

Examination of Witness

Witness: Matilda MacAttram, Director, Black Mental Health UK, gave evidence.

Q119 Chair: Yes. You mentioned your meeting with the Commissioner and the fact that you have gone yourself to look at the new CCTVs in respect of the police vans.
Marcia Rigg: Yes.

Q120 Chair: Is there a good relationship with the police now in order to try to ascertain the truth?
Marcia Rigg: With the public or with myself?
Chair: No, yourself and the police in trying to get to the truth of what has happened.
Marcia Rigg: Yes, they have been quite accommodating, particularly since the verdict. Prior to that they were not and so I think that the family has forced the Metropolitan Police to apologise to the family, and I think that the Metropolitan Police are perhaps making it appear that they are doing what can, and they are at the moment. They are being very accommodating and we shall see what happens. What I want to know is that cameras at the back of police vans must work at all times. That is what the issue is here.

Q121 Chair: Thank you. Ms Coles, I know that you have other evidence that you can give the Committee. If you, as a result of this hearing today, feel that you could write to us with additional information, please do not hesitate to do so. We on this Committee are looking at practical suggestions to improve the effectiveness of the IPCC. Thank you very much for coming today.
Marcia Rigg: Thank you for listening.
Deborah Coles: Thank you.
Chair: We are most grateful, thank you. Could we have our next witness, please?

Q122 Chair: Thank you very much for coming today to give evidence to this Committee. I won’t repeat my introduction. You know what this inquiry is about, and you have heard the last witnesses. In your evidence you describe people with mental health problems being, and I quote from you, “strip-searched, left naked in a cell, left cold, hungry and thirsty, not given the medication they needed, been restrained by more than one officer” and being “insulted and patronised”. That is a very serious indictment of the way in which people are being kept in custody. What evidence do you have to support that most extraordinary of statements?
Matilda MacAttram: Well, there is a body of evidence that goes back quite a few years when it comes to the treatment of mental-health service users and the police, and I think the most striking evidence would be the fact that the IPCC’s own data show that 50% of people who die in police custody are mental-health service users, so the inhumane treatment you have described is part of the experience, but the starkest outcome and the reason Black Mental Health UK have made the submission is because of the deaths in custody. As we have heard already, the Sean Rigg case has highlighted a lot of issues, but sadly his experience typifies the experience of the stakeholder group that Black Mental Health UK seeks to serve and represent.

Q123 Chair: I was interested to see the comments of the Metropolitan Police’s Area Commander for South-East London, Neil Basu, who talked about the police investing in dealing with mental health issues. What way do you think the police can do this, because it must be very difficult for officers, given the situation, to make assessments of this kind, which are medical assessments, in a situation of possible emergency, or
to dealing with this vulnerable group as far as places of safety goes, as far as restraint goes and as far as treatment goes, but what we are seeing in policy is completely different from what we are seeing in practice. So I don’t know if there needs to be more scrutiny or just a review of how this group are treated.

Q125 Nicola Blackwood: So is there training in terms of when an officer first comes in? Are they trained in how to identify someone and does that happen in every force area? Are there variations across the country? Has there been some kind of assessment made?

Matilda MacAttram: My understanding is that they are not trained in assessing somebody to find out whether they are—

Nicola Blackwood: Sorry, is that “are not” or “are”?

Matilda MacAttram: My understanding is they are not.

Q126 Nicola Blackwood: Okay. What kind of training do you think would be appropriate and how could the situation be improved?

Matilda MacAttram: How could the situation be improved? There needs to be more focus on this area, because it is huge. It is a routine part of the “bobby on the beat” work load every day. How can it be improved? I think by closer scrutiny; I think if there was more scrutiny on certain practices. One of the things Black Mental Health UK have a huge concern with is the presence of police on psychiatric wards. Now, if somebody is in a health-based setting because they are considered to be a danger to themselves or others, and the thinking is, and the understanding we hope should be, that it is therapeutic and encourages recovery, and yet we know for a fact on forensic wards, officers are going in in riot gear, they are going in with Tasers, they are going in with Alsatians and they are going in to restrain people. These are practices that are hugely concerning to us, and there is no transparency at all. It is completely opaque.

Q127 Nicola Blackwood: Is that common practice, or is that happening in some places and not in others?

Matilda MacAttram: It is happening. I think if it happens even once—

Nicola Blackwood: Yes, but I am just trying to get a sense of the scale of the problem. I am just trying to understand.

Matilda MacAttram: I think this is an area that needs to be scrutinised, because the information that we have has come from information like the Mental Health Act Commission report. It is an annual report that has now been replaced by what the Care Quality Commission—that is the current watchdog—produces. We have a lot of information that comes to us, but it tends to be anecdotal. We have what I think many would consider to be horror stories, and it is hard to believe them, but when you see them published in a watchdog’s report, then you know it to be the case. One issue that has just come to Black Mental Health UK’s attention that I think that this Home Affairs Committee should know about is an incident that
happened after the Rigg verdict, where the trust that was responsible for his care had riot police called in only this month. It is a huge concern; it is completely opaque and there needs to be scrutiny here. There needs to be accountability here.

Q128 Nicola Blackwood: Can I ask if there are concerns about sharing of information between the NHS, between GPs, between those caring for those with mental health concerns in the health sector, and those who may well be called out within police teams so that they are already aware of health concerns with an individual? We are experiencing this in other areas, sort of data-sharing, and a culture of not sharing information, even though it would be helpful, for fear of data protection issues. I just wonder if that is an issue that comes up in this area as well.

Matilda MacAttram: My understanding is that there is a relationship between health providers and the police, so there are certain service users who are known to the services. Sean Rigg was known to the services; he was a revolving-door patient. The stakeholder group that we represent sadly are revolving-door patients, so I think sometimes there is the knowledge of the service user by the police, but that doesn’t negate the fact that they are treated in a way that they should not be, I think, especially a vulnerable person who is unwell. I hope that answers your question.

Q129 Mr Clappison: I have two questions. I am just intrigued, first of all, by the answer that you gave to my colleague about police going into mental health wards. What is the reason for police going there in the first place? What is the background to that? How do they come to be there?

Matilda MacAttram: How do they come to be there? This is the understanding that Black Mental Health UK has, and the only reason that this organisation exists is in response to the disproportionate number of black people at the secure parts of the mental health services. We have just happened across this and we are just as concerned as the family members who contact us. They are called in when the situation has escalated to a point where it is of concern. I don’t know if the Committee are aware of a case of a young post-graduate student called Olaseni Lewis. He was detained under the Mental Health Act. I think he wasn’t in the system for more than 24 hours when the police were called in because there was a situation on the ward. Now, what—

Mr Clappison: They were called in by the hospital authorities or the clinicians?

Matilda MacAttram: That is how it happens consistently, and it is of grave concern. It is of serious concern to Black Mental Health UK, because if somebody is supposed to be in a place of safety where the practitioners are supposed to be trained to be able to support these people and de-escalate a problem, it is something that needs to be addressed, and I think I would welcome it being on the Select Committee’s radar.

Q130 Mr Clappison: The other sort of broader question I had is what practical steps you would like to see taken to get from being where we are now to where you would like to see us in the future.

Matilda MacAttram: Practical steps?

Mr Clappison: Yes. I am thinking of training or what would the alternatives be to cells as a place of safety.

Matilda MacAttram: Even if a cell is termed a place of safety, it is not a place of safety. Invariably they do not have windows and they are like dungeons. They are not therapeutic, they are places of trauma, and for people from the UK’s African-Caribbean community, because of the disproportionality when it comes to deaths in custody, they are seen as places of punishment and also they—

Mr Clappison: I completely understand that, but I am asking what you would see as an alternative.

Matilda MacAttram: The alternative has to be health-based places of safety, and more importantly than that—this is where the resources have to shift from compulsion to therapy—community-based places of safety. They have to be places where people can be kept when they are florid or having an episode where they can be de-escalated in a situation that doesn’t criminalise them, so community-based places of safety and health-based places of safety, not custody-based places of safety.

Q131 Nicola Blackwood: Do you know how many police force areas in the UK have what you would consider acceptable places of safety and how many places are using police cells as places of safety?

Matilda MacAttram: My understanding is they are being phased out, and they are being phased out quite rapidly, so there is going to come a time very quickly—because we know with budget cuts that some police stations are going to be shut down, and so the custody suites are going to go with them; so we know that they are being phased out. I couldn’t give you the data, but I could find out and then get that to you.

Nicola Blackwood: That would be very helpful; thank you.

Q132 Mark Reckless: You described a number of specific police practices, such as the use of prone restraint and also the use of Tasers, and I just wonder, is there any way that you could see the Commission guarding against any inappropriate use of those mechanisms?

Matilda MacAttram: Yes. Prone restraint is key, as Deborah has alluded to already. A disproportionate number of people from the UK’s African-Caribbean community sadly die after the use of prone restraint. Mental-health service users, their medication means they have a raft of other physical ailments that means if this group are restrained, they are more likely to die. I think if a service user is known to the police, there has to be an emphasis on de-escalation. There really has to be an emphasis on an alternative use of cuffing and restraining people. There are many people on the wards who, as well as maybe being unwell, have cuts on their wrists, so all these people are unwell, who have bruising and cuts, and these just exacerbate their illness.
So I think a focus on this, if this was flagged up by the Committee as an issue, like restraint with mental-health service users is a huge concern, and we know because of Sean Rigg and many other cases that it leads to tragic consequences that are very expensive to the state and are very, very expensive to the family and the community. That would shine a light on it, and, I think, alternatives. People who are unwell have no place being restrained.

Mark Reckless: Ever?

Matilda MacAttram: I have answered the question.

Q133 Mark Reckless: I mean, are there circumstances in which you would understand and accept the police restraining people even though they fit into the mental health category you describe?

Matilda MacAttram: Black Mental Health UK would say it doesn’t really matter what—I think the position should be this: would it be suitable for anyone in this room in the same position, and if it would be acceptable for anyone in this room to be treated in that way when florid, then it should be acceptable for the vulnerable and voiceless groups. If it is not acceptable for you or your family, it is not acceptable for anyone. It violates human rights. It is dehumanising and it exacerbates trauma, so Black Mental Health UK’s position is, not in any situation. These people are vulnerable. “Mental-health service users are more likely to be a danger to themselves or others.” People often revert to stereotypes that demonise a vulnerable group and legitimise behaviour that shouldn’t be acceptable.

Q134 Steve McCabe: Can I just check, do you have a background in mental health care yourself?

Matilda MacAttram: My background is in journalism.

Q135 Steve McCabe: I just wondered. Thank you. I want to just go back to the psychiatric hospital where the police in riot gear are being called in. If we had the consultants or the nurses before us today and I asked them why that was happening, what would be their explanation? Would they say they had lost control or they were scared for their own safety? What explanation is offered for this?

Matilda MacAttram: Well, if they have lost control—I can’t really speak for the practitioners and the service providers, because I cannot understand in what situation you would need law enforcement agents—then it is an issue of training, because the people who are admitted to medium and secure psychiatric settings are people who have an understanding need a certain type of care that might be quite intensive, so the staffing at all levels should be able to be skilled enough to deal with that.

Steve McCabe: Yes, I understand that. I was just curious to know what explanation you would offer.

Matilda MacAttram: Yes, I suppose loss of control, but law enforcement agencies are not the answer.

Q136 Steve McCabe: Can I just ask finally about the IPCC itself? If you were recommending how it should change the way it operates, what would you suggest it should do? 

Matilda MacAttram: Well, concerns around complaints is one thing, because when people who have used the services would like to raise a complaint, maybe about being tasered—there is one reference to a service user who was handcuffed and in a cage who was tasered, and because of the time limits in which somebody needs to make a complaint, the fact is that he was firstly detained, and so couldn’t, and then secondly was not in a position to until he received support meant that he could not. So the complaints procedure when it comes to this group is inaccessible. Another recommendation would be that the investigation of deaths needs to have at least the same scrutiny in health care settings as it does in prisons and police. I know there are questions over that, but the fact that 62% of people who lose their lives in the care of the state are people who have been detained under the Act means there needs to be more scrutiny in this area, and there just is not at the moment.

Steve McCabe: Okay, thank you.

Q137 Nicola Blackwood: I accept a lot of your argument, and I understand your concerns about inappropriate restraint. I am just slightly curious about your position about how restraint is never appropriate. If you have an individual who has gone off their meds for whatever reason—that does happen—and is psychotic and dangerous, perhaps has a weapon and is in the community or is perhaps presenting for the first time as psychotic and so has not come to the attention of the mental health community before, are you saying that it would never be appropriate to restrain that individual?

Matilda MacAttram: Well, I think somebody armed—

Nicola Blackwood: Because there are accepted safe forms of restraint that do not harm the individual, and it is as much for that person’s protection so they do not injure someone at a psychotic moment and then have to live with that. Surely—I am just wondering. I think I misunderstood.

Matilda MacAttram: No, I think it is a very good point, and I think if somebody is armed with a weapon, then it becomes an issue of their safety and the public safety. If somebody, regardless of their mental state, has a weapon, then it is an area of criminality. Black Mental Health UK’s position is vulnerable people are routinely being restrained; it is almost like part of the experience.

Nicola Blackwood: When they are not presenting a risk, are you saying?

Matilda MacAttram: Well, that is just the culture of the way this group are treated, and our position is, given what we know about the impact of that, the trauma that restraint has, there has to be another way of dealing with this vulnerable group. Right now, people might not see it, but our position has to be, if we are going to advocate for this voiceless group, that restraint is not appropriate. If somebody is armed, that is completely different; they need to be disarmed. But if somebody is psychotic, then our position would be invest more time in de-escalation, because we do know that these sorts of treatment are leading long-term to loss of life.

Nicola Blackwood: Okay. That is clearer. Thank you, I appreciate that.
Q138 Chair: At Sean Rigg’s inquest, a number of professionals came forward to give evidence and they said that the reforms had taken place and things were better, and if it happened again it perhaps would not have been in the same circumstances, but there have been other cases. You mentioned Kingsley Burrell-Brown, Colin Holt, Olaseni Lewis and others. Do you think that the reforms have made a difference?

Matilda MacAttram: If the reforms had made a difference when Sean Rigg had died, Olaseni Lewis would not have died. We know that, because it is the same health provider, and if the commitments that reforms had been put in place since Sean Rigg’s inquest were a reality, then I don’t think riot police would have been called to South London and Maudsley NHS Trust this month, and this is what has been raised with us. So these providers are very large, they are very powerful and their PR machine is very effective, and what Black Mental Health UK are very keen to do is to see really robust scrutiny on what is being said so that it becomes a reality for the people who use the services.

Q139 Chair: One final question, and it is a yes or no answer; if you do not know the case, obviously do say that you do not. In Parliament last week there was a debate on the case of Azelle Rodney. Do you have an opinion on whether intercept evidence should be used in coroners’ courts in respect of deaths in police custody?

Matilda MacAttram: Yes.

Chair: Probably the briefest answer we have had today. We are very grateful. Thank you very much, and again, if there is other information, the inquiry will be going on for a number of weeks, please write to us. The Clerks will take anything you have in writing, and we will add it to our evidence. Thank you very much indeed.

Matilda MacAttram: Thank you.
Tuesday 6 November 2012

Members present:
Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Michael Ellis
Dr Julian Huppert

Steve McCabe
Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witnesses

Witnesses: Chief Superintendent Derek Barnett, President, the Police Superintendents’ Association of England & Wales, and Paul McKeever, Police Federation, gave evidence.

Q140 Chair: Our witnesses are Chief Superintendent Barnett and Paul McKeever in our inquiry into the Independent Police Complaints Commission. Mr McKeever, Mr Barnett, please accept the apologies of this Committee, we are also conducting an inquiry into child grooming and our last two witnesses provided us with fertile opportunities to ask questions. The relationship, you very much feel?
If I can start with a general question. The Committee, as you know, is looking at the IPCC. Some suggest that the IPCC should be abolished, others believe it should be reformed. There are complaints being made by those who have made complaints to the IPCC, and I know from anecdotal evidence that police officers are not particularly happy with some of the workings of the IPCC. If I can start with you, Mr McKeever, what is wrong, why is this not working? Why do some police officers not have confidence in what was a new organisation designed to deal with police complaints?
Paul McKeever: Can I first thank the Committee for inviting us along here, Chairman, and having the opportunity to speak about the IPCC? You have said a number of things in your opening address there. We are very supportive of having an Independent Police Complaints Commission of some sort. We know that the nomenclature is important, but as long as there is an independent complaints commission of some sort in existence, we are content with that. Before its conception, we were one of the strongest voices in the policing family that said that we should have an independent investigative complaints process in the police service. We think it is vital important in a free and democratic society that that is the case, that there is independent scrutiny of the police service. We have probably the IPCC investigations are appropriate and proportionate, but there are occasions when we are dissatisfied. We have done work with the IPCC in the past—we have had joint communiqués as well, which reflects a successful relationship, too. We are also aware of the fact there have been complaints from complainants and people who represent complainants. So the fact that both we, as the representatives of the officers who have been complained about, and those who are making the complaints, on occasions have reservations about the effectiveness of the investigations being carried out, means that probably they are getting it about right most of the time. That said, there are some instances where we are concerned about the length of investigations in particular, and the way some of the investigations are carried out. We also have concerns about some of the press statements that have been released in the past, although they have improved greatly. I have to say, credit where credit is due, they have improved greatly in the last year.
Q141 Chair: Can you tell us how many of your members are currently being investigated? Do you have a figure? Would somebody have a figure like that?
Paul McKeever: I would guess the IPCC would be able to assist you there, Chairman. I don’t have that figure because it is very fractured, there are 43 forces and we would have to get the evidence from them.
Q142 Chair: Would they come to the federation to seek assistance?
Paul McKeever: Almost certainly they would. They would come to the federation and they would speak to us on a force by force basis. But the IPCC will investigate a very small proportion of the total number of complaints against police officers, which runs to allegations—about 60,000 a year; complaints—30,000. The vast majority of those will be investigated in house by internal complaints investigation officers. It is also worth bearing in mind that many of those investigators within the IPCC, because of the skills required, have served in police forces as well.
Q143 Chair: Yes, we are going to come onto that in a second. Mr Barnett, what about your members? What is their concern about the way in which the IPCC has developed? You clearly support the idea of a complaints organisation, but do you have any concerns about the way in which it has been operating?
Chief Superintendent Barnett: Well, yes, we do support a complaints commission. I will not repeat everything that Paul said, but I share what Paul has said. However, I think it is important to emphasise that, certainly as an association representing the senior operational leaders of the service, we believe that we have a police service that is admired worldwide, generally believed to be ethical and overwhelmingly free from corruption. So it is important in terms of public confidence, but also to strengthen the
legitimacy of policing, that we have a body such as the IPCC. If we did not have the IPCC, I guess we would have to invent something similar. But in terms of our overall support for the IPCC, I think they do a very important job. I think, overall, they do it very well, but you have mentioned some of the things, for example, delays in investigation, and we have concerns about whether the IPCC is properly resourced to do the job that Parliament expected of it.

Q144 Chair: Yes, if I could ask you about that. I was surprised to note that the commission has fewer staff than the directorate of professional standards of the Metropolitan Police Service, which seems to have an awful lot of people working for it. Did you know that?

Chief Superintendent Barnett: I didn’t, but I think if you look at the history of the IPCC, the intention was that it would always be an organisation that would investigate the serious end of police conduct. I don’t think it is resourced sufficiently to be able to undertake the level of independent investigations that is required. I think it is important that, if you have a level of serious matters that require investigation, the determining factor should be the seriousness and not the resources of the investigating commission.

Chair: That is something we feel strongly about as well.

Q145 Chair: I am just looking at some figures here: 7,000 appeals each year from the public, 8,500 allegations of corruption, 837 people being referred to the commission, and the commission only investigated 21 of the most serious cases. Even though whenever you see it in the media, someone is always off to the IPCC, in fact the numbers are quite small, are they not, in terms of the actual investigations?

Chief Superintendent Barnett: Yes. My understanding was around about 100 a year and the intention—

Chair: Do you know how many of your members are currently being investigated?

Chief Superintendent Barnett: We are a relatively small organisation compared with Paul’s so, yes, I know those members who are what we would declare at risk. But that does not necessarily mean that they are being investigated by the commission. It is a relatively small number for our members.

Q146 Chair: When your members come to you if there has been a complaint to the IPCC, the views of some of the families of the victims are that the police cannot co-operate with and complete investigations? Because as you said, Mr McKeever, some of these go on for a very, very long time.

Paul McKeever: Indeed. Most investigators will know that you have a pretty good picture of what you are investigating within the first two or three weeks, and one of the concerns that has been expressed, not just by us but by others, is that there seems to be perhaps a longer period of time than is necessary on occasions to decide whether somebody is going to be a suspect or a witness in a case. We are professional witnesses, we expect to have to co-operate with any investigation at all, but one of the problems that occurs in terms of getting that evidence into the investigator’s domain is deciding whether an officer is a witness or a suspect. There is a very clear differentiation between the two and something we are very guarded about for a number of different reasons. That is one of the problems we encounter because if you can have best evidence from officers, you should get it at the earliest stage possible, not wait four or six weeks down the line. Get that captured as soon as you can and when it is appropriate to do so, because it is not always best to get it immediately after an event. In some serious instances, where people are traumatised, it is better to take it two or three days or even two or three weeks. That is something we feel strongly about as well.

Q147 Chair: The shadow Home Secretary has called for the abolition of the IPCC and for a completely new body to be created. Would you support that or would you think that this body needs to be reformed, or is what she is asking for basically the same thing—a reform of the organisation?

Chief Superintendent Barnett: We have been consistently in favour of the new college of policing. One of the things about the college of policing is that policing policy and practice and procedure should be based on evidence. What we would ask is, “Where is the evidence that the IPCC is failing to the extent that you need to create a new body?” Then, of course, there is the cost of creating a new body as well. It is important, and in our written evidence we have made the case that, over time, the mission of the IPCC has grown from being a police complaints commission to being one that now includes the HMRC, UK Border Agency—and soon, the new police and crime commissioners. So there is an issue about the name of the IPCC, whether it reflects what they do. It is mission creep—and the issues we talked about, delays and resources—means they are taking on an increasingly large workload.

Q148 Chair: The shadow Home Secretary is asking for, and it is something that would welcome the one that now includes the HMRC, UK Border Agency—and soon, the new police and crime commissioners. So there is an issue about the name of the IPCC, whether it reflects what they do. It is very important when you are dealing with any organisation to get the name right. If there is a change of name, we would be quite content with that. If you are going to establish a new body and go through all the turmoil associated with that, we would have to see what is being proposed before we went down that route. It took an awful long time to get an Independent Police Complaints Commission set up in its present form. Yes, there are some wrinkles and problems there, but, personally, I would be reluctant to throw the baby out with the bathwater without knowing what the shadow Home Secretary, Yvette Cooper, is saying.

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very fact that the press will say, “This has been referred to the Independent Police Complaints Commission” implies that somehow there is some fault in policing so there is a very strong issue for me about the name of the IPCC.

Q150 Michael Ellis: Can I just say, Mr Barnett, that I agree with what you said about the police service? I think it is admired worldwide. It has very high ethical standards and sometimes is unfairly criticised both in the press and by politicians. I am concerned about delays, and there are clearly lengthy delays. Justice delayed is justice denied—that applies to criminal defendants as it applies to others. What are the reasons for these delays and do you think they are justifiable? In some cases, no doubt they are, but generally speaking should it take a year or more to investigate somebody?

Chief Superintendent Barnett: In an ideal world, it should not. Not all the matters under investigation by the IPCC take that long, but a good proportion of them do.

Michael Ellis: Some of them do.

Chief Superintendent Barnett: Partly it is down to resources, but I also acknowledge that many of the issues they are looking at are very complex and, in the same way that justice delayed is justice denied, if we were to rush the process unnecessarily, you may end up with an equally flawed outcome.

Q151 Michael Ellis: We would not want them rushing the processes but do you think there is room for speeding these things up and still getting a just result?

Chief Superintendent Barnett: Yes, I do.

Q152 Michael Ellis: Can you think of a way in which these things could be sped up? Surely it is not just a question of throwing money at it, is it? There are ways of improving things without throwing money at them.

Chief Superintendent Barnett: I do not claim to be an expert about the internal workings of the IPCC.

Q153 Michael Ellis: Mr McKeever, do you have any suggestions? You have seen it working.

Paul McKeever: Management of cases. There is no point in setting targets for yourself and then failing to meet those targets. If there is a fundamental problem within the system, then address that. I do not think there is a major problem there.

Michael Ellis: No.

Paul McKeever: You have to look at the individual cases perhaps and decide what went wrong there and learn the lessons from it. What I wouldn’t want to see is setting up another organisation that scrutinised the IPCC because we have to stop somewhere.

Michael Ellis: Who guards the guards?

Paul McKeever: Exactly. I know, and we go on and on.

Michael Ellis: Then who guards the guards who are guarding the guards? It would never end.

Paul McKeever: Absolutely.

Chief Superintendent Barnett: Can I just come back to Mr Ellis, please? One of the things that may improve matters later this month is the Police Reform and Social Responsibility Act, which will change the nature of some of the complaints, the way they are recorded and dealt with.

Q154 Mr Ellis: Do you think that will help?

Chief Superintendent Barnett: That may take some of the workload out of the system, yes.

Mr Ellis: Thank you.

Q155 Mr Winnick: As a lifelong trade unionist I can hardly criticise any organisation that acts as a trade union and I do not intend to do so. What do you say, Mr McKeever, because this is basically the criticism of the Police Federation rather than your organisation, Mr Barnett—that it is a trade union in all but name, that it is very sensitive to any form of criticism, that it has a particular firm of solicitors, not in itself wrong, but nevertheless it does not hesitate to use those solicitors? You may be aware of an article very recently by a former Chair of a Home Affairs Committee that made these points. Unfair points, Mr McKeever?

Paul McKeever: Are you talking about Mr Mullin?

Chair: Yes, not about me.

Paul McKeever: Indeed.

Mr Winnick: He has had one or two disputes with the police, yes.

Paul McKeever: I understand that. I read the article very carefully myself, as you would expect.

Mr Winnick: Yes.

Paul McKeever: A lot of the criticism is historical and I would hope that we have moved on from perhaps some of the positions that he talks about. I don’t know the detail of what happened back in the 1980s, where he was writing from. I think that some of the criticism was unfair.

Q156 Mr Winnick: Is it unfair to look upon the Police Federation as a trade union in all but name?

Paul McKeever: We were set up especially by Act of Parliament not to be a trade union.

Q157 Mr Winnick: Yes, exactly and you can’t go on strike because of the legislation in 1919. It comes back to my question; the criticism, if it is a criticism, it would not necessarily come from me—or the accusation, whichever word one wants to use—that it is in fact a trade union in all but name in so far as the legislation—

Paul McKeever: We have been compared by others with a trade union. We do not see ourselves in that way. We try to influence and negotiate rather than take any form of direct action, which we cannot do. In terms of defending representatives of the Police Federation, that is part of our role and again it is determined by regulation. It is by Act of Parliament within the parameters in which we work, and we adhere to those very rigorously, yes.

Q158 Mr Winnick: In answer to the Chair, you said that you wanted to have a discussion with the shadow Home Secretary over possible changes to the organisation looking into complaints against the police, the IPCC. What does that mean in English?
Paul McKeever: I have heard that she wants to change the IPCC and some of the processes within it, but until I have the opportunity to speak to her face to face, I don’t know exactly what it is that she is proposing, and the form that she sees any future organisation taking. It is hard to comment, not knowing some of the factors that are in that equation.

Q159 Mr Winnick: You believe it is the role of the Police Federation to have discussions about what organisation could be established by Parliament to look into the police?

Paul McKeever: It is for others to decide what the final shape of that organisation should be. It would be highly improper for us to decide how we should be investigated. That is not our role at all.

Q160 Mr Winnick: Is that not a danger of what you just said?

Paul McKeever: I do not think so, no because we are not seeking to try and shape anything that she would intend to introduce at a later stage. It is incumbent upon me as the chairman of my organisation to know what that shape is going to be so that I can inform myself about any future recommendations that are put in place, which are going to affect all police officers whom I represent. That is where I would see myself coming from.

Q161 Mr Winnick: Mr McKeever, I should make it clear I have no criticism of yourself. You have carried out your duties as the chair of the federation but I am probing about the federation itself, as I am sure you understand. Can I just ask you this question about the IPCC? No doubt this is the reason that Yvette Cooper has some thoughts on the matter. There is a good deal of criticism about the organisation looking into the police; that it is inadequate, that it does not do the job that it should do, that it is very slow. Moreover, the point that has been made when witnesses have appeared before us is that some of the most senior investigators are former senior police officers so inevitably there seems to be a feeling that former police officers are investigating their former colleagues.

Paul McKeever: That is a conundrum we can’t get around because if you are going to look at who is qualified to become a senior investigator, there is a very limited pool. By the very nature of policing, most of the senior investigators—the best investigators in the country—are going to be within the police service, so that is where you are going to draw your staff from. In an ideal world, you would say, “Yes, let’s have other people”. Where are we going to draw them from? It is a practical problem that we face in terms of getting that independence. They are working for the IPCC and they are not working for the police any longer.

Chief Superintendent Barnett: May I just come in on that one, please? First, a little bit of context. It is my understanding that there are approximately 30,000 complaints a year set against over 10 million 999 calls to the police service. It is important to put it in that context. The most recent survey that I have seen shows that 85% of the public had confidence in the police complaints process. So, again, the world we work in, in terms of policing—and inevitably, if you are going to investigate the police, that means that sometimes people, for whatever reason, are going to be dissatisfied with the service they have had or the outcome of their investigation—it is important sometimes to keep the context. When we criticise the IPCC, again, I suggest that we look at the evidence rather than sometimes some of the anecdotes.

Q162 Mr Winnick: One final question, Mr McKeever, again with apologies, Mr Barnett. What is the morale among police officers at the moment?

Paul McKeever: It is absolutely dreadful. I was at my home station yesterday and I was accosted by a number of different officers, who were bitterly upset by what has been happening in the policing world over the last few years. That was completely unsolicited, it was officers approaching me. In terms of the general feeling across the country, people are still going out there and doing the job because that is the nature of policing. There are two sides to this. Are we going out there and trying to do the job? Yes, we are. Are people feeling happy and content with the world and the police service? No, they are not. That distinction is lost sometimes when you listen to somebody like Sir Hugh Orde, the President of the Association of Chief Police Officers. He will always say, “Look, police officers always complain and always moan like they do in the Army, The Army do the same but they still get on and do the job” but the reality is no, the morale is extremely low at the moment. It is not just me saying that, you have only to go around police stations and people will approach you. If you are known to come from the senior echelons of the federation, they will accost you and complain about their lot. That has never happened in the past.

Q163 Mr Clappison: Just very briefly, I have a question for Mr McKeever. The police have to be answerable for their actions. It is in the nature of their work and their responsibilities that sometimes people are going to be dissatisfied with the response they get to complaints and also people have been known to make false complaints against the police.

Paul McKeever: Absolutely, yes.

Mr Clappison: Is this something that you think should be reflected in the organisation or the complaints system? Is it something that your members look to you for representation on and is it a factor
that you think we should have in the background of our minds.

**Paul McKeever:** I do and I welcome that question very much. When I was a police officer, I received a number of complaints in the early part of my career and it was because I was getting stuck in and doing the job that I was expected to do. Some of the people who had been upset by my actions were some of the people you would want to be upset perhaps by having strong intervention from a police officer. Look at the type of the people we are dealing with on a daily basis: they are some of the most difficult individuals in society very often.

By the very nature of the job, you are going to get complaints and each year when the number of police complaints is published, I often do interviews and people will not come under the remit of IPCC officers had three complaints in a year” and I say, “Yes, unfortunately they are the sort of officers you would probably want to police your community because they are upsetting some of the criminals out there and trying to do their job”. Clearly there are officers who are doing things that are wrong and inappropriate and that has to be addressed but having served in South London for most of my career and received complaints, I know what the nature of the complaints system can be. The vast majority of those complaints were not upheld.

**Q164 Bridget Phillipson:** In terms of the outsourcing of police services, are there people working in the delivery of police services today who would not come under the remit of IPCC investigations? Do you have any concerns or risks about further outsourcing and the role of the IPCC in relation to those?

**Paul McKeever:** Yes, we have to recognise that, first and foremost, the public have to have trust and confidence in those who are dealing with them with the backbone of those police officers policing the support worker or whatever, and that goes right across the whole policing landscape. If we are going to maintain that confidence, as I said at the start, we have to have independent investigation of what we do. That is right and appropriate in a free and democratic country. It is one of the pillars of society to have a police service that people feel they can talk to and feel it is right and proper, if we are going to have outsourced services in the police, that those people working within those outsourced services, and their supervisors and managers, are also held to account in a similar way.

**Chief Superintendent Barnett:** When a body such as the IPCC is investigating matters within policing, the evidence will take them elsewhere than policing. It is important that the investigators in the IPCC are allowed to follow that evidence to wherever it takes them and to whatever organisation. That includes people who are involved in policing from the private sector but also other bodies. It is important that the IPCC has the ability to make recommendations that agencies other than the police should take due regard. I do not think that is the case now, so, as an association, we would be calling for the IPCC to have the power, very similar to the rule 43 that coroners have, where they can make recommendations to other agencies—other bodies that would be expected to comply with those recommendations. It is bringing it within the remit of the IPCC—first, those people who are involved in policing, wherever they may sit, but also then to be able to follow up with significant recommendations.

**Q165 Bridget Phillipson:** Just returning to complaints about police officers. Do you think there is room for improvement in how police forces deal with complaints before we get to the stage of the IPCC?

**Chief Superintendent Barnett:** I use the analogy of going into a large store or bank or whatever, where perhaps you have not had very good service, and bear in mind that, of those complaints that are received about policing, about 50% of them are about civility and courteousness and timeliness. Quite often, all you are seeking to do is get a first line supervisor to say, “That was not very good—we will try and put that right and make it better”. The problem we have is that we build in a bureaucracy that leads complainants into a position where they are trapped in a system, when all they want is someone to come to them and say, “Sorry”. The legislation coming into effect this month may reduce the number of those—what I would call—wasted investigations. It certainly should not be the case that people are coming into a police station to make a comment and are being chased out the door, “Will you give me your name, address, date of birth and ethnicity?” when simply all they want is a very quick resolution and a sorry.

**Q166 Bridget Phillipson:** That is an important point and obviously we have touched on the fact that police officers are often criticised when things go wrong and do not always get praise when it is due, when situations are handled well. I appreciate for the individual officer that receiving that kind of criticism or what might be viewed as a complaint can be difficult if they feel they have handled a situation well. However, I am not particularly confident at the moment that police forces deal with those lower level complaints, perhaps around the issues you have talked about, and when they are not addressed people are then frustrated, but clearly they would not take an issue of that minor nature to the IPCC, it would not be appropriate to do so.

**Paul McKeever:** One of my concerns is very real. I understand the problems that forces are facing around the country with reduced budgets and the like. I know my own home force, the Metropolitan, is potentially going to be looking to reduce a lot of the line supervisors, sergeants, inspectors to try to concentrate on the constable numbers and keep those up. I understand that—I understand the dynamic within which a commissioner has to work within, but it means you are not going to have that intrusive supervision. You are not going to have the supervision whereby somebody can come in and deal with a complainant, perhaps as actively as they can at the moment. We might lose something if we are not careful in terms of somebody having redress immediately from a supervisor and resolving the problem quickly in a human way rather than a
bureaucratic way. When we put the bureaucracy in place, as Derek says, you lose the human touch because you become more focused on getting the form filling correct rather than dealing with the individual. That is something we have to keep.

Q167 Bridget Phillipson: Of course most people do not necessarily want a formal procedure. They just want to know that their comments have been taken on board, that it will not happen again, that they have been listened to.

Paul McKeever: Absolutely. That is correct, yes.

Chief Superintendent Barnett: It is important just to recognise that for two consecutive years now, the number of complaints has fallen and part of that may be that the police service has recognised that that customer service type work is necessary to reduce those numbers of unnecessary lower level complaints about the releasing of information and explaining to people why police officers have acted in a certain way. I think there is some good news in there.

Bridget Phillipson: Thank you.

Q168 Mr Ellis: I want to say something that I think might surprise you, Mr McKeever, gentlemen. I think trade unions are very valuable and worthwhile organisations. They have achieved a lot over the course of decades, they serve a proper purpose and I support their continued existence. The Police Federation is, in all but name, effectively a trade union organisation— is that not fair? I realise that you can’t strike, but other than that it is effectively a trade union organisation and can be quite a hostile one, can’t it?

Paul McKeever: The Police Federation is not a trade union. We cannot be a member of the Trades Union Congress. We have some of the structures in place that are similar to a union, but that is outside our control, sir.

Q169 Mr Ellis: So, you would say that it is not just a question of nomenclature. It is not just the name. You are not a trade union because you are not a trade union, you are effectively very different from a trade union organisation?

Paul McKeever: If you look at why we were set up in the first place, we were set up back in 1919 not to be a trade union. The reason for that was very good, because Europe was in revolt, revolution was taking place and they did not want the police going on strike.

Mr Ellis: And there had been a police strike before 1919.

Paul McKeever: There had been a police strike, and a police union had been formed then, so we were set up not to be a union and we do not have the same provisions as unions.

Q170 Mr Ellis: On the issue of alternatives possibly to the IPCC, and I am not saying you are suggesting there should be one, I want to look for a moment at the professional standards department because they are staffed by members of the Police Federation as well, aren’t they?

Paul McKeever: They are, sir, yes.

Q171 Mr Ellis: Is this a conflict for you?

Paul McKeever: It is not a conflict because as a police officer you are a member of the Police Federation by Act of Parliament.

Q172 Mr Ellis: Yes, even if you are a member of a professional standards department that is examining misconduct or failure in standards in other police officers?

Paul McKeever: If you are looking for conflicts of interest in terms of the investigation, which I do not think are there, having experienced internal complaints investigations myself, like most police officers, there is a very clear delineation between those who are working within professional standards and those who are being investigated. That is understood and respected in the service throughout every force that I have been to, but we are all police officers and that is where our first loyalty is. It is not to the Police Federation: people do not go around thinking, “I am a Police Federation member” every day of their lives. They do not. They are very proud to be police officers.

Q173 Mr Ellis: Their first loyalty is to the Crown, is it not?

Paul McKeever: Absolutely.

Mr Ellis: Quite right.

Paul McKeever: First loyalty to the Crown and that gives us our independence and the independence of operation, too.

Q174 Mr Ellis: Rightly so. Thank you. Finally from me, do you think that police professional standards departments always treat officers fairly? Do you think there are examples of unfairness or that the system as it currently exists can be unfair? Mr Barnett, if you could answer as well.

Paul McKeever: Generally, I think professional standards operate in a very objective way; they try to get things right. There are occasions, and I have been subject to that myself, where things go wrong, but they are the exception rather than the rule.

Chief Superintendent Barnett: In answer to the question, “Is there a conflict of interest I do not think so. Not as a member of the Police Federation. I do not believe they are in any way, shape or form like a trade union at all. There is a fundamental difference between a trade union and the—

Q175 Mr Ellis: Do you say the same thing about the Police Superintendents Association?

Chief Superintendent Barnett: Absolutely, but at a completely different level. I do not think the accusation of being a trade union—

Mr Ellis: I did not put it as an accusation; I merely put it as a question. Accusation implies something that is wrong. I prefaced my remarks by saying, “I support trade unions” I would not take Mr Winnick’s position of never criticising them, no matter what.

Mr Winnick: That is not fair. Mr Ellis should be very careful what he says.

Mr Ellis: Okay.

Chair: Order. Could we get back to the IPCC? This is getting far too jolly.
**Chief Superintendent Barnett:** I do think that the contrary may be true, that professional standards overwhelmingly behave in a way that you would expect. There are occasions where I think they may be zealous to the point of acting in the public interest. Rather than conflict of interest that they are not robust, I think they would err on the side of robustness.

**Mr Ellis:** That is just as relevant an issue, being overzealous. It is just as relevant an issue as being under—

**Chair:** Thank you so much, Mr Ellis, we are most grateful.

**Q176 Steve McCabe:** Presumably both of you would distinguish between poor performance and professional misconduct?

**Steve McCabe:** Are you satisfied that the IPCC does when it is dealing with your members?

**Paul McKeever:** That is an important question. There are occasions where there is a confusion between the two. They are very different indeed and we have to get that right and make sure that they are dealt with appropriately. Again, it is an individual case by case basis, you have to look at them from that perspective but, yes, I think that happens. In force as well—let us not keep it just to the IPCC. Occasionally in force, supervisors sometimes get it wrong, too, so it is a difficult area to deal with.

**Chief Superintendent Barnett:** I think you have to look back. When the Taylor report brought in the current misconduct regulations, the ethos there was separating what is bad and clearly either criminal or bad, and what is either human error or poor performance. The ethos was, “Let’s separate the two, but also try to work on the basis of improving it for the public, which is learning and development”. Most of the time, both the IPCC and the professional standards departments get it right, but there are a small number of occasions when it is not right. It would be wrong to give you personal examples here, but we could give you some anonymous case studies if that would be useful to the Committee.

**Chair:** Please, that would be very helpful.

**Chief Superintendent Barnett:** There is a relatively small number. I have to say, but we could give you examples where people have been subject to gross misconduct, where their employment may be at risk, which we think is disproportionate to the circumstances. I am very happy to give that to the Committee.

**Steve McCabe:** I think that would be very helpful. Can I just ask one other thing? I noticed that the group INQUEST said in their evidence that there would be far greater public confidence in the IPCC if their procedures were modelled on those that the police use themselves. So, for example, taking control and securing a crime scene, interviewing people in the same way that the police do when they have people whom they think might be pertinent to their inquiries.

Would you support that sort of approach?

**Paul McKeever:** There is something in what INQUEST says. We are the experts in the area as police officers and that is probably why there are so many police officers in the IPCC as well. It is important that you do secure scenes, you do use the gold marker very effectively to the best of your ability. There may be something in what they say.

**Chief Superintendent Barnett:** There is an issue about pragmatism and practicalities here that, to be able to do that, you have to do it instantaneously in many cases, and the first people to do that are the people who are on the ground, unless you have a standing organisation that has people waiting to go to what is, I have to say, a relatively rare occasion. So the theory and the idea behind that are very laudable. The practicalities of that are not realistic.

**Steve McCabe:** Thank you.

**Q178 Chair:** What do you say about the view that some very senior officers are escaping censure by the IPCC because they retire before an adjudication and therefore the investigation stops? I am talking at chief constable level. Do you find that there is a worry among your members that the higher you go, the more you can escape proper censure?

**Paul McKeever:** I do not know. It would only be me making assumptions on my behalf of the IPCC. In terms of what is happening at the moment, I understand there are 10 senior officers who are suspended.

**Chair:** Yes.

**Paul McKeever:** There is something happening there that is being dealt with. In terms of the most serious matters, if there is a criminal element, that will carry on. In terms of disciplinary matters, that will clearly stop, but for the moment it is up to each police authority from what I understand.

**Q179 Chair:** Does that happen to your members too, if they cease to be police officers, the investigation stops unless it is criminal?

**Paul McKeever:** In terms of complaints, the complaint would stop but if there was a criminal matter that would continue.

**Chair:** Right.

**Paul McKeever:** Yes, almost certainly.

**Chief Superintendent Barnett:** If I may, if the issue is serious enough to warrant criminal investigation, they cannot escape criminal investigation. If you are then looking for some sort of sanction, go back to the Taylor ethos—are you trying to put something right or are you trying to find somebody to blame and to publicly be held to account? There is a difference between the two.

**Q180 Mark Reckless:** I was previously a member of the Kent Police Authority and we used to try to ensure that the complaints system operated in the public interest by having one or two members every month dip sample the complaints in the professional standards department. We would assess those, then we would feed back whether we felt they were being dealt with appropriately. By the time I ended my involvement in that process, I felt that they were looked at appropriately. I wonder whether either of you feel there may be a role for the directly elected police and crime commissioners in oversight of police complaints, both at the local level but also potentially...
through the IPCC or a reformed institution that might replace the IPCC?

Chief Superintendent Barnett: The IPCC research would probably show this: one of the key determinants of whether it is an effective complaints system is leadership at the top of the service. So if the individual chief constable believes it important, then that oversight is better. As a BCU commander or as a chief superintendent, I would have made it my job to make sure that local complaints are dealt with effectively and appropriately. There is an issue of that local leadership, and I have no doubt at all that the role of the PCC will be vital in replacing the Police Authority. I cannot see a police and crime commissioner who would not want to take an interest in their local resolution of complaints. It is that personal leadership and example that they offer.

Q181 Mark Reckless: I understand the role you would have taken as a BCU commander or that a chief constable could lead it in this area but, rightly or wrongly, there may always be a certain scepticism from the public as to whether a senior police officer would necessarily be balanced and equidistant between the public, the complainants and the police. I just wondered whether by virtue of being an elected figure, the police and crime commissioner might be better able to oversee the process, even if all that may be required is simply explaining to the public that things are being done properly.

Chief Superintendent Barnett: Exactly. My understanding is that is enshrined in the legislation. That is the role of the police and crime commissioner.

Q182 Mark Reckless: With regards to the IPCC or at a national level, could you see scope for PCCs taking a role there?

Chief Superintendent Barnett: I must admit it is not a line of thought that I have developed. I would probably need perhaps to understand a little bit more of your thinking about that. I think at the moment that the IPCC do conduct themselves very professionally. There is an issue about resources, but they certainly do it through paperwork, we do it on a face to face basis. When somebody comes into contact with the police, the complainants and the police. I just wondered whether by virtue of being an elected figure, the police and crime commissioner might be better able to oversee the process, even if all that may be required is simply explaining to the public that things are being done properly.

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Q183 Mark Reckless: Mr McKeever, could I put that question to you as well?

Paul McKeever: I concur very much with what Chief Superintendent Barnett has said. There may be a role, and I am very reluctant to comment about PCCs at all in the run-up to the elections anyway—we are trying to stay out of that arena. I can see that there might be some difficulties as well, so it has to be judged very carefully to make sure that it is done in an appropriate fashion. They are the elected official and I am sure they are going to want to have some input into relations with the local populace, so that is part of it.

Q184 Mark Reckless: We have another new body on the horizon, the college of policing.

Paul McKeever: Yes.

Mark Reckless: Could that potentially have a role in the complaints landscape?

Paul McKeever: Yes. What we have to be very careful about is making sure we get a clear delineation between all these new bodies that are coming into place, with the PCCs, the college of policing, the new HMI who has come into office as well. Where does the oversight and review of some of the processes and the outcomes take place? Where does that create change in the future as a recommendation for change? We do not think it should be with the IPCC. They can highlight and recommend but we do not think they should have the policy making power. That should be with the PCC or with the HMIC to recommend, and perhaps for Parliament as well if it is a more serious matter.

It should not be with the IPCC in terms of their powers. Certainly they could recommend, but not change. That would not be a good road to go down because they become less independent then, they are part of the policy making machinery and that would be wrong. In terms of the delineation, the change processes should be within the college of policing, perhaps with recommendations from HMI as well but not the IPCC.

Chief Superintendent Barnett: Just on the college of policing, I have huge optimism that the college will be a force for good in policing.

Q185 Chair: Are you all involved in the formation of the college? Will you all be sitting on the board?

Chief Superintendent Barnett: Yes, we have been and we will have a place on the board of the college.

Chair: Good.

Chief Superintendent Barnett: One of my hopes for the college is that it will deal with those things about recruitment, training, ethics of the police service in developing and enhancing that, but there is also a role in setting standards as well. So what I would see is the IPCC making recommendations, whether they be rule 43 recommendations or simply recommendations, that the college will build into their approved professional practice. I do think the college will play a huge role in that.

Q186 Chair: Could I ask for your quick views on whether mediation could be used before a complaint gets to the IPCC? The Committee is going to hear evidence later this year from those who are mediators. Would that help?

Paul McKeever: Anything that improves confidence in policing and the police service would be welcome. If perhaps there was a pilot to be run we would be willing to look at that. It comes down to this human element, doesn’t it? In everyday life when we deal with our friends, our colleagues, our family, we do not do it through paperwork, we do it on a face to face basis. When somebody comes into contact with the police and they are not content with what has happened, the last thing you want to do is go through a bureaucratic process. So if we could have some mediation to assist, whether it is at local level or further up the scale, surely that must help, I would think.

Chief Superintendent Barnett: Again, let us see the evidence. The evidence tells us in restorative justice that, when you have that, the victims are more
satisfied and more content. Likewise, it probably improves the behaviour of the criminal. If you apply the same principles to complaints, our experience would tend to be when you put the police officer or the member of staff with a complainant, that conversation, even if they agree to disagree, leaves them with a lot better feeling that they have been listened to and their matter resolved.

Q187 Chair: In respect of those who refer to the IPCC for breaches, for example, of PACE—I know you are dealing with the Steve Fulcher case at the moment—do you have any concerns about the need to look at PACE again after 28 years to see how it can be improved?

Chief Superintendent Barnett: You will understand why I would not talk really about the case you mention but I would invite the Committee to look back at the Police and Criminal Evidence Act and why we have it. My view as a police officer of nearly 35 years and as a detective officer at the time that the Police and Criminal Evidence Act was brought in, is that it is one of the greatest safeguards that the public have against misuse of police powers. I would caution greatly anybody suggesting that somehow the Police and Criminal Evidence Act should be watered down or diluted. It is a great safeguard for the public and the legitimacy of what we do. I have to say, as a detective at the time, it brought in one of the best safeguards I had as a professional investigator because it just set down very clear guidelines and a code of what was acceptable and not acceptable. That is absolutely clear to everybody involved in the criminal justice system.

Q188 Chair: Mr McKeever, you are making your last appearance before this Committee in your capacity as Chairman of the Police Federation. You have touched on a number of changes over the last three years. I was with you, as you know, at your conference this year, and can I first of all thank you for the way in which the federation has dealt with this Committee? For the first time, you have invited us to attend your annual conference and you have engaged with us in a very positive way. It helps us make our recommendations to Parliament and this has happened under your leadership.

One of the points that the Home Secretary made at the conference was about the need for an independent review of police integrity, whatever that means. I want to ask you what you think that means. Going back to the conference was about the need for an independent review of police integrity, whatever that means. I want to ask you what you think that means. Going back to the conference was about the need for an independent review of police integrity, whatever that means. I want to ask you what you think that means. Going back to the conference was about the need for an independent review of police integrity, whatever that means. I want to ask you what you think that means. Going back to the conference was about the need for an independent review of police integrity, whatever that means. I want to ask you what you think that means. Going back to the conference was about the need for an independent review of police integrity, whatever that means. I want to ask you what you think that means. Going back to the conference was about the need for an independent review of police integrity, whatever that means. I want to ask you what you think that means.

Chair: And changed and abolished and reformed.

Paul McKeever: Changed as well and that is happening. I do not see anything wrong in looking at any institution and whether it is behaving in a proper way or not, but it has to be done on evidence, and I have not seen a great deal of evidence to suggest that the police service is in a parlous state that needs to fundamentally address integrity issues. The vast majority of police officers I know are people of the highest integrity, professionalism and honesty, and they are people who I am extremely proud to work with. The same is true in most of the organisations that are under great scrutiny and review at the moment, whether it is Parliament or elsewhere—we know that, but it seems to be the flavour of the moment. In any society, you go through these times and I think we are part of that.

Q189 Chair: How would you sum up your three years now that you have come to the end of your three years in office?

Paul McKeever: Sad to go. I am extremely proud to be a British police officer. One of the proudest boasts I think anybody can have within the United Kingdom is to say that they have served as a British police officer. It is something that is respected around the world. When I travel, in a limited fashion, people know what it means to be a British Bobby. They know and understand that we are different. We do not carry guns, we police by consent and that is something that is recognised elsewhere. So to have had the huge privilege of being the Chairman of the Police Federation of England and Wales for almost five years by the time I retire is something I will remember forever and it is something I am very proud of.

Q190 Chair: On behalf of the Committee, I thank you for all the work that you have done with us. You have been an outstanding leader for your members and can I wish you well for the future, the best of luck.

Paul McKeever: Thank you very much, Chairman.

Q191 Chair: Thank you, Mr McKeever. Thank you, Mr Barnett, you are still with us, you are not going anywhere, I understand.
Chief Superintendent Barnett: No—this will be my last appearance as well.

Chair: Oh, Mr Barnett, I am sorry. What is going on?

Chief Superintendent Barnett: Unless you invite me back to repeat some of my evidence.

Q192 Chair: Can I reiterate and thank you? Sorry, I did not realise that. Thank you for all the work that you have done with this Committee. Whenever we have asked your association to give evidence, you have been extremely helpful. We have attended your conference as well and perhaps I can give you a couple of words. How would you sum up what has happened over the last few years?

Chief Superintendent Barnett: We have seen a huge amount of change under the banner of reform these last two years. Some of it we welcome and some of it obviously we do not. In terms of morale, I think morale is a strange concept and will change from day to day but there is no doubt at all that there is a sense within the police service of being undervalued at the moment. One of the great things about leadership is to have a workforce that will deliver change for you in the future. You have to value them and they have to know that they are valued. It is not just about the words, it is about the tone and the language. I would say that the police service is still a wonderfully committed and talented organisation, dedicated to serving the public, but policing needs to be brought in from the cold if I could describe it like that. In the same way that we have had health summits and business summits at No. 10, I really do think it is an opportunity to bring all sides of policing, whether they be politicians, elected members, professional staff associations, in from the cold. Reform is so much better when it is done with the workforce rather than against it. My plea to anybody is you have a service that is very desperate to serve the public.

Chair: Thank you very much. You, too, have been an outstanding leader for your members. I thank you both and wish you both the best of luck. Thank you.

Paul McKeever: Thank you.

Chief Superintendent Barnett: Thank you.
Tuesday 13 November 2012

Members present:
Keith Vaz (Chair)
Mr James Clappison  
Michael Ellis  
Dr Julian Huppert  
Steve McCabe  
Mark Reckless  
Mr David Winnick

Examination of Witnesses

Witnesses: Keir Starmer QC, Director of Public Prosecutions, and Nazir Afzal OBE, Chief Crown Prosecutor, North West Area, gave evidence.

Q193 Chair: I refer everyone present to the Register of Members’ Interests where the interests of members of the Committee are noted, and welcome the Director of Public Prosecutions and Mr Afzal. This first session relates partly to our inquiry on child grooming but also to our inquiry and our monitoring of the situation post-Hillsborough. We will then take evidence from other witnesses after that.

May I start with you, Mr Starmer? Thank you for coming in. I know it has been difficult to arrange diaries, but we are most grateful to you for coming, and Mr Afzal. I want to start with child grooming, the work that the CPS is doing and the statement that you made on 24 October that the CPS had failed grooming victims. That is a very serious statement from the Director of Public Prosecutions. How did you fail the victims of child grooming?

Keir Starmer: I think that was the headline rather than my words, but the point I was trying to make was this, and it was not restricted to the Crown Prosecution Service. It was the police, the Crown Prosecution Service and, to some extent, the courts as well. What I was driving at was this, and I think this is for us the single biggest challenge when it comes to grooming. The tests of reliability and credibility that the police, prosecutors and courts traditionally use for witnesses and victims do not work for young children subject to systematic abuse. In any case, a prosecutor has to reach a decision on whether or not there is a realistic prospect of conviction. There are a number of tests for that, which are in cases, such as when the person came forward, whether they have been consistent, whether they have given one account and not deviated from it, whether there is other supporting evidence, in sexual offences whether they have gone back to the perpetrator, etc. There are also issues relating to drink and drugs. These are obviously useful tests for any prosecutor. The problem, I think, when it comes to grooming is that whenever those tests are applied to this category of victim, you would almost invariably get the wrong results when you are assessing credibility and reliability. One of the things we did in light of the Rochdale ultimately successful prosecution was to walk through the decision making from start to finish, from when the case first came to us, and then after that to gather together other cases we have throughout the organisation.

Q194 Chair: We will come on to that in a minute, but what concerns me is the fact that clearly for years there have been victims of child grooming. This has involved the CPS, the police and social services, yet, for example, if you look at this year, before you made your announcement and before you appointed Mr Afzal—something that I welcome in respect of the action you have taken—there were no prosecutions for child grooming in South Yorkshire, for example, in the whole of this year. That is a pretty big indictment of the way in which these matters are conducted, though we know because we read about the victims and the Committee has heard evidence from others that this is going on. Mr Afzal himself in the statements that he has made has said that this is going on, but at the end of the day there have been no prosecutions.

Keir Starmer: No, I understand the concern. What we have tried to do is to walk through our decisions and to front up to where there have been problems in the past and to make sure that we are in a position to deal with them now. Part of the problem is a lot of the evidence that I think has been given to this Committee is evidence that has been collated other than by the police. There is then the evidence that the police have put together, and then there is the evidence they have passed to us. What has tended to happen in the past is that the police have presented a few cases to us but as individual cases. Our prosecutors then assessed those individual cases using the tests that I have just described and concluded that in the particular case the reliability and credibility of the witness is such that there is not a realistic prospect of a conviction. Now, that is because they have applied these traditional tests. The challenge for us—so when you look at it in that way, you can see why that could happen.

Q195 Chair: But it may well be the case that in terms of what has happened in the past there are cases where, had they not applied the tests that you were mentioning, people ought to have been prosecuted.

Keir Starmer: Well, that may be and it may not be. I mean, the—

Q196 Chair: Well, you will not know until you look at those files, will you?

Keir Starmer: No, because—having articulated the tests that, as it were, should not be applied, there is a much bigger challenge, which is if you do not apply the usual tests of credibility and reliability, what is your test of whether you are going to be able to succeed in this particular case? If you put on one side inconsistency, you put on one side late complaint, and you put on one side going back to the perpetrator, you
put on one side that they may have been under the influence, put on one side they may have told inconsistencies in other accounts—which I do understand, and we have to do that; that is our challenge—there is then an even bigger challenge: what are you going to put in its place if you are now going not to over-steer and simply prosecute every case where any allegation is ever made?

Q197 Chair: Of course. But what is going to happen to those past cases?

Keir Starmer: Can I just come to that? Part of our analysis is that the key here for us is to ask the police, when we see an isolated case, what the surrounding cases are, so that we can make the links, etc. That is the process that is going on.

Q198 Chair: Sure. We will come to Mr Afzal in a second, but what are we going to do about the past cases that we have not been able to prosecute for the reasons that you very articulate and eloquently tell the Committee today? What about all those that have gone by the way?

Keir Starmer: Well, what we do, in areas such as the North West what the police are doing is actively engaging in a review of the decisions they have made in the past and we are part of that review with them, so we are looking at those decisions again.

Q199 Chair: All the cases?

Keir Starmer: Well, I am not sure it is all of the cases, but they have an approach that they have agreed as to what they will reinvestigate, because this has to start, in a sense, with the police. What we need to do is to make sure that an arrangement like that is replicated around the country so that we can go through the exercise that you rightly say needs to be gone through, which is to look at cases that have historically come to us as one-offs and see whether there are links. I think in the main it will require us to ask the police to do further work, but part of our responsibility is to say to the police there is more work that needs to be done here.

Q200 Chair: I understand that. Mr Afzal, you have now been appointed to this new post to head this network. You have been very vocal in the past about the importance of prosecuting those responsible. How are you now going to take this forward? How do you see it being different from what has been happening in the past?

Nazir Afzal: Chair, when I have given evidence before to this Committee on honour-based violence and forced marriage, I have always talked about the fact that where you have hidden criminality, as we have discovered clearly in relation to child sexual exploitation, the answer is to look, the answer is to begin to believe, the answer is to build very strong cases and preferably without relying entirely upon the victim, which is what we have had to do particularly in Rochdale. The network is in addition to my day job—I remain Chief Prosecutor for the North West—but it is about ensuring that there are specialist prosecutors throughout the country who understand, as the Director just said a moment ago, the specific dynamics about these types of crimes in order to assist the police locally about what they should be looking for in order to build stronger cases and in order to take those cases to court. I have publicly said we made mistakes in relation to the way Rochdale was dealt with back in—

Q201 Chair: “We”, the CPS, or is it the network of organisations?

Nazir Afzal: Oh, absolutely, I think the evidence you have taken from every agency suggests that there were gaps, if that is a kind word, in the way that organisations have been dealing with it, whether it was local authorities or those charged with safeguarding or police, even prosecutors in this particular instance. I think that one of the things that we have learnt, one of the bits of learning, is about connecting the dots—that somebody somewhere has information. Previously, I think the Director made the point that that information is held tightly by a particular organisation and not shared more widely. What we would like to be able to do is, using the multi-agency approach that we have, ensure that people think about what that information could be and if it is added to something else that somebody else holds. What we are doing in the North West, which I can speak for, because I think that is now good practice based on our experience following Rochdale, is ensuring that we actively work with the police in identifying cases that can be strengthened and can be taken forward. You may have seen last week nine new defendants were charged just in Rochdale in relation to a new alleged network. I have something like 28 defendants just in the North West, who are already charged and being proceeded with in relation to this type of activity. You heard from Greater Manchester Police when they gave evidence that we are talking now of dozens of alleged victims and dozens of alleged suspects, and that is because we are looking.

Q202 Mr Winnick: Mr Afzal, what puzzles, I would imagine, my colleagues on this Committee but certainly myself is simply this. Until you arrived on the scene and decided to take action in Rochdale, despite all that was going on—and there was sufficient evidence, I would have thought, of these vile practices, sordid and sick, which have shocked the country, not only in Rochdale—no action was taken. What made you decide there was sufficient evidence that would stand up in a court of law?

Nazir Afzal: Firstly, I am not going to take the credit for this. Operation Retriever took place before my time in Derbyshire. There has been some good practice throughout the country and in understanding of this type of behaviour. What happened in the Rochdale case was that evidently a new investigative team, you heard from the Greater Manchester Police, were instructed to look at the circumstances around the particular victims that we were dealing with. They identified that there was a ringleader who had not been prosecuted, and they quite rightly brought it to our attention. I decided to look at the case and instructed one of my very senior and very experienced lawyers, Fran Gough, to look at it in great detail. As a result of what she came up with, it was, to use a phrase, a
no-brainer on my part to be able to say that there was, in fact, sufficient evidence. Again, the Director’s point, on its own maybe there was not, but you link it up with other bits of information being held by different other agencies or by the police themselves, and it becomes a case that has some robustness about it. By reversing a decision that was taken, as you now know, in 2009, which was in my view and the view of everybody now wrong, it enabled us to maintain, I think, public confidence in being able to take this forward. What the Director has tasked me with is to ensure that whatever good practice we have developed around Rochdale and the child sexual exploitation in the North West is rolled out and used everywhere. But let’s be clear about this. This happens everywhere. It may well come in different forms. The vast majority of it takes place with white males being involved, but the point is recognising that there was a particular issue, it was one that we had to address, and we are now being seen to address it.

Q203 Mr Winnick: Do you think that in Rochdale— we know it goes on elsewhere, we know there is no particular group that has a monopoly in this vile and sick practice, we know that only too well, but do you think in Rochdale the ring has been broken?

Nazir Afzal: That particular ring has been. As I said, we have just charged another nine people from Rochdale.

Q204 Mr Winnick: Perhaps I should not use the word “ring”: I should have used “activity”.

Nazir Afzal: This activity is going on and continues to go on. Bizarrely, I was driving through a certain part of the north of England and I could see it with my own eyes. I am no policeman—

Q205 Chair: You could see what with your own eyes?

Nazir Afzal: I could see grown men with young girls who clearly were not their daughters in a situation or a particular situation that caused me concern, and I actually did something with that information. The point is, I think there is a responsibility on all of us. When I first went to Rochdale, which was bizarrely after these convictions, people were saying, “Nazir, do you want a team of whistleblowers?” No, I want the members of the community, as they are now doing, providing information, providing intelligence, which enables the police to build strong cases, which enables us to build strong cases. I think that there is a lot of good, bizarre, that has come out of perhaps the poor performance there was initially in Rochdale across all agencies. That good is something we want to ensure that everybody has.

Q206 Steve McCabe: I was interested in the point you were making there about maybe the need for specialist prosecutors and this requirement to link things up that people in different agencies seem to miss. Are you suggesting that there should be a slightly enhanced investigative role for prosecutors in these kinds of cases, perhaps a bit closer to the Procurator Fiscal system in Scotland? I am not trying to sell that idea, but I am interested that one of the persistent features of these cases seems to be the way different agencies do not connect the threads, and that seems to be a central point of your argument.

Keir Starmer: I would deal with that across the organisation because one of the things we have worked on in the last four years a lot is our violence against women and girls strategy. We have put in place specialist prosecutors. We have rape and serious sexual assault units in each of our areas, and you can only be in that unit if you have had specialist training because we realised that we needed that for ourselves. We have also tried to encourage the police to come to us early so that although we have no power of direction over them, we can ask them to look at certain lines of investigation rather than waiting, as happened, in fact, in the Rochdale case, to the very end of the police investigation. At the end of perhaps a single allegation the file comes to us months after the event. If they come early and we do our job properly, then I think that is a recipe for better success in the future. Part of the point of the network then is that while we have 13 teams of specialists across the country, what I want to make sure is that the journey that the North West has been through and the lessons that we have learnt with them are learnt simultaneously by all of our teams. What I now expect is if there is a team in Derby, Nottingham, wherever it is, that has a case, through that network they share experience with the team that has just succeeded in Rochdale, so that we are as joined up as we can be as an organisation. I accept that that was not the situation a number of years ago, but they are some of the steps we have taken to try to put that right now.

Q207 Chair: There are now a number of different inquiries into child sex abuse. There is the North Wales inquiry, as you know. There is another inquiry into North Wales. There is the Savile inquiry, which is called Yewtree. Sorry, what is the name of the Metropolitan Police inquiry? I have forgotten.

Keir Starmer: I think it is Yewtree.

Q208 Chair: It is Yewtree. You have your own inquiries up in Rochdale, then there is Rotherham and South Yorkshire. Do you think there is now a case for an overarching inquiry that will bring together all these various strands? Because the problem might be each one of these will report separately. There may be duplication but the worst part of it all is at the end of it there would be a need to bring all these various strands together. Is it perhaps time, as Mr Gamble said this morning, that you should actually have one inquiry encompassing all these different child sex abuse allegations?

Keir Starmer: I recognise there may be a case for an overarching inquiry for all the reasons that you have articulated. So far as we are concerned, the only issue really is timing. I am hoping that our review of the decisions on Jimmy Savile will not take much longer. We are now working with the North Wales team. I can see the case for an overarching inquiry at some stage to pull all of the strands together and to ensure that all of the findings are put in one place and all the best practice is brought together for everybody to share.
Q209 Chair: When would you like to see that happen? Because at the moment everyone has started their various inquiries, and there seems to be no co-ordination. I accept what you said about the CPS. You are co-ordinating good practice through your appointment of Mr Afzal to do this, but other agencies do not seem to be co-ordinating things. The National Crime Agency is there, but it is just looking at North Wales.

Keir Starmer: Yes. I am not sure about the timing. What I want to do is to ensure that we have reviewed our decisions in the Jimmy Savile case sooner rather than later, and we are pushing on with that. I hope that I—

Q210 Chair: Before Christmas?

Keir Starmer: Yes, I would hope to be able to report on that. Once I have that review, it will give me a better sense of what went on in that case. Obviously, we are working with the NCA and the North Wales Police on the inquiry there. We started the scoping work last week in a meeting with them. I just need to take stock of that, but I do accept the points you make about an overarching inquiry.

Q211 Chair: A final question on child grooming, before we turn to Hillsborough: are there any changes to court procedure that would make it easier for the CPS to prosecute cases of local grooming?

Keir Starmer: I am not sure it is procedure. We have special measures that we can apply for in these cases, but there is an issue, which is assuming we make the right decision about prosecution and assuming the case, therefore, starts, it is extremely difficult in practice to keep the victims and witnesses on board for the prosecution. It was a struggle in the North West and it is a struggle in all the other cases, because most of these youngsters do not trust the authorities, they do not think they are going to deliver for them, and we are constantly battling to keep them on board so that the challenge is not so much what happens in the courtroom; the challenge for us is, can we get from charge to getting into the court door and hold the case together for that period? There is a huge amount of support that has to go on in that period of time to ensure that the cases do reach court. When they get to court, we do have special measures. There are issues that the court itself is concerned with through special measures and other techniques, which is the extent to which all victims, but particularly children, are sometimes put through the ordeal again when it comes to the way in which they give their evidence. There can be many days of cross-examination. One of the other features of these cases that we cannot leave out of account is that it is quite likely you will be dealing with a victim who has previously made allegations, whether to police or to social services, which may not be found to have been true. Because of the rules of evidence now, all of that can be explored in court as well. I would not say to this Committee there is a procedure we would like to see changed, but I would like the Committee to appreciate that even where we have managed to get enough evidence to charge, that journey from charge to court door is a very difficult one for us.

Q212 Chair: That is very helpful. Yes, Mr Afzal?

Nazir Afzal: Just on that point, I have never known victims who require as much support as victims of child sexual exploitation. One of the young ladies in Rochdale said, “I’m a tramp, why should anybody believe me?” We had to build her self-esteem and her confidence, never mind provide her with the bespoke witness care that we did. I think that we should not underestimate the amount of effort that we have to put in to keep them with us.

Q213 Chair: Indeed, and actually a question I ought to have put to you, which I put to other witnesses, and other members of the Committee have, over the issue of the race of those involved: do you think that there is a racial element to this? It has been said it is groups of Pakistani men and young white girls, and that is where the exploitation happens. What is your take on that?

Nazir Afzal: From my perspective, it is an issue but not the issue. The issue here is predators preying on the most vulnerable in our society. They just happen to be from a particular ethnicity. What is little known is just in the Rochdale case the so-called ringleader was subsequently prosecuted successfully for raping an Asian woman. Similarly, only last week a white man, John Tatton, was prosecuted for sexual offences against one of the victims in the Rochdale case. So you have a white man, you have an Asian female, you have a white female—it is much more complex than people would like to think it is. From my perspective, we just need to have a better and richer picture, really, in order for us to make some judgments on it.

Q214 Chair: That is very helpful. Let us now move to Hillsborough. As if you did not have enough on your plate at DPP, you now have Hillsborough.

Keir Starmer: Good to prep for two different topics.

Chair: We are not conducting an inquiry; we are monitoring outcomes. We had the families in here to see us and they were very, very firm on this. They believed that there was a possibility that people would lose track, following the excellent statement of the Prime Minister, the Home Secretary and others following the publication of Hillsborough, on trying to find out who is responsible. They came to us and suggested that you as the DPP should have overall responsibility for co-ordinating all the activities post-Hillsborough; in other words, not having another inquiry but getting on with looking at the 450,000 pages of the report and prosecuting those responsible. Is this a job that you want to take on?

Keir Starmer: Well, there are a number of independent players in all this, and it simply is not possible for any single individual such as myself to take on that role, not least because I do not have a power of direction over some of the other bodies. What I think is very important is that it is as co-ordinated as it possibly can be and that we collectively deliver for the families something that has not been delivered for them for many years. We all have an obligation to work very closely together. Because a number of the investigators in the end will come to us for prosecutorial decisions, it puts us in a position
where we can in the loosest sense of the word co-ordinate some of what is going on, but we cannot and should not replace the independent decision makers in those independent bodies.

One of the reasons we took the action we did, which was to say at the outset we will review the available material, is because what I did not want to happen was the various investigations to take place, at the end of that exercise different files to be submitted to us by different bodies and at that stage we would then review. What I thought we at least owed the families now was for us to say, contrary to the usual approach, we will do the review up front so that we can now help the investigators by identifying what we think are the gaps, if there are any, and advise as to where investigations might go.

**Q215 Chair:** That all sounds very sensible. However, there is a lack of co-ordination, is there not? The Home Secretary has written to this Committee. She does have certain powers to appoint a special prosecutor. We have no history in this country of having a person who can co-ordinate after an event of this kind.

**Keir Starmer:** I do not think she has power to appoint a special prosecutor. What we have to do here—

**Q216 Chair:** What does she have the power to do if she wants to get better co-ordination?

**Keir Starmer:** Well, I think the important thing at the moment is to identify what areas need to be investigated, and it seems to me—

**Q217 Chair:** Who is doing that?

**Keir Starmer:** Well, there is a team that are working away, are meeting—

**Q218 Chair:** Your team?

**Keir Starmer:** Yes, we go to meetings regularly to co-ordinate on this issue. We have had a number of meetings already and we have a number of meetings coming up. What we are trying to identify there is what needs to be investigated, who is going to investigate, how are we going to lock the thing together, not to trespass on independent decision making, to make sure that we are all locked together in this.

**Q219 Chair:** Who chairs that meeting?

**Keir Starmer:** Well, I think it varies. Some of the meetings have been chaired at the Home Office. I think there is a meeting coming up that we are convening, but contrary perhaps to the way people think we might be operating, I do not think there is any great sense that anyone wants to determine who is going to chair. We all recognise we have to play our part.

**Q220 Chair:** I asked that because there are different independent agencies. Nobody wants to step on each other’s toes. Is it Stephen Rimmer at the Home Office? Is it the Home Secretary? Who will be the ultimate person who will say, “This is not going fast enough. We are letting the families down for a second time. This needs to be done or that needs to be done”? You are saying you are not the person who can do that because that is not within your powers, so who does that?

**Keir Starmer:** Well, I am saying that my view is that the different bodies must get on with their tasks independently as they are required to do, but that we should co-ordinate and agree terms of reference, memoranda of understanding, sharing of information, etc., so that that is locked in together so that team A knows what team B is doing, and that if information is uncovered by one investigative team, another team know about it and that we as prosecutors know about it. The four areas that we are looking at are the layout and planning of the ground; the organisation on the day, including the club; the policing on the day; and the aftermath. Different bits will be looked at by different teams. That is the locking together and co-ordination. We are actually all working together hard on that.

**Chair:** I am sure.

**Keir Starmer:** There is then the question, should there be somebody outside of that who is at least able to ask that co-ordinated team how they are getting on? We are attending to that at the moment, thinking through what that body might be.

**Q221 Chair:** A body as opposed to an individual?

**Keir Starmer:** Well, I do not know whether it is body or individuals, but it obviously has to be something that we think is going to work, which does not—

**Q222 Chair:** So you are currently doing work to bring this all together?

**Keir Starmer:** It has to be something that we think will work for the purposes of the investigation and any possible prosecutions. It has to be something that does not trespass on the independence of the decision makers. It also has to be something, to my mind, that the families have confidence on. As you can imagine, there are a number of discussions going on to try to ensure that we can come up with something that fits all those criteria.

**Q223 Chair:** Is there a timetable for these discussions?

**Keir Starmer:** There is not a fixed timetable, but we are moving fast. We are having meetings probably every week just at the moment.

**Chair:** The is very helpful.

**Q224 Michael Ellis:** Director, clearly it is a massive undertaking, and I thank you for the work that you and your team have been doing on this so far. It is very important work, as no doubt you recognise. As the Prime Minister said, truth needs to be followed by justice. I am very concerned, as we all are, to have heard about police officers who were changing statements and deleting passages unhelpful to their case as they saw it. This is more than just collaboration, if true. This is actually perverting the course of justice, isn’t it?

**Keir Starmer:** Well, potentially it is and it is very serious, and I accept that. What I am going to avoid is saying too much about it because some of those
cases may end up on my desk for obvious reasons, but I do not resist the thrust of what you are saying.

**Q225 Michael Ellis:** Now, serving police officers clearly will be appalled, but does the IPCC have no role as far as former officers are concerned? Do you envisage any possibility that the IPCC could have a role if an individual has left and is no longer serving as a police officer, perhaps even for some years? Is there any way that the IPCC can provide information to you as the Director of Public Prosecutions to help you deliver justice for the Hillsborough families?

**Keir Starmer:** I think the finer points of the jurisdiction of the IPCC might be better for the IPCC, with respect, because I know they are obviously carefully looking into that. My own view is that whoever the investigator is, there needs to be this co-ordinated response. What we cannot do is leave unturned any stone that needs to be turned over simply because we do not have the right investigative team in place. That is my major concern, but as to their specific jurisdiction I think that is really a matter for them, if you do not mind.

**Q226 Michael Ellis:** You are focused on building the team that can deliver this mammoth undertaking, is that what you are saying?

**Keir Starmer:** Yes. I do not think it is fair for the victims in this to say that there is some reason why something that needs to be investigated cannot be investigated. We owe it collectively to the families to deliver that.

**Q227 Michael Ellis:** How best can that be delivered?

**Keir Starmer:** I think by us being clear as prosecutors as to the areas that we envisage might need investigation; hence the review of all the material so that we are clear. Take the football club or even some of the planning authorities, etc.: it seems to me that the IPCC would not have jurisdiction in relation to all of the potential defendants here. We need to assess the material, work out what it shows us at the moment, what other further lines of inquiry are possible, and we absolutely need to make sure that there is a body that has jurisdiction to investigate whatever needs to be investigated. That is our responsibility, and that is what I told the families.

**Q228 Michael Ellis:** Could you elaborate a little on timetable as far as that is concerned? I appreciate that you want to do this thoroughly; we would all support you in that. As I have said before on this Committee, justice delayed is justice denied, and so, with that in mind, how long are we talking about?

**Keir Starmer:** Well, I have put a team in place. We have identified the members of our team, and we have some of the material to that team. There is a huge amount of work—

**Michael Ellis:** There is.

**Keir Starmer:**—roughly speaking, 450,000 documents. We will work through that as swiftly as we can in co-operation with the investigators. Meanwhile and in parallel, there is the question of whether there will be new inquests, which the High Court will deal with hopefully sooner rather than later. What I want to do if at all possible is to make sure that by the time a coroner is identified, if appointed, I am in a position to have a meaningful conversation with him or her about the time-tabling from there on in. I see it in stages. It would not be sensible for me to put a rigid timetable round this, but you can take it from me we are working swiftly on this. I am conscious of the fact that it is incumbent on us to deliver as swiftly as we can given the delay there has been already.

**Q229 Michael Ellis:** Just finally from me, you are confident about the co-ordination element? There are a number of entities that will need to be co-ordinated, aren’t there; as you say, the coroner, the Crown Prosecution Service, others—

**Keir Starmer:** Yes, and I am doing as much as I can, along with others who are doing as much as they can, to make sure that it is co-ordinated and it is joined up, and there is a lot of goodwill there to make sure that it happens. We have to keep on at that and not just do it at the beginning and lose it 3, 6 or 9 months down the line. I am conscious of that, and that is a discussion I had with some of the families when I met them.

**Q230 Mark Reckless:** Mr Starmer, this Committee is trying to clarify who is doing this co-ordinating role and how far that can be done within the legislative regime. Lord Falconer gave evidence to us on 16 October, and I think he had had a meeting with you the previous day, Tuesday, 15 October. He said, “The Director of Public Prosecutions has to make the decision finally as to whether prosecutions are brought, but he can also have a co-ordinating role making sure that there is no overlap and no unnecessary delay.” He then went on to say, “The Director of Public Prosecutions was absolutely clear that if it required further investigation he will do it.”

Was Lord Falconer mistaken in telling us that?

**Keir Starmer:** I am not sure what he meant by further investigation. I was very clear with the families, and that is that we owe them a collective response, this must be co-ordinated, and we must all work as swiftly as we can to give them that co-ordinated response, and I stick by that. I am willing to play my part in that. Because in the end we will be the decision maker on any prosecutions, if we are involved early with all investigators it gives us the opportunity at least of having knowledge of the different investigations and being able to see across the piece in a way that perhaps others cannot. I do not think it allows me to trespass on other people’s independence, and I do not want to do so, but I do think that I must do all I can to play my part in co-ordinating this.

**Q231 Mark Reckless:** Mr Starmer, nothing I say is intended at all to be critical of you or the role that you have taken in this, and I think we all want to see justice as quickly as we possibly can for the Hillsborough families. It may be there are some issues of the current regime that may limit the co-ordination that is possible, which legislators may wish to look at. Could I just ask about another piece of evidence that we had from Lord Falconer? He said, “The IPCC is
considering whether or not they should bring criminal
charges”. Is that possible, or would it have to be you
who brought the criminal charges were that to	happen?

Keir Starmer: Well, in the end we would make the
decision but they take a prior decision, which is
whether there is enough evidence for criminal charges
to pass it across to us. They have a critical role in this,
and they, of course, can look much wider at
misconduct as well as criminal conduct. Their remit
is much wider than ours, which is another good reason
why it would not be appropriate for me to lead on
their issues. But if it comes to a prosecution
ultimately, we will have to decide as the CPS whether
to prosecute.

Q232 Mark Reckless: The timetabling of the
coroner’s reopening of the inquest relative to other
investigations or potential prosecutions: is that
entirely a decision for the coroner?

Keir Starmer: Well, assuming for a moment there is
a coroner appointed, the position then is—and this is
the general position—that if there is an investigation
going on, that does not necessarily hold up the inquest
procedure, but if there is a charging decision, that does
have implications under the statute and rules for
coroners. Usually, an inquest would then pause until
the determination of those charges. That is not
automatically the case, and that is one of the
conversations I think I would envisage having with
the coroner if we are at that stage. Again, I am very
conscious of the fact that the families, as far as I
understand, do not want things to go slowly because
one body is finishing off what they have to do before
another starts. So we have to tread carefully, but I do
not think an investigation is an inhibitor for the
inquest procedure continuing. If there is a charge, we
will have to have a conversation about that.

Q233 Mark Reckless: To the extent that it is possible
for there to be an overall co-ordinating role, is that
something that you will be taking on, or is the Home
Secretary taking that role or is anyone else; or is there
not really scope for such a co-ordinating role?

Keir Starmer: I do not think I am making myself
clear. The various bodies involved are already co-
ordinating. We have met a number of times and we
intend to meet in the near future. We are collectively
co-ordinating this. What we have not arrived at is a
final set of arrangements that are satisfactory to
everybody because they have to meet a number of
tests, if you like, not least, as I said, the confidence of
families. But we are working hard on that, and I do
not want, if I may, the Committee to be left with the
impression that we are not meeting and trying to put
together a co-ordinated set of arrangements,
respecting, as I say, the independence that has to be
respected but making sure that collectively we are
delivering a co-ordinated response.

Q234 Mark Reckless: A final question if I may.
Chair: if the result does take a substantial period of
time, longer than the families might wish, if you come
to any conclusions during that process as to the cause
of those delays or if you have any recommendations
as to the way the process might work better, would
you be able to report back to this Committee,
particularly to the extent that it is the legislative
provisions that may inevitably lead to issues with the
speed of this overall process?

Keir Starmer: If there are legislative issues, then of
course I am very anxious that we should make
progress as quickly as possible. If we hit insuperable
problems, then obviously I would happily report back
to this Committee. I would also want to do something
about it.

Q235 Dr Huppert: It is a pleasure having you give
evidence again, Mr Starmer. Just following up on that
last question, are you saying there is some possibility
that you might be asking for legislative change to
enable better investigation or prosecution? I assume
we are not talking about any retrospective criminal
offences, but are you saying there is some possibility
that structural legislative change would be needed?

Keir Starmer: No, I do not see it in that way at the
moment. I think that it is in many ways more simple
than that. We as prosecutors need to be clear as to the
likelihood of identity of offences and offenders, and we need
to ensure that there is an appropriate investigator for
each of those categories and that we can work in a co-
ordinated way. At the moment, from a prosecutorial
point of view, I have not identified any legislative
issues that we need to overcome. That is not to say
there could not be legislation that might smooth out
one or two bits of it, but at the moment I would be
very surprised if we could not put a co-ordinated set
of arrangements in place to deal with the extent of the
conduct that we need to look at. I can’t see any
inefficiencies, certainly not on us as the CPS.

Q236 Dr Huppert: Thank you very much. If I can
now move on to the general issue with the IPCC and
issues around the powers the IPCC ultimately has to
interview officers who were witnesses to events, you
will know that there have been a number of concerns
about that and officers not having to answer questions.
Do you think there has ever been a situation where a
witness to an event?

Keir Starmer: I do not think I am making myself
clear. The various bodies involved are already co-
ordinating. We have met a number of times and we
intend to meet in the near future. We are collectively
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to this Committee. I would also want to do something
about it.
other responsibilities. Would it be helpful if they were brought into the same remit? Would that help in ultimate prosecutions if they were in the same role and terms of the IPCC investigations of answering questions?

Keir Starmer: I am not sure. The fact that other bodies are investigated by other investigators does not inhibit a prosecution, but I can see that there is sense where some criminal justice functions are privatised and some are not but it is a team working together that it is sensible to look at all of the conduct in the round. I can see an advantage in it. I do not think it can be assumed that without it is impossible to make progress in these other cases, but I can see a case for a more co-ordinated approach.

Q238 Dr Huppert: That is very helpful. Just one last question if I may, Chair. In 2004, the IPCC agreed to liaise with the CPS at the earliest opportunity in the most serious cases, so that there could be a lawyer allocated and there could be consultation for advice. I believe you have recently agreed a new memorandum on exactly the same issue.

Keir Starmer: I hope the Committee have it.

Dr Huppert: I think we do have it. The question I was going to ask is: is the IPCC, in your view, doing everything possible it can to help you bring prosecutions?

Keir Starmer: Yes. Over the last two years we have worked really closely with the IPCC to learn lessons about the way we conduct ourselves. One of the issues we identified was early co-ordination when it comes to investigations and possible prosecutions. We put an MOU in place. We have practical guidance in place, and that works very well. We now get very early notification of cases.

Q239 Dr Huppert: So you are happy with everything the IPCC is doing to help you?

Keir Starmer: Well, there is an issue, which I know concerns the Committee, and that is why cases in particular relating to those who die in custody in the broadest sense do not succeed at court. I think it is quite important to drill down into those to understand what the nature of the problem is.

Chair: Can you give the Committee the figures? Because doing the best we can with the records we have, in the last 12 years we have charged 25 individuals plus the commissioner in the Stockwell case. When you break those down, four of those cases were for manslaughter. In the last 12 years there have been four manslaughter cases before our courts. Two of them were for positive acts, something that was done; that was a shooting in the Ashley case and a push in the Tomlinson case. Two were for failure to act, manslaughter by gross negligence, and that was a case involving victim Michelle Wood, and Dr El-Baroudy, who was prosecuted earlier this year. None were convicted. In the Ashley case the matter was withdrawn from the jury by the judge. In all the others the individuals were acquitted. The other 25 individuals that we have charged in that 12-year period were mainly for misconduct in public office, in one case health and safety at work, which usually included things like failure to carry out duties properly but not causative necessarily of death. One was convicted. One pleaded guilty to misconduct. The Commissioner was found guilty of a breach of health and safety at work provisions in the Stockwell case. All the others were either withdrawn by the court or acquitted. In a sense, the idea that no case has been brought is wrong. Can I go on, if it is helpful to the Committee, just to give you our analysis of what—

Q240 Chair: If you can do it as briefly as possible. We have other witnesses, and I know you have to be away.

Keir Starmer: I am happy to share it with the Committee in writing if that is more helpful.

Chair: That would be extremely helpful if you could do that. Thank you. David Winnick, do you have any follow-ups?

Q241 Mr Winnick: As far as death in police custody is concerned, you have given the information to my colleague. Just one point: there has been a development, has there not, in the Sean Rigg case? Would you like to give us details about that?

Keir Starmer: Well, I think it is right—

Q242 Chair: We do have the chair of the IPCC coming to give evidence immediately after you. Perhaps that is a better question for her, Mr Winnick.

Keir Starmer: I think it probably is in terms of where the current activity is.

Chair: Since it has not involved you in it?

Keir Starmer: Yes.

Chair: I am sure we can leave it to her.

Q243 Mr Winnick: The only point I would ask, Mr Starmer, is whether in fact it would have any relevance to other cases of death in custody.

Keir Starmer: Well, I simply do not know at this point. In a nutshell, the problems prosecuting the death in custody cases are these. You have to first identify what sort of a case it is. If it is a fatal shooting case, which some of them are, the basic charge for the police as prosecutors is that as currently set up our law of self-defence says you take the facts as the individual genuinely thought them to be, even if he is mistaken and even if his mistake is unreasonable. In order to prosecute a police officer for a fatal shooting successfully, we have to prove before a jury that he did not genuinely or honestly believe that it was necessary to open fire, not just that he was wrong to do so, or not just that he made a mistake. Now, that is a high hurdle. When it comes, very briefly, to restraint cases, a different category of cases, the biggest issue we face is that we cannot pool culpability. If four people are holding someone down, we cannot pool the culpability of all of them. There are issues. I will elaborate, if I may, in a letter.

Chair: If you could do that that would be very helpful. Just to say to colleagues that we are running about 20 minutes late and we have other witnesses who have been waiting. I know you will bear that in
mind. This is not a reflection on you at all, Mr Ellis, but you are next.

Q244 Michael Ellis: Well, having had that note, could I just ask you, then, Director, about your caseload and the investigation of serious cases? Looking at these: death in custody or following contact with the police, including shootings, nine cases; assaults, six cases; perjury, three cases; failure to investigate and falsifying records, two cases; and dangerous driving, two cases. How many of those cases involve chief constables, deputy chief constables and assistant chief constables?

Keir Starmer: I thought the Committee wanted to know about chief constables. If you give me all those ranks, I am going to have to go—

Q245 Michael Ellis: All the ACPO ranks those are.

Keir Starmer: If I may, can I—

Q246 Michael Ellis: Do you want to write to us?

Keir Starmer: I could tell you if it was chief constables, but with all the ranks, which I understand you want—

Q247 Michael Ellis: Tell us about the chief constables.

Keir Starmer: None of those involve chief constables. If you tell me, I will happily give you the other ranks when we have had the opportunity.

Michael Ellis: If you could, the ACPO ranks.

Chair: That was extraordinarily brief, Mr Ellis.

Q248 Chair: Maybe I can conclude with two very quick questions. First, you made a statement about prosecutions of those who go on Facebook and Twitter and the need for new legislation. I have to declare my interest, and I am sure those of Dr Huppert, Mr Reckless and others, as Twitter users. What exactly did you have in mind? Because there was a lot in the Twittersphere where people are obviously making allegations, and you have made a statement saying you think there ought to be new legislation to cover this; is that right?

Keir Starmer: No, I did not make a statement saying there should be new legislation. I made a statement saying that I need to issue guidance for prosecutors on the approach they should take to these cases, because section 127 of the Communications Act makes out an offence if a communication is grossly offensive. There are 340 million tweets a day, roughly speaking. There are now a billion Facebook subscribers, active users. If only a small percentage of those are grossly offensive, and looking at some of the cases I have looked at that may be an underestimate, there would be many, many cases coming before our courts, which might have quite a profound effect on free speech. What I want to do is to issue guidelines to prosecutors to help them through these difficult decisions.

Q249 Chair: Do you know when those guidelines will be forthcoming?

Keir Starmer: I am hoping in the next few weeks. We have had a number of roundtable discussions. We are working on them. I would hope before Christmas. We are doing quite a lot before Christmas, but I would hope before Christmas we will have those out of the way. But as you will have seen, there are cases coming almost on a daily basis now.

Q250 Michael Ellis: That is an unenviable task—guidelines on that subject.

Keir Starmer: It is not easy, but I don’t think I came into this job for an easy time.

Q251 Chair: You came into this job four years ago, and whenever you appear before the Committee—the last major time that you appeared before us was over phone-hacking—you seem to be going back and thinking and saying to the Committee, “We made mistakes. We should do things better.” This seems to be a feature of what has been happening in the CPS, though it has changed enormously over the last four years. In respect of what you are doing at the moment, do you have sufficient resources to do the huge amount of work that people now expect of the Crown Prosecution Service? It is not a quiet organisation as it was, say, 10 to 15 years ago. It is right there in the forefront of the public debate on the criminal justice system. You are doing Hillsborough. You are doing child abuse. You are doing guidelines for the internet and many, many other routine cases that never come before the Committee. Do you have enough resources and people to do all this?

Keir Starmer: Can I just deal with the first comment and put it in context? There are about 100,000 cases going through the Crown court year on year. There are about 900,000 defendants going through the magistrates court. We have responsibility in those cases to make a number of decisions. Assume for a moment there are only two or three critical decisions in every case. That is probably 2 million or 3 million decisions that my staff have to make year in, year out. Unlike almost any other public authority, every one of those decisions is fought over in court in an open, adversarial space. That does not happen to many public authorities. The conviction rate is extremely good. The guilty plea rate is extremely good. As you will have seen from some of the honour killing cases, we have been able to bring the most difficult and most sophisticated cases to trial. The Stephen Lawrence case is another example of that. Of course, within that scale of things there will be mistakes, and I would not sit here and say otherwise. I think it is only fair to my staff to say if you look at the nature of the beast and the scale of the undertaking, the mistakes are very rare compared with the very many successes.

Q252 Chair: That is very helpful. What about resources?

Keir Starmer: So far as the resources are concerned, we are in the middle of making savings over a four-year period. What is significant about the Crown Prosecution Service, something I am very proud of, is that on our indicators we are improving year on year notwithstanding the savings that we are making. That is not to say that if somebody offered me more resources to put into any part of the business I would not gladly take it, but we are, in fact, slowly but surely
improving notwithstanding the savings. That is a tribute to my staff.

Q253 Chair: The old stories about missing files are no longer making it to the papers. It seems to be a much smoother and more efficient organisation.

Keir Starmer: Well, I hope that reflects the more efficient organisation that we are now running, but we have put a huge amount into quality assurance in the last three or four years and the oversight arrangements within the organisation. With that volume, there will always be problems day in, day out, but I think and I hope there are fewer, and where they are I hope people have noticed that we are quicker and more honest and open that we have made a mistake and we act to put it right.

Chair: Excellent. Mr Starmer, Mr Afzal, thank you very much for coming. We are most grateful. Thank you.

Examination of Witness

Witness: Nick Hardwick, former Chair of the IPCC, gave evidence.

Q254 Chair: Thank you very much for coming in. I apologise for keeping you waiting, but obviously we had a number of questions for the DPP. We have called you in as part of our inquiry into the IPCC as a former chair of the IPCC, but we might have one or two questions about your position as Chief Inspector of Prisons, in particular in respect of the drugs inquiry that we have just concluded. Now that you have a bit of space between when you did the job and the job you are doing at the moment, there are calls for reform, abolition and changes. Generally speaking, are you happy with the way in which the IPCC developed during your time as the chairman, or do you think there should be changes to either powers or organisational structures? I am bearing in mind that your successor is sitting at the back of the committee room.

Nick Hardwick: My successor was a very good choice, if I may say so, Chairman. I do not say that to flatter, I was delighted when I heard that. We got the IPCC off the ground into the air and it flew, and when we started a lot of people did not think it would last more than a year. Clearly, I hope we have learnt from experience of things that now need to improve and could be done. The principle of independent investigation of the police is established, so I certainly do think that the range of reforms, most of which are set out in the IPCC submission, that we started talking about back in 2005—I checked with colleagues—now need to happen, and I think there is the appetite for making those reforms now that maybe was not present when I was there.

Q255 Chair: And strengthening the organisation, giving it more powers, more resources?

Nick Hardwick: More powers? Definitely. I will not repeat what is in the IPCC submission; I agree with those. More resources: certainly. What I will say, Chairman, and perhaps I can say as an outsider what may be difficult for them to say, is that there must be no half measures here. They need these powers quickly. We started calling for more powers years ago. If you are not careful, Anne will be through her term of office by the time they come in, so if you are going to give them more powers you need to get on with it. Also more resources: they should not be too modest about that; they need significantly more resources to deliver what the public is now asking for them to do. If they are doing it, the police are not doing it, and I would have thought they should have some of those resources, frankly.

Q256 Chair: Thank you. Now I am going to take you to one of the statements you made when you were chairman concerning the Jean Charles de Menezes case. To quote from you, “The death of Jean Charles de Menezes was a truly shocking event. An entirely innocent man on his way to work was shot and killed by armed police while he sat on a Tube train”. You call for a public debate and scrutiny on this whole issue of those who are involved in these activities. Do you think that the recommendations in that particular case and the recommendations that you have made during your term as chairman of the IPCC have been acted upon?

Nick Hardwick: Some of those recommendations arising specifically from the shooting of Jean Charles de Menezes have been achieved because of the degree of scrutiny and priority it got. You will remember, Chair, that the Commissioner of the Metropolitan Police tried to stop us doing that investigation. I did not think that should happen, and again we fought that off. So there has been real change there, but there is a problem with the way in which the IPCC’s recommendations are dealt with that has become very apparent in this job. I agree with the IPCC and others; there should be a statutory requirement on either the police and crime commissioner or on the chief constable to give a formal response to the IPCC’s recommendations, at least to make sure they have looked at them.

Certainly now, in my role as Chief Inspector of Prisons, we do follow up IPCC recommendations that have been made: before we go in and look at police custody, which we also inspect, we will check with the IPCC what they have said, what they have recommended and follow it up. But in other areas outside custody I do not know whether that has been done. So there is a mechanism now if the force or PCC had to respond to the IPCC recommendations, we and the other inspectorates would then be in a strong position to follow it up and see whether progress is being made.

Q257 Michael Ellis: Mr Hardwick, during your time as chair of the commission, did you experience any of the culture of police looking after the police? The
IPCC is an entity where police are effectively investigating police, is it not?

**Nick Hardwick:** No.

**Q258 Michael Ellis:** You disagree with that; ex-police officers?

**Nick Hardwick:** We had some former police officers who were on the IPCC staff, and they were about a third of the IPCC staff, but commissioners were responsible for the delivery of the cases.

**Q259 Michael Ellis:** There is a complete distinction and separation?

**Nick Hardwick:** No. I have thought about this a lot since I left. As I said, when we started the IPCC it was new and the model we had to take about how do you investigate these sorts of incidents came from this. So we took a policing model and some of what we were looking at was not exactly synonymous with what the police look at. As the IPCC has gained more experience it needs to develop more of its own methodology and doctrine. It is not just who you have but how you do it. It now should have the experience to develop more of its own doctrine and methodology.

**Q260 Michael Ellis:** It is difficult to see who else could police it anyway.

**Nick Hardwick:** The way I would do it, if I were back now, I would be saying, “Look, now we have some experience, now we have who we have on staff at the moment”—not, “Do we need police officers or should we have somebody else?” but, “What are the skills and competencies and experience we now need to add to the existing team for people to feel that we are meeting their concerns?” and we are—

**Q261 Michael Ellis:** What about in the course of investigations seeing examples of instances where police within a station or within a force area have acted in a way to protect their colleagues—those types of instances?

**Nick Hardwick:** You mean protect in a sense of protect from disciplinary or criminal action?

**Michael Ellis:** Yes.

**Nick Hardwick:** I certainly think there would be individual officers and that has happened on some occasions, and that should not—

**Q262 Michael Ellis:** To the level of obstruction, possibly?

**Nick Hardwick:** It certainly does happen, and, as we were saying, on the case of Hillsborough, where it happened most dramatically, that should be regarded as a criminal offence, I think.

**Q263 Michael Ellis:** Certainly, but more recent examples perhaps of chief officers who may have tried to discourage you from investigating or a quiet word. Can you give any examples of that? Does that happen?

**Nick Hardwick:** I can certainly give an example. As I mentioned before the Commissioner of the Metropolitan Police told us we were not going to be allowed to investigate the Stockwell investigation—

**Michael Ellis:** A former commissioner.

**Nick Hardwick:** A former commissioner, and that had to be resisted. I think in the end that was a significant factor in him losing his job, rightly so, and since then other chief constables have been less willing to have a go at us in that way.

**Michael Ellis:** Quite right. Thank you, Mr Hardwick.

**Q264 Mr Winnick:** You were, of course, chief executive to the Refugee Council for some eight years, and if I may say so highly regarded, Mr Hardwick.

**Nick Hardwick:** I was.

**Q265 Mr Winnick:** Let me put it to you like this, following on what Mr Ellis has said. If the organisation, the Refugee Council, had quite a number of former immigration officers, however much they would be people of integrity, would there not be just a feeling of suspicion?

**Nick Hardwick:** Yes, I see—

**Q266 Mr Winnick:** You take the point as regards the organisation we are now looking at?

**Nick Hardwick:** I do think of course that is true. I do not deny that is true and an issue. Certainly whenever I interviewed people obviously for the more senior roles and talked to senior police officers, one of the things I wanted them to understand was how they would be regarded and therefore how they would deal with those concerns. I would put to ex-police applicants what you have just put to me, pretty much. “This is how you will be seen. How are you going to deal with it? How do you respond to that?” If people were very defensive about that, then for me they were not up to the job. The individuals themselves had to recognise the concerns people would have and persuade me that they could deal with them when I was involved in interviewing them.

**Q267 Mr Winnick:** Is it your view that, whether it is the present organisation looking into the police or a replacement body—which is a possibility, I would imagine, being considered at some level or other—it would be impossible in effect for that present organisation or its replacement, unless it did have in its ranks quite a substantial number of former police officers?

**Nick Hardwick:** It would be very hard for a new one. The IPCC now should be in a position to develop its own staff and add to the people it has already from a wider pool than perhaps has happened in the past. Some of what you have to deal with are very practical things like the handling of evidence. You have a body to deal with sometimes. I have always thought it was difficult to see how you would manage without any police experience in doing it.

**Q268 Mr Winnick:** My final question, Chair; let me give you a figure. As of November last year, 8 out of 9 commissioned senior investigators and 38% of deputy senior investigators were ex-police officers. Do you think that is a rather high figure?

**Nick Hardwick:** To be fair, that is the same as it was in my time, and that is something that needs to change. We need to be bringing people up through the
ranks, as it were, from other backgrounds, and I do think that is an important thing to do. If I may say so, I think what is very important is that the newly appointed commissioners are active in operations. Part of how it works is you have a balance. You might say the senior investigator or the investigator might be a former police officer, but it is important that the family or who you are dealing with sees an active commissioner in charge making the relevant decisions and not speaking in the sense of the police language. There was a sense of it when I was there. One of the things I got wrong, if I may just say, is that commissioners had both a governance and an operational role. They were the board and they had roles in cases. The way we moved that was to reduce their operational role and make them more like a traditional board. If I had my time again, I would do it the other way around. I would take out their governance and board roles and give them a greater operational role in the active oversight of cases. I think that would be reassuring to families if they were clear that the person in charge of their case was somebody who by law could not be a police officer. We got off track a bit on that, I think.

Q269 Chair: Just following up from Mr Winnick’s question, what do you think a reasonable percentage should be? 8 out of 9 was the figure that he gave you. Should it be half, or less than half; a minority?

Nick Hardwick: It should move to the position where it is a minority, but the critical thing is that commissioners who by law cannot be a police officer should be seen to be actively in charge of the case.

Q270 Dr Huppert: The IPCC has announced an independent review of its work on the Sean Rigg case being run by Dr Silvia Casale. Do you think there needs to be a more formalised mechanism for returning to decisions in the light of new information?

Nick Hardwick: Yes, there should be two things. One is sometimes new information comes to light that could not have been known before and my understanding is that the IPCC could not then change its decision in some circumstances because they were quasi-judicial without a judicial review. That seems to me to be a nonsense and is something that needs to change. The appointment of Dr Casale is an excellent decision; I think she will be very well regarded. Again, I would suggest that one of the things the IPCC could do is in a sense almost build that into its processes so that an external review of the most high profile cases happens before it gets to the end. It would not be practical to do in every case, but having a fresh pair of eyes from outside the organisation coming in and looking at it rigorously would be healthy.

Q271 Dr Huppert: Just to go back to the question I was asking the Director of Public Prosecutions earlier, do you think it would be helpful to have powers for the IPCC to deal with private contractor firms doing custody and other similar roles?

Nick Hardwick: Yes.

Q272 Dr Huppert: You would like to see them more involved?

Nick Hardwick: In terms of the public, if it looks like a police officer, talks like a police officer, walks like a police officer, the IPCC should investigate it.

Dr Huppert: Fantastic; thank you.

Q273 Mark Reckless: Sean Rigg’s sister recently gave evidence to the Committee, and in response to a question I asked her she said that one thing that might give her confidence in the IPCC, which she certainly does not have currently, would be if the directly elected police and crime commissioners were, with their mandate, to take an oversight role in respect of the IPCC.

Nick Hardwick: The introduction of police and crime commissioners is a very good thing from the IPCC’s point of view, because some of the decisions or some of what people looked to the IPCC to do were in fact political questions that should have been decided by a politician. In overall questions about policing in a particular area there should be a police and crime commissioner to take those decisions and if the people do not like it they can vote him or her out rather than an unelected chair of a quango, which is what I was. It is better if it is more democratic than that.

Q274 Mark Reckless: You are suggesting that some activities that the IPCC is undertaking now or at least has in the past would better be done by them?

Nick Hardwick: For instance, the IPCC is now publishing complaints data about individual forces. I hope the police and crime commissioners will be looking at that data in detail and getting their chief constable in and saying, “Look, you are having more complaints,” or, “You are not recording,” or, “The IPCC is upholding more appeals against this force. What are you going to do about it?” I think that would be a good thing, and I would like to see the PCCs having a role in making sure that if forces do have to produce action plans in response to recommendations, they are delivering. It would be a good thing all round.

Q275 Mark Reckless: You suggested that the IPCC’s commissioners might better have the lead operational role in an investigation rather than having the governance focus. Could you then potentially look to the police and crime commissioners for that governance role?

Nick Hardwick: Well, no, I would separate out the board functions in the IPCC from the oversight of cases, and I think you need commissioners to have a greater degree of oversight of cases. There are some things that people looked to the IPCC to provide an answer on that were, it seemed to me, political questions about policing generally. Those political questions should be answered by a politician, in effect.

Q276 Mark Reckless: If the IPCC commissioners are taking the operational role, who is then providing the governance?

Nick Hardwick: You could have a board in which you would have some non-operational commissioners or board members in the same way you would in any other NDPB. As you would have in the Parole Board,
for instance, you have Parole Board members that are responsible for overseeing cases, they do not all of them form the board of the Parole Board, and I think you can make that distinction.

Q277 Mark Reckless: But would you be content to have the elected PCCs play at least a role in—
Nick Hardwick: There needs to be a distinction between PCCs and the IPCC, not least because in a sense I do not think you could have the PCCs responsible for dealing with discipline and criminal matters; that would not be right.

Q278 Mark Reckless: Finally, you mentioned earlier we should get on with this for your successors and, hopefully, in the public interest in terms of any additional powers for the IPCC.
Nick Hardwick: Yes.
Mark Reckless: Could I ask you if you were just to pick three examples of areas where you believe Parliament could usefully give the IPCC more powers?
Nick Hardwick: I would have powers to compel police witnesses to co-operate with an IPCC investigation. They are public servants; they should be willing to give an account of what they have done. We said that back in 2005. Powers to investigate private contractors providing police-like functions, G4S or whoever it might be. Thirdly, I would pick up something that the DPP was saying. At the moment in some cases the standard defence by a police officer involved in a fatal shooting is what they genuinely believed, and it is very difficult to prove that they do not genuinely believe something. I do not understand why that test is not what they reasonably believed taking into account all the circumstances of the event. There should be a reasonableness element to that test, not just what they genuinely believed. That would be helpful.

Q279 Chair: Some time ago you warned the Government that the election of PCCs could result in an increased risk of corruption. Is that right?
Nick Hardwick: Yes, I think it is two things. The introduction of PCCs is a good thing because a lot of policing is very political and those political decisions should be taken by politicians. My concern was if you look at some of the examples from the States, if you do not get the relationship between the chief constable and the PCC right, there is a risk of corruption. That has happened in some places in the States and so what I felt the Government needed to do was put in appropriate checks and balances to avoid the risk of corruption, but on the whole it is a good thing and I hope they get a good turnout on Thursday.

Q280 Chair: A final question about your role as the Inspector of Prisons; you have produced a report about prescription drugs and the abuse of prescription drugs.
Nick Hardwick: Yes.
Chair: The Committee is very interested in this subject. Is it widespread in our prisons?
Nick Hardwick: It is. What is happening I think reflects what is happening in the community as well. What is growing now is the diversion of prescription medicines like Tramadol and Gabapentin that are prescribed too laxly and then traded in the prison, or they are stolen, or they are a source of bullying. We find now that has moved from the high-security estate where it has been a problem for some time into the prison system generally. It does not show up in some of the drug-testing regimes, and so in our view it is a bigger problem than has previously been recognised and is a real danger in prisons, because the people are mixing some cocktail of drugs that can be very dangerous, quite apart from all the social consequences and the bullying that goes on around it.

Q281 Chair: We know that 58% of those convicted of drug offences reoffend and return to prison.
Nick Hardwick: We do. We find prisons that we go into where you have 10% or 15% of prisoners telling us that they have developed a drug problem while they have been in the prison.

Q282 Chair: How do the drugs get into prison?
Nick Hardwick: As I say, sometimes they are handed out by the pharmacy to an orderly queue.

Q283 Chair: Those are prescription drugs. What about the illegal drugs?
Nick Hardwick: They come into the prison in a number of different ways. They might come in through visitors. They might come in through prisoners themselves going in and out through remand. They might be chucked in over the wall, and staff bring them in.

Q284 Chair: Do you not think there should be compulsory drug testing of prisoners either on entry or exit?
Nick Hardwick: There is normally.
Chair: On entry?
Nick Hardwick: There is random testing—
Chair: What about compulsory testing on entry and exit to prisons? Because it seems to be a place where people, as you say, learn how to use drugs for the first time.
Nick Hardwick: On the whole these things are best done on the basis where there is some intelligence to support it, so I would not be in favour of that. My own view is effective rigorously applied random testing is more likely to discourage and prevent the spread of drugs than just testing everybody, because if everyone knows they are going to be tested, then they can—
Chair: Entry and exit?
Nick Hardwick: If you know you are going to be tested, you will probably find—

Q285 Chair: No, random testing.
Nick Hardwick: I would have random testing. Random testing might work well in the prison, but the random testing needs to test for as many of the drugs that are available as is possible. At the moment it does not test for half of what is available.

Q286 Dr Huppert: One of the concerns that has been expressed about doing a lot of testing is it drives people from some drugs that are in the bloodstream
for longer to other drugs that may be far more harmful. Is that a concern that you share?

Nick Hardwick: Not completely. It is important there is a rigorous testing regime, but I do not think that testing is going to tell you everything. You also need to have intelligence that tells you when somebody buys drugs, you need to have staff that are alert to what they are seeing is happening in the wings and appropriate levels of supervision. There is not one method, but drugs are a danger to prisoners, and if you have active supply reduction processes that are thoughtful and attuned to that particular set of circumstances, you make it easier for prisoners to say, “No, because I am going to get caught, and I do not want to be part of that.” There is a duty to prisoners in there to do that properly.

Chair: Thank you, Steve McCabe has the last question.

Q287 Steve McCabe: Mr Hardwick, I just wanted to ask, there has been quite a lot of publicity recently about events at HMP Birmingham, where I understand they have had quite a bit of trouble. I wondered if you had any plans to have an inquiry or an investigation of what has happened there.

Nick Hardwick: Birmingham went to the private sector in October last year. We did an inspection and we published the results in January. That was very soon after it had gone into the private sector, and to be fair, at that point we saw some positive change but that was in a sense a baseline inspection. We will go back for an unannounced inspection in due course to see what has happened after they have had some time. The inspection will be unannounced, so it would not be sensible for me to tell you when now.

Q288 Chair: Mr Hardwick, thank you very much for coming in we are most grateful.

Nick Hardwick: Thank you, Chair.

Chair: Thank you.

Examination of Witnesses

Witnesses: Dame Anne Owers DBE, Chair, IPCC, Ruth Evans, Commissioner, IPCC, and Jane Furniss, Chief Executive, IPCC, gave evidence.

Q289 Chair: Dame Anne, welcome back. Ms Evans and Ms Furniss, thank you very much for coming. You have heard the evidence of the Director of Public Prosecutions. This is really almost the end of our inquiry into the IPCC, and we did promise when you came right at the start that we would have you at the beginning and we would have you at the end to give us the last word. But of course since the start of the inquiry we have had the report into Hillsborough and the very strong statement made by the Home Secretary after the panel’s decision was announced to Parliament. You have now been handed, Dame Anne, 1,444 names from one of our other witnesses, the Chief Constable of South Yorkshire. What exactly are you doing with these names?

Dame Anne Owers: This is obviously going to be, as we said, a large and complex investigation. The Committee needs to recognise that the investigation we have currently announced is an independent investigation into what we would call the aftermath. In other words, was there a cover-up? Why were blood samples taken? What information was released to the media and why? How did the West Midlands investigate? It is in respect of that that we have announced an investigation and that we already have, as you say, a preliminary list of names. There are two very large tasks that we have to do in what we are calling phase one of that investigation. The first is in relation to documentation. As you will know, there are 450,000 pages of documentation. At the moment they have been returned to those people who gave them to the inquiry; they are no longer in a single place. They need to be gathered together into a place because we need the originals of those statements for obvious reasons, and documents, and they then need to be put on to a system like the Home Office Large Major Enquiry System, HOLMES, which can be used to support a criminal investigation. So that is a huge task.

Q290 Chair: You can’t really do anything with these 1,444 names until you have all that information, is that right?

Dame Anne Owers: We can’t. No. First of all we have to get the documentation in one place and on to a system, but at the same time and concurrently we have to look at the names that we have and other names that will come into the frame because there are other officers as well, the South Yorkshire police, you will understand, that we need to look at those and decide who needs to be investigated and as what—who may be a suspect, who may be a witness. So those preliminary pieces of work are those that we are engaged on at the moment. Jane may be able to tell you more about the detail of how that happens.

Q291 Chief: Thank you. In respect of the detail, we know that you have the list of names from David Compton. Bearing in mind what Dame Anne has just said, which of the other forces have come up with their lists of names?

Jane Furniss: It is important to recognise, Chair, that the list that Mr Compton has provided is only the start of it. There are going to be significantly more people listed from South Yorkshire. There are also the officers that are to be identified by West Midlands. There are other forces who provided officers on the day at Hillsborough and significant numbers from two or three forces and much, much smaller numbers from others. This preliminary work, as Dame Anne has said, is to identify what allegations are to be put to individuals.
Q292 Chair: Of course. I understand. If we just stick to the numbers, because I thought that that was the definitive list—
Jane Furniss: No. Chair:—but there is obviously more.
Jane Furniss: Yes.

Q293 Chair: Are you writing to the different police forces, or are they voluntarily sending you lists?
Jane Furniss: They are identifying the people at the moment.

Q294 Chair: But do you know which police authorities they are?
Jane Furniss: We do.

Q295 Chair: You do. How many are there?
Jane Furniss: We have only in the last few days had the list from South Yorkshire of all the forces that supplied officers to the operation.

Q296 Chair: So they are giving you the list?
Jane Furniss: Yes.

Q297 Chair: How many other forces are on there?
Jane Furniss: There are three that had very significant numbers present, and then there are another 15 or more who had perhaps only one, two or three officers present on the day.

Q298 Chair: Right. and when you say significant numbers, we know the 1,444 that is stuck in our brain. How many more are we talking about—hundreds, or another thousand?
Jane Furniss: I think we are probably talking in total hundreds but towards 1,000, but I am estimating based on what I know so far.

Q299 Chair: In your estimation, 1,000 is probably the top limit?
Jane Furniss: I would think so from what I have seen so far in totality, yes.

Q300 Chair: So in total you could be looking through the names of 2,444?
Jane Furniss: I think that is that at least, yes.

Q301 Chair: In respect of the resources, have you been offered by the Home Office additional resources to deal with what must be an absolutely enormous new inquiry that has been placed right in your lap?
Jane Furniss: Yes, indeed. The Home Secretary has made it very clear to both Dame Anne and me personally that we must have the resources that we need to do this piece of work.

Q302 Chair: Right, and have you asked for any?
Jane Furniss: We are certainly asking for it. What we are doing at the moment as part of this scoping phase one is identifying what we need and there will be different resources needed at different points during the investigation, so as we have said, the documentation is a very significant challenge. Retrieving the documents that were returned to the different authorities and then logging them all on to the HOLMES system—you may have seen it in operation, Chair, in visits to the police—is a very skilled job that needs to be done by people. That will take time. Secondly, there is a—

Q303 Chair: Roughly, how long?
Jane Furniss: I could not answer that. I have asked—

Q304 Chair: Are we talking about years or months?
Jane Furniss: No, months. Months, yes.

Q305 Chair: In a few months’ time you will have put on the data; that is the first thing.
Jane Furniss: We would hope to have made substantial progress in that, but what it is also important for the Committee to know is that the panel did not receive all the documents that are available, so more documents have come to light since the panel issued its report.

Secondly, because of the level of contact we are now having with bereaved families and survivors we are already hearing from quite significant numbers of members of the public who were at the match on the day who said, “I tried to make a statement and was not allowed to,” or, “I made a statement and the statement that is on the website is not the statement I made,” or, “I was bullied into withdrawing information,” so new allegations are coming to light as a result of us announcing what we are doing.

Q306 Chair: Of course. Now, this is very interesting: this is the first time that the Committee is hearing about this. Do you think that there ought to be a lead person dealing with the various agencies that are involved? You heard what the DPP has said; he is having regular meetings with either one or all three of you. The families came before us and said, “We think someone should be in charge to co-ordinate all this.”

Who is running the show?
Dame Anne Owers: As the DPP very clearly said, there are various bodies with various statutory responsibilities. Ourselves, we are investigators, the DPP is the prosecutor and there may in time be a coroner, who will obviously be a judge. What we have all said from the beginning, and we have said to the families who are worried for understandable reasons, is that what is really important is that what we do is fully integrated, that we are not waiting for each other to do something in order to start and that we do it as quickly and of course as thoroughly as we can, and so from the beginning we have been having meetings—ourselves and the DPP—to work out who is doing what.

At the moment we are leading on that investigation into the aftermath, which may of course result in us wanting to put cases to the DPP because there may be criminal charges. Simultaneously the DPP is leading on reviewing the original decision about whether prosecution should follow in relation to the deaths. There may then be investigations that need to happen as a result of that, so what we need to do is to work very tightly together so that we are complementing each other.
Q307 Chair: But there are others involved like the coroner’s service and the police and others. Surely there should be somebody, an individual, who should be responsible for making sure everything is co-ordinated, because you are not going to step on the DPP’s toes and he is not going to step on your toes, but you are separate organisations, are you not?

Dame Anne Owers: Yes, but we are separate organisations who have to work together. We work together anyway, obviously, in cases that we investigate that result in potential criminal charges, so we are accustomed to that. We have to work together. The coroner of course will say, quite rightly, he or she will be an independent judge and will not be co-ordinated by anybody, but we must make sure that our efforts are joint and that we are genuinely working together.

Q308 Chair: Can you tell us about someone like Sir Norman Bettison, who of course was referred to you? He has now resigned. Do you still investigate him because some of the families felt that the resignation might mean the end of the investigation? Those who are serving officers who were referred to you and subsequently resigned: you still continue with the investigation, is that right?

Dame Anne Owers: That is right. There are two points to make on that. One is that the investigation that we are currently doing into Sir Norman Bettison is around allegations made about his conduct following the publication of the panel’s report and the referral to us. Those are conduct matters that we are dealing with now and that we are investigating. In relation to anything that happened at or around Hillsborough, if there are criminal allegations against Sir Norman or any other officer involved, then irrespective of whether they are now serving with the police those can still be investigated by us and can still result in prosecution.

Q309 Chair: That is very helpful. Ms Evans, please feel free to chip in whenever you wish to do so and you too, Ms Furniss. Let us move to the wider issue of the IPCC. We have taken a lot of evidence in the last few weeks and months about the IPCC, and we have heard from Nick Hardwick. Just looking at the organisation that you joined a few weeks ago, Dame Anne, when you last gave evidence to us, do you yourself feel that there is a case for reform and enhancement of the powers of the IPCC, or do you take the view of the Shadow Home Secretary that maybe we should scrap the whole thing and start from the beginning?

Dame Anne Owers: I certainly do not think there is any benefit in scrapping and starting from the beginning because of all the work that has been done over the last eight years to get to where we are now. But as I said when I was before this Committee last, and as I said to the Home Secretary shortly after I was appointed, I do think that the IPCC needs greater powers, and we have laid out a menu of that in front of this Committee and in front of the Home Secretary. I also believe that the organisation is under-resourced for the job that it was set up to do. That remains the case.

Q310 Chair: It is a surprise that there are fewer commissioned staff than there are working at the Directorate of Professional Standards at the Metropolitan Police. It is extraordinary.

Dame Anne Owers: That is right. That shows you the scale of the task that we are trying to undertake.

Q311 Chair: In the last financial year you have had a budget cut of 21%.

Dame Anne Owers: I think that is right.

Jane Furniss: Not 21% in one year, thankfully—I think we would be looking rather pale if that was the case—but over the whole of the 4-year period, yes.

Q312 Chair: Despite taking this very, very heavy workload you are facing reductions in your staff and your budget.

Jane Furniss: Similarly to all the public sector, that is right, Chair, yes, we are. That is something that we have been in discussion with the Home Office about as a consequence of that, because over the last six years during which I have been the CEO I have spent each year persuading the Home Office to give me more money to do the task that we were given. We have gone from £28 million to £37 million at its highest, and at the moment we are facing a budget cut of over £5 million over the 4-year period. At the moment the Home Office are maintaining that we need to make the cuts and savings that they require while at the same time having conversations with me about more money for Hillsborough, so we are in a slightly double-minded kind of conversation with them about that.

Q313 Steve McCabe: I wonder how this is going to evidence itself in the future. Is there going to be a point where you are going to say, “Sorry, we cannot do that investigation; no resources,” or are we just going to see slimmer and slimmer investigations that some people might think is a criticism that could be made at the moment?

Dame Anne Owers: I have had discussions with our very hard-pressed investigations directorate about this. I do not think we have come to that. I am assured by our investigations directorate about this. Similarly to all the public sector, that is right, Chair, yes, we are. That is something that we have been in discussion with the Home Office about as a consequence of that, because over the last six years during which I have been the CEO I have spent each year persuading the Home Office to give me more money to do the task that we were given. We have gone from £28 million to £37 million at its highest, and at the moment we are facing a budget cut of over £5 million over the 4-year period. At the moment the Home Office are maintaining that we need to make the cuts and savings that they require while at the same time having conversations with me about more money for Hillsborough, so we are in a slightly double-minded kind of conversation with them about that.

Q314 Steve McCabe: I wonder how this is going to evidence itself in the future. Is there going to be a point where you are going to say, “Sorry, we cannot do that investigation; no resources,” or are we just going to see slimmer and slimmer investigations that some people might think is a criticism that could be made at the moment?

Dame Anne Owers: I have had discussions with our very hard-pressed investigations directorate about this. I do not think we have come to that. I am assured that there are no cases that we feel we ought to have independently investigated that we have not been able to for resource reasons. But if one is being realistic, looking down the track if our workload continues to increase, which it is, because we are getting more appeals year on year from dissatisfied complainants, we are getting more direct referrals of serious cases that need to be referred to us. If those two things continue to happen—if the workload continues to increase and the resources continue to diminish—then you do not need to be a mathematical genius to work out that we will have to make some difficult choices. Quality and robustness is absolutely key if we are to have public confidence. We cannot be producing investigations that do not have the confidence of yourselves, the public and the courts if they get there.

Q315 Steve McCabe: I do not wish this on you, but if you reach that point how would we know? Would you tell us? How would we find out?
Dame Anne Owers: You can be assured that we would tell you.

Jane Furniss: Since I appeared at the Public Accounts Committee in 2008 I have said the public’s expectations of us far outweigh the resource at the organisation and it is not just about size. It really is not just about the numbers of people. It is the fact that we cover England and Wales, and we know that every week there are going to be 40 referrals of serious incidents from the police, and that of those, something like 10% really need someone to get to the scene quickly. We know that is going to happen but we do not know where it is going to happen, so having staff ready to be deployed at the point they are needed—quite often, of course, in the middle of the night because that is when a lot of difficult policing takes place—that is one of our biggest challenges as a small organisation, getting the people who need to be on the scene quickly. That is a challenge and it is something we are very open about—the difficulty that creates for us.

Q315 Dr Huppert: If I heard you correctly, Dame Anne, you were saying there have not been investigations you have not been able to do for resource reasons. I am trying to understand how that fits because it would be an astonishing coincidence if you had exactly the right amount of resource. Assuming that is right, does that mean that the investigations are not being done thoroughly? How is this amazing coincidence of exactly the amount of resource to deal with exactly the number of complaints you deal working?

Dame Anne Owers: I was probably making it sound rather too tidy. There are serious cases that we have to investigate, deaths and serious injuries for example, serious corruption, serious assaults. At the moment we have been able to start independent investigations into those serious cases. There is, if you like, an area where there are some choices to be made and all organisations have to make those choices but the investigations directorate is clear that there are not any cases where they have said, “This absolutely should be an independent investigation,” and it has not been done as an independent investigation. But of course what sometimes takes place is the investigation will take longer than otherwise it would. If we are going to be thorough and we are going to do the independent investigations we need to do, some of which are very complex and involve the taking of hundreds of statements and sometimes quite a lot of forensic evidence and so on, then we will not necessarily be able to complete all those investigations in the time that we would like to.

Q316 Dr Huppert: So, just to check that I understand—

Dame Anne Owers: So there are three bits—

Dr Huppert: Your response to resource constraints is that some important investigations take longer or do not start early enough, and other ones that are not the most serious investigations where you could investigate or not you do not investigate?

Dame Anne Owers: Yes, we have to make those choices; that is absolutely right.

Jane Furniss: There is a top criterion and death would be the leading priority. There are others where it would be really helpful to public confidence for the IPCC to do an independent investigation where we regretfully have to say we can’t. It is not always as clear but there is a set of criteria we use.

Chair: Ms Evans, you wanted to say something.

Ruth Evans: Just to agree; I think resource constraints and the cuts to our budget have been extremely deleterious on our work in certain respects. Not necessarily the independent investigations, as Dame Anne said, but when we are looking at community engagement and working with our stakeholders, when we are looking at quality assurance in particular, which is what we are aiming to spend a lot of resource on, we find that we are very strapped for cash. We cannot do what we should be doing with the community, with stakeholder engagement and with quality assurance. We are doing what we can within resources, but Jane, the Chief Executive, has been adept at wringing out of the cuts that we have suffered redeployment of resources. She has managed to redeploy something like £5 million as well as managing the £5 million cut that we are suffering from over the next four years. These are sizeable sums, and it is becoming increasingly difficult. We would like to do more to inspire confidence among stakeholders and the community at large. For example, leading more independent investigations into serious corruption is something that we would like to do and we can’t. It is a very under-resourced organisation. In my experience from the organisations I have worked with, I have not seen such paring back in ancillary functions to the core investigation function and that, you have to remember, alongside investigations is a communications department, is strategy, is engagement—all the hidden things that have really been very greatly reduced. We have kept all the back-office staff, not the front—sorry, the other way around.

Q317 Mark Reckless: Ms Evans, I wonder if one way of interpreting your answer there is that the bar standards for the General Medical Council, the Ofcom Consumer Panel and the Queen’s Counsel Selection Panel may have been somewhat overstuffed.

Ruth Evans: That is a very complicated question, examining a range of organisations over a number of years. My own philosophy is that you can achieve efficiencies, and I was on the NAO until recently. It is incumbent upon public organisations to get value and indeed organisations of professional regulators whose practitioners provide the fees. I am not talking about this here at all. You can make comparisons when you are talking, for example, about expertise employed in investigating whether you want the practitioners, the doctors, the barristers and so forth investigating cases. There I think parallels can become quite relevant and would be useful to today’s discussion, but you are asking for an academic exercise over a number of years.

Q318 Mark Reckless: Your reply was excellent; thank you very much. Dame Anne, you were saying
that there were not any examples of cases where the IPCC should have independently investigated where you were resource-constrained from doing so but there were some where you could have chosen to investigate or not where you chose not to. Is it also the case that there were some cases where you could choose to investigate or could choose not to where you did choose to investigate? Is it possible that if resources were reduced, it is just a question of taking on perhaps a smaller proportion of that category?

Dame Anne Owers: I think if you were to ask the staff in and around the investigations directorate and to ask the commissioners, they feel that we ought to be doing more independent investigations, and so indeed do the public, rather than fewer. We have greatly increased the number of independent investigations. Last year we took on about 130 independent investigations. That already is something that this Committee and others will have had complaints from people about—"You are only doing 130 independent investigations a year." If we started cutting into that number, I think there would be really serious issues for us.

Jane Furniss: May I just add, I think if any one of you saw the list of cases that we were investigating you would find it very difficult to say, "That one ought to come off the list." That is something we talk about daily—about making sure that we are using the investigative capacity we have for the right cases. They are all cases that really raise public concern. They are either ones where someone has died, about 60% of the cases; they are ones where someone has been seriously injured; or they are ones where corruption is such that it really is felt that for reasons of public confidence we must take those on independently, for the reasons that you were discussing earlier about the police investigating the police.

Q319 Mark Reckless: What about this trend of self-referrals? Are there cases where there is a lot of media interest, there are criticisms and, say, a police authority would find the path of least resistance being to refer it to the IPCC when they might have been able to deal with the situation themselves?

Dame Anne Owers: If we feel that they could and should have dealt with the situation themselves, we will send it back. There are cases that have to be referred directly to the IPCC that are, as Jane has said, deaths and serious injuries, serious corruption, serious assault, serious sexual offences. They have to come to us. If things come to us that we feel do not need to, we would send them back and say, "These are things that you can deal with yourselves." I think you are right that there could be a tendency for people to try to push things to us that we can’t and shouldn’t deal with, in which case we do not.

Jane Furniss: We have about 2,500 referrals a year and only take about 120, 130, 150 independent investigations.

Q320 Mark Reckless: There is a lot of media interest in some of these referrals and the line to take, it is agreed, is this has all been referred to the IPCC and that just allows the debate to be shut down when it should more properly be a matter of public scrutiny and perhaps for the police and crime commissioners coming in or the chief constable to deal with that debate.

Dame Anne Owers: Whatever happens in any of those, there needs to be an investigation, doesn’t there? If we do the investigation or if the police do the investigation, then the proper scrutiny will come after the contents of the investigation are produced.

Q321 Mark Reckless: I am not sure of my specifics in the police arena, but I wonder whether I am picking up on feedback from constituents and others, that it is almost as though the reaction is that there must be an investigation. Where actually, in some of these issues, something has gone wrong and the facts are fairly clear, and someone should take responsibility, instead of that happening there and then, there is a long investigation by some body, independent or otherwise, into it. Have we gone too far down that route, at least in some areas?

Dame Anne Owers: I think, perhaps, if I play that question into the way that complaints in general are dealt with rather than investigations, which is the top end of what happens, it is certainly our view—expressed in—our new statutory guidance, which will be released later this month to police forces,— is that where there is a complaint from the public that is an expression of dissatisfaction, that should be dealt with as speedily as possible. If it is something that can be resolved, which is not so serious that it needs to be investigated, it is not a matter that could lead to criminal matters, it could not lead to misconduct and it is not a breach of someone’s fundamental human rights, then you should try to resolve it and you should try to resolve it as speedily and as quickly as possible.

Jane Furniss: We are upholding a lot more of the appeals that come to us when police forces fail to do that because our very strong message over the last three, four or five years has been, “Resolve the problem, if you can, at the point that the person expresses their dissatisfaction.” One of the police weaknesses is that they spend too much time saying who is to blame and how should they be punished about their own behaviour, rather than what went wrong and how we put it right quickly.

Chair: Yes, we noticed this in Wales and North Wales in particular.

Q322 Mr Winnick: Sean Rigg, who had mental problems, Dame Anne, as we know, died in police custody. There has been a new development today, has there not?

Dame Anne Owers: Almost as soon as the inquest verdict came out in August, I announced that I would be commissioning an external review because unusually the inquest verdict was very different from our report. That very rarely happens. Also the family were expressing a lack of confidence in our investigation, and therefore I thought it was very important that we should have an external review so we, if necessary, could learn any lessons and so that if it revealed gaps in our powers or our resources, that could be clear. That was announced in August and we
were able, as you said yesterday, to announce the person who will be running that.

Mr Winnick: Tell us who.

Dame Anne Owers: Dr Silvia Casale.

Mr Winnick: For the record, yes.

Dame Anne Owers: She is being assisted by a QC and also by a forensic mental health specialist.

Q323 Mr Winnick: The review will be led, as you said, by the person who I think was recently, am I not right, the President of the European and UN Committee for the Prevention of Torture and Inhuman Treatment? Is there any sort of time limit in which the report will be finalised?

Dame Anne Owers: She has said that she expects to get the report to us before Easter next year.

Q324 Mr Winnick: Dame Anne, there is no doubt—at least it seems to me there is no doubt, but I will want to know your view—that the investigation into Mr Rigg’s case was inadequate; would you agree with that?

Dame Anne Owers: I think I would want to wait and see what the external reviewer says. There was clearly a gap between what we found and what the inquest jury said in its narrative verdict. There is clearly massive dissatisfaction from the family, and that is precisely the reason why I want someone from outside, someone very credible with a huge amount of experience from outside, to come in and define what happened.

Q325 Mr Winnick: I want to press you on this, because you say that you do not want to reach a view until the person who is looking into it with her colleague reports accordingly. I understand that. If I could just refer you to what the coroner, Andrew Harris, said, and I quote: “The level of force used on Sean Rigg while he was restrained in the prone position at the Weir Estate was unsuitable. There was an absence of leadership. This led to a failure to take appropriate control of the situation”. That was the coroner. Are you saying in effect that you do not want to accept or reject what he said?

Dame Anne Owers: No, of course not, but what I want the review to do is to get to what we found, why we found what we found and why we didn’t find some of the things that we didn’t find. The whole purpose is to help our investigators to do their job as well as they possibly can. If you will recall, this is also feeding into a much wider review, which was set up before I became chair, which is looking at the way that we deal with deaths during or after contact with the police more generally. I think we are in learning mode, and if there are things to be learnt from it, we will learn them. If there are things that are about the fact that we need different powers, more resources, we will also get that out of the review.

Q326 Mr Winnick: Dame Anne, would you accept that it was the pressure of the family, particular Mr Rigg’s sister, which has led to the present situation that you have just told us about rather than the work of your commission?

Dame Anne Owers: I think that the work that the family have done is truly admirable, and we have commended them on that. I have spoken with the family and we are full of admiration for the work that the family has done, and undoubtedly they have worked very hard to get to where the situation is. I wouldn’t say that there was nothing that the IPCC did that was helpful either to the family or to the coroner because there was quite a lot of evidence that we uncovered that was useful in the inquest. There is, as you say, a gap between what the inquest found and what our investigation found, and it is my absolute determination to find out why that gap exists and what can be done about it.

Q327 Mr Winnick: Can you accept that the family and particularly the sister, who has given evidence, has she not—

Chair: She has.

Mr Winnick: I thought so. I well remember the evidence she did give, even if I have just had it confirmed by the Chair in case my memory was wrong, but would you accept the feeling of, perhaps, bitterness felt by the family and generally at what occurred? Mr Rigg dies in such circumstances, the IPCC investigates, it turns out from the family’s point of view, and it seems to be the case, that it was totally inadequate the way that the findings came about, or that the investigation was considered to be inadequate; isn’t that a reflection on the organisation?

Dame Anne Owers: I think it is certainly a reflection on the fact that relationships with the family broke down at an early stage, and that is very regrettable. I have spoken at some length with the family, with both of the sisters, the brother and also Sean Rigg’s mother. I have also attended a local community meeting at which they were present and so I know exactly what you mean about their anger and their frustration. I think the best way of dealing with that, as I say, is to have a robust look at what we did and why we did it and to see what lessons can be learnt from that. I don’t see that we can do any more; I want to do that, and I want to do it as well as we can.

Q328 Mr Winnick: Would it be right to say that pending what is being looked into, the IPCC is taking more care than previously? You may say that it always has taken care in its investigations, as one would assume it would, but would you say the lessons are such that there is a tougher attitude towards such incidents and deaths in custody?

Dame Anne Owers: I would say first of all that this was quite a long time ago, and it would be surprising if in the 4 years, I think it is, since Sean Rigg died that the IPCC had not developed its way of dealing with deaths in custody. In any event I would say that there has obviously been learning. I think the second thing is that, as I said earlier, the whole issue of people who die during or following police contact is one that troubles the IPCC a lot and that was the reason for setting up the broader review to see whether there are further lessons to be learnt. I am very grateful for the fact that we are having an external reference group to that review. Inquest, for example, is sitting on that external reference group,
and I think we can do no more than make sure that where things have not gone as well as they could we find out about that and we learn lessons from it.

Q329 Steve McCabe: You highlighted quite recently the abuse of police power and the involvement of some officers in sexual exploitation. Can you give me the Committee some idea how deep a problem you think this is?

Jane Furniss: I commissioned the piece of work that you are referring to because over a number of weeks I was hearing about referrals from a number of forces of cases where officers were abusing their position, either gaining access to information, computer information, to target individuals or going on to target those individuals for sexual purposes. It seemed to me likely that if it was happening in numbers in 2 or 3 forces, then that wasn’t likely to be the only place it was happening.

Over the two-year period that the report covers we had about 5,000 referrals from the police, of which 54 cases were those of sexual exploitation. I think it is highly implausible that that is the total picture. The difficulty is—and it is a little bit similar to the situation that the DPP and his colleague were talking about earlier—as you will understand, this is a hidden crime. The women who were targeted, the young women and women who were targeted by police officers—and it is largely women who are the victims although not entirely—are often targeted because they are in a powerless and vulnerable position. They may be victims of domestic violence or other crimes in relation to which police officers are called to give them help, or they may be themselves offenders or defendants, prostitutes, drug users, where the police officer uses their position to say in terms, “If you give me what I want, I will make these charges go away.” It is very difficult to know the answer to your question about how widespread this is and I do think, while in many cases the police have regarded this as a very serious crime, too often, it seems to me from the work we did, they didn’t regard this seriously enough early enough so the early indicators were often not listened to. The early indicators of a victim saying, “This has happened to me,” were dismissed as not credible, similarly again to the paedophile cases that we are hearing about.

So there is something about the police having much better systems to listen to vulnerable, powerless victims. What came out of our work was a real need for the police to do much more rigorous vetting. You would think that if you were joining the police or moving within police forces, vetting would be a very rigorous process. I have to say I was shocked to discover that information about a police officer’s behaviour in this force wasn’t necessarily passed on; so, vetting, supervision of officers, knowing where they are and what they are up to and using intelligence. What we found was that quite often colleagues of the man, once it became known that he was being investigated or had been charged, would say, “I’ve never trusted that person.” It was something that ought to have been available to managers in the organisation. Sergeants, inspectors and superintendents ought to have tapped into this information in order to address it.

Q330 Dr Huppert: May I first check for the record what proportion of the total number of police complaints were investigated by the IPCC last year?

Jane Furniss: I think one of the slightly confusing things about our name is that it gives the impression that we investigate police complaints, not surprisingly given the title. We don’t, and that was never Parliament’s intention. Parliament’s intention was always that the majority of complaints would be investigated by police forces themselves. That is the system. They have to record complaints and decide how they should be investigated or resolved. The IPCC’s primary function in relation to complaints is to deal with the appeals, so when a member of the public has had their complaint investigated and isn’t happy—

Q331 Chair: What is the figure? Dr Huppert wanted a figure.

Jane Furniss: The number of appeals last year was about 6,500 and that would be in relation to 29,000 to 30,000 complaints, so it is about 18% or 16%, something like that of complaints end up coming on appeal.

Q332 Dr Huppert: You investigate all of those appeals?

Jane Furniss: We don’t investigate appeals. It is an appellate function, so it is a paper exercise. We review all the documents of how the complaint was dealt with. It is slightly complicated. I won’t go into all the detail unless you want me to, but there are different grounds for appeal.

Q333 Chair: If you could write to us on that, that would be very helpful.

Jane Furniss: Yes, of course.

Q334 Dr Huppert: Particularly coming back to the 2008 to 2011, 8,500 allegations of corruption were recorded by police forces, 837 only reported to the commission. The commission looked at 21 of those. Does it alarm you that there are, first, 7,500 not making it to you and then 800 not being looked at by you?

Jane Furniss: First, you need to understand that quite a lot of complaints are made about corruption when what people mean is, “I don’t like the decision that was made,” and their way of explaining it to themselves is that there must be corrupt activity as a result. I don’t say that to diminish the seriousness of the numbers that you are talking about. Corruption covers a very wide range of things, because there is no legal definition of corruption. It is basically a judgment about how someone misused the power they have, so it could be a very tiny activity or it could be a very serious one. Obviously, within that, those numbers that you are quoting from our report, the range is very significant.
I think what we believe we should do, we should be able to investigate more of the corruption allegations particularly against very senior officers because that, it seems to us, is the area where we should target and prioritise our resources.

Q335 Chair: The number of senior officers who are being investigated at the moment is 9, I understand?

Jane Furniss: I think it is 10 to date.

Q336 Chair: 10 chief officers? ACPO officers?

Jane Furniss: 10 ACPO officers.

Q337 Chair: That are all the subject of a complaint?

Jane Furniss: No, not necessarily a complaint, because they may not—

Q338 Chair: There could have been a referral?

Jane Furniss: They are all based on a referral, yes. They may also contain a complaint, yes.

Chair: That is very helpful.

Q339 Dr Huppert: One last very quick question, which we have raised with the previous witnesses. There is an issue about private-sector providers of related services. Would you welcome the power and responsibility to look at those?

Dame Anne Owers: Yes, absolutely. We have asked for that. If I just give the Committee an example, during the Olympic Games there were a number of agencies involved in providing security-type operations for the Olympics. It included the police in England and Wales. It also included police from and Northern Ireland, and it included military personnel. For those people that we do not have a statutory responsibility for—Scotland, Northern Ireland, MoD—we had MOUs with all of them allowing for any conduct matters that emerged during the Olympics to be dealt with between the responsible authorities. The one group that we had no responsibility over at all was G4S.

Q340 Dr Huppert: So you would like the power to be able to investigate G4S?

Dame Anne Owers: Yes, when they are carrying out policing activities. I hasten to add, I have no desire at all to extend my empire over the whole of G4S.

Q341 Michael Ellis: Yet you did say you are already quite busy, Dame Anne.

I just want to move on to the issue of intercept evidence because there is a prohibition, as I am sure you know, on the use of intercept evidence in court in court in England and Wales. Do you think that that prohibition affects the ability of the IPCC to investigate cases and deliver your objectives of public confidence?

Dame Anne Owers: I think there is an issue of public confidence, and we have raised it. My deputy chair has gone public on the fact that we are unhappy. The IPCC’s role is a tiny part of a much wider picture, as I know the Committee is aware.

Where it comes to us really is at inquests. It can be possible at inquests that there is information that we can’t disclose but we can’t even disclose why we can’t disclose it because that in itself would be a breach of the law, and we do believe that changes would be helpful. At present, as the Committee will be aware, there is an inquiry going on into the death of Azelle Rodney and it is a public inquiry rather than an inquest precisely on this point.

Q342 Michael Ellis: So you think there should be some review of section 17, I think it is, of the Regulation of Investigatory Powers Act 2001, referred to as RIPA?

Dame Anne Owers: Yes.

Q343 Michael Ellis: But you accept, do you, that there are some complicated issues to look at in that and there is a multitude of different areas in which there is an interest in that prohibition being maintained?

Dame Anne Owers: Absolutely. It is a complex issue and we are really a bit player in a much bigger issue, but we are aware of the issues of public confidence.

Q344 Michael Ellis: It has caused some complications to you?

Dame Anne Owers: It has caused some complication, yes; and in relation to being able to run inquests. Article 2-compliant inquests.

Q345 Michael Ellis: Did you want to add anything, Ms Furniss?

Jane Furniss: I just wanted to say that in the 8 years the IPCC has existed there have been 23 fatal shootings and in only one of those has it not been possible for the coroner to hold an inquest. So I think it is important to keep it in perspective. When it can’t be used, when there are problems—and all of us are in danger of breaking the law even by having this conversation, so I am hoping we are covered by parliamentary privilege—

Michael Ellis: I think we are all right.

Jane Furniss: You all are.

Chair: But please don’t defame anybody at this hearing.

Jane Furniss: I think it is important to keep it in perspective in terms of numbers but when it does happen—

Michael Ellis: It happens very rarely, but it can have repercussions.

Jane Furniss: It happens rarely, but when it happens it is fatal to the case, if I can put it that way.

Q346 Chair: Just finally, you mentioned the name of the organisation. Paul McKeever of the Police Federation and Derek Barnett of the Superintendents’ Association both suggested that a change of name might be desirable as well as a number of other things that they have suggested. What do you think of that, Dame Anne?

Dame Anne Owers: As I think Jane Furniss has said, there are some problems with our name, in the sense that we are not the police and we don’t investigate all complaints, but apart from that—

Chair: What would you like to be called?

Dame Anne Owers:—the front and back end, the bookends, are fine. We are independent and we are a commission. We can stand by that.
I think it creates difficulties in perception but, on the other hand, once you have a name and a brand, as many companies have found with far greater resources than we have for advertising, it becomes quite difficult just changing names.

Q347 Chair: If it could be changed, do you think that clarity would be helpful?
Dame Anne Owers: It might but it is not the top of my shopping list.

Q348 Chair: Ms Evans, you are there to scrutinise. You are a non-executive commissioner. Do they take your recommendations seriously? Have you been able to get through some of the changes that you want to see happen to this organisation?
Ruth Evans: Yes, increasingly. Not altogether. A large part of the problem has been resources. That will continue to be an issue. Certainly there are a number of areas where I have recommended change where change has been implemented.

Q349 Chair: In terms of the Savile inquiry, are you involved in any way in any of the work?
Dame Anne Owers: Not as yet. What we have done in relation to both Savile and North Wales is that we have reminded those who are doing the investigation that should any conduct matters come to light in the course of their investigations those are matters that will need to be referred to us, but so far that hasn’t happened.

Q350 Mr Winnick: Could I just put this one point to you, Dame Anne? You did the job, and very well, which Mr Hardwick is currently doing, Chief Inspector of Prisons. I cannot imagine one person ever suggesting that there was a lack of independence on your part any more than the present occupant. Is that not a question of perception regarding the commission now however very different are the functions? One position, Chief Inspector of Prisons, no one has suggested in the past or present that there is any connection with the Prison Service as such, totally independent, which is not the case with the commission. The perception is somewhat different.
Dame Anne Owers: I think you are right about perception, and I think my job is to work out why there is that perception and to do my best to reverse it. You raised with Mr Hardwick the question of the employment of ex-police officers in the IPCC. As I said to this Committee when I appeared before you last time, when I was Chief Inspector of Prisons, as Mr Hardwick now is, half of those who inspect prisons for the Independent Inspectorate of Prisons will have been prison governors and what is more some will go back to govern prisons after they have been to the inspectorate. As I have said a number of times in different forums, if we only focus on the issue of ex-police officers, I think we are in danger of missing the point. The point is that what the organisation does needs to be independent. It needs to be seen to be independent, and that is clearly something that we have to—

Q351 Chair: Do you have anything to add, briefly?
Ruth Evans: Yes, very briefly, I agree with that. In the autumn we are having a specifically focused recruitment campaign. This is something that I have been concerned about. It is to get into the organisation more investigators not from a police background, but alongside that there has to be culture change and the two things have to go together. We are spending £500,000 on a recruitment campaign to get in the investigators on the basis of merit, who have the skills to—1

Q352 Chair: Who are not police officers?
Ruth Evans: Who are not police officers. It doesn’t mean that they will entirely not be police officers, but we are looking very carefully at competencies. Just going back to your question before, the General Medical Council involved lay people, and it involved doctors in investigating medical mishaps. We do, increasingly, quality-assure the investigations undertaken, and it is something that I have been, with my non-executive colleague, focusing on. Peer review, quality assurance, getting somebody alongside to have a look at investigations who isn’t from a police background, is an easy win for us. We are doing more and more of that.
Chair: Dame Anne, Ms Evans, Ms Furniss, thank you very much for giving evidence.

1 The IPCC is in the process of planning an investigator recruitment campaign. The campaign will not preclude police officers from applying but will be aimed at encouraging applicants from diverse backgrounds. The figure of £500,000 quoted by Ms Evans relates to an early estimate which IPCC received for a full recruitment process. The IPCC will not however be following this estimate up and the recruitment costs are likely to be significantly less.
Tuesday 27 November 2012

Members present:

Keith Vaz (Chair)

Mr James Clappison
Michael Ellis
Dr Julian Huppert
Steve McCabe

Bridget Phillipson
Mark Reckless
Karl Turner
Mr David Winnick

Examination of Witnesses

Witnesses: Chief Constable Mike Cunningham, ACPO Lead for Professional Standards, and Bernard Hogan-Howe QPM, Metropolitan Police Commissioner, gave evidence.

Q353 Chair: I call the Committee to order and refer all those present to the Register of Members’ Interests where the interests of all Members of the Committee are noted. I welcome the Commissioner of Metropolitan Police and Chief Constable Mike Cunningham, Commissioner, we are going to start with some general questions about the police budget and then go on to specific questions about the IPCC. Welcome back. You have now done your year as Commissioner of the Metropolitan Police. Presumably you are still enjoying the job.

Bernard Hogan-Howe: Yes, I love it. Thank you.

Q354 Chair: A recent survey of Met officers showed that 56% of those surveyed—this could be just not the Met but also nationally—contemplated leaving the police and 95% of serving officers did not feel that they had the support of the Government. Of the public, 33% felt that they would not be confident of receiving good service from the Metropolitan Police. How do you feel about those figures?

Bernard Hogan-Howe: There is no doubt that the morale in the police service generally is challenged at the moment as everybody in public service knows that the economy is tight, which means that money is tight for the public service. To be fair, it is for commercial entities too. If you look at a police officer, you are going to pay 3% more for your pension, which is effectively a 3% pay cut. You are probably going to get your pension later. There will probably be fewer of you doing the job and, as we know, the demand of the job is probably getting more rather than less.

I suppose if you take all of that together, and if you think the pension contributions now for any officer will be about 15% of their salary, that is about a sixth, which is not an insignificant amount of money. Everybody might say, properly, that in tight financial circumstances everybody has to make a contribution but, of course, some of these officers have mortgages to their salary and their salary is reduced as a result of the pension contributions. I think, taken together, there are many reasons why officers and our staff are feeling the challenge and, of course, if you look at Metropolitan Police’s experience over the last two years, we lost 1,900 people. Nearly 2,000 police staff members lost their job and, as we announced the other day, having to find £500 million of savings, we think the job is probably getting more rather than less.

Q355 Chair: Would you describe morale as being low?

Bernard Hogan-Howe: There is certainly some evidence of it. That is what people say but if you looked at the objective evidence, our turnover, the number of people leaving us is broadly the same. We are not getting a higher turnover of staff where people are retiring or leaving to join other jobs. It is still about 5%. Sickness has not increased. By many standards morale, I think, is high. We still have officers turning up early for work. They work through their meal times. They will take on people with knives. The detection rate is increasing and the crime remains to fall. If I were to be very objective then I would say the objective evidence says the morale is okay, but I would have to listen to the officers and staff we have. My experience, and Mike may have another one, is that that is quite a challenge at the moment.

Q356 Chair: If we look at the specific proposals that you have put forward about the 1,200 officers of sergeant and above rank being replaced with 2,000 police constables, is it an indication that the Met was top-heavy and you are able to remove a whole layer and replace it with ordinary PCs?

Bernard Hogan-Howe: I believe so. Ratios can tell you anything, as you know, but the ratio of constables to sergeants in the Met is about one to 4.4 and the average through the rest of the country is approaching one to six and the best ratio is about one to 10. By the time we finish these changes our ratios will still be around the average for the rest of the country. Of course the Met is different from Northamptonshire and different from many of the forces. We can account for some of that difference, but I think there is some evidence that we can slim down the management tiers and still have an effective organisation.

One of the things that you may have spotted from our plans is that we believe we will have a historic high number of constables. I think the historic high number of constables we have had from the past has been just over 24,000. By the time we have finished these
changes we will have over 26,000. We will have more of the people who do, the people who go out and arrest, the people who deal with victims and help them, and fewer of the people who, I suppose, spend time talking or writing or being in committees and supervising, which, to be fair, I hope adds some value but frankly we have to have more doers.

Q357 Chair: Let us turn to procurement now and the Deputy Mayor very helpfully gave us a list of the companies that you will use in order to spend the £3.5 billion that you do on procurement every year. There are a couple of issues that I would like you to comment on. He was very specific that he felt there were too many people dealing with computers and IT specialists within the Met. How many do you now have dealing with IT issues? The bill is now £1 billion, which is quite a lot of money.

Bernard Hogan-Howe: People may have seen the reports in the Mail on Sunday about that information, but of course that conflated the spend for three years together. So this was the spend over three years. I would agree that too much money is being spent on IT for the quality of product we have. Our joint ambition, together with the Deputy Mayor, is that we will spend and get better. It is factually correct to say that all those contracts that were mentioned in the Mail on Sunday are all contracts and they are going to come up for renewal. If you looked at the IT one, two-thirds of that will come up for renewal in 2015.

Q358 Chair: So you would expect that to come down?

Bernard Hogan-Howe: Yes.

Q359 Chair: The Deputy Mayor was very concerned at the number. How many do you have dealing with IT at the moment?

Bernard Hogan-Howe: I could give you the exact numbers in writing if that is okay, but something approaching 1,000.

Q360 Chair: That is just for the Met?

Bernard Hogan-Howe: That is right. To be fair with you, we do provide some national services around counter-terrorism, and we provide systems that are accessed through the rest of the country, and we do something for ACPO, but 99% of it is Metropolitan Police work.

Q361 Chair: You mentioned the list and, going down the list, there are lots of issues that have been sensationalised. I am not suggesting for one moment that this Committee is volunteering to do the clearing of horse manure from the stables that costs you £0.5 million, because somebody has to do it, but we were drawn to the attention of your list. Mr Colin Griffin, who appears on this list, appears to have had contracts worth £2.48 million. Was that a typing error? Is there somebody who has received £2 million worth of contracts?

Bernard Hogan-Howe: I must admit I had missed the name on the report. I don’t know, Chair. Could you help me by saying which company that was?

Chair: There was not a company. There was just his name, Colin Griffin. This list has been supplied to us by the Deputy Mayor.

Bernard Hogan-Howe: Of course, yes.

Q362 Chair: Have you not seen a copy of it?

Bernard Hogan-Howe: I had not seen it before I saw it in the Mail on Sunday, so I am afraid I cannot answer the question about C Griffin, but I will find out.

Q363 Chair: I am surprised at this because when the Deputy Mayor came to give evidence, we asked him for the list of contracts. I would have assumed that the list of contracts would have come from yourself to the Deputy Mayor and it eventually came to this Committee.

Bernard Hogan-Howe: Of course, one of the interesting things about that list is, first of all—

Q364 Chair: Is that not right? You have not seen a copy of this list?

Bernard Hogan-Howe: No, and that is probably not too surprising because, of course, these are historical contracts and the contracts were not all necessarily signed off by the Metropolitan Police. They were signed off as work by the Metropolitan Police Authority. There is a procurement process that says for any contract in excess of £1 million the police authority, quite properly, have oversight of. Though some of them now, in retrospect, may look challenging, there was a process gone through to show that, first, there was a need for the service and the market was tested.

Q365 Chair: But you are now part of that process and we will certainly give you the list if nobody else has.

Bernard Hogan-Howe: Of course. I am afraid that one escaped my gaze. I am sorry about that. The horse one that you mentioned, I would mention two things. One is, of course, £500,000 accounts for three years of it and we do have eight sites. It does have to be processed and we have two choices. We either do it ourselves, and I have asked that question for the next time the contract is re-let, “Could we do it cheaper?”, but number two is there are very few people available to shift this stuff out of the centre of London. There is a limited number of people who will take it and they will want paying. We are checking to make sure that the next time we re-let—there was a competition, but not everybody wanted this contract, because not many people wanted to visit central London to shift it and then move it to wherever they take it to. We will give more information as we get to the bottom of the contract.

Chair: Thank you. Given you have not received the list, I think it would be helpful if we let you have the letter that your Deputy Mayor sent to us.

Bernard Hogan-Howe: Thank you, and I am sorry I am not prepared for that particular question.

Q366 Chair: That is okay. Two quick final questions from me. Have you found somewhere to move New
Scotland Yard? You are on record as saying you have to see it. Do you know where you are going? Bernard Hogan-Howe: Yes, sure. Of course, it is not entirely up to me. The Deputy Mayor has the accountability, properly, around the estate. We still have to complete the process. We had a process within the last two weeks within the Met to make a proposal to the Deputy Mayor. I do not want to go too far down that road, other than to say that we believe we have a site that we can invest in for the future, which is going to be the New Scotland Yard, and that we can extract value from the present site. Just to remind the Committee that, of course, we have no cost-free option. If we stay in New Scotland Yard we have to spend £50 million over the next four or five years to maintain its presence, well, to improve it. I am afraid that, as usual, there is no risk-free option.

Q367 Chair: Finally from me on Operation Yeetree, I understand you have 30 officers on Yeetree at the moment. What is the cost so far? Bernard Hogan-Howe: The operation has only been running for about three months, so I don’t have the exact figures, but basically the officers you are probably talking about a couple of million, possibly less than that. Some have argued in fact that we should have more officers but, of course, what we are trying to do at the beginning is establish from witnesses—and many of these are historical occasions around the country—exactly what we are dealing with. Sadly, as we saw in the north Wales episode, you have to be careful about the first witness account to make sure that the investigation sets off on the correct footing.

Chair: We will come back to child grooming later.

Q368 Steve McCabe: Commissioner, I wanted to ask about the sale of New Scotland Yard. Am I right in thinking the Met currently own it and is it your assumption that all capital receipts would come to you? In other areas of the public sector, the Treasury or the relevant department sometimes helps itself to some of the capital receipts. I wondered if you had an assurance that it is all coming your way.

Bernard Hogan-Howe: First of all, it should in the sense that, five years ago, the police authority took a good hard look. I think in hindsight—we do not have hundreds of these people because often it is not only the individual; you have to provide a whole back-up team. So it is not as though they are a high-volume deployment. They should only be deployed against the most serious of crimes where there is no obvious alternative or no realistic alternative to gain that sort of information. Some of the stories that have been discussed in the press are quite historical events. One of the things that is happening is that we, together with the IPCC, are looking back at some of these previous allegations to see what has happened in the past and see if there are lessons for us to learn now or either crimes or misconduct to be established.

Q370 Mr Winnick: If an undercover agent engages in sexual activity in the group to which he or she has been sent to do police work, would that be considered appropriate?

Bernard Hogan-Howe: It certainly should not be part of the strategy to do that. The fact that it may sometimes happen, I think, could almost be inevitable. Not that I would encourage it, obviously, but when you are deploying an officer to live a lifestyle and they are going to get close to a target or a group of targets, it is not impossible to imagine that human relationships develop in that way. We put various things in place to make sure that, if it is going to happen or there is a likelihood of it happening, we spot it early and get the UC out before it happens, but it is not impossible given human relationships.

Q371 Mr Winnick: The point has been made, has it not, that if someone undertakes such work and refrains clearly from any form of sexual activity, be it heterosexual or the other one, inevitably suspicion will be that this person is somewhat different? It is almost like if he or she is appearing in police uniform. What would be your response to that view, that part of their work will inevitably be forming personal relationships, which will be in a deceitful way obviously?
Bernard Hogan-Howe: It is not the only risk that undercover officers will have to manage. It can be that one of the tests for somebody who is new to a group will be to see whether they will get involved in any criminal activity. It may be they had drugs round. It may be that they are handed a weapon. Of course, the new person who finds some way of avoiding that will lead to more questions. It is a constant challenge for the undercover officer to manage that and there are tactics and strategies that they are trained in, but if that approach is made we would expect the undercover officer to report it back to their supervisor, for their manager to be able to discuss whether it is getting too risky and whether you would then withdraw them from that situation. I think what might have happened in some of these cases where that has failed is that either reports have not been going back or the supervisor did not inquire too greatly. If you ended up in a position where the undercover officer is running the operation, the whole operation can be compromised. They are very good people who, on the whole, take very mature decisions and take great risks on our behalf and I would always stand up for them.

Q372 Mr Clappison: Just a quick one to look at the other side of the picture. Can you give us some ideas of recent successes that you have had in general terms as a result of undercover operations?

Chair: Not a lot of them. Just one will be fine.

Mr Clappison: Just so we get some idea.

Bernard Hogan-Howe: It is a bit difficult because sometimes it is not always revealed.

Mr Clappison: That is why I said in general terms.

Bernard Hogan-Howe: In general terms what you are looking at is there are two broad areas in which it is helpful to have undercover officers, for example drug supply in which somebody is following that route back. Another vital piece of work they do regularly is to discover firearms. If you can find the source of the firearm or get the ammunition back, somebody who is brave enough to go into the pub or wherever it has to be to go and buy these things, it is a brave thing to do, particularly when you do not know who you are meeting and you haven’t known them for 20 years, which is what they expect when they are having that sort of business transaction. Those would be two particular areas.

Mr Clappison: We should recognise the courage of officers who do that.

Bernard Hogan-Howe: Yes and quite properly they are going to be held to account.

Chair: Let us move on to the IPCC.

Q373 Mr Winnick: What is the policy of the Met with contracting former employers, Commissioner, as consultants? Is that a general practice?

Bernard Hogan-Howe: This is for the IPCC or just generally?

Mr Winnick: Yes, former employees of the Met.

Bernard Hogan-Howe: As consultants?

Mr Winnick: Yes, being taken on as consultant.

Bernard Hogan-Howe: It is not a general policy. In law it is not impossible to do that. I could not tell you exactly how many ex-employees we have as consultants, but we could always discover that for the Committee. I have not heard that is a particular problem, but forces around the country will sometimes re-employ officers on short-term contracts, because of their police skills, who become police staff. That certainly has happened.

Q374 Mr Winnick: Would this be a common occurrence?

Bernard Hogan-Howe: It is probably less common now than it was five years ago. Often you have officers who attained the end of their police career and they will come back as an analyst or they come and support an investigation team, but I do not think there are too many where you are going to find a separate business contract. There may be in the Met, but I don’t think it is a strategy that happens often.

Mr Winnick: Could you send the Committee more detailed information?

Bernard Hogan-Howe: Of course.

Q375 Chair: If you would write to me that would be good. Nick Hardwick, the former Chair of the IPCC, described how a previous commissioner had, in his view, tried to block the IPCC investigation into the death of Jean Charles de Menezes. Could you envisage a circumstance where you would do the same?

Bernard Hogan-Howe: To be totally honest with you, I will not comment on that case because I don’t know all the circumstances, but the law is quite clear. The IPCC have powers to investigate in certain circumstances and, if that is the case, then the police have no power to block them. I would expect that that happens. Obviously there are times when, in any sensitive police operation, police are concerned that secrets are not leaked and I can see perhaps why, in the de Menezes case, this was a concern at the beginning. But the bottom line is that the IPCC have a legal power and a statutory duty to investigate complaints against police and I would expect that happens.

Q376 Chair: We will now go on to specific questions on the IPCC but, Mr Cunningham, please feel free to come in whenever you want. I have a specific question for you about the IPCC. We have received a lot of conflicting evidence, some in favour and some against. Nobody has said that the IPCC should be abolished but they do think it should be reformed. What is your view?

Chief Constable Cunningham: The IPCC are now a fundamental and crucial part of our accountability. We are accountable to the public and to have independent scrutiny of our activity through somebody investigating the misconduct or complaints or issues that we would want to refer for independent scrutiny is now a valuable part of our accountability framework. In that sense they are crucial. I am not
aware of clamours for the abolition. Certainly I think
in terms of reform there are question marks over the
capacity within the IPCC, but they are not alone in
having questions about capacity in the public sector. I
think that is a moot point in relation to the demands
that they face and those questions are being dealt with
in other places. In terms of the function that they hold,
it is one that is a necessary and now an important part
of what we do.

Q377 Michael Ellis: First of all, Commissioner, can I,
through you, thank the officers under your command
for their dedication and courage and public
service and everything they do throughout the year? I
am impressed with what you have said about the
number of constables increasing despite the difficult
economic times and the way you are focusing on the
property folio and reducing management structures,
and may I say that is very impressive. I want to ask
both you and Chief Constable Cunningham about the
questioning of police officers when circumstances are
challenging. Evidence that this Committee has
collated indicates that in some serious cases, such as
deaths in custody, police officers may not be
questioned in the early stages of their involvement in
an incident, at least until an inquest perhaps has
occurred. As you both well know, that might be
several months down the line. Do you agree that it is
important to have an account of events on the record
as soon as possible, both to reach the ends of justice
but also to assist those officers who might otherwise
be under suspicion?

Bernard Hogan-Howe: Certainly for me there should
be. Police officers are witnesses, as is everybody else,
and they have a legal duty to assist a criminal
investigation process or a coroner’s process or any
public or legal inquiry. I think that duty should be
fulfilled by providing an account. There is already a
duty to provide an account, so an officer may provide
a written statement and explain what happened from
their perspective. The IPCC made the point, and I
broadly support them, that an account is helpful but
not conclusive. Often an investigator will want to ask
question about how something happened, not exactly
what happened. I know that has been a frustration for
the IPCC and one that I share.

Chief Constable Cunningham: I think there are two
separate processes to be distinguished here. First of
all, in terms of officers being witnesses and having the
information to assist, anybody who is making proper
inquiries into the circumstances of a situation, it is
absolutely a clear public expectation and a correct one
that officers would assist that investigation. In relation
to the circumstances you describe, maybe a death in
custody for example, as part of the coroner’s inquest
officers would be required to submit an account.
Separate to that, and maybe in parallel with it, there
may be an inquiry overseen by the IPCC into whether
any misconduct was involved in that situation.

Q378 Michael Ellis: But do you see the point about
delay?

Chief Constable Cunningham: I do and that is why
the early account is important and would be necessary
for the coronial proceedings. Then that could form
part of the subsequent investigation.

Q379 Michael Ellis: All right. If the IPCC were to
be given new powers that would have the effect of
compelling police officers to attend an interview in
the case of commission investigations, whether they
be death in custody or anything else, can you foresee
any problems with that? Would either of you have
any objections with the IPCC being given those new
powers to compel officers to attend an interview, for
example, the issue of admissibility of evidence in
court and so on? Do either of you have a comment
on that?

Chief Constable Cunningham: Just to make a couple
of points. The first point, just to reiterate, I think it is
a real and proper public expectation that if officers
have information to assist the IPCC in their
investigation then they should co-operate with that
investigation. In relation to the problem of officers not
co-operating with that investigation, I am not sure that
the proposed legislation, as it is set out, will answer
that particular problem because what the proposed
legislation is requiring is for the officer to fix in the
same room as the person who is asking the questions,
in other words to attend the interview. It is not
requiring any further co-operation beyond that. What
we are seeking, I think, is probably something—

Q380 Michael Ellis: No one can be compelled to
answer questions. They can only be compelled to have
questions put to them.

Chief Constable Cunningham: Exactly. I think that,
in relation to solving that particular problem, there are
other solutions or other potential avenues through the
leadership of the service for us to consider the
requirements that we place on officers as part of their
professional responsibilities.

Bernard Hogan-Howe: The only thing I would add
to that is one of the things you need to distinguish is
that if one of the people the IPCC want to talk to is a
suspect, is that they have a suspicion that that person
was involved in a person’s death in a negative way—
they murdered them or it was manslaughter or
anything improper—then they would expect to be
cautioned, which is an entirely different process in the
criminal process. It seems to me that, without some
kind of lever that moves on from, “If you are sat in a
room but you refuse to answer questions we are no
further forward”, we have to consider whether a police
officer’s employment continues if they are not
prepared to help in some way with that inquiry. It
seems to me antagonistic to the duties that we hold to
say, “We are not prepared to support a legal inquiry”.
The irony, of course, for me is that a police officer
who has nothing to hide excites the very concern that
we are trying to avoid, which is that there was a
problem with this person’s death or all the other things
that a police officer from time to time may be accused
of. I think openness is a good thing. Officers should
be encouraged to do that. If we can set the right tone
that is helpful but, at the end of the day, if the IPCC
do not get straight answers to reasonable questions
then I can’t see how you can ask an officer to continue
with their duties in the same way. I am not saying
they would all be sacked, that is not my point, but I think they have to know that there is a risk to their employment and their continuing in the office of constable.

Q381 Dr Huppert: You have presumably seen the Police (Complaints and Conduct) Bill. Is it something that has your support?

Chief Constable Cunningham: In terms of the first clause, I have been discussing with the Home Office whether it resolves the issue because, as I mentioned before, I am not sure the first clause, which requires the attendance of officers for interview, resolves the problem that is trying to be solved. In relation to the second clause, which is about re-investigating investigations which have previously been overseen by the Police Complaints Authority, that is something I think is required and is supported. There is another point about the first clause I should mention. You will notice that it talks about requiring serving officers to attend for interview. Given some of the high-profile investigations that are about to be undertaken, a number of people they will seek to obtain witness evidence from will be retired officers and so it does not answer that specific question either.

Q382 Dr Huppert: I put this previously to the Minister in a letter, that police who have left the police service should perhaps be covered by the same thing. Is that what you are saying?

Chief Constable Cunningham: Yes.

Dr Huppert: I think that is very helpful. Sorry, Commissioner, did you have anything to add?

Bernard Hogan-Howe: No. I would agree about the PCA point. I think often the IPCC are torn. They do not have enough resources to carry out all the inquiries they have now. To take on the historical inquiries for PCA-led investigations of the past I think is a real challenge.

Q383 Dr Huppert: I don’t know if you saw Nick Hardwick’s evidence, but he told us that the police believe that if it looks like a police officer, talks like a police officer, walks like a police officer, the IPCC should investigate. Of course, you and I have talked about Newham law enforcement officers in the past, but, more generally, there are a number of people who take on quasi police roles. Do you think they should be covered by the IPCC?

Chief Constable Cunningham: My view on that is that the IPCC should be allowed to question and investigate where the evidence takes them in relation to policing misconduct matters, and more and more that will require an investigation of people who do not bear the office of constable. That is not to say that they have prescribed oversight of different organisations. It is allowing them to follow the evidence.

Bernard Hogan-Howe: The other thing I presume the IPCC is going to have to consider is, of course, if there is no clear definition—at the moment you have police officer or someone employed by the police—to extend further. All they are doing is widening their remit with no more resources and, of course, the exercise of power under the law is getting to be wider and more diverse all the time, sometimes private contractors, sometimes local authorities. I think it would need a lot of careful thought.

Q384 Dr Huppert: Can we move on to ask about police complaints? Last year the IPCC completed 172 appeals about decisions by the Met not to record a complaint and half of those appeals were upheld. In fairness, the proportion was even higher in a number of other forces. Dame Anne Owers has said, “Police forces urgently need to examine their own practice to ensure they are not blocking access to the complaints system.” Do you think the police do routinely under-report complaints?

Bernard Hogan-Howe: In terms of the information about the Met in particular—we have had a look at other things—I am not sure I recognise the ones that you have talked about now. I may be wrong and so I acknowledge that, but I thought generally for the country we were talking about one in three appeals were successful whereas in the Met it is 22%, so nearer to one in five. I will check now that you have mentioned a bigger stat. I suppose there are two ways of looking at it. I talked to Dame Anne about this last week.

First of all, it shows that the majority remain cases that do not require investigation and, of course, somebody looking at it from an objective point of view would say, “Well, at the very least this investigation needs to go forward”. It seems to me that is a reasonable response. Of course, if the IPCC were to say, “Well, 2% could go forward”, they would appear to be a toothless body. If we allow them to be a toothless body, they are seen to be weak. If we have a fair percentage where we are asked to investigate further, then we are seen to have made the wrong decision. There are some quite difficult cases to decide in these ones.

Chief Constable Cunningham: The vast majority of complaints are usually complaints about a standard of service that somebody has received as opposed to a very significant criminal allegation. In relation to recording those, often there is a judgment issue on the part of the officer who is receiving that complaint and it might be that the complainant simply wants something to be put right that was not done properly on first delivery. The vast majority of complaint activity talks about relatively low-level but important standards of service issues. What is crucial is that the very significant complaints, few as they are relatively speaking, are properly recorded, properly referred and properly investigated.

Q385 Dr Huppert: Dame Anne also said that all chief constables should take a personal interest in police complaint statistics. How do you both do that personally?

Chief Constable Cunningham: Two ways. Complaint information is important not just for a temperature gauge in relation to the conduct of officers, but it is also a quality of service indicator. Just as part of a monthly performance programme, I would look at information where people are satisfied with the police service that is being delivered. The contrary picture has to be presented as well so we know what it is that is hacking people off as well as what it is that is
pleasing them. Also in relation to the more serious allegations and the investigations where people may be suspended from duty, they are subject to monthly review, too. The progress of those and any themes that are emerging takes part of a performance management programme.

Q386 Dr Huppert: With you personally?  
Chief Constable Cunningham: I would personally be part of that but, as in most forces, the discipline authority is delegated to my deputy. He has personal oversight but the overall performance management is reported at a meeting I attend also.

Bernard Hogan-Howe: Three broad ways. One is that I have a performance board every four weeks, which looks at performance right across the Met, volume of crime and then through to IT to discipline. Secondly, when the police authority was there, the police authority had a subcommittee, which members may know. It was a legal duty for them to check the complaints register every month and I think one of the things that IPCC will need to consider is how they intend to keep oversight of each complaint. It is a valuable thing for them to do and I think we need to hear more about how that will happen. The third thing we have in the Met is a third-party reporting system, which is for internal use. The 50,000 can contact another body, not the Met, to complain about internal misbehaviour. Every four weeks I see that anonymous reporting to see what the complaints are, what the allegations are and I also keep an eye on the covert side of our investigations, which are particularly around correction.

Q387 Chair: You mentioned retired officers being called to attend an interview. The view that has been put to us by Ministers is this: the retired officers are, in effect, ordinary members of the public and it would be wholly unprecedented if we were to grant the IPCC the power to compel such individuals to attend an interview as a witness, and indeed the police themselves do not have such a power. Do you disagree with that? Do you think they should be?  
Chief Constable Cunningham: No, sorry, Chair. My point was that I don’t think the first clause of the legislation as it is framed is going to solve the problem that has been identified in terms of potentially getting evidence from people who are reluctant to give it.

Q388 Chair: I understand that, but do you think it should go further then?  
Chief Constable Cunningham: No. I think the point in relation to the civil liberties of people who are not required to give evidence as witnesses, in the same way as they would for crime situations, normal members of the public, it would be problematic if it was set out just for IPCC investigations.

Chair: I am not clear what you are saying to this Committee. You do not think clause 1 deals with the problem—  
Chief Constable Cunningham: No.

Chair:—and this is still a problem.  
Chief Constable Cunningham: Yes.

Q389 Chair: How do we deal with the problem?  
Chief Constable Cunningham: I do not have a solution to the problem in relation to retired officers. In relation to officers who are serving, I think that is something that, as the Commissioner set out, is a leadership issue for within the service and an expectation of the officer constable that when you sign the dotted line—

Q390 Chair: You do not compel them, you just hope?  
Chief Constable Cunningham: The problem, in terms of compelling, is that, as the legislation is set out, you will compel them to attend the interview but they can sit there in silence and still not co-operate.

Chair: There is no point in having clause 1 because it does not deal with the problem?  
Chief Constable Cunningham: Exactly.

Q391 Chair: Have you told this to the Government?  
Chief Constable Cunningham: I am talking to Government about this and I have fed back that clause 1 will not resolve the problem that they are trying to solve.

Q392 Chair: That is very helpful. Just one question before I begin Mr Reckless on the Mark Duggan case. Officers there, we were told by the IPCC, have refused to attend an interview. Your view presumably is that they ought to co-operate with the IPCC. Is that right?  
Bernard Hogan-Howe: That is correct. Of course, they have provided statements and once I learned that there was this refusal we have worked with the officers and the IPCC to try to remedy that. There was a bit of confusion at one time because we were told that the IPCC then had decided that they did not want to interview them so it all became very confusing, but I think that is one of the things that has helped me to conclude that clause 1, when remedied—and I agree with Mike that it needs to have a better remedy in it—is probably required to send the signal.

Q393 Mark Reckless: With a normal employer where there is an investigation and they want to interview an employee about it, surely that is a reasonable request and something the employee would be expected to obey and, if not, could potentially be dismissed. Is the legislation proposed the right way of dealing with these issues in the police or could the application of normal employment laws for police officers be the way forward instead?  
Chief Constable Cunningham: Mr Reckless, my approach is that the legislation is kind of the nuclear option here in terms of requiring officers to attend under law. I think there is something more around the professional responsibility of the officer as an employee, as a member of the police service, that they have a responsibility that I think the public quite properly expect of them to co-operate with an investigation that they can assist. The problem sometimes comes when officers are operating within a very legislative framework. They are alive to legislation issues a lot and their subject could change during an investigation as somebody who is a witness to somebody who may have allegations put against...
them and they will take legal advice on these issues at a very early stage. The legal advice may often be to protect themselves in terms of limiting what they say at the outset.

Q394 Mark Reckless: Is the role of the Police Federation in this context helpful or otherwise?

Chief Constable Cunningham: I think the role of the Police Federation is necessary. Whether it assists investigations is sometimes problematic because they might advise officers, I might say for what they see as very good reason, not to say sufficient. That is very frustrating not just on the part of the IPCC but on the part of police investigators who are undertaking these investigations also.

Q395 Michael Ellis: I am going to follow up what has already been raised on clause 1. It is not unreasonable to require a defendant, and police officers do it every day of the week, to come to an interview. Just because we can’t force suspects to answer questions does not mean we do not oblige them to go through an interview process. I have heard interview tapes where they simply say, “No comment”, for an hour, or even two hours, and repeat, “No comment”. To every answer, but a negative inference can be drawn from a failure to respond. The fact that we cannot force people to answer questions does not mean we should not oblige people to be subjected to questioning, does it?

Chief Constable Cunningham: But, of course, Mr Ellis, in the circumstances that you describe, the “no comment” interview is by somebody who is a suspect in a particular criminal matter. What we are talking about here are people who are witnesses to a potential incident.

Michael Ellis: The principle is the same.

Chief Constable Cunningham: I think the principle in terms of getting people to give evidence is a real problem. I absolutely recognise the problem that is trying to be resolved here. I guess my point, to return to it, is will that clause solve the problem? I think what it will do is require officers to attend for an interview but not necessarily to co-operate with that any further.

Bernard Hogan-Howe: I think the distinction is the principle that has been followed in criminal law, as in the misconduct process, is not requiring a person to self-incriminate. That is why the silence is allowed, certainly in criminal cases. However, in certain circumstances, because special evidence is available in a criminal case—it may be a fingerprint, it may be a DNA sample—then the person is given a warning that if they choose not to explain it a negative inference may be drawn should that case then come to court. That is a distinction, which is why this is so important. All we are saying here is that where there is a witness you would hope a police officer wants to give a comprehensive account.

Q396 Bridget Phillipson: On a different topic, the Committee has been carrying out an inquiry into child grooming and exploitation, particularly looking at the cases in Rochdale and Rotherham. Commissioner, could you say whether cases like that are currently under investigation in London?

Bernard Hogan-Howe: Certainly at the moment I am not aware of any particular cases that we have of the same order. I am sure that there will be allegations from time to time in a city the size of London and I am not complacent that we will not have further allegations. At the moment we have not seen a particular problem in that area, but it would be odd, if certain parts of the country have that issue, that we do not have it at all in London.

Q397 Bridget Phillipson: The Children’s Commissioner, in her report last week, talked about gang-related sexual exploitation and that does appear to be a particular problem in London, if not the kind of exploitation you are seeing in other parts of the country. What would you say to that?

Bernard Hogan-Howe: I think what we can probably say is that we have a gang problem in London. We have identified it because we have created a gang command. We think we have 269 gangs in London, of which 62 are the most serious hard one, the ones who shoot or stab someone. One of the indirect consequences of these gangs is that young girls or women are abused. There is some evidence of that type of offence. Whether that is exactly what was being mentioned in the Rochdale example, I would not like to say exactly. Certainly we are carrying out work, first of all, to enforce the law against the gang members so they get locked up if they commit offences. We are also trying to divert them where we can. We are also trying to regard particularly young women who hang around in these cases more as victims than offenders, although from time to time it gets rather difficult because the women are used to carry weapons or drugs, as often they are because they are regarded as, “The law won’t treat us seriously”. Then they get caught between the two quite often. It is a constant challenge.

Q398 Bridget Phillipson: I think that is probably the crux of it and, in terms of Rochdale as well, often you are dealing with young women who perhaps have challenging behaviour have been involved in criminal activity. It is crucial, as you say, that they are treated as victims where that is appropriate, not simply as criminals who are a problem to the police because of the challenging behaviour that they can exhibit.

Bernard Hogan-Howe: It is a real difficulty and I won’t try to run away from it, because what can happen is that the woman or the girl is asked to keep a firearm in the house and if they are found with it the law says that, unless there are exceptional circumstances, they will go to prison for five years. The police, the CPS and the judge have to look at each case carefully. Of course, some of these girls are abused in many ways, sometimes sexually, sometimes physically and certainly from time to time criminally.

Q399 Bridget Phillipson: On a separate issue, Dame Anne Owers highlighted the problem of sexual abuse by police officers in one of her reports in that it was not often taken seriously enough. Could you set out perhaps more generally, Mr Cunningham, but also in...
terms of the Met what the mechanisms are for dealing with that for reporting and responding.

Chief Constable Cunningham: The first thing to say is, on that report, it was a joint report between the IPCC and ACPO because we both identified, in parallel, that there was a theme emerging where there were investigations in many police forces throughout the country where officers were abusing their powers and sometimes sexually exploiting vulnerable women. A number of things have come together and you will know at the back of that report there is a checklist of activity that I have written to all chief constables for them to implement within their forces and to check that is being done. They are things like identifying officers who may be arresting on average more women, officers who are voluntarily attending incidents that are generated by them—so there are some questions. It is about vetting arrangements for officers who put themselves in positions such as domestic abuse officers or dealing with vulnerable missing from home, those sorts of things. There are a number of practical steps that we are putting in place as well as looking at supervisors being diligent as to the activities of officers on duty. There is a practical checklist that has been commended to all forces on the back of some cases, most notably the Stephen Mitchell case in Northumbria, which was on the extreme end of this, right the way through to other forms of abuse.

Q400 Mark Reckless: The Committee have seen quite a wide range of levels of co-operation between police and children’s social services under local safeguarding rules across the country. What do you consider to be the level of such co-operation within London, but also its range and any particular boroughs and areas where you may have concerns?

Bernard Hogan-Howe: I think on the whole the relationships are good, but it is a fact that we all have to be careful because, as we have seen with BBP, despite all the improvements we have seen over the last years, the best systems can sometimes fail us. I think it is an area we have to be constantly vigilant in. That said, in London, as you know, we have 32 boroughs. At the moment we have five boroughs that are experimenting with something called MASH centres, which I don’t know if you have heard of but the idea is that one of the challenges in the past has been that each agency holds data. Of course they guard that information, better risk assessments and joint activities of officers on duty. There is a practical checklist that has been commended to all forces on the back of some cases, most notably the Stephen Mitchell case in Northumbria, which was on the extreme end of this, right the way through to other forms of abuse.

Chief Constable Cunningham: The Commissioner’s point is absolutely a correct one in terms of this is happening now throughout the country. In terms of any serious case review or public inquiry, public sector organisations, when there has been a tragedy, have been quite properly eviscerated because there has been lack of information sharing when there should have been. The whole concept of multi-agency safeguarding hubs is now growing throughout the country where officers at that point of referral are sitting with health professionals and social services, so there is much more dynamic sharing of information, better risk assessments and joint interventions. This is something that is very much a growth area for us throughout the country.

Q401 Chair: Mr Cunningham, I was surprised to note that 11 ACPO-ranked officers were currently under investigation by the IPCC. That sounds like a very large figure.

Chief Constable Cunningham: Yes.

Q402 Chair: More generally, to both of you, 16 police authorities either have a temporary chief constable or a chief constable who is about to resign. Are there any concerns to either of you?

Chief Constable Cunningham: In relation to the first point, the number of officers under investigation range from an officer who has recently been dismissed through to accusations. Obviously accusations need to be properly investigated and accusations come with the territory. I have been subject to accusations myself as a chief officer which, quite properly, have been investigated, with a happy conclusion I have to say. Nevertheless, it is part of our public accountability and our role that people can make complaints about us.

Chief Constable Cunningham: No, absolutely not. Having said that, in view of the concerns about the dismissal of a chief constable recently and other accusations that are alive, ACPO are commissioning some work to review police leadership, to review both what is working effectively and whether there are any
themes emerging through the investigations that are currently alive.

Q404 Chair: Commissioner, obviously the Met is stable. You are there. You have been there for a year, but do you look around the country and say, “Where are all my colleagues disappearing to?”

Bernard Hogan-Howe: Your question was, “Is there a major concern when you look at all these vacancies?” My major concern is they do not come and steal some of the very good DACs we have for chief constables around the country, and it is a concern, but I think the fact there are so many vacancies is a logical consequence of one thing. The Government has said, and I think we need to support this, that as the police authority has died as they move towards November, if they in that year were to select a new person who would then be the legacy they would leave for their successor bodies, that could hardly be fair when you might be giving someone a five-year contract, which would have exceeded the term of the person who was elected. I think that is what people were trying to manage.

What it has meant over this last year is that more and more vacancies have accumulated and, of course, now we have almost two years’ worth of vacancies. I think there are 43 forces and, as you say, there are 16 waiting for new chiefs. I am sure we will get through it, but it is the logical consequence of having this period where they could not recruit because they wanted the PCCs to have the opportunity to select their person who they would work with in the future.

Q405 Chair: But your team is in place. It is a new team. You may get a new building but the people are the same.

Bernard Hogan-Howe: We have been quite fortunate in the sense that, first of all, we had a Deputy Mayor who arrived in January. That meant that I could select my own team. The past police authority selected both the chief constable and their team, so I have been able to select my team, with the exception of the Deputy Commissioner who was selected by the Home Secretary. That is a Crown appointment. We have been able to select our own team and we have carried on doing that all year. Others of our colleagues have looked a little aghast at it, but we have carried on recruiting, which means that we have a relatively new team in and our turnover now is low. For reasons that this Committee knows about, the Met has had two or three years of turnover at the very top, with all the knock-on effect on the management, and I am hoping that we will have some stability.

Q406 Mark Reckless: Given that the PCCs will not be involved in the ACC and DCC outside London selections in the way that the police authorities were and given that HMIC will no longer have the advisory role, do you expect there to be a greater diversity of chief constable appointments in light of that?

Bernard Hogan-Howe: It will be interesting because, of course, the pool from which they will select will be the same. The thing that will change will be the person making the decision. Whether or not the diversity will change, I am not too sure. I think probably the biggest challenge we are facing, rather than the vacancies we have—Mike and I were talking about it just before we came in—is you will now see 16 adverts going out. It is not the old central control. So all the interviews might happen on the same day. People might want to go for more than one job and, of course, the new dynamic that has kicked in now is that, say for the PCCs, if you interviewed Mike and I for the job and they offered Mike job, they would then have to have confirmation of that appointment by a scrutiny panel. The scrutiny panel have the opportunity to veto that appointment.

Q407 Chair: In effect, you need a UCAS for chief constables now?

Bernard Hogan-Howe: Yes. There used to be one called the Senior Appointments Panel. That went. We were just saying there is a danger because there are so many decisions to make it could get rather confusing, because there will be a gap, I suspect, between the PCC’s nomination and the scrutiny panel’s confirmation. If Mike were selected for that he might say, “Well, let’s go for that other job”. I think there is going to be a period of confusion, but hopefully we will get through this year anyway.

Chair: The Committee is having its own investigation, as you know, into each of leadership and standards in the police. I hope you will both be involved in that. Thank you very much for coming this afternoon.

Examination of Witnesses

Witnesses: Lawrence Kershen QC, Commercial Mediator, Tooks Court Chambers, and Anthony Glaister, Dispute Resolution Adviser, gave evidence.

Q408 Chair: I welcome Lawrence Kershen and Anthony Glaister. First of all, my apologies for standing you down a few weeks ago due to the work that we were doing on an urgent basis. Thank you very much for coming to give evidence. We will be short and sharp in our questioning and we would appreciate the same response.

A third of the population do not feel that a complaint about the police is taken seriously. If you were making the case, Mr Kershen, for mediation as opposed to the system that we have at the moment, with your experience in dealing with these issues, what would that case be?

Lawrence Kershen: The mediation process is faster than most investigatory processes. It is certainly cheaper. Most importantly, it builds a relationship or has the potential to build a relationship; and the outcomes that are possible through the mediation process are far richer than that which might be possible through an adjudicative process.
Q409 Karl Turner: I think the rules are set out in the Police and Criminal Evidence Act in relation to mediation of this form. What kinds of complaint could be dealt with through mediation and what kinds could not, in your view?

Lawrence Kershen: Broadly speaking, mediation could be applied to any dispute provided that the parties are willing to engage. So voluntarism is an important tenet of mediation and if one of the parties, police officer or member of the public, does not want to engage, mediation is not appropriate. Otherwise, I would say that just about everything is susceptible to a mediated solution if the parties want to engage with it. That is not the same as saying that a serious complaint should only be dealt with by mediation. I think there is an element, which I know the Committee will be much more alive to, that in serious complaints or crimes mediation is only a part of the answer, just as restorative justice—and I will say a bit more, if I am permitted to, about restorative justice—is being used in serious crime. It is not with a view to removing the possibility of an adjudicated resolution, but it is something that goes alongside it and has the potential to transform the relationship.

Q410 Mr Clappison: I suppose the type of mediations you are involved in cover a wide range of circumstances but, if there is such a thing as a typical mediation process, could you give us some general idea of how much it would cost?

Lawrence Kershen: May I introduce the idea of restorative justice at this point—

Mr Clappison: Yes, please do.

Lawrence Kershen: because we are talking about mediation and mediation is a process where the parties are essentially on a level playing field. There is no admission of responsibility one way or the other. Restorative justice, as I am sure you will know, is being increasingly used in cases of crime, also in education and organisational situations. Because there you have an acceptance of responsibility on one side for having done whatever the acts are that are complained of, and then you have the parties talking about how to move through that. So the cost of restorative justice is usually much lower than the cost of mediation. It is often done by volunteers or it is done by community services and therefore it is done very cheaply. Mediation can be anything from a community mediation service, which may do it for nothing or may do it for a very low cost, all the way up to the big beasts of the mediation jungle who will charge £5,000 upwards for a day’s mediation.

Q411 Mr Clappison: Who would the big beasts be, for these purposes?

Lawrence Kershen: Not me, I am afraid. Experienced mediators who have been around a long time and who are specifically in the commercial world. I think that is worth saying.

Anthony Glaister: I represent a group of about 130 mediators in the north of England. I am not from London. We do see an enormous number of requests for low-cost mediation, small claims mediation in courts. It can be a requirement for an explanation at a workplace level. In terms of cost, I am not an expert on restorative justice, although to an extent what we do as mediators is restorative justice because you are restoring relationships, but to give you an example of costs there is one that pinged on my phone about 20 minutes before I came into this room. It was a free mediation, and it is interesting to see that those mediations are primarily done by the Law Society’s pro bono panel. It may well be a complaint against the police, for instance a family of someone who is a victim of a murder case. They may not have any money and they may not have any legal aid, but that is the sort of example where you could see a free mediation being arranged using commercial mediators. They last about 30 seconds on the net before they are taken.

In other words, there are so many mediators out there in terms of cost it has a low level at that level. The more complicated the mediation you can get quite a costly one lasting one or two days, but on average you are talking certainly at the smaller end for a four-hour or three-hour type of mediation.

Q412 Bridget Phillipson: Would you agree that where mediation takes place—particularly I am thinking more generally where it is cases of disputes between tenants, where there is antisocial behaviour or in family law proceedings—that that can serve a really important role but it can only do so if the person conducting the mediation is suitably experienced or qualified—that need not be a lawyer—but is able to judge sometimes where mediation is not appropriate because mediation in such cases is not always the right option?

Anthony Glaister: No, but I think in the majority of cases involving ASBOs or community cases at a community level the mediators tend to mediate in pairs. They are, by and large, highly experienced and obviously mediate at a very moderate cost, depending on the contract arrangements with the local police authority or whatever. There you can see high levels of experience at very low or moderate cost, with a pair of mediators mediating. We are more used to mediating on our own and the breadth of mediation can be enormous but there are occasions when mediation is inappropriate, particularly where there are public policy issues involving a requirement to investigate.

Q413 Bridget Phillipson: Finally, where I have dealt with some cases concerning antisocial behaviour sometimes the victims feel that they are disadvantaged if they refuse to take part in mediation. Sometimes they feel quite strongly that they are not willing to sit down any more with that person, that they are intimidated, threatened or there is risk of violence. Would you support the right of the person to express those concerns and perhaps say that mediation was not appropriate for them?

Anthony Glaister: We are all used to dealing with very high levels of emotion. I have one on Thursday between a brother and a sister and it is going to be enormously highly emotive and they do not want to meet. They will meet, probably, and they will probably shake hands or hug each other at the end. I
do not know. There is a sort of magic in the room that does enable you to work the parties towards having a meeting in a difficult situation. Other times they will agree to meet around the table. Lawrence Kershen: Of course I agree with what Anthony said. I also want to add that in restorative process one of the things that you make sure of is that nobody comes into a room unless they are willing to, and if you ask the victim of a crime at the beginning are they willing to meet the offender the answer is probably, “Not on your Nellie.” If you ask them after they have been properly prepared, after the offender has admitted guilt or taken responsibility, then the attitude is very different, if they have been properly prepared. Without it, and this is the risk with bad quality restorative process, unless they have been properly prepared there is a risk that they can be re-victimised.

Q414 Michael Ellis: I admire the work that you do, gentlemen. I think it is clearly a saving to the public purse and it is very good. I notice that in recent trials for mediation of minor police complaints in Northern Ireland there was not a very successful rate. I think there was only about a 5% rate of success. Do you know why that was? Was that particular to the province of Northern Ireland or is there something that can be learned from that in terms of lessons for mediation, successful mediation in England and Wales?

Lawrence Kershen: I only know as much as is contained in the report. Having read it, my conclusion was that, first of all, there was a very high level of suspicion between police and public in Northern Ireland at the time that this was taking place. Secondly, the steps that were taken to prepare officers, never mind the public, for that process were not as full as one would wish and hope for. If you look at the example of police in England and Wales, historically Thames Valley has done a huge amount of successful work mediating complaints against police through a restorative process. I spoke to Garry Shewan, who the Committee may know is the Assistant Chief Constable of Greater Manchester Police and also the ACPO lead on restorative justice, and he told me last evening that there have been in the last three months seven complaints against police, all run through a restorative process, all with successful outcomes and all the complainants saying that they were either satisfied or very satisfied.

Q415 Michael Ellis: So it is all about preparation?

Lawrence Kershen: All about preparation. All about also, if I may say so, the context in which it has happened. I think that in Northern Ireland there was a strong accusatorial or blame flavour, not that those who ran the experiment were doing that but the pilot was not successful.

Q416 Michael Ellis: Finally from me, there is clearly a wide range of disciplines or areas in which mediation is possible. I understand, Mr Kershen, that you have experience in mediation in defamation actions, for example?

Lawrence Kershen: Yes.

Q417 Michael Ellis: Bearing in mind recent events, you could be quite busy. Are there any areas that you think are not susceptible to mediation?

Lawrence Kershen: We have already spoken about those where the parties do not want to engage. Anthony has spoken about those where there are public policy issues or where, for example, one of the parties wants a precedent. That would not be appropriate.

Q418 Michael Ellis: I am referring to public policy really more than anything else.

Lawrence Kershen: Public policy? I do not know why there would not be—well, I do know one reason. In the Truth and Reconciliation Commissions in South Africa one of the problems for the victims was that they came away feeling that justice had not been done. They had had their chance to speak out, the offenders had had their chance to speak out but there was, in their words, no justice. I think that you have to bear in mind that for certain levels of complaint this process of mediation or dispute resolution by dialogue will be hugely effective. In other cases if there is a genuine desire for justice, whatever that means, I do not think by itself mediation or restorative justice will be enough, unless there is a holding to account as well.

Anthony Glaister: I think Chief Constable Cunningham said that the vast majority of complaints were to do with the standard of service and the complainant really wants an explanation and hopefully most of them are dealt with directly by negotiation, but it may be that mediation has a role there.

Q419 Steve McCabe: My impression from the relatively limited number of complaints against the police that I have come across has been the complaint procedure is all about process so it is quite difficult to get to resolution. Is the major requirement in mediation that if someone is seeking a resolution it provides a direct route to it with all the safeguards that you have indicated?

Anthony Glaister: I think that the panoply of the process, that almost the process takes over the complaint.

Steve McCabe: That is what I mean.

Anthony Glaister: In a misconduct hearing the police service is paying for two barristers, supported by two solicitors, two supervising officers and one lay assessor, tribunal clerk, panel legal adviser together with the administrative staff dealing with the witnesses, tape recording, care and conduct of the panel. That is the panoply of the process in addition to the internal management costs of having someone suspended for a long period of time. The worry from a taxpayer’s point of view, standing outside of the mediation context, is you do see these complaints that are dealt with many months after the event, the initial complaint. I appreciate there has to be an investigatory process, but the speed with which these processes happen is of concern. I appreciate it has to be a thorough process and sometimes mediation can intervene and speed it up.
Q420 Chair: You do not feel sorry about putting all these starving lawyers out of business?
Anthony Glaister: Absolutely not.

Q421 Chair: A very quick question and a quick answer please, to both of you, should these services be commissioned by the IPCC or by the police forces themselves? Mr Kershen?
Lawrence Kershen: Local resolution seems to me to be a theme that is running through a lot of what we are talking about. It is faster, it is less high profile, it is less of a machine coming to bear, so I would say that is the answer to your question.
Anthony Glaister: I would reflect what Mr Kershen says. Our experience in North Yorkshire and the Derbyshire areas of the north shows that at a local level they use mediation fairly frequently.
Chair: Thank you both for coming in. We may well have other questions to put to you. It has been very helpful and we will write to you again. My apologies again for putting off the original session. Thank you both very much.

Examination of Witness

Witness: Damian Green MP, Minister of State for Policing and Criminal Justice, gave evidence.

Q422 Chair: This is the conclusion of our inquiry into the IPCC. Minister, I apologise. I know you have to go at 5.15pm because you have another pressing engagement and I am sorry that went on much longer than I anticipated. We are going to concentrate on the IPCC but can I ask you one question on what you have just heard? Presumably you have read the Vine report. Are you as concerned as I am and this Committee is about what you saw there? I won’t ask what you knew and what you didn’t know. We have had evidence on this.
Damian Green: Thank you, Mr Chairman. What most concerned me in the Vine report was discovering a sequence of events where I had been specifically asked to allow the checks on the controlled archive to take place once every six months, which I agreed in January 2011—indeed, I wrote to this Committee in March 2011 saying we were going to move to six-month checks because otherwise it was taking up too many resources—and then discovering that those checks were not made. It was reminiscent of previous things that happened in the UKBA but in this case very starkly I was asked for explicit permission to move to six-month checks and those six-month checks didn’t happen, so the responsibility there seems to be pretty clear. I was very disappointed to hear that.

If I can make one comment on the questions and answers I have just heard. I think it was Dr Huppert who asked the question, “Is it not time to start again with this organisation?” Actually, of course, to a large extent that has happened. Splitting off Border Force and making the UKBA and Border Force separate bodies was precisely so that you could have a management chain that found it easier to get a grip on each of those organisations. I think it is unarguable that Border Force performed very, very well during the Olympics at the time of maximum stress. Border Force is in a much better shape than it was three or four years ago. This is clearly a very bad episode as part of a wider problem with the legacy of the half million cases when the asylum system collapsed in the early years of the last decade, but it is the case that there are parts of the UKBA where you can see improvement as well, notably, for instance, the visa section.

Q423 Chair: We don’t want to spend all our time on immigration but it is a very clear answer. You were upset basically because they didn’t do what they specifically asked for permission from you that they should do, but you knew nothing about this information that was given to the Committee? You didn’t know that it was inaccurate? You were given the same information as we were given?

Damian Green: Yes. The first I knew about that was in July. It was after John Vine had gone in and the organisation then came to me and said, “We’ve discovered we haven’t done”—what particularly concerned me were the checks against the Police National Computer, because those checks might have revealed that there were people who we didn’t think were in the country were actually committing criminal offences. Happily there were none. So my first act was to ensure that those PSC checks were done. They were done in August and the Warnings Index checks were done by October.

Q424 Chair: Excellent. Let us move on. Can I say to colleagues that the Minister is due to be away at about 5.15pm so we will have to be quick in our questions and very quick in our answers. Resources to the IPCC. The evidence that we have received from all concerned, including incidentally today from Mike Cunningham and the Commissioner, was that they are concerned about the level of resources that the IPCC has. They are facing a budget cut of 21%. We now have Hillsborough referred to them. That is 2,444 officers who have to be investigated in one week. Then there is Orgreave. They are now going to look at the Battle of Orgreave. They have their existing caseload. What can be done to assist them in terms of additional funding?

Damian Green: The biggest additional responsibility, as you rightly say, is Hillsborough. The Home Secretary has said that she will ensure that there are sufficient resources for them to do what they need to do with what will clearly be a very major investigation. In terms of ensuring that their workload and resources are properly aligned, we are obviously in discussions with the IPCC. We get the autumn statement next week so I can’t give any details now. I should say the 20% cut is over the whole spending review period and that is consistent with other cuts that other public service organisations have taken. The IPCC has been extremely good at driving out the back office costs in a way that one wants to see happen. They are doing more independent investigations than...
before. They are doing something like three times as many independent investigations as they were seven or eight years ago. Some of the changes that have come about in legislation are precisely to allow the IPCC to concentrate on the most serious investigations. That is where we want to see them acting and so it will give them more flexibility and will ensure that the less important investigations can be effectively carried out outside the police forces.

Q425 Steve McCabe: Minister, the BBC’s Panorama programme alleged that Deborah Glass of the IPCC cautioned a senior investigator against treating the police as suspects while investigating a death during an arrest. Should questions be asked about the IPCC’s relationship with the police?

Damian Green: The IPCC’s relationship with the police seems to me to be appropriately robust. I wouldn’t accept if the underlying accusation is that they are too cosy with the police.

Q426 Steve McCabe: I think that was the Panorama—

Damian Green: That is what I picked up from your question and from the programme. I should say specifically in regard to the programme, I think the Chairman has seen Dame Anne Owers’ letter to Panorama—I don’t know if the rest of the Committee has seen it—which is a very strong letter about the journalistic standards of that programme. One part that struck me as a former television journalist is that, according to the IPCC, they had approached a bereaved mother for an interview but after she made clear that she believed the IPCC had done a good job they not only didn’t interview her but they didn’t send her a survey form to complete. They were doing a survey of apparently discontented bereaved parents. I think there is clearly controversy about the journalistic standards of that particular Panorama. It would be worrying if there were too cosy a relationship or if people could see too cosy a relationship between the IPCC and the police. As I say, I think in general terms that would be an unfair criticism.

Q427 Michael Ellis: Minister, moving on to police as witnesses, the Police (Complaints and Conduct) Bill introduces new powers to compel officers to attend an interview in the most serious of cases. We raised this with the Commissioner of the Metropolitan Police earlier and a Chief Constable. The issue is will the evidence from those interviews be admissible in court? The chief officers seem to have some concerns about the powers to compel officers. What do you think?

Damian Green: I agree with the IPCC that the powers to compel officers are necessary particularly in the case of Hillsborough. Clearly the evidence once given is there, so it would be admissible. Equally clearly, if somebody is afraid of incriminating themselves, just as in an interview with somebody who has been arrested by the police, they are free not to say anything. But the IPCC made a very strong case that this extra power was necessary in the particular instance of the Hillsborough inquiry, which is why we have included it in that Bill and are seeking to get that Bill through both Houses of Parliament by the end of this year so as not to have a day’s delay in the IPCC’s part of the wider Hillsborough inquiry.

Q428 Michael Ellis: One can safely assume in the normal run of events that the Government would have had legal advice, and of course you can’t discuss the content of legal advice the Government receives but no doubt for it to appear in a Bill draft measure the advice would have been satisfactory that such a measure was consistent with the law.

Damian Green: Yes, absolutely, Chairman, you talked about resources. I suspect the focus of this report will be partly about resources, partly about powers, and the IPCC and others make the point they need both more resources and more powers. They are getting these two extra powers immediately in this Bill and obviously we are in discussions. There are a range of other powers that people have brought up that are wider and therefore are inappropriate for emergency legislation. I think the spectre of the Dangerous Dogs Act hangs over all of us. We don’t want to repeat that kind of thing, but these are narrow powers specifically to enable the Hillsborough inquiry to be as effective as possible.

Q429 Michael Ellis: The Police Action Lawyers Group told us in evidence that the threshold for interviewing officers under caution was too high and that they believed that a new power could distract from the real concern that already established powers are not being used. In other words, do you think this is a power that is surplus to requirements?

Damian Green: I don’t think that and the IPCC doesn’t think that. One takes their views very seriously because they are in the early stages of conducting what is clearly a hugely important inquiry.

Q430 Michael Ellis: Finally from me, in some cases there is a regular defence by a police officer who, for example, might be involved in a fatal shooting that they acted on what they genuinely believed. It is difficult to prove what someone does not genuinely believe or what they do genuinely believe. Do you think, as some do, that there ought to be a reasonableness test? I would accept that the problem would then be applying a reasonableness test to circumstances in which armed police officers find themselves, which are outside of the experience of most people, but taking into account the context and the issue of genuine belief alone, do you think that the issue of genuine belief should not be a defence?

Damian Green: I am conscious of treading into jurisprudential areas where some, including you, Mr Ellis, would have much greater expertise than I do. It seems to me as a matter of principle that as far as possible the law should apply to all citizens equally, so we shouldn’t have special laws for police officers. I quite take the point that the law attempting to decide what was going on inside someone’s head at the time is quite difficult. I would draw the analogy with the announcement made by the Justice Secretary recently about people defending their homes against burglars, that the courts will be enjoined to take into account the fact that this will not be a cool, calculated
decision. It will be a decision taken in that case by somebody who will be in their own home, frightened. I suppose the analogy is an armed police officer has to make an instant decision of huge importance.

Q431 Michael Ellis: And in very exceptional circumstances.

Damian Green: Exactly, yes.

Michael Ellis: You may be assured to hear that the law regularly requires juries to consider what is reasonable and what is not reasonable in various circumstances.

Chair: Thank you, Mr Ellis, for that legal advice. That is very helpful.

Q432 Mr Clappison: Looking at this from another point of view, surely the issue here is for the tribunal to decide and the investigator to decide what the police officer genuinely believed. If they come to the conclusion that the police officer did genuinely believe something, it would be oppressive to condemn them for whatever actions they took when they had a genuine belief.

Damian Green: The point at issue is how do we construct a law so that the tribunal or the court can come to that decision sensibly. You have to consider in that case the surrounding circumstances at the time. I hate to fall back on the thought that every case will be heard on its merits but that is what individual judges will do, in each of the many high profile cases that have affected the IPCC when they are investigating police action in which somebody has died. There are clearly commonalities across those cases but each of them has individual circumstances and those are what the IPCC has to take into account and, if it ends up in a criminal trial, the judge has to take into account as well. It is quite difficult to generalise about that.

Q433 Mr Winnick: I understand the Police (Complaints and Conduct) Bill is going to be taken very quickly at all its stages, for reasons we understand. Is it the case, Minister, that the controversy about whether there should be another body in place of the IPCC is something the Government is not intending to pursue?

Damian Green: As I say, this legislation is very narrow legislation. I am grateful for the support of the Chairman of the Committee for that legislation, as well as the official opposition. I think the question of the future of the IPCC is a longer term and wider question. It seems to me that it is sensible to address the issue of powers. I know the IPCC has argued in front of this Committee that it needs more powers, some of which it is getting under this legislation. We are discussing with it potential other powers for potential future legislation as well. That seems to me to be a sensible place to have the debate now rather than saying, “Let’s scrap it and start again”.

Q434 Mr Winnick: I understand. Is it intended to make the IPCC recommendations binding on the police?

Damian Green: That is an interesting point because that is a point that has not been brought up by the IPCC with Government, but I am conscious of the debate around that. There are clearly practical implications that if a Chief Constable chose to ignore an IPCC recommendation then that would itself create a huge public debate, a debate which would be all the sharper now for the existence of Police and Crime Commissioners. There would be a PCC who would have no doubt want to hold the Chief Constable to account. If I may, I will take that away. I think it is one of the useful things about this inquiry, to raise that issue.

Mr Winnick: That would be very helpful. When you say you will take it away—

Damian Green: I will take it away and think about it seriously, is what I mean.

Mr Winnick: The possibility of an amendment or whatever on the floor of the House?

Damian Green: Not to this Bill.

Chair: You will take it away for the future and look at it?

Damian Green: Yes.

Q435 Dr Huppert: As you may have seen in the transcript, Nick Hardwick told us the police believed it if looks like a police officer, talks like a police officer, walks like a police officer, the IPCC should investigate it. I wrote to you about this and you responded, “The issue about the extension of the powers to those who have quasi police roles sits outside the scope of this fast track Bill. We are actively considering this issue.” I appreciate it is not part of this Bill. What are your thoughts on this area? How far has this active consideration gone?

Damian Green: I think Nick Hardwick expressed it perfectly well. I would make the distinction, of course, that the exercise of warranted powers, which would be covered by that description, is going to be done by warranted police officers, so everyone who does that sort of thing already is subject to potential IPCC investigation. The point at issue is clearly the use of private sector partnerships, which of course already happens.

Dr Huppert: Local authority, law enforcement, custody. There is a whole range.

Damian Green: Yes, and potential other partnerships. I think the sensible thing to say is that it is under active consideration for potential future legislation as to whether the IPCC’s powers should be extended to those doing those sort of functions. It is under active consideration is probably the sensible phrase I should use.

Q436 Mark Reckless: With the commissioners at the IPCC, we had a discussion with them between them having a governance role and taking operational responsibility for superintending investigations. Do you have a view as to where they should be on that spectrum?

Damian Green: What, the IPCC and the PCCs, how they—

Mark Reckless: Are the commissioners there to provide a governance function or are they there to superintend investigations?

Damian Green: The IPCC will investigate the most serious complaints, as it does now, and also,
incidentally, have a role in investigating criminal complaints against PCCs and their deputies. PCCs are responsible for holding chief constables to account, not just for operational decisions but also for decisions they make in relation to handling complaints and taking disciplinary action against officers in the force.

Q437 Mark Reckless: I am not sure if I have made myself clear. It is not so much a point about PCCs but the commissioners at the IPCC where there seems to be a discussion among them, and perhaps some shift in the focus of their role. The question is, for inspiring public confidence in the complaints system, would it be best if those IPCC commissioners stuck to a governance overall strategic role or should they have a more operational role of superintending particular complaints investigations?

Damian Green: Reading the back papers from this investigation, I am struck by the slight worry that the IPCC itself is too laden with ex-police officers and therefore the accusation of cosiness might be made. It seems to me quite valuable that each serious investigation has to be overseen by an individual commissioner and by law every one of those commissioners cannot be an ex-police officer, so you have independence built into the system at the top. Therefore, out of that form, I think, derives the answer to your question, which is that it is useful to have them there with direct operational interest in individual investigations.

Q438 Chair: The very final question is, we heard evidence from Chief Constable Cunningham and the Commissioner who said that, although of course they support clause 1, it will not actually achieve its intended purpose because if somebody comes along to the interview and says nothing then you will get no information.

Damian Green: That is true even if the police arrest someone. You cannot compel people to incriminate themselves in an interview, so this is replicating that.

Q439 Chair: They feel that it is best left to the leadership of the service to try to encourage people to come along and chat away. You don’t agree?

Damian Green: I don’t agree and the IPCC doesn’t agree. The IPCC thinks this power is important and in practical terms think that if people turn up the vast bulk of them will give some useful evidence.

Chair: This Committee thinks it is important too. Minister, please don’t assume that when you next appear before us it will only be for a short time. I know you have another appointment. We are probably exhausted, having dealt with Mr Sedgwick and Ms Homer. We look forward to seeing you again. We have a number of other inquiries and we will see you on the floor of the House next Wednesday. Thank you very much.
Written evidence

Written evidence submitted by the Home Office [IPCC 00]

INTRODUCTION

1. The Independent Police Complaints Commission (IPCC) was established in 2004. It oversees the police complaints system in England and Wales. As the name suggests, it is independent by law and makes its decisions independently of the police, Government, complainants and interest groups. It has strong powers to investigate complaints against the police which are set out in the Police Reform Act 2002. It has an annual budget of approximately £33 million and employs approximately 400 staff.

2. The last 12 months have been a challenging period for the IPCC. In particular, it has received public criticism over its handling of the response to the police shooting of Mark Duggan. Nevertheless, it has continued to perform strongly. It has undertaken a high number of independent investigations while reducing costs. A 2011 survey found that 85% of people thought that the IPCC would treat a complaint against the police fairly.

3. The IPCC will face further challenges over the next 12 months. These will include implementing changes to the police complaints system that will make the system more efficient and more effective. It will also investigate allegations of criminal behaviour against new Police and Crime Commissioners.

4. The IPCC is well set up to manage these changes. In particular, it has a new Chair who was recruited by a Home Office managed campaign, specifically with these future challenges in mind. The Home Office is therefore confident that the IPCC will continue to grow in strength over the coming months and years and will play a key role in ensuring public confidence in the accountability of the actions of police officers and staff in the new policing landscape.

BRIEF HISTORY

5. The IPCC was created following both public and political concern about the lack of an independent system to deal with complaints and conduct matters within the police service. Particular public concerns in advance of the IPCC’s creation were centred on instances of deaths and alleged police brutality within custody and the policing of black and minority ethnic communities.

6. Both Lord Scarman’s inquiry into the disorders in Brixton in 1981 and the Stephen Lawrence Inquiry in 1999 called for the establishment of an independent body. The Police Reform Act 2002 established the IPCC and it became operational in April 2004. It replaced the Police Complaints Authority which previously dealt with police complaints before this point but had fewer powers and was perceived as being less independent than the IPCC.

7. In April 2006 the IPCC’s supervisory role was expanded to include HM Revenue and Customs and the Serious Organised Crime Agency (SOCA). In April 2008 this role was expanded further to cover the UK Border Agency. Given that the IPCC is only set up to investigate complaints against the police and those exercising police like powers, the Home Office does not envisage the IPCC taking on responsibility for investigating complaints against the Crown Prosecution Service or any other part of the Criminal Justice System.

ROLE AND POWERS

8. The IPCC’s primary statutory function is to secure and maintain public confidence in the police complaints system in England and Wales.

9. The IPCC has responsibility for the police complaints system overall and independently investigates the most serious complaints and allegations of misconduct against the police. It also receives nearly 7,000 appeals each year from members of the public whose initial complaint has been handled by their local police. All complaints must be dealt with in accordance with legislation and the guidance issued by the IPCC and agreed by the Home Secretary.

10. The IPCC has strong powers so that when conducting its investigations it can follow the evidence wherever it leads them. These powers are set out in the Police Reform Act 2002 and regulations made under it. The Home Office has recently further strengthened the IPCC’s powers in the Police Reform and Social Responsibility Act 2011 so that the IPCC can recommend and direct that unsatisfactory performance proceedings are brought against an officer where a complaint reveals that the performance of a police officer is unsatisfactory.

11. In addition, the Home Secretary has the power to ask the IPCC to do specific pieces of work under section 11 of the Police Reform Act 2002. This power was used recently in commissioning the IPCC to review their experiences of corruption within the police service in England and Wales.
INDEPENDENCE AND ACCOUNTABILITY

12. The IPCC is overseen by a Board that is made up of a Chair, up to five Commissioners with investigation oversight responsibilities and two non-executive Commissioners. The Chair and Commissioners, acting collectively as “The Commission”, are the governing board of the IPCC. All independent and managed IPCC investigations, into the most serious matters, are overseen by an IPCC Commissioner. By law, IPCC Commissioners cannot have served with the police, been a member of SOCA, a Commissioner and/or an officer of HM Revenue Customs at any time.

13. The Chair is appointed by the Crown and IPCC Commissioners are appointed by the Home Secretary. Two non-executive part-time Commissioners provide objective challenge and scrutiny to IPCC governance and accountability.

14. The Commission is accountable to Parliament through the Home Secretary. Parliament also scrutinises the work of the IPCC through the Public Accounts Committee and the Home Affairs Select Committee.

15. 90% of IPCC staff come from non-policing backgrounds. Those that do have a policing background provide experience and expertise that the IPCC can conduct competent and robust investigations. All IPCC investigators, irrespective of background, undertake a tailored and externally accredited training programme.

16. The IPCC regularly reports publicly on the outcome of investigations and makes local and national recommendations, as appropriate, to help to ensure that the same thing does not go wrong again. The IPCC also publishes its investigation reports, research studies and complaint statistics on its website, which are available for the public to review, in order to ensure transparency. Following the IPCC report on police corruption, the Home Office is working with the IPCC to strengthen mechanisms for ensuring action is taken by police forces in response to recommendations resulting from IPCC investigations.

RESOURCES AND PERFORMANCE

17. The IPCC has an annual budget of approximately £33 million and it employs approximately 400 staff. The majority of its staff work in frontline investigative and casework roles.

18. In line with the rest of the public sector generally, the IPCC needs to manage its work within a diminishing budget during the Comprehensive Spending Review Period. It has made significant savings over the last 24 months by reducing its back office and support costs that have allowed it to focus its resources on front line investigative work.

19. In 2011–12 the IPCC completed 130 independent investigations. Whilst this was an overall reduction on 2010–11, this needs to be seen in the context of an overall 10% reduction in referrals compared to 2010–11, which the IPCC indicates was partly to do with better, more effective communication with forces. The IPCC also reduced the number of managed investigations it undertook in 2011–12 (it completed 33), recognising that public confidence is greatest when it carries out independent investigations. (Managed investigations are carried out by police force professional standards departments under the direction and control of the IPCC. Independent investigations are carried out by IPCC investigators overseen by an IPCC Commissioner).

THE FUTURE

20. Over the next few years, the IPCC will have a vital role to play in supporting police reform, including taking responsibility for investigating criminal complaints against Police and Crime Commissioners, investigating complaints against the new National Crime Agency (subject to the passage of the Crime and Courts Bill currently before Parliament) and in making the complaints system less bureaucratic and more transparent. In relation to its new role in investigating criminal complaints against Police and Crime Commissioners, the IPCC has extensive experience of handling sensitive, complex and high profile cases and the Home Office is therefore confident it is well placed to provide independent scrutiny to the handling and investigation of any allegations against Police and Crime Commissioners.

21. Through the Police Reform and Social Responsibility Act 2011, the Home Office will be introducing changes that will free up the IPCC to take on this extra work while at the same time making the police complaints system more effective and more efficient. These changes include giving police forces additional discretion to deal with low level complaints which will free up the IPCC to deal with the most serious and high profile complaints. The changes also include giving the IPCC more flexibility in the way it carries out its administrative functions so that it has the freedom to direct more resources to carrying out its investigations.

22. In addition, the Home Office is in the process of recruiting new Commissioners who will further strengthen the IPCC in this period of change, under the leadership of the new Chair. The new Chair of the IPCC, Dame Anne Owers, is a respected criminal justice professional with a formidable public reputation for independence and addressing sensitive and complex issues of public interest with integrity, incisiveness and authority. She is prepared to challenge all parties to get to the truth and ensure that the organisation provides a fair, transparent and trusted service to everyone involved. The Home Office is confident that she is well qualified to lead the IPCC’s work to increase public confidence in policing in the new policing landscape.
23. The Home Office expects the IPCC to play a vital role in increasing public confidence in the police service in the future policing landscape by ensuring that police officers and staff are accountable for their actions. The Home Office is therefore taking IPCC’s request for further resources (as set out in its report on police corruption which was published earlier this year) very seriously, and officials are continuing to discuss the details with IPCC. The Home Office welcomes the steps that the IPCC is already taking to tackle corruption, such as increasing the number of independent investigations into corruption within its current resource envelope.

24. The Home Office is currently considering the IPCC’s requests for further powers also contained in its report on police corruption. For example, on the issue of whether or not the IPCC should be able to investigate private sector contractors carrying out policing functions, contractors working as detention and escort officers already fall within the IPCC’s jurisdiction. The Home Office is looking into how the IPCC’s remit could be extended to cover private contractors carrying out a range of other policing duties such as call handling.

25. Going forward these changes will require the IPCC to continue to change and adapt. The changes to the complaints system will mean the IPCC may need to review how it provides effective oversight of the complaints system, including those matters that are resolved locally in forces.

26. The findings of the IPCC report on police corruption will also require the IPCC to make changes to improve both transparency and consistency of the handling of corruption cases. The Home Office welcomes the fact that work on corruption is identified as a priority in the IPCC’s recently published corporate plan.

27. In addition to this the Home Office expects the IPCC to continue to focus on demonstrating its independence. The Home Office welcomes the work the IPCC is doing to develop its own investigations workforce so that it is not so reliant on investigators with a police background.

28. The Home Office also expects the IPCC to communicate effectively with the public and its stakeholders. For example, IPCC reports need to be accessible and user friendly for both the public as well as its stakeholders. The Home Office therefore welcomes the fact that the IPCC is renewing its external communications strategy and supports the work that the IPCC are doing with partners following the fatal shooting of Mark Duggan to ensure that, in future, there is no confusion about the arrangements for communication with the victim’s family following a fatal shooting.

June 2012

Written evidence submitted by the Police Superintendents’ Association of England and Wales [IPCC 02]

Please find enclosed a written submission from the Police Superintendents’ Association of England and Wales (PSAEW) to the Home Affairs Committee’s inquiry into the Independent Police Complaints Commission.

The PSAEW represents police officers holding the rank of Superintendent and Chief Superintendent in the 43 Home Office Police Forces, British Transport Police, Civil Nuclear Constabulary and the Isle of Man Constabulary. Our members are the most senior operational leaders in the Police Service, and the Association is engaged at the strategic level of policing with the tripartite partners of ACPO, the APA and the Home Office, and also other key stakeholders such as HMIC and the NPIA.

Our members carry out a variety of senior leadership functions across the Service, including leading and managing Basic Command Units (BCUs), force level operational and support departments, and increasingly collaborative units, such as joint force serious and organised crime teams.

Of particular interest in the context of this inquiry is the number of our members who are involved in leading professional standards teams which interact with the IPCC on a regular basis or conduct investigations under the management of the IPCC.

Our members regularly perform operational command roles such as that of Senior Investigating Officer in murders and other serious crime investigations, and tactical (Silver) as well as strategic (Gold) command roles for firearms incidents and other critical operational incidents. At a national level, we have members seconded to the Home Office, the NPIA and other national agencies where their expertise and experience inform policy making and the delivery of high-level national policing services.

Superintendents and Chief Superintendents are integral to the delivery of policing at local, force and national levels. They have a wealth of experience in:

- Professional Standards
- Service delivery
- Managing performance
- Partnership working
- Working directly with communities
- Commanding high profile policing incidents
Submission

1. Executive Summary

1.1 The PSAEW welcomes the Home Affairs Committee’s inquiry into the Independent Police Complaints Commission (“the Commission”). We believe that the Home Affairs Committee is well placed to examine the work of the Commission and to receive submissions and evidence from interested parties.

1.2 Whilst it is important to remember that UK policing is highly regarded as being ethical, professional and overwhelmingly free of corruption we recognise that on occasions things will go wrong for a host of reasons.

1.3 We therefore require a police complaints system that is transparent, fair and effective. A system that whilst holding individuals and the police service to account, focuses on learning and improvement in order to continually improve policing services and thereby confidence in the police.

1.4 The Independent Police Complaints Commission plays a pivotal role in this and must be sufficiently resourced, with the right skills and powers to deliver on the significant responsibilities Parliament has given it.

1.5 The PSAEW believes that the Commission’s role in making recommendations to improve policing practice should be enhanced with new powers.

1.6 Overall the PSAEW believes that the Commission is demonstrably independent of the police service. Whilst it is rightly entirely a matter for the Commission to determine who it appoints as investigators, it is our experience that having some ex senior police officers, with their extensive investigative skills and knowledge of the police service, enhances the skill base of the Commission.

1.7 Our submission focuses on the particular points of interest identified by the Committee in the Terms of Reference for the Inquiry.

2. Whether the Commission has improved the scrutiny of police practices

2.1 The PSAEW believe that the Commission has improved the scrutiny of police practices. This has been achieved through conducting their own independent investigations or managing police investigations and thus influencing the recommendations made at the conclusions of those investigations. The IPCC has also conducted a number of important research projects looking at police practices such as near misses in police custody and police—related road traffic deaths and serious injuries.

2.2 It is arguable that the Commission has been involved in the scrutiny of all the key policing areas such as custody detention, police use of firearms (including use of Taser), command and control and the response to issues concerning vulnerable people.

2.3 The work that the Commission has undertaken in producing the Learning the Lessons bulletins (now at edition 16) demonstrates a commitment to ensure that lessons learnt in one police force area are shared with other forces to improve best practice in policing.

2.4 However, the PSAEW believes that the Commission’s ability to make recommendations should be enhanced by providing the Commission with a power similar to the Rule 43 power available to Coroners.

2.5 As an example, in 2008 the Commission published a research paper on the use of police detention facilities for persons suffering from mental health.1 It recommended that NHS Commissioners should work with relevant organisations to develop alternative places of safety rather than police detention. We question whether such recommendations carry sufficient weight with other bodies and Government departments in order to ensure that such important recommendations are acted upon to remove the risk of such vulnerable people being held inappropriately in police cells.

2.6 The PSAEW believes that the Commission would benefit from being involved in the training exercises of operational staff in specialist areas such as the police use of firearms and the management of critical incidents. In critical incidents the police and the Commission have dual roles and enhancing respective

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1 “Police Custody as a “Place of Safety”—Examining the use of Section 136 of the Mental Health Act 1983"
understanding of those roles and practices is crucial to both parties. This will be particularly relevant when new Commissioners and investigators are appointed.

3. Whether the Commission has the right powers and resources to carry out its role effectively

3.1 Whilst the PSAEW is acutely aware of the strain on public finances, we do believe that the Commission is not sufficiently resourced which can lead to a negative impact on both public and police service confidence.

3.2 The original remit for the Commission was for it to be the “Independent Police Complaints Commission” with the focus on the oversight of the police complaints system. The Commission’s remit has been extended to include responsibility for oversight of complaints involving Her Majesty’s Revenue and Customs, the UK Border Agency and as of November 2012 responsibility for handling certain serious matters relating to Police and Crime Commissioners. We understand that the national Crime Agency is also likely to come within the Commission’s remit. The PSAEW believes that this causes some confusion for the public in the name of the IPCC and what they are there to do.

3.3 There are a large number of matters that are statutorily required to be referred to the Commission, such as death or serious injuries following police contact, that do not involve any complaint. These are routine referrals owing to the nature of the matter rather than suggesting from the outset that there is any individual or organisational failing. The title of the Independent Police “Complaints” Commission suggests that there is always a complaint involved and therefore the media and the public may be judgmental about the fact that a matter has been routinely referred. The PSAEW suggests that the name of the Commission should therefore be changed to reflect its wider remit beyond policing and its statutory role in handling non complaint matters.

3.4 The impact of insufficient resources can be seen in the number of independent investigations the Commission is able to conduct when compared with the original intention and the time taken to conduct such investigations and deal with the Commission’s other responsibilities around the timeliness of appeal handling. Our members report some unacceptable delays in some cases leading to increased concern for families, complainants and officers and staff alike. The PSAEW recognises the increased requirements for independence in investigations which engage Articles 2 or 3 of the European Court of Human Rights and the impact that this had on the Commission’s approach to such cases.

3.5 The PSAEW welcomes the changes to the police complaints system contained in the Police Reform and Social Responsibility Act 2011 due for enactment in November 2012. We believe that the changes will enable more proportionate handling of low level complaints at a local level and will enable the Commission to focus its resources on the more serious incidents and those cases of greatest public concern.

3.6 We also believe there should be an opportunity for the Commission to think more about its ‘guardianship’ role and how it could use the powers it has been given to reassure itself, the public and the police service that complaints are being handled effectively and proportionately at a local level and we look to see how the Commission will work effectively with Police and Crime Commissioners in this respect.

3.7 The PSAEW believes that the changes in November will also provide an opportunity for the police service and the Commission to focus more clearly on the use of the unsatisfactory performance procedures (capability procedures for police staff) which were introduced at the same time as the new misconduct system in December 2008 and yet, in our experience, have been largely unrecognised by the Commission in its investigations.

3.8 We do not believe it is appropriate that police officers and staff are investigated for ‘misconduct’ when it is clear that the issue is, at worst, an issue of performance/capability.

3.9 The PSAEW believes that broadly speaking the Commission does have the right powers to carry out its role effectively (see paragraph 7 below). We do think that consideration should be given to looking at the powers of the Commission to change a decision when it clearly recognises it has got a decision wrong. The legal concept of “Functus Officio” is one which has been cited by the Commission to prevent it from changing a decision even though the Commission itself would like to do so.

3.10 If there were a provision for the Commission to be able to change its decision (in exceptional circumstances) where it clearly believes it has got a decision wrong, then this will not only prevent costly legal proceedings in judicial review but will also provide confidence that the Commission can change its position if it clearly believes it has been mistaken.

4. Whether investigations lead to improvements in police practices

4.1 The PSAEW believes that any investigation of any complaint or incident should lead to an opportunity for learning for both individuals, the police service and other agencies whether that investigation is conducted or managed by the Commission or conducted by the police force concerned.

4.2 The Commission was instrumental in setting up the Learning the Lessons committee and issuing the bulletins which share the lessons to be learnt in all forces. The PSAEW is a constituent member of the Learning the Lessons Stakeholder Group and to assist in providing wide distribution of the Learning the Lessons bulletin, the PSAEW circulates an e copy to all of our members.
4.3 It is the experience of our members that the Commission routinely scrutinise the policy and procedures which exist within a force as part of any investigation to identify if practices could be improved. The PSAEW supports the work of the Commission in producing meaningful lessons that the police service can use to improve policing services.

4.4 In many cases an investigation will show that the police practices and procedures were followed and that those practices resulted in an appropriate police response. The PSAEW believes it is important for public and police service confidence that the Commission and the police service acknowledge this and are proactive in publishing and explaining the police response.

5. Whether improving police services should be formally included in the Commission’s remit

5.1 The PSAEW believes that it would be difficult to formally include “improving police services” within the Commission’s remit. It would be very difficult to quantify whether the Commission’s work led to the improvement in the service or not.

5.2 An example is the reduction in the number of deaths in or following police custody. In its report² the Commission reported that over the 10 year period the number of deaths had fallen sharply. In conclusion the report states:

“We cannot provide a conclusive reason for why this fall has occurred. However, we can point to some plausible explanations which concern operational practice in police custody suites”.

5.3 The report cites three possible reasons relating to better cell design leading to less opportunity for ligature points, officers tending to take persons to hospital first rather than to a custody centre and an increase in the number of custody sergeants refusing to admit persons who appear unwell. It notes that there are likely wider contextual issues such as the requirement for better risk assessment in Code C of the PACE provisions and better management of the custody estate.

5.4 The PSAEW has no doubt that the Commission’s work in this area has had some impact but it is hard to quantify.

5.5 If the Commission were given such a remit we would also be concerned at a blurring of the lines between the role of the Police and Crime Commissioner, HMIC and that of the Commission. The Commission investigates the most serious complaints, conduct matters and deaths and serious injury cases. It has substantial powers to conduct those investigations and to make recommendations and is guardian of the police complaints system. If the Commission were to become responsible for improving police practices by, for example, being involved in the development of operational practice then it is difficult to see how the Commission could be seen to be independent in future investigations where those practices are challenged.

5.6 The Police and Crime Commissioner must secure that the police force is “efficient and effective” and to hold the chief officer to account. The PSAEW therefore believes it is the intention of Parliament for the Police and Crime Commissioner, working together with the chief officer, to be responsible for improving police services. Whilst the Commission has a valuable role to play in identifying learning from particular cases, it seems it could confuse the policing landscape if their remit was extended as suggested.

5.7 The PSAEW believes that the creation of the new Professional Body for Policing, which will become operational from December this year, provides a better opportunity to address the issue of “improving police services”. This could place a requirement of the Professional Policing Body to take account of any recommendation by the IPCC to improve police services and change police policies and guidance or require Chief Officers and or Police and Crime Commissioners to implement such changes in their police forces.

6. The Commission’s role in scrutinising elected police commissioners

6.1 The Commission will be responsible for conducting an independent investigation or managing a police investigation in cases involving certain criminal allegations against Police and Crime Commissioners.

6.2 Whilst the PSAEW can broadly understand the rationale for having an independent body to scrutinise these elected officials, we are concerned that in giving this role to the Commission it again demonstrates a widening of the role of the Commission and will potentially place further pressure on its resources.

7. The Commission’s role in scrutinising third parties commissioned to carry out policing duties

7.1 The increased use of outsourced and partnership working in providing a policing service, together with an increase in the number of volunteers in policing, has created a gap in the powers that both the police service and the Commission has in investigating certain matters.

7.2 The PSAEW believes that it is vital that there are no gaps in legislation which could lead to a situation where the full facts of an incident could not be established as there were insufficient powers to examine the role played by a private contractor or other third party agency. This would lead to a loss of confidence in the
system and would be potentially unfair to the police officer or police staff member who acted based on decisions made by other third parties.

8. The Commission’s role in considering complaints which may relate in part to other bodies involved in the justice system, such as the Crown Prosecution Service

8.1 The PSAEW believes that all elements of the criminal justice system should be subject of independent scrutiny, as often decisions made by the police service are influenced by the actions of other agencies.

8.2 As a minimum the Commission should have the resources and powers to follow the evidence wherever it leads in order to establish the facts in any given case. That does not mean that the Commission needs to become the oversight body for other bodies involved in the justice system but there must be seamless processes whereby an investigation by the Commission can include the actions of other bodies.

8.3 The recommendation we make in this submission, regarding giving the Commission a similar Rule 43 power, would we believe increase confidence in the robustness of any recommendations whether they involve the actions of the police or other agencies.

9. Whether the right balance is achieved between independent, managed and supervised investigations

9.1 The PSAEW has always welcomed the ability for the Commission to be able to conduct independent investigations. A well resourced independent investigation, conducted by investigators with the right skills, focused on establishing the facts can provide reassurance to both the public and the police service.

9.2 We believe there are some inconsistencies in the decision making of the Commission as to which cases are suitable to be independently investigated. It appears to the PSAEW that these decisions are often made on the basis of available resources rather than the appropriateness of the case.

9.3 It is our view that managed investigations do provide a suitable alternative to independent investigations where the direction and control of the investigation rests with the Commission although the actual investigation itself is conducted by the police.

9.4 The PSAEW do not believe that the provision for supervised investigations adds any value. In such cases the Commission sets the terms of reference but the investigation is conducted by the police and a complainant has a right of appeal against the findings of the investigation. It seems that this can be confusing to complainants who are told that the investigation is being “supervised” by the Commission and yet in reality there is no active supervision of the case.

9.5 It does not seem to make sense that a complaint which is supervised by the Commission then attracts a right of appeal back to the Commission.

9.6 In our view either a case is serious enough for the Commission to have direct oversight of the case or it is not.

9.7 As mentioned previously, we believe it would assist the Commission if their “guardianship” role was developed in order that they could satisfy themselves that the low level complaints were being handled efficiently and effectively by the police force concerned.

10. How the work of the Commission could be effectively scrutinised

10.1 The PSAEW would be very cautious in suggesting that there should be another body established to scrutinise the work of the Commission. We do think that as the Commission is responsible to Parliament then holding an inquiry such as this one through the Home Affairs Committee is an effective way for interested parties to report on the work of the Commission and for the Committee to take a view on the effectiveness of the Commission and its powers and remit.

10.2 The Commission’s independence is established by the Police Reform Act 2002 (as amended) and its decisions are subject to challenge by means of judicial review. There have been challenges to the Commission through the courts and it appears to the PSAEW that this is another way in which the Commission’s work is subject to scrutiny (see also paragraph 3.9).

11. Conclusion

11.1 The PSAEW believes that the Commission plays a vital role in providing independent oversight to the most serious incidents and matters which affect public confidence in the police service. In order to perform this important role the Commission must be sufficiently resourced, skilled and with the appropriate powers or both public and police service confidence will be adversely affected.

June 2012
Written evidence submitted by the Independent Police Complaints Commission [IPCC 06]

EXECUTIVE SUMMARY

The IPCC welcomes the Committee’s inquiry which is particularly timely given the challenges facing the police and the IPCC:

— Public confidence in policing has been knocked by allegations of failures to investigate phone hacking, related corruption matters and allegations of racism.
— The Police Reform and Social Responsibility Act 2011 changes the accountability arrangements for policing with the replacement of Police Authorities by Police and Crime Commissioners.
— The Act also makes changes to the police complaints system and the IPCC’s role which will come into effect in November 2012.
— The IPCC’s work is in the public spotlight more than ever before and recent high profile cases have attracted critical scrutiny of the organisation and its role.
— The IPCC itself is going through significant change with the appointment of Dame Anne Owers as the new Chair, the departure over the next 12 to 18 months of six founding Commissioners and the recruitment process for new Commissioners currently ongoing.

All of these factors are causing the Commission to review the role it should play in the future:

— The Commission’s report on police corruption was laid before Parliament in May and sets out the actions required to improve the handling of such allegations.
— A public consultation has been launched on the Commission’s proposed Statutory Guidance for the public and police on how the complaints system should work post the Police Reform and Social Responsibility Act changes.
— A major review is underway of how the Commission undertakes investigations of deaths during or following contact with the police which includes consultation with bereaved families and stakeholders.
— The concept of “guardianship” is being reviewed in the light of eight years’ experience and the effects of the Police Reform and Social Responsibility Act with a view to a more proactive role for the IPCC in relation to the quality of local complaints handling and learning from complaints.

A case has been made to the Home Office for changes to the Commission’s powers and significant additional resources to enable it to meet the challenges of the future.

The IPCC has gained considerable experience as a result of its work over the past eight years. Its work has resulted in demonstrable improvements in policing and the handling of the public’s concerns. The Commission constantly looks for ways to improve and recognises the need to engage better with external stakeholders, to do more to improve the quality of its investigations, to strengthen its oversight role, and to continue to ensure the confidence of the public, families and complainants affected by the Commission’s work. The IPCC welcomes the Committee’s Inquiry as it provides another opportunity to assist in setting the direction of the organisation for the future.

INTRODUCTION TO THE IPCC AND ITS REMIT

1. The IPCC was established by the Police Reform Act 2002 (PRA) and became operational in April 2004. Its primary statutory function is to secure and maintain public confidence in the police complaints system in England and Wales. It acts as an appeal body for some locally handled complaints and issues statutory guidance on complaints handling to police forces. It undertakes independent investigations into the most serious cases of police misconduct, deaths and serious injuries and other human rights breaches; and has the power to manage or supervise police investigations. Its statutory role also involves an obligation to measure, monitor and where necessary, seek to improve the current system. The IPCC is independent and makes its decisions independently of the police, Government and interest groups.

2. The IPCC was created following both public and political concern about the lack of an independent system to deal with complaints and conduct matters within the police service. Since 2004, the organisation’s remit has been extended to include serious complaints and conduct matters relating to staff at the Serious Organised Crime Agency (SOCA), Her Majesty’s Revenue and Customs (HMRC) and the UK Border Agency (UKBA).

3. The Police Reform and Social Responsibility Act 2011 has extended the IPCC’s remit further. Since January 2012, the IPCC has been responsible for deciding whether any criminal allegations relating to the occupant of the Mayor’s Office for Policing and Crime (MOPC) or his Deputy should be investigated. The IPCC will have a similar remit over Police and Crime Commissioners (PCC) and their deputies following their election in November.
4. The IPCC is run by a Chair, Deputy Chair and 10 Commissioners. Together they make up the Commission. Commissioners (other than the two non-executive Commissioners and the Chair) have an operational role and also have responsibility for oversight of the organisation as a whole. Commissioners are appointed by the Home Secretary and by law they must never have served as a police officer. The Commission is supported by a Chief Executive and a small management team.

5. In 2011–12 the IPCC received a delegated budget of £34.3 million. It has approximately 370 staff with around 115 of these responsible for investigations and 115 responsible for dealing with direct complaints and appeals. Staff come from a range of backgrounds, including a minority from a police officer background (approximately 11% of staff overall and 33% of investigators are former police officers). The Commission values both the technical and forensic skills that these staff bring to the organisation. They work alongside colleagues from a non-police background, so that investigation teams are balanced and equipped to deal with the array of challenges which arise in an independent investigation. In 2011, the Commission established a training scheme to help candidates from a range of backgrounds become IPCC investigators. Five trainee investigators were initially recruited and the scheme has recently been extended further.

THE IPCC’S CURRENT POWERS AND RESPONSIBILITIES

6. The IPCC’s powers include:

- Investigative powers: forces are required by law to refer certain incidents to the IPCC—they include deaths or serious injuries following police contact as well as other categories such as serious sexual assault or corruption. The IPCC then makes a mode of investigation decision and has the power to independently investigate cases, manage or supervise police investigation of cases, or decide cases can be investigated locally by the police without oversight.

- An appeal function: complainants who are unhappy with how the police dealt with their complaint may submit an appeal to the IPCC.

- A guardianship function: the IPCC has a duty to improve public confidence and oversee the performance of the complaints system. The IPCC carries out its guardianship role alongside key stakeholders and in relation to priority areas to seek to ensure that improvements are delivered across the system.

7. Although the IPCC has responsibility for the police complaints system overall, it is important to recognise that, as Parliament intended, the Commission only investigates or has direct oversight of a very small proportion of cases and complaints. These are usually the most serious complaints and allegations of misconduct against the police in England and Wales. These matters have a particular impact on the public’s confidence in policing, especially when the public are concerned that the police may have caused a death or failed to prevent it or when there are allegations of corruption at senior level. The public’s concern and the IPCC’s role is reinforced by the requirements under human rights legislation for an independent investigation where the actions of the police arguably engage Article 2 (right to life) of the European Convention on Human Rights, and therefore require independent investigation (eg a fatal police shooting; a death in custody; a road traffic accident involving a death).

8. Each police force has its own Professional Standards Department (PSD) which is responsible for dealing with the vast majority of complaints and conduct matters against police officers and police staff. Complainants have a right of appeal to the IPCC if they are not satisfied with the outcome of local investigations. The bulk of the resource within the system is therefore within the police themselves—this is not always well understood and there is often a misconception that the IPCC does or should investigate all complaints and conduct matters itself. As has been publicly stated previously, the IPCC has fewer staff than the Directorate of Professional Standards of the Metropolitan Police Service.

9. The system created by the Police Reform Act can be complex and difficult for the complainant to engage with. The IPCC made proposals to the Government aimed at simplifying the system and some of these changes have been included in the Police Reform and Social Responsibility Act. Despite these changes, the system remains complex for both the citizen and the police to understand. One of the IPCC’s key tasks over the next year will be to try to ensure that the system is working consistently well and fairly across forces and that lessons are being learnt from complaints. This is an important part of feedback about the crucial relationship between the police and the citizen.

10. The Commission’s experience of conducting investigations since 2004 has suggested that there are areas where a change in statutory powers is necessary. These areas are discussed in further detail later in this submission.

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3 The IPCC’s current priority areas are deaths and serious injury: in police custody, as a result of police use of firearms and less lethal weapons, as a result of gender abuse and domestic violence where it is alleged that the police have failed to protect the victim, and following road traffic incidents where it is alleged the police have caused or failed to prevent. The other priority areas are serious police corruption, police use of stop and search powers and other issues affecting young person’s confidence in the police and policing of protests and public order incidents.
11. The Police Reform and Social Responsibility Act will make a number of changes to the operation of the police complaints system when the majority of provisions come into force in November 2012. In addition to the IPCC having limited jurisdiction over the Mayor’s Office for Policing and Crime and Police and Crime Commissioners, (see paragraph 3) the Act will also make the following changes to the system:

- An extension of the system to include complaints about direction and control matters (currently it only includes conduct complaints).
- Changes to the allocation of appropriate authority responsibilities in relation to complaints about senior officers. Chief Officers will become responsible for holding to account everyone in their force, including their top team.
- Simplified handling when complaints about the police are made directly to the IPCC.
- Extending the police service greater discretion both in the recording of complaints and in their decisions to disperse with a complaint or discontinue an investigation (all with a right of appeal to the IPCC).
- Giving the police greater discretion to resolve complaints locally.
- Giving Chief Officers responsibility for appeals against the outcome of complaints in less serious complaints that are locally resolved.
- Giving the IPCC the ability to recommend or direct that a police force takes action to remedy unsatisfactory performance by police officers.
- Creating a role for PCCs and other local policing bodies in ensuring that chief officers handle complaints correctly.

12. The IPCC has been working to prepare for these changes, liaising with the Home Office and with ACPO. This includes revising the current statutory guidance for the police complaints system to reflect the changes and focus strongly on the need to resolve complaints and learn from them. A draft version was published for public consultation in June 2012 and the consultation period is expected to run until September. The Committee’s views on this document are welcomed.

13. In addition, the IPCC will be producing a suite of communications products aimed at ensuring the changes to the complaints system and the revised statutory guidance are communicated to all relevant audiences, including potential complainants, in the most accessible and appropriate way. This will include a range of documents available in both hard copy and on the IPCC’s website explaining the various stages of the complaints process and signposting individuals to where they can get more information.

Managing Demand

14. The IPCC is a demand-led organisation and demand for IPCC services continues to grow. Police are required by law to refer certain incidents to the IPCC including deaths and serious injuries. The IPCC conducts investigations, handles appeals and receives direct complaints from members of the public. In 2011–12, more than 12,400 complaints were made directly to the Commission. The IPCC does not have the power to record complaints, so in line with the Police Reform Act, these complaints were forwarded onto the appropriate authority (normally the relevant force) for a recording decision to be made.

Demand—Investigations

15. In 2011–12, over 2,100 matters were referred by the police to the IPCC and 126 independent investigations were commenced. In the last financial year and for the first time in the IPCC’s history, more independent investigations were completed than started. The Commission took a decision to continue reducing the number of managed investigations undertaken in favour of taking more cases independently, recognising that these instil the most public confidence. In addition, the Commission has made increasing use of supervised investigations to examine specific themes or clusters of issues. This type of oversight has been used as a way of addressing public confidence and gaining oversight of a number of complaints arising out of a specific incident, or a specific theme causing public concern. Recently the IPCC has undertaken this type of supervision in relation to allegations of racism and concerns about Taser usage.

16. The length of time it takes for an IPCC investigation is a matter of real public interest and importance. The Commission has a target to complete 60% of independent investigations within 157 working days and in 2011–12 this was achieved for 59% of the cases completed. Investigations which take longer than the 157 target can be for a number of reasons:

- Sub judice ie where an investigation cannot proceed due to other criminal proceedings. This can cause lengthy delays and is largely outside the control of the IPCC.
- Awaiting accounts from officers, particularly when they decline to attend for interview, can impact on timeliness. Consideration is currently being given as to whether the Commission should have powers to compel officers to attend for interview (see paragraph 75).
17. The IPCC has worked hard to eliminate internal delays caused by its own processes. Historically some cases took longer than they should have done but systems are now in place to reduce delay. Although the IPCC recognises the importance of timely investigations for families, complainants and public confidence more generally, a thorough investigation requires time and it can sometimes be necessary to take longer than the target timeframe.

18. It is almost always the case that the IPCC cannot publish an investigation report until after any criminal or coronial proceedings are complete. This can often take considerable time, and can lead the public to believe that the length of IPCC investigations is far longer than it really is. Similarly, the IPCC is not responsible for the timeliness, conduct or decision-making in police misconduct hearings which may follow an investigation.

**Demand—Appeals**

19. The number of appeals received from the public increased in 2011–12 to over 6,400. Appeals can be about the non-recording of a complaint, the process of local resolution of a complaint or the findings of a local or supervised investigation. In 2011, the IPCC launched the Right First Time Campaign, which is designed to help forces improve the way they handle complaints. The aim of this work is to ensure that a greater number of complaints are resolved first time, leading to improved complainant satisfaction and fewer appeals to the IPCC.

20. Appeals performance is influenced by demand, the number of active cases at any one time and the level of resource available to deal with these cases. Taking these factors into consideration the IPCC aims to complete all appeals within an average of 35 working days and in 2011–12, the IPCC achieved this, taking on average 34 working days. However, performance in the early part of 2012 has been affected by the need to make financial savings which resulted in the loss of temporary staff. This was in part in anticipation of the implementation of the Police Reform and Social Responsibility Act, which was in fact delayed, so that the anticipated decrease in the number of appeals has not yet happened. The Chief Executive has recently taken a decision to recruit additional staff to ensure the appeals backlog is reduced.

**Resources**

21. The Commission does not currently have sufficient resources to enable it to meet its statutory responsibility or the public’s growing expectations of its role. It should be noted that there was no transfer of resources from the policing budget when the IPCC became operational in 2004, despite the fact that the bulk of the resource for investigating complaints and conduct matters previously lay with them.

22. Like the rest of the public sector, the IPCC has been affected by the Comprehensive Spending Review (CSR) and a programme of work is under way to enable it to meet the budget cuts required. At the start of the current CSR period, the IPCC was informed that its grant in aid budget was to be cut from £35.4 million in 2010–11 to £30.4 million in 2014–15. Over the past two years, 63 people have been made redundant (representing approximately 15% of the workforce in 2009–10). The reduction in posts has been achieved by reducing administrative staff and management posts with front line operations being protected. The IPCC has also recently closed one of its regional offices, in the East Midlands, to make savings. Staff based in this office have been transferred elsewhere, are now home-based or chose not to be re-located and have left the organisation.

23. Although much has been achieved, there still remains a savings shortfall by 2014–15. The IPCC’s Management Board continues to examine cost cutting options and active discussions on these funding pressures are ongoing with the Home Office. Part of this discussion centres around both the IPCC’s and the wider public’s desire for more independent investigations. Research undertaken for the IPCC’s recent report into corruption in the police service for example found that the general public expects an independent body like the IPCC to be investigating cases of serious police corruption. The IPCC stands ready to undertake more of these investigations if further resources can be made available.

24. Equally important is the IPCC’s ability to act as an effective guardian of the complaints system in general, and to monitor both local handling of cases and also the implementation of recommendations and learning from investigations. Thematic supervised investigations (see paragraph 15) are one way of doing this, but a more rigorous and routine sampling of locally handled cases would provide additional reassurance and consistency. The Commission is therefore reviewing its concept of guardianship and the additional resources necessary to do this effectively to increase public confidence in the system as a whole.

25. The IPCC already collates a wide range of complaints and investigations data and it will continue to do so in the future. This data could be used more effectively to influence police practice, but this also is a resource issue, as the non-frontline functions of research and policy have experienced cutbacks due to budgetary pressures in the last few years.
The IPCC’s Impact on Policing

26. There are a number of outcomes which can result from an IPCC investigation. The three main ones are:

- Criminal proceedings.
- Misconduct proceedings.
- Learning that improves service for the public as a result of systemic improvements for a specific force or across all forces.

Criminal proceedings

27. In 2011–12, 28 cases were referred to the CPS as a result of an independent investigation. This represented 22% of independent investigations overall. The CPS made the decision to prosecute in six of these cases, decided on no further action in 17 cases and the remainder are still outstanding. In the same period, 18 managed cases were referred to the CPS (55% of all managed investigations for the year). The CPS decided to prosecute in eight cases, decided on no further action in four cases and the remainder are still outstanding.

28. The IPCC is not the decision-making body in relation to criminal or disciplinary offences arising from its investigations, nor does it believe that a successful prosecution is necessarily a measure of organisational success. It is of vital importance however that police officers are held to account and that this is reflected in prosecution and sentencing decisions. Some examples of where officers have faced criminal proceedings as a result of IPCC investigations are below:

- **Case study 1**
  Ali Dizaei, who had 26 years service with the Metropolitan Police Service, was convicted of misconduct in a public office and perverting the course of justice and received a sentence of three years imprisonment at a retrial in February 2012. The ex-Commander entered “not guilty” pleas to the indictments, but the jury returned unanimous “guilty” verdicts on both counts.
  The convictions followed the completion of an IPCC independent investigation prompted by a complaint received by the Metropolitan Police Authority from a man who had been arrested and held in police custody.

- **Case study 2**
  In March 2011, a magistrate found PC Marcus Ballard, an officer with the MPS, guilty of common assault. He resigned on the day of his conviction and was sentenced to 150 hours community service and ordered to pay £1,000.
  The IPCC’s investigation followed an incident where a 16 year old boy was pushed through a shop window during a stop and search. An independent investigation established that the boy was not acting in a threatening manner and that he was grabbed by PC Ballard and forcibly pushed through the window. This use of force was unlawful and unnecessary.
  This case highlighted young people’s concerns about the use of stop and search, and the manner in which it is conducted. The witnesses to the incident were predominantly young black men and IPCC staff worked hard to convince these witnesses of the organisation’s independence from the police service and to allay any fears they had about possible repercussions of giving statements to IPCC investigators.

- **Case study 3**
  Following an independent investigation, PC James Dougal of Northumbria Police was tried and found guilty of death by dangerous driving. He was sentenced to three years imprisonment on 1 May 2009. PC Dougal was also banned from driving for four years.
  The IPCC’s investigation found that PC Dougal, in pursuit of another car, accelerated to a speed of 94mph in a speed limit of 30mph without activating his emergency warning equipment. His car collided with Hayley Adamson as she crossed the road and Ms Adamson tragically died of her injuries.

Disciplinary proceedings

29. In 2011–12, the IPCC determined as a result of its independent investigations that there was a case to answer for misconduct in 33 cases. This represented 26% of independent investigations completed in 2011–12. In relation to managed investigations, there was considered to be a case to answer in 22 cases (representing 66% of all managed investigations in the same period). Some examples of where officers have faced disciplinary proceedings as a result of IPCC investigations are below:

- **Case study 4**
  The findings of an IPCC investigation released in August 2011 showed that there were failings in the way that a Dorset Police officer handled allegations of domestic abuse.
  Ms Ryba was murdered by Mr Zasada—her former partner—on 2 October 2009.

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4 The figures in this section are still subject to further validation so may be subject to minor amendment.
5 The figures in this section are still subject to further validation so may be subject to minor amendment.
She had made allegations of domestic abuse prior to her murder. The investigation discovered that an inappropriate relationship had developed between Ms Ryba and PC Richard Allan. PC Allan was removed from frontline duties during the IPCC’s investigation and during this time he carried out unauthorised searches on the police computer. This led to a further investigation carried out by Dorset Police and supervised by the IPCC. In June 2011, PC Allan faced a misconduct panel and was dismissed from service.

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**Case study 5**

Grahame Maxwell, who was Chief Constable of North Yorkshire Police, received a final written warning after admitting gross misconduct at a conduct hearing. This followed an IPCC independent investigation. This was the first time in 34 years that a serving Chief Constable had faced such a hearing. In an earlier management meeting, the Deputy Chief Constable of the same force received management advice after a finding of discreditable conduct and failing to challenge and report improper conduct.

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**Learning outcomes**

30. As a result of its work, the IPCC can show systemic improvements in policing practice. Some of these improvements relate to changes which have been made across the police service as a whole and others are as a result of recommendations and learning which have arisen for individual forces following IPCC investigations.

31. As well as making directed recommendations, the IPCC also shares and disseminates learning through Learning the Lessons Bulletins. The bulletins are produced by a multi-agency group, led by the IPCC and are designed to help the police service learn lessons from completed investigations into police complaints and conduct matters undertaken by the IPCC or by the police service locally.

32. Some specific examples of the IPCC’s impact and of improvements to policing practices are provided below.

**Deaths during or following police contact**

33. Forces have a statutory duty under the Police Reform Act to refer to the IPCC any incident involving a death that has arisen from police contact. Since April 2006, fatal cases from HMRC and SOCA have also been subjected to the same statutory duty. The IPCC presents annual statistics on the number of deaths referred. The 2010–11 report is available on the IPCC website (http://www.ipcc.gov.uk/en/Pages/reports_polcustody.aspx) and the next report, for the period 2011–12, will be published on 9 July 2012. A copy will be sent to the Committee.

34. The annual statistics are broken down into a range of categories including road traffic fatalities, fatal shootings, deaths in or following police custody, apparent suicides following release from custody and other deaths following police contact. The IPCC has made improvements to policing practice in some of these areas and details are provided below.

(a) Code of practice on the management of police pursuits

35. In 2007, the IPCC conducted a detailed research analysis into police road traffic incidents involving serious and fatal injuries (www.ipcc.gov.uk/en/Pages/reports_rti.aspx). This piece of work identified shortcomings in police practice around police pursuits and the Commission worked closely with ACPO and road safety groups to improve national policy in this area. One of the specific recommendations in the report was that the ACPO guidance on the management of police pursuits should be made subject of a statutory code. This received support from all police bodies, and Home Office Ministers were keen to see progress in this area.

36. Although the process of codification commenced, it stalled in 2010 with the formation of a new government. The IPCC continued to pursue the matter with both relevant national stakeholders and the Minister for Policing. The Minister for Policing recognised the value of this work and concluded that the code should be presented to Parliament. In May 2011, the Code of Practice on the Management of Police Pursuits was presented to Parliament requiring pursuits to be conducted to exacting standards set by ACPO, ensuring maximum safety for members of the public and police officers.

(b) Deaths in police custody

37. Figures from the IPCC’s predecessor body, the Police Complaints Authority, indicate that in the years prior to the establishment of the IPCC, deaths in police custody remained constant at 30–34 each year. There has been a downward trend in the number of deaths annually since then and the figures for 2011–12 (to be published on 9 July) continue to support this.

38. The IPCC has conducted rigorous and transparent investigations following many of these deaths, which have resulted both in individuals being held to account where necessary and in the IPCC making recommendations in relation to training, equipment and facilities.
39. Recently, the IPCC has helped shape new national guidance on the safer detention and handling of detainees. The Commission worked with ACPO and the National Policing Improvement Agency on the second edition of the ACPO Guidance on the Safer Detention and Handling of Persons in Police Custody, which was released in March 2012. The guidance focuses on practical issues within custody and aims to provide a definitive guide to police forces on strategic and operational policies to raise standards of care within custody. The IPCC made a number of recommendations on best practice as a result of learning from its investigations into deaths and serious injuries, complaints appeals and its Study of Deaths in or following police custody published in December 2010 (http://www.ipcc.gov.uk/en/Pages/deathscustodystudy.aspx), which have been reflected in the new guidance. One key change relates to the handling of detainees who are intoxicated. A new definition of “drunk and incapable” has been included, meaning someone who is unable to walk or stand unaided, or is unaware of their actions or unable to fully understand what is said to them. If a person is found to be drunk and incapable then they should be treated as being in need of medical assistance at hospital and an ambulance should be called. The revised document also gives further guidance on a range of other areas including risk assessments, handover procedures and dealing with detainees with diabetes.

40. Alongside the contributions from external groups and the work of the police themselves, the Commission believes that the work it has conducted in this area has been a key factor in the incremental decrease in the overall number of deaths.

41. Of course, the IPCC is not complacent and believes that even one death in police custody is too many. As one of the seven priority areas listed in the IPCC’s recent corporate plan, the organisation continues to place a high focus on this area.

(c) Fatal shootings

42. The IPCC has investigated every fatal police shooting since it came into existence in 2004. While in the vast majority of these cases inquest juries have returned a verdict of lawful killing, a number of these investigations have identified significant learning which has been accepted by the police service and resulted in major changes to national firearms policy and training. Much of this learning, which includes the police response to emotionally and mentally distressed people who are at greater risk of being shot, and the command and control of firearms operations, have been reflected in changes to the ACPO Manual of Guidance on the police use of firearms.

43. IPCC recommendations have also precipitated the eventual adoption by ACPO of new post-incident procedures in which officers can no longer confer when making their notes.

(d) Mental health and police custody

44. In 2008 the IPCC published a research report which examined the extent and use of police stations as “places of safety” under section 136 of the Mental Health Act 1983 (http://www.ipcc.gov.uk/en/Pages/mh_polcustody.aspx). This followed concerns raised by the Commission about the number of people with mental health problems who died in police custody. The study sought to identify good practice and made a series of recommendations for the police, health, social care and other relevant bodies, to seek to minimise the use of police custody as a place of safety.

45. This was the first time national statistics on this subject had been produced and they were used to inform national policy including the report by Lord Bradley into mental health and offending. They formed part of the resulting recommendations to reduce the practice of using custody suites as places of safety. In addition the report was used to encourage local healthcare providers to create alternative places of safety for people with a mental illness coming into contact with police custody. The Home Secretary recently reinforced the IPCC’s position in her speech to the Police Federation conference, in which she stated that a police station was an inappropriate place of safety for mentally ill people. She also confirmed that she had secured the Health Secretary’s commitment to divert more mentally ill offenders away from the criminal justice system, including introducing mental health liaison and diversion services at every police station that needs them. These measures as well as an NHS commissioned pilot to deliver a police custody health service are in tune with the recommendations made by the IPCC in 2008.

46. IPCC statistics show that approximately half of those who die during or following police custody are known to have mental health problems. This reinforces the need for a coordinated response across the police, health, social care and other services to protect and meet the needs of this vulnerable group.

Stop and search

47. The IPCC recognises that the police use of stop and search powers can have a significant impact on public confidence in policing. It is also recognised that those people who are most unhappy with stop and search encounters—in particular, young people and those from black and minority ethnic backgrounds—have the least confidence in the police and the police complaints system. This is therefore an area in which the IPCC has done a considerable amount of work.

48. The Commission believes that it is not enough for the exercise of stop and search powers to simply be within the law—the powers should be used in a way that is demonstrably fair and effective, and in a way that
49. The Commission continues to monitor cases to identify issues and learning and continues to work alongside the police service and government to bring about improvements by sharing experience and disseminating lessons from relevant investigations.

50. Earlier this year, public concern generated following CPS decisions taken in relation to IPCC investigations, prompted the IPCC to closely scrutinise the way in which the Metropolitan Police Service handles racism complaints. As part of a wider package of measures, the IPCC advised the MPS that for a period all public complaints alleging racism by officers should be referred to the Commission. During this period, the IPCC received more than 50 referrals alleging racism, a large proportion of which were made subject to a supervised investigation. These supervised cases are being monitored. In addition, the IPCC is examining and reviewing cases which had already been locally handled by the MPS. The conclusions of this work, and the independent investigations into race allegations also being carried out, will be made publicly available, and may provide a model for work with other forces if resources permit.

51. The IPCC has conducted a number of investigations following fatal incidents of domestic violence where it is alleged that the police have failed to protect the victim. As a result of emerging themes arising from these investigations, in 2009 the IPCC established a gender violence Strategic Support Group (SSG), comprising of predominantly expert voluntary sector organisations, to review these cases and identify any lessons for both the IPCC and for policing more widely.

52. As a result of the work of the SSG and following specific investigations, a number of recommendations and areas of learning were identified and disseminated throughout the police service. These included a recommendation to all forces that they conduct domestic homicide reviews following a domestic murder, a recommendation to the Home Office that it consider changes to legislation to ensure that offenders who return to the UK having served a life sentence in another country are subject to a life licence here and a recommendation to ACPO that it make amendments to the national call handling standards.

53. The IPCC also uses its knowledge in this area to engage with national groups. The Commissioner lead on Gender Violence is a key member of the Home Office Domestic Homicide Review Quality Assurance Group. In addition, in 2011, the Commissioner for Wales, in partnership with Gwent Police, held a Wales-wide conference to help improve the way the police and other agencies work together to support and protect victims of domestic abuse.

54. The IPCC continues to receive an increasing number of referrals highlighting incidences of violence and abuse against women. The Commission will continue to place a high priority on these referrals in the future.

55. Following a series of cases where members of the public, or in one case a police officer, died at the hands of a licensed firearms holder, the IPCC identified a number of concerns about the system for licensing firearms. A series of recommendations were made to the Home Office and to ACPO in relation to the medical history of an applicant, the taking into consideration of bindovers and the consideration of cumulative convictions. The Chief Executive of the IPCC and the Commissioner with responsibility for firearms licensing gave evidence to the Committee in September 2010 about these matters and further information can be found in the written submission and oral evidence transcript.

56. In July 2011 and in the wake of concerns around phone hacking, the Home Secretary requested a report on the IPCC’s experience of corruption in the police service in England and Wales. The IPCC submitted its initial report at the end of August 2011 with a final, more detailed report submitted in April 2012.

57. The report illustrated the kind of behaviour that undermines public confidence in the police such as abuse of authority, perverting the course of justice, and accepting generous hospitality. A number of actions for change were identified which included the requirement for Chief Constables to ensure more consistency in their recording and referral of corruption cases to the IPCC, the need for clearer public information about what constitutes police corruption and the need for a more effective national system for handling allegations of corruption against very senior officers. The IPCC is working with ACPO and others to ensure these actions are taken forward. A programme of work is well under way and the IPCC will be able to update the Committee in the autumn.
Police complaint handling

58. The IPCC has an oversight role of the operation of the complaints system in general. Part of this involves the issuing of statutory guidance, which is currently being updated (see paragraph 12). In addition, it is responsible for producing annual reports on police complaints statistics for each financial year. As a result of this work, the IPCC has taken steps to develop a performance framework which enables itself, police forces and the public to compare and contrast performance.

59. Due to limited resources, this project was implemented in stages but the IPCC is now in the position where it collects data from each police force at the end of every quarter and uses it to produce a report called the “Police Complaints Information Bulletin”. These Bulletins show the force data against a number of indicators that have previously been agreed and tested with forces and policing organisations. All of these bulletins are available on the IPCC website and have made police complaints data more accessible to the public.

60. In the Committee’s 2010 report, reference was made to the need to use this work as a basis for a more proactive approach with police forces, to monitor trends and from time to time examine how complaints are dealt with locally: for example if there are concerns about the upholding rate in particular forces, or in relation to certain types of complaint. This forms part of the work being undertaken on race complaints in the MPS, and is something being actively examined as part of wider work, in the wake of the Police Reform and Social Responsibility Act. However, given the other pressures referred to above, this will be subject to necessary resources being available.

Scrubity of the IPCC

External scrutiny

61. Parliament is charged with formally scrutinising the work of the Commission. The IPCC lays its annual reports before Parliament and its work is subject to regular review via the Parliamentary Committee structure. Over the past four years, the IPCC has been the subject of a detailed National Audit Office study followed by an appearance before the Public Accounts Committee. In addition, it has appeared to answer questions from the Home Affairs Committee and Joint Committee on Human Rights. Although independent from Government, the IPCC can be required, under Section 11(2) of the Police Reform Act, to provide the Home Secretary with reports on specific matters as required. This specific power has only been used once and that was in 2011 when the Home Secretary responded to both parliamentary and public concern and requested a report on the IPCC’s experience of corruption in the police service in England and Wales.

62. The IPCC’s independent investigations are regularly scrutinised in both criminal and coronial proceedings with IPCC investigation reports being frequently used as the prime source of evidence during both criminal trials and inquests. Similarly, investigation findings are tested in police disciplinary procedures.

63. The most high profile of the IPCC’s investigations can be the subject of intense public and media scrutiny, particularly at the outset of the investigative process. At this stage, all the information that is put in the public domain by the IPCC is scrutinised and publicly commented on. Bereaved families, complainants and the wide range of both police and community stakeholders with whom the organisation works also provide an ongoing critique of the IPCC’s work. The release of information at any stage of an IPCC investigation has to be carefully considered to prevent premature or inappropriate disclosure of information relevant to actual or prospective criminal proceedings.

64. IPCC decision-making is susceptible to legal challenge by judicial review—like any other public body which exercises public functions. Much of IPCC statutory decision-making originates from the provisions of the Police Reform Act and associated regulations. Some of this decision-making is quasi-judicial (eg casework appeal decisions) and therefore, if the IPCC considers that it has reached a decision erroneously, then it requires the intervention of a court before the IPCC can re-take the decision. This occurs through a claim being issued in court for judicial review. Other IPCC decision-making is not quasi-judicial (eg the decision to refer a matter to the CPS) and where the IPCC considers that it has erroneously reached this type of decision, then the law allows the IPCC to re-take such a decision without the intervention of a court. In the last two financial years, the total number of claims issued for judicial review has remained constant at 56 in 2010–11 and 55 in 2011–12. This represents a very small proportion of the overall number of decisions made by IPCC Commissioners and staff each year. The vast majority of these claims are refused permission for an oral hearing with only three substantive hearings taking place in 2010–11 and two in 2011–12.

65. Recognising the need to ensure maximum transparency and accountability, the IPCC signed agreements in 2009 with the Police Ombudsman of Northern Ireland (PONI) and the Garda Síochána Ombudsman Commission (GSOC). These agreements allow Chief Executives to make requests for the independent review or scrutiny of an investigation each organisation is undertaking or undertook. They also allow for “special requests” to be made to each other where, in their view, a “critical incident” affecting the public confidence in their respective organisation requires an independent review. Since the agreements were signed, the IPCC has supported three external reviews and has requested three reviews of its own work.
Internal quality assurance

66. The IPCC regularly seeks feedback from those individuals who engage with the complaints system. A survey is sent out as standard practice to all appellants and feedback is also sought from those who come into contact with the IPCC through its investigations. The appellants survey continues to show over 50% of respondents are satisfied with the service received. Although this statistic may not seem particularly high, it should be remembered that those individuals responding are the people who feel most let down by the system and are often not happy with the outcome of their appeal.

67. In addition, the Commission is looking at how to seek formal feedback from bereaved families—though this is a sensitive area which requires careful consideration. This will form part of the IPCC’s review of its cases involving a death (see paragraph 83).

68. The IPCC has a standalone Quality and Standards Directorate whose role is to give focus and structure to the way in which the organisation provides internal oversight and quality assurance of operational business. The Directorate regularly reviews the organisation’s handling of independent and managed investigations and where appropriate it makes recommendations to assist the lead investigator with a specific investigation or to help improve organisational performance in future.

69. Regular quality assurance work has also been carried out in respect of the IPCC’s casework function with a selection of cases being examined each quarter. Recommendations have been made which have resulted in improvements to consistency and organisational performance.

Additional Powers

70. Like any other statutory body, the IPCC can only operate within the powers afforded to it by Parliament. The Commission’s experience of conducting investigations over recent years suggests that there are areas where a change in statutory powers is necessary. A number of changes to the system form part of the Police Reform and Social Responsibility Act and will come into force later this year. There are however other powers that the Commission wishes to have, all of which would require primary legislation. The requirement for these powers has already been discussed with Home Office Ministers and officials and further information is provided below.

(a) “Contracted-out” staff

71. IPCC powers in relation to contracted-out staff working in the police service are currently limited to those who are designated (under section 39 of the Police Reform Act 2002) as detention officers or escort officers. Contracted-out staff performing roles other than detention or escort officers do not fall directly within the Commission’s remit. For the IPCC to investigate such staff under the current legislative regime there would need to be an IPCC criminal investigation already under way in relation to police officers or staff and any investigation could apply only to criminal allegations, not wider complaints or conduct matters.

72. The Commission is very concerned that this gap in oversight could damage public confidence and affect its ability to carry out thorough investigations. Given the likelihood of a growth in the use of contracting out arrangements there is a clear and urgent need to extend the IPCC’s remit to include these staff in relation to all types of investigation.

(b) Statutory framework for IPCC recommendations

73. A number of IPCC investigations identify institutional failings in police forces about which recommendations for change are made. There is currently no regulatory framework or mechanism to ensure such recommendations are properly followed up or enforced and this has understandably caused concern from a number of bodies, including the Committee.

74. A statutory framework in which IPCC institutional recommendations require a formal published response by the responsible authority within a specific period of time would help to reinforce public confidence in the work of the IPCC, particularly following high profile cases of public concern. It would also allow the new Police and Crime Commissioners to follow up on the issues raised.

(c) Powers of compulsion

75. The IPCC does not currently have the power to require police officers to attend, or participate in, interviews in the course of investigations into deaths or serious injuries, unless a criminal and/or misconduct investigation is being conducted. If there is reasonable suspicion of criminal activity, the officers concerned are treated as suspects, compulsive powers exist and interviews are held under caution. There is an argument, powerfully articulated by some police action lawyers, that the IPCC ought always to take this route where death has occurred—as the police would normally do in the case of a member of the public directly involved in a killing—or at least that the IPCC’s threshold for not taking the criminal route is too high. However, a blanket policy of treating all police officers as suspects would be inconsistent with the statutory test of “an indication that a criminal offence may have been committed” (paragraph 21A schedule 3 Police Reform Act), since police officers are lawfully entitled to use lethal force when this is absolutely necessary or in self-defence.
76. In investigations where there is no suspicion of criminal activity and where police officers refuse to
attend for interview, IPCC investigators can only seek the information they need through the submission of
written questions to officers via their solicitors or other representatives. Not only can this seriously undermine
public confidence in IPCC investigations, it can also impact on the overall effectiveness and timeliness of
investigations. Relying on the written submission and response of questions is generally a much longer and
less satisfactory process than conducting a face to face interview, particularly when investigators need to
follow-up answers provided by officers.

77. The Commission believes that all public servants, including police officers, should be accountable for
their actions. Where a fatal or serious incident following police contact occurs, the public are right to expect
that those officers directly involved, or those who witnessed the incident, should be required to provide a
detailed account to the body charged with investigating the matter. It is anomalous that regulations require a
police officer to attend an IPCC interview if misconduct is alleged (which could include, for example, a
speeding offence or an allegation of discriminatory treatment), but not if he or she is involved in or witnesses
a death or serious injury.

78. There are various ways in which this might be tackled. The IPCC could seek powers to compel an officer
to answer questions but the evidence obtained in this way could not necessarily be used in criminal or
disciplinary proceedings. An alternative would be for the IPCC to have the power to compel an officer to
attend for interview, in which case it is likely that information arising from these interviews could be used in
future proceedings. This would at least ensure that officers had to attend for interview—though of course the
IPCC would not be able to prevent them from providing no comment.

79. The Commission is continuing to consider this complex issue and will keep the Committee abreast of
its progress.

d) Access to third party data

80. IPCC investigators often need to seek information from third parties, including individuals, public and
private bodies. This information is often personal data for the purposes of the Data Protection Act 1998 and
therefore, when an investigation does not include a criminal dimension, third parties may be unwilling to
provide data for fear of breaching data protection laws. It would assist the IPCC's non-criminal investigations
if a gateway allowing disclosure without fear of unlawful data processing could be created.

e) Authorisation for IPCC staff to carry out certain acts under PACE 1984

81. The independence of the IPCC can at times be undermined by requirements under the Police and
Criminal Evidence Act for statutory oversight or supervision by a police officer for certain tasks such as the
authorisation of search warrants. The recognition of the IPCC for the purposes of statutory review/oversight
under PACE would therefore enhance public confidence.

The Way Ahead

82. This is a period of extensive change for the IPCC. A new Chair, Dame Anne Owers, began in April
2012 and the final terms for a number of Commissioners are due to end over the next 12 to 18 months. The
recruitment process for new Commissioners is currently ongoing with a view to appointments commencing
between autumn 2012 and spring 2013. The new Commission will wish to make decisions on how to build on
the past and prepare for the future.

83. The IPCC constantly reviews its work to learn from experience and make improvements for the future.
As such it has recently announced a review of its work of cases involving a death. The methodology and scope
of the review have now been agreed and the main consultation process is due to begin shortly. The IPCC will
be engaging with a wide range of external stakeholders including those who have been most critical about its
work to seek their input. The Commission will also be keen to seek the views of the Committee in due course.

84. The Commission is actively looking at some of the issues arising from the challenges set out in the
executive summary and throughout this submission. As thinking becomes more developed, it is likely that
the IPCC may wish to submit supplementary evidence to the Committee before it appears as a witness in
the autumn.

June 2012
Written evidence submitted by the Police Federation of England and Wales [IPCC 08]

BACKGROUND

The Police Federation of England and Wales (PFEW) is established by statute as the representative body for police officers of the ranks up to and including the rank of Chief Inspector. There are currently over 134,000 of its members serving in the Police Forces of England and Wales.

OVERVIEW

The PFEW were involved with the IPCC a long time prior to their inception in April 2004. We were members of the Programme Board in 2001 before the formulation of the Police Reform Act 2002 and had oversight of the change from the Police Complaints Authority (PCA) to the IPCC.

After the implementation of the IPCC we were members of the IPCC Advisory Board and have always had a healthy professional working relationship with the Chairman and Chief Executive of the IPCC. This is not to say we agree on all matters; however we are firm believers that we need an independent element in the investigation and management of public complaints.

We also took an active role in the “stocktake” that took place in 2008 and have over the years issued two “joint communiqués” to both our members and the public to update them on the procedures in relation to public complaints.

We are about to be involved in the consultation on the amended IPCC Statutory Guidance and welcome that opportunity.

We have always enjoyed a productive, be it at times fractious relationship with the IPCC. This is only natural given our differing roles and the conflict that the relationship at times brings but despite this we have moved forward well in some areas and maintain a healthy and respectful dialogue.

We welcome the opportunity provided by the HASC to respond to their inquiry and this response has been compiled after consultation with Police Conduct representatives from forces around the country.

KEY AREAS

Our key areas of concern some of which are partially covered in the formal responses to set questions could be highlighted as:

— Communication
  (i) Ill-considered and provocative press releases often quite biased and prior to sufficient evidence being gathered. These ought to be more neutral in tone until a clear picture has emerged.
  (ii) Officers under investigation are under huge stress and the required updates are often bland and uninformative.
— Investigations
  Are still taking far too long, this is either due to a failure in a sense of proportionality or inadequate investigative skills and the PFEW are outraged that these failures are often unfairly levelled at officers not assisting the investigation.
— Oversight
  PFEW believe the current oversight arrangements are inadequate.

It would be fair to say progress has been made in some of these areas but it is too slow and insufficient.

TERMS OF REFERENCE

We note the terms of reference of the HASC Inquiry and wish to respond as follows:

Whether the Commission has improved the scrutiny of police practices

PFEW believes that overall the IPCC has improved scrutiny of the police and its independence from the police is vital in this area. We believe sometimes certain individuals adopt an overly crusading standpoint, a recent example of this being the latest surge to require officers to be compelled to answer questions in an interview, when they are witnesses. We have always supported investigations and given full and detailed statements but we deserve the right to the same protections afforded in law to other citizens.

Whether the Commission has the right powers and resources to carry out its role effectively

On the question of powers, by and large the IPCC has sufficient powers. They may lack some basic powers to follow the evidence, eg medical records, outsourced functions such as custody. There is, however an anomaly PFEW believes in cases where Professional Standard Departments (PSDs) have allegedly conducted a poor, biased or even corrupt investigation. The IPCC should have the right to investigate these on the very rare
occasion it is alleged, as the perception amongst officers is that PSDs are a law unto themselves, without the independent scrutiny afforded to all other officers. This needs to be addressed and set in regulation as it is extremely difficult if not impossible to progress in the current regime. Officers should be able to complain directly to the IPCC on how they are being treated by their forces in exceptional cases.

With regard to sufficient resources, we are aware the IPCC have had to make cuts like everyone else but it is not our belief that the individual workload on investigators is excessive. Many investigators do not seem to grasp the nature of proportionality and waste valuable time and effort over egging the pudding. This is a cultural issue which is being addressed but again progress is slow.

Since the inception of the IPCC they have taken on a wider remit, incorporating the Serious Organised Crime Agency (SOCA), Her Majesty’s Revenue and Customs (HMRC) and the Border Agency. Whilst it may be appropriate that these organisations have some form of independent scrutiny, by utilising the IPCC without any increase in resources there is a dilution of the work the IPCC do with the police. It would be our view that the IPCC be allowed to conduct more independent investigations, but solely of the police. The clue is in the title the “Independent Police...”

Whether investigations lead to improvements in police practices

The Learning the Lessons programme has been very successful, in particular in the area of Custody where both the Police and the IPCC have improved as a result of investigations. The Police Federation have actively contributed to these bulletins and are an active participant in the programme board.

The difficulty is effecting change within not only the police service but other areas of the public sector. This needs to be addressed through legislation. There is an argument that there could be something akin to the Coroner’s Rule 43 to enforce change. This may prove difficult legally but we believe it could make some positive changes, especially in areas like continuing to use police stations as a place of safety for persons with mental health problems. This issue has been raised time and time again and there seems universal agreement that this should not be occurring, however there is nothing being put in place to change this.

Whether improving police services should be formally included in the Commission’s remit

Other than as outlined above the improving of police services should remain under the HMIC and potentially the proposed Police Professional Body (or College of Policing) although we accept that this is still in its embryonic format.

The Commission’s role in scrutinising elected police commissioners

We believe that there has to be some process for the scrutiny of elected police and crime commissioners and it would appear to be the logical solution for the IPCC to conduct any investigations of them independently.

The Commission’s role in scrutinising third parties commissioned to carry out policing duties

The difficult issue for the PFEW is that we have grave concerns at this time to the third party commission of Police Services (or outsourcing) so do not think we should comment on this area.

The Commission’s role in considering complaints which may relate in part to other bodies involved in the justice system, such as the Crown Prosecution Service

As stated in our response to a previous question we believe the IPCC should focus solely on public complaints in relation to the police and no other area. There are other bodies that can deal with complaints about staff within other organisations within the criminal justice sector.

Whether the right balance is achieved between independent, managed and supervised investigations

PFEW would prefer the IPCC to have sufficient resources to investigate independently the complaints they need to investigate, that is the high profile media cases and deaths and serious injuries following police contact. Proportionality is the key here, if it is low level let it remain internal to the Police and the IPCC concentrate on the more serious level. Too many valuable resources are focussed in the wrong areas to catch officers who have made mistakes rather than focussing on the high level incidents where there is serious corruption. There needs a clearer line with regard to someone not doing the job correctly (performance issue) and someone doing something wrong (misconduct).

How the work of the Commission could be effectively scrutinised

The current arrangement apart from one fatal flaw could be sufficient. As it stands another organisation such as Ombudsman for Northern Ireland or the Garda can be called in to review an investigation but only at the instigation of the Chief Executive of the IPCC. Whilst we have every faith in the current Chief Executive it just seems wrong in principle to have a self-referral only process. The alternative would have to be a legally chaired panel with representatives from amongst ACPO, PCCs, HMIC, Police Professional Body and staff associations which may actually be quicker and less expensive.
CONCLUSION

Whilst the relationship between the PFEW and the IPCC, both centrally and locally varies and at times we have differing points of view we do not feel there is the need to have a new organisation formed to oversee or investigate public complaints against the police.

We support the continued existence of the IPCC although would like serious consideration to be given to the points that we have raised in our response.

Police Federation of England and Wales

June 2012

Written evidence submitted by Black Mental Health UK [IPCC 23]

EXECUTIVE SUMMARY

The purpose of this submission is to highlight the need to ensure that the issue of deaths in custody as it relates to mental health services users and ethnic minorities is included on the agenda of the Home Affairs Select Committee’s (HASC) inquiry into the Independent Police Complaints Commission (IPCC).

People who use mental health services account for 50% of those who lose their lives in police custody, and it is in the area of mental health and policing that many of the most serious causes for complaints against the police occur. Detention rates under the Mental Health Act continue to be highest for people from the UK’s African Caribbean communities, even though there isn’t a high prevalence of mental illness amongst this group. Black people are currently 50% more likely to referred to mental health services via the police than their white counterparts.

The high profile, deaths in police custody, cases of Kingsley Burrell-Brown, Sean Rigg, Olaseni Lewis, Colin Holt, Mikey Powell and Roger Sylvester is further evidence that failures in policing of mental health services users, which is impacting people from Briton’s black communities in greatest numbers.

The unsatisfactory way in which a long line of complaints involving high profile police deaths in custody of people from this community has been dealt with over the years has shattered faith in the belief that the IPCC is an independent body with the ability to investigate complaints made against the police without bias. In light of this, BMH UK is using this submission to highlight the pressing need for a judicial review into how all deaths in custodial settings are handled.

Mental health service users also account for 61% of all deaths of those detained by the state, but currently there is no independent body established for investigating these fatalities.

This submission is also being made to highlight the need for the establishment of an independent agency to investigate preventable death of those detained under the Mental Health Act.

INTRODUCTION—ABOUT BLACK MENTAL HEALTH UK (BMH UK)

Black Mental Health UK (BMH UK) work in the area of public policy with a focus on the over representation of people from the UK’s African Caribbean communities detained in medium and high secure psychiatric settings.

We work towards educating and informing the communities over represented within custodial and detained setting about the latest policy developments and equip those most affected by these issue and other injustices to lobby for positive change. Also an online publisher we use our website, www.blackmentalhealth.org.uk and online magazine, entitled The Solution, to raise awareness and address the stigma of this health condition within the communities most affected but least informed about this issue.

BMH UK’s The Solution Magazine is the only publication of its kind with a focus solely on the African Caribbean experience of mental health and mental health services.

INFORMATION BMH UK WOULD LIKE THE COMMITTEE TO CONSIDER

1. Mental health and policing.
2. Prone restraint.
3. Tasers: lack of accountability in the overuse of force.
4. IPCC complaints procedure.
5. Deaths in custody.
6. Police presence on psychiatric wards.
7. Independent scrutiny of mental health service users deaths.
8. Recommendations.

1. Mental Health and policing

1. Police officers often have a significant role to play in mental health services and are commonly the first point of contact for a person in a mental health crisis. The police have specific powers under the Mental Health Act 1983 to intervene in a case where an individual appears to be in an immediate need of an assessment. Up to 15% of incidents with which police deal are thought to have some kind of mental health dimension.

2. People with mental ill health rarely commit serious crimes and are at greater risk of becoming victims of crime than the general population. The linking of the perception of dangerousness and resulting stigma around mental illness with negative stereotyping to other areas such as race, is particularly damaging and there is no evidence to support this stereotype.

3. BMH UK have observed that it is in the area of mental health and policing where the most tragic outcomes occur. This is borne out by data from the IPCC which shows that 50% of fatalities which occur in police custody are of mental health service users.

4. Although responding to situations where people are experiencing acute mental distress is a significant aspect of policing, some police departments do not feel that their general response is a good one.

5. People from the UK’s African Caribbean communities are 50% more likely to be referred to mental health services via the police than their white counterparts.

6. In almost all cases mental health service users held detained in police custody under S136 of the Mental Health Act are left feeling vulnerable and distressed. This experience increases paranoia and the feeling of being criminalised.

7. Research shows that some people with mental health problems held in police cells as a place of safety have been strip-searched, left naked in a cell, left cold, hungry and thirsty, not given the medication they needed, been restrained by more than one officer and been insulted or patronised.

8. There is a commonly held view among the UK’s African Caribbean communities that police cells are not a place of safety, in fact they have the opposite effect, with a lot of black men dying in police cells and families never actually have a satisfactory answer as to why.

9. The recent tragic cases of Sean Rigg, Olaseni Lewis, Colin Holt and Kingsley Burrell-Brown have reinforced this view. This is also borne out by data published by the IPCC which shows that black people account for 20% of those who die in police custody even though this group are just 2.9% of the national population.

10. Although police are routinely involved in the detention under the Mental Health Act, officers are not mental health experts and do not have the training or resources to deal care for a vulnerable person in need or urgent mental health care.

11. The treatment of mental health service users by the police has shattered this community’s confidence in police services and the police complaints system at the IPCC as it viewed as being staffed completely by police.
12. BMH UK would welcome the HASC including the issue of mental health and policing in their inquiry in order to look at ways public confidence among some of society’s most vulnerable group who come in contact with police services can be improved.

2. Prone restraint

13. There is a growing body of research that has raised particular concern about deaths involving ethnic minority men following police restraint.20 Cases involving Black people and those of mixed ethnicity form a greater proportion of those restrained.21 The UK Parliament’s Joint Committee for Human Rights notes that between 1998 and 2003, 18% of those who died in police custody overall were from ethnic minorities, and restraint was involved in a higher proportion of the deaths of people from ethnic minorities coming into contact with the police (22%) than of White people (12%).22

14. Over one-third of cases in which a black detainee had died occurred in circumstances in which police actions may have been a factor (the proportion raises to almost one-half if the cases of accidental death where the police were present are added); this is compared with only 4% of cases where the detainee was White.23

15. The police continue to use restraint techniques that have been attributed to deaths stretching back nearly two decades. Guidelines do not bar any particular holds but say that the use of force must be lawful, proportionate and necessary.24

16. The numbers of fatalities, particularly involving mental health service users shows that there are "fundamental problems in the effectiveness of police training in restraint. There is an ever present risk of death or serious injury.25

17. This submission is calling for fresh parliamentary scrutiny through this HASC inquiry into the way often distressed mental health service users are restrained by the police.

3. Tasers: lack of accountability in the overuse of force

18. Despite an overall increase in of police contact with those experiencing mental distress, they are not trained to deal with such situations, which they are facing on a daily basis. This could account for the over use of force when dealing with people from the UK’s African Caribbean communities in urgent need of mental health care. There is a growing level of public concern over the disproportionate use of Tasers against people from the UK’s African Caribbean Communities and particularly those who use mental health services.26

19. There have been a series of high profile cases which have raised questions about their use, including case of an Alzheimer’s sufferer who was Tasered in his home when he refused to go into care.27 Another incident involving a 25-year-old graduate with a history of mental illness, who was Tasered in his groin after officers, shot him five times with live bullets.28

20. BMH UK is also aware of a mental health service user who was Tasered while handcuffed and in the caged area at the back of a police van.

21. These cases make the use of Tasers very much a live issue for professionals in the health and social care sector.

22. BMH UK are aware of cases, where because of lack of capacity, mental health services users are unable to make complaints about their treatment or have missed deadlines for appeals during the complaints procedures because of the absence of support.

4. IPCC complaints procedure

23. The practice of referring complaints back to the station where the incident may have occurred raises questions of independence when it comes to investigating complaints against the police.

24. The requirement to attend the police station where the offense may have taken place acts as a prohibiting factor for many people who would like to make a complaint because of fear of coming in contact with police


25 Ibid.


again after what has often been a traumatic experience when in custody, (usually while detained under the Mental Health Act).

25. The added restriction of the time limit for making a report means service users who believe that they have been subject to coercion unjustly often do not have the capacity to respond within the window of time available. This excludes them from any recourse to have their concerns addressed and further reinforces negative perceptions of the force and systems that are established to monitor their performance.

5. Deaths in custody

26. According to the Equality and Human Rights Commission Triennial Review, people who use mental health services are more likely than those without to die during or following police custody.29 This is confirmed by the Joint Committee on Human Rights report into deaths in police custody, which found that just over half of those who died following contact with the police had shown signs of mental health conditions.30

27. In addition, in terms of total deaths in police custody since 2004 in England and Wales, a disproportionate number were of Black people (20% of deaths in 2008–09 who comprise around 2% of the population).31

28. While it is welcomed that suspicious deaths in police custody are automatically referred to the IPCC for investigation, there is widespread mistrust among communities who are disproportionately affected by these fatalities that the IPCC is in any way independent from the police in light of data which indicates that 90% of senior IPCC investigators are ex police.

29. Also data indicating that large number of IPCC staff are also former police employees reinforces that view that independence in investigations are compromised because of the close relationship that employees have with those they are supposed to be investigating.32

30. There is a need for a judicial review into how the issue of deaths in custody is currently handled with a view to establishing an independent body responsible for investigating all preventable deaths which occur within mental health settings.33

6. Police presence on psychiatric wards

31. Police presence, often in riot gear, on psychiatric wards is an issue that is not publicly discussed but has led to a number of high profile death in custody cases that have reinforced distrust of both police and mental health services. (see Annex 1).

32. The final report by the now defunct Mental Health Act Commission entitled “Coercion and Consent: Monitoring the Mental Health Act 2007–09” details the eye witness account of an elderly service user who watched while a squad of 12 heavily equipped police officers with riot armour, CS gas, Taser guns and an Alsatian attack dog went onto a hospital ward to remove just one young man of African Caribbean origin from a hospital, which is a practice that is largely unknown to those outside mental health services.34

33. The use of Police restraint on psychiatric wards is a major area of concern. When such incidents occur, an often unreasonable level of force is used and preventable injuries are sustained by the patients.35

34. There is no consistent mechanism for monitoring deaths which occur after police restraints on psychiatric wards. Only cases where there are high profile fatalities, and the family are vocal about the incident are such matters brought to the public’s attention. BMH UK believe that there is a need for all preventable deaths which occur within mental health settings to be reported to an independent agency outside of the authority of the Health Trust where the death occurred.36

35. With mental health service users making for 61% of all deaths of people detained or held in custody by the state,37 BMH UK are of the opinion that there is a need for such deaths to be subject to the same independent investigation as those which occur in prison or police custody.

36. Mental health patients who do not suffer fatal injuries after being restrained by officers who have been called onto a hospital ward are not in a position to make an official complaint about their treatment to the


32. Black Mental Health UK. Calls for abolition of IPCC gets backing from across the community. 2012. Black Mental Health UK.

33. The Observer. The terrible anomaly of deaths in mental health detention. No single person or agency is responsible for investigating deaths in mental health settings. 2012. The Observer.

34. Black Mental Health UK. New report brings to light inpatient deaths which could have been prevented. Z Samuels. 2009. Black Mental Health UK.


IPCC because of their status as detained patients under the Mental Health Act, which restricts them from leaving the hospital. The absence of privacy on many secure wards with staff listening to patients telephone calls from the ward also prevents this group of service users from seeking redress through the IPCC for their treatment at the hands of the police.

37. While the IPCC is responsible for investigating all preventable deaths in police custody and the Prison and Probation Ombudsman (PPO) has the same duties to those who lose their lives in prison, no equivalent mechanism exists for when someone dies in mental health detention. BMH UK believe it is unjust that institutions responsible for the care of those detained often against their will under the Mental Health Act should not be subject to the same level of scrutiny.

7. Independent scrutiny of mental health service users deaths

38. In 2004 the parliamentary committee on human rights recommended that there should be an independent body to investigate the deaths of people detained under the Mental Health Act. Earlier this year the Equalities and Human Rights Commission noted that this is a key area that needs improvement.

39. The case of 23-year-old masters graduate Olasei Lewis, who died after he was restrained by up to seven police officers at the Bethlem Royal Hospital in Beckenham on 31 August 2011 has made once again raised the profile of the issue of black deaths in custody.

40. The case of 29-year-old father of two, Kingsley Burrell-Brown who died after he was restrained by police officer while detained at the Mary Seacole mental health unit, at Queen Elizabeth Hospital in Birmingham on 30 March 2011, further reinforced the widespread distrust of mental health services and the police. Although this incident occurred over a year ago, his body has not been released to his family because the IPCC are still investigating the case; they have been told that it is likely to take a further six months before they will be able to bury him.

41. All suspicious deaths need a truly independent agency to monitor them, currently there is no such agency for those who die in mental health care. BMH UK are of the view that it is not possible for a mental health trust to be independent when investigating a death, which may have been caused or contributed to by the failures of its own staff and systems.

8. Recommendations

— For the HASC to examine issue of mental health and policing in this IPCC inquiry in order to look at ways public confidence among some of society’s most vulnerable group who come in contact with police services can be improved.

— For the HASC to examine the over user of Tasers among mental health service users in light of the lack of capacity that this group have to raise complaints after being subject to this use of force.

— For the HASC to examine need and the establishment of an independent agency to investigate preventable death of those detained under the Mental Health Act.

— For the HASC to examine and recommend a review of the IPCC’s current complaints procedure in light of mental health service users lack of capacity to effectively access the current process.

— For HASC inquiry to examine the way often distressed mental health service users are restrained by the police and the use of restraint generally.

— For the HASC to examine the pressing need for a judicial review into how all deaths in custodial settings are handled.

— For the HASC to examine the role and appropriateness of riot police entering health based settings such as psychiatric wards and restraining patients and establish a system to monitor when such incidents occur with a view to phasing them out.

— For the HASC to review current staffing of the IPCC so that it is more reflective of the general public. An emphasis on the inclusion of family members who express an interest in working as an IPCC commissioner should be considered.

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39. The Observer. The terrible anomaly of deaths in mental health detention. No single person or agency is responsible for investigating deaths in mental health settings. 2012. The Observer.


41. The Observer. The terrible anomaly of deaths in mental health detention. No single person or agency is responsible for investigating deaths in mental health settings. 2012. The Observer.

42. Black Mental Health UK. Community condemn the death of student after restraint of seven met officers. Z Samuels. 2010. Black Mental Health UK.


44. The Observer. The terrible anomaly of deaths in mental health detention. No single person or agency is responsible for investigating deaths in mental health settings. 2012. The Observer.
CASE HISTORIES: FATALITIES OF MENTAL HEALTH SERVICE USERS FROM UK’S AFRICAN CARIBBEAN COMMUNITIES

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Case history</th>
<th>Date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kingsley Burrell-Brown</td>
<td>29</td>
<td>Called the police for help, they took him to a local psychiatric hospital. Officers returned two days later and restrained him, Burrell-Brown, put on life support, died two days later without regaining consciousness.</td>
<td>March 2011</td>
</tr>
<tr>
<td>Fitz Hick</td>
<td>39</td>
<td>Died after restrained by staff on secure psychiatric ward in West Midlands.</td>
<td></td>
</tr>
<tr>
<td>Colin Holt</td>
<td>53</td>
<td>Suffered fatal injuries after police went to his home after hospital reported that he had not returned from leave.</td>
<td>August 2010</td>
</tr>
<tr>
<td>Olaseni Lewis</td>
<td>23</td>
<td>Restrained by seven met officers in riot gear, confirmed dead three days later when life support machined was switched off.</td>
<td>August 2010</td>
</tr>
<tr>
<td>Godfrey Moyo</td>
<td>25</td>
<td>Suffered a series of seizures after being restrained for a lengthy period by prison officers.</td>
<td>June 2009</td>
</tr>
<tr>
<td>Sean Rigg</td>
<td>39</td>
<td>Although physically fit and health Rigg lost his life just 91 minutes after he was taken into custody by Brixton Police.</td>
<td>August 2008</td>
</tr>
<tr>
<td>Tema Kombe</td>
<td>32</td>
<td>Found hanged in the toilet of a psychiatric ward at Heatherwood hospital, Ascot.</td>
<td>September 2003</td>
</tr>
<tr>
<td>Mikey Powell</td>
<td>38</td>
<td>Died after being arrested by police in Lozells, Birmingham. Powell was knocked over by a police car then restrained by six officers using batons and cs gas.</td>
<td>September 2003</td>
</tr>
<tr>
<td>Ertal Hussein</td>
<td>32</td>
<td>Found collapsed at Bethlem Royal hospital, south London, taken to Princes Royal University hospital where he was pronounced dead on arrival.</td>
<td>June 2003</td>
</tr>
<tr>
<td>Eugene Edigin</td>
<td>19</td>
<td>Admitted to psychiatric unit at the Whittington hospital, north London under the Mental Health Act. The following day he was found unconscious in his bed. The inquest in February 2003 recorded an open verdict</td>
<td>March 2001</td>
</tr>
<tr>
<td>Roger Sylvester</td>
<td>30</td>
<td>Restrained by up to eight officers restrained at the 136 emergency psychiatric room in the emergency psychiatric unit at St Anne’s hospital, Haringey. Stopped breathing, was resuscitated, died seven days later without regaining consciousness.</td>
<td>January 1999</td>
</tr>
<tr>
<td>David Bennett</td>
<td>39</td>
<td>Died after restrained by team of up to five nurses for almost half an hour.</td>
<td>October 1998</td>
</tr>
<tr>
<td>Veron Cowan</td>
<td>32</td>
<td>Died three week after admission to Blackberry Hill hospital, Bristol from a blood clot on her lungs. MIND submitted a critical report to the coroner about the care she received. The coroner preferred the evidence from the Mental Health Trust which ran the hospital. A verdict of death by natural causes was recorded.</td>
<td>November 1996</td>
</tr>
<tr>
<td>Ibrahim Sey</td>
<td>29</td>
<td>Died in Ilford Police station after being forced to the ground while handcuffed and having cs gas sprayed in his face at close quarters.</td>
<td>March 1996</td>
</tr>
<tr>
<td>Newton White</td>
<td>33</td>
<td>Died after being found drowned and scalded in a bath in the Denis Hill Unit of the Maudesely hospital. The post mortem found no evidence of a heart attack, stroke or head injury. Newton had no history of heart problems, epilepsy or high blood pressure. The inquest in March 1997 recorded an open verdict.</td>
<td>January 1996</td>
</tr>
<tr>
<td>Mark Fletcher</td>
<td>21</td>
<td>Died after being restrained and given injection into his spine at All Saints Hospital in Birmingham</td>
<td>August 1992</td>
</tr>
<tr>
<td>Munir Yusef Mojothi</td>
<td>26</td>
<td>A psychiatric patient at Bootham Park psychiatric hospital, he was given an injection of droperidol and then transferred to Clifton hospital, where he was given another injection of the same drug to calm him down. As this did not work, an intravenous dose of the drug was given by a doctor within 15 minutes he had stopped breathing.</td>
<td>June 1992</td>
</tr>
<tr>
<td>Jerome Scott</td>
<td>27</td>
<td>Died on his way to hospital in a police van after being held down by police and inject with two different antipsychotic drugs</td>
<td>June 1992</td>
</tr>
</tbody>
</table>
Orville Blackwood | 31 | Died after he was injected with tranquilisers and placed in seclusion after disagreements with staff at Broadmoor Hospital. | August 1991

Jonathan Weeks | | Sent to Chase Farm hospital for depression by social workers. The inquest recorded a verdict of “death by natural causes”, (pneumonia). It was later revealed that he was receiving eight different drugs, this information was not available to the inquest. | August 1994

Joseph Watts | | Ward staff appeared with shields and helmets, entered his seclusion room, injected him with a drug cocktail and within minutes he was dead. | August 1988

Michael Martin | | Died after being stripped, injected with antipsychotics and placed in seclusion at Broadmoor psychiatric hospital. | July 1984

Winston Rose | 27 | Died in police van after being restrained by police officers taking him to psychiatric hospital. | July 1981

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**Supplementary written evidence submitted by the Independent Police Complaints Commission [IPCC 06a]**

Thank you for the opportunity to give evidence to the Committee on Tuesday 17 July. I hope that the members found the session informative and helpful.

I agreed to follow-up on three specific points and these were regarding the gender breakdown of our investigators, the amount of our work which arises from the non-police organisations we have jurisdiction over and issues relating to the Lynette White case.

**Gender Breakdown of Investigators**

As at 31 March 2012, 54% of our investigators were male and 46% were female.

**The IPCC’s Jurisdiction Over Non-Police Organisations**

Since 2004, the IPCC’s remit has been extended to include serious complaints and conduct matters relating to staff at the Serious Organised Crime Agency (SOCA), Her Majesty’s Revenue and Customs (HMRC) and the UK Border Agency (UKBA).

A very small percentage of our investigations and appeals work comes from these organisations and we receive income from HMRC and UKBA based on work undertaken.

Over each of the past three financial years, investigations relating to SOCA, HMRC and UKBA have constituted less than 3% of our total investigations work. In the same period, income received from these bodies has amounted to approximately £1.8 million. In 2011–12, we completed five investigations for these organisations (two independents, one managed and two supervised), representing 1.87% of all investigations completed by us that year.

Appeals from these organisations have constituted less than 1% of our total appeals work each year. In 2011–12, we completed 25 appeals relating to SOCA, HMRC and UKBA representing 0.42% of all appeals completed by the IPCC in this year.

**Lynette White**

At the hearing, Mr Michael asked me a question about the Lynette White case. As this is a local constituency issue, our Commissioner for Wales, Tom Davies, has arranged to meet with Mr Michael to discuss further.

**Investigation Costs**

Following the hearing, the Clerk also asked if we could provide some indicative costs of each of our investigation types. You will appreciate that it is difficult to provide precise costs and that no two investigations are the same in terms of the resources required for them. Resources needed may, for example, include significant amounts for forensic or other expert work. We are yet to implement an automatic cost and time recording system but we will be doing this in the next financial year.

I have provided below an estimate of the organisational cost for each type at investigation. The cost for an independent investigation is based on an average investigation and it is important to understand that some may cost as little as £45,000 whilst more complex investigations can reach up to £300,000. The figures provided...
for managed and supervised investigations relate only to the IPCC cost and do not take account of the majority of costs which fall to the appropriate authority, usually the relevant police force.

Independent—£120,000.
Managed—£14,000.
Supervised—£3,000.

I hope this information is helpful. We may wish to submit further written evidence as the inquiry progresses. I understand that you will be hearing from additional witnesses after recess and I look forward to appearing before the Committee again, alongside the Chief Executive Jane Furniss, in the autumn.

Dame Anne Owers
Chair
Independent Police Complaints Commission

August 2012

Further supplementary written evidence submitted by the Independent Police Complaints Commission

Letter from Dame Anne Owers, Chair, Independent Police Complaints Commission, to the Chair of the Committee, 12 November 2012

RE: Complaint Statistics

Thank you for your letter dated 24 October 2012 requesting further breakdown of our complaint statistics.

As you know, the 2011–12 statistics showed that 31,771 police officers had been subject to a complaint. The following table gives a breakdown of the ranks of these officers.

<table>
<thead>
<tr>
<th>Police Officer Ranks</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Officer Ranks—All ranks above Chief Superintendent</td>
<td>31</td>
</tr>
<tr>
<td>Chief Superintendent</td>
<td>41</td>
</tr>
<tr>
<td>Superintendent</td>
<td>75</td>
</tr>
<tr>
<td>Chief Inspector</td>
<td>152</td>
</tr>
<tr>
<td>Inspector</td>
<td>1,024</td>
</tr>
<tr>
<td>Sergeant</td>
<td>3,965</td>
</tr>
<tr>
<td>Constable</td>
<td>21,567</td>
</tr>
<tr>
<td>Other police officer ranks</td>
<td>3,291</td>
</tr>
<tr>
<td>Rank unknown*</td>
<td>1,625</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>31,771</strong></td>
</tr>
</tbody>
</table>

* Rank unknown—These have been identified as police officers but the rank is not recorded on force systems.

I hope this information is helpful and I look forward to appearing before the Committee tomorrow.

Dame Anne Owers
Chair
Independent Police Complaints Commission

November 2012

Further supplementary written evidence submitted by the Independent Police Complaints Commission

Letter from Dame Anne Owers, Chair, Independent Police Complaints Commission, to the Chair of the Committee, 30 November 2012

Thank you for the opportunity to return and give evidence before the Committee on Tuesday 13 November. I hope that you and the other members found the session to be informative and helpful to the inquiry.

I am writing to provide you with further information regarding the appeals system as requested by the Committee. Now that your oral evidence sessions into the IPCC have finished, there are a couple of other points which have arisen in evidence that I would also like to address.

**Appeals**

Prior to 22 November 2012, responsibility for determining all appeals lay with the IPCC. Since that date and the enactment of relevant provisions within the Police Reform and Social Responsibility Act 2011
(PRSRA), the responsibility for determining appeals is now shared between the IPCC and the chief officer. Broadly speaking, the IPCC will retain its appellate function in relation to allegations that the police have refused to record a complaint, and in relation to matters that require local investigation, because they raise issues which, if proved, could result in criminal or misconduct proceedings or are potential breaches of Article 2 or 3 of the European Convention on Human Rights. Less serious matters, which can be dealt with via the local resolution process or in some instances via local investigation, will now be appealable to the chief officer of the force responsible. These provisions will take some time to come into force given that they only relate to appeals following complaints made on or after the above date.

I am aware that you have received written evidence from a number of our appellants detailing their experience of the pre-November 2012 system, so I think it would be most useful if I provided information on the appeals system for complaints made under that system.

Under that system, the IPCC was able to consider appeals from complainants into:

— the failure of a police force to record a complaint;
— the local resolution process; and
— the outcome of a local or supervised investigation.

The number of appeals submitted to the IPCC has increased annually since 2004 with over 6,400 being submitted in 2011–12. The Committee appeared to be most interested in appeals against investigation outcomes, the vast majority of which will still be within the IPCC’s appellate function under the new Act, so I have focussed on this area.

A complainant who is dissatisfied with the outcome of a local or supervised investigation may appeal to the IPCC within 28 days of the date on which the appropriate authority sends him or her notification of its determination of the outcome.

A complainant may appeal on grounds that he or she:

— has not been adequately informed about the findings of the investigation or any proposals resulting from the report;
— disagrees with the findings of the investigation including whether there is a case to answer for misconduct or gross misconduct;
— disagrees with the police proposals for action—or lack of them—in light of the report; and
— disagrees with the decision not to refer the report to the CPS.

The IPCC looks at a number of factors in considering an appeal including whether the investigation was carried out in a proportionate manner consistent with IPCC Statutory Guidance; whether (in relation to the findings) sufficient evidence was gathered and the conclusions reached were reasonable; and whether any proposed action is based on a sound assessment of the evidence. This is, however, a paper exercise and an appellate function, not a re-investigation of the original complaint.

In determining the appeal, the IPCC is able to:

— review the findings, without further investigation, which may result in the IPCC upholding the findings or substituting its own findings;
— direct the appropriate authority to reinvestigate the complaint;
— recommend and, if this is resisted direct, the appropriate authority to take misconduct or disciplinary action; and
— recommend the appropriate authority take other action, including referral to the CPS if appropriate.

An appeal offers a final opportunity to consider whether the complaint could have been handled better at a local level and, where appropriate, to put things right. If a complainant is still dissatisfied after an appeal, he or she may seek to challenge the decision through judicial review.

In 2011–12, we upheld 31% of investigation appeals, a significant increase on previous years. We are concerned about this figure, and about the inconsistency between forces in the number of appeals we uphold. In 2011, we launched the Right First Time campaign, which is designed to help forces improve the way they handle their complaints, ensuring that a greater number are resolved first time, leading to improved complainant satisfaction and fewer appeals to the IPCC.

As we have already told the Committee, we would like to be able to conduct more rigorous and routine sampling of locally handled cases to provide additional reassurance and consistency. This will be particularly important under the new appeals system, where not all appeals will come to us. We believe that this would be a powerful tool in improving complaints handling and public confidence in the system. However, as we have made clear to the Home Secretary and the Committee, our ability to undertake this task is dependent on having the resources to do so.
Test for Firearms Officers

In his evidence to the Committee, my predecessor, Nick Hardwick, suggested that there should be a change to the test for police officers involved in fatal shootings. He stated:

“At the moment in some cases the standard defence by a police officer involved in a fatal shooting is what they genuinely believed, and it is very difficult to prove that they do not genuinely believe something. I do not understand why that test is not what they reasonably believed taking into account all the circumstances of the event. There should be a reasonableness element to that test, not just what they genuinely believed. That would be helpful.”

The current test that Mr Hardwick refers to—that was an honestly-held belief the test that applies to self-defence in general, not just to the actions of police officers. It would be strange and difficult to justify if the test for using lethal force in self-defence were different for a police officer than, for example, a householder facing a burglar.

However, the test, as currently applied, has two limbs. The first is the subjective test of what the person honestly believed the circumstances to be when they used force to defend themselves or another person. However, the second limb of the test is an objective one: having regard to those circumstances, was the use of such force reasonable?

To that extent, the current formulation of self-defence does include “reasonableness”. If a person claims, at the time force was used, to have had an honestly held belief that a certain set of circumstances existed, but a jury assesses this to have been a manifestly unreasonable belief, the defence of self-defence would not have been made out, because a jury would be likely to conclude that the person did not in fact have this belief. In assessing this, a jury can take into account the whole of the surrounding circumstances, which can include the background and circumstances of the person using lethal force—allowing them, for example to distinguish, if necessary, between a panicked householder confronting a burglar and a trained firearms officer taking part in a pre-planned firearms operation.

The High Court and Court of Appeal have considered the test of self-defence in English law in relation to the use of lethal force by firearms officers and both courts concluded that the current formulation of the test is consistent with article 2 of the European Convention on Human Rights.45

We do not therefore see any need to provide for a different legal test for police officers than for members of the public.

Emergency Legislation—Police (Complaints and Conduct) Bill

We welcome both the Government’s and Opposition’s commitment to giving the IPCC the powers we need to investigate the Hillsborough disaster and to conduct effective investigations more generally. As you know the draft Bill covers two key areas: a power to require serving police personnel to attend for interview as witnesses during independent and managed investigations; and provisions to ensure that the transitional provisions in the Police Reform Act do not prevent us from carrying out a full re-investigation of officers’ conduct at Hillsborough.

We will be providing relevant members with a briefing detailing our views before the forthcoming Bill debates and I will ensure that Committee members are sent a copy.

I trust that this information is helpful. I understand that the Committee plan to report before Christmas so if there is anything further that I can assist with prior to then, please do not hesitate to get in touch.

Dame Anne Owers
Chair
Independent Police Complaints Commission
November 2012

Written evidence submitted by the Police Action Lawyers Group [IPCC 25]

Introduction

1. Members of PALG are acutely aware of the vital role the Independent Police Complaints Commission (IPCC) could and should play in assisting our clients to realise their primary objective: to hold police officers accountable to disciplinary and criminal misconduct.

2. However, it is with regret that we must inform the Committee that our clients’ experiences with the IPCC are rarely positive, often frustrating and sometimes utterly demoralising.

3. In our experience our clients can expect islands of good practice scattered amongst a sea of ineffective conduct in respect of the IPCC’s investigatory, supervisory and appellate functions. We are currently in the

45 R (on the application of Bennett) v HM Coroner for Inner South London [2006] EWHC 196 (Admin) and [2007] EWCA Giv 617.
process of preparing a dossier of case studies to draw our members' experiences to the attention of the IPCC in the hope that the Commission can learn from mistakes made in the past. However, for present purposes we propose to focus on the following themes which have emerged through our review:

3.1 The flaws in the investigatory process;

3.2 The IPCC's failure to enforce its own Statutory Guidance on disclosure; and

3.3 The poor quality of IPCC decision making in its appellate function.

FLAWS IN THE INVESTIGATORY PROCESS

4. The consistent failure by IPCC investigators to decide that officers should be interviewed under either criminal or misconduct caution in death or serious injury (DSI) cases and in supervised or managed police complaints is an issue that causes our clients a grave lack of confidence in the IPCC investigatory process. The issue has been raised most publicly during the IPCC investigation into the death of Mark Duggan, but is a practice that we see regularly. The consequence of a failure to interview under caution is that all officers, who may have been causatively involved in the death of our clients’ loved ones or who may have been accused of having committed criminal offences, are not adequately tested during an investigation. Accordingly, the investigation misses the opportunity to secure important evidence which in turn raises questions about the extent to which any such investigation can be effective overall.

5. In our experience, the decision not to interview officers under caution cannot be viewed in isolation; it falls within the wider context of decisions taken at the outset by IPCC investigators. This is particularly the case since the introduction of certifying investigations as subject to “special requirements” in paragraphs 19A–E of the Police Reform Act 2002. Our experience is that the interviewing of officers under caution was a more frequent occurrence prior to this amendment.

6. To be clear, it is not the position of PALG that all DSI cases are conduct matters and that all officers should be interviewed under either misconduct and/or criminal caution; there are plainly cases where there is no basis to consider that criminal or misconduct offences may have been committed.

7. What we are seeing, however, is an unwillingness to review early decisions taken in investigations that a matter is not a conduct matter (in DSI cases) nor a matter which should be subject to special requirements whereby officers should be served misconduct notices and/or interviewed under criminal or misconduct caution. This is often despite evidence emerging during the investigation which may give rise to a reasonable suspicion that an officer has committed a criminal or misconduct offence.

8. This is to be contrasted with the approach in criminal investigations which does not involve police officers or deaths in custody. In such police investigations, especially following a death which has resulted from lethal force where any culpability is not clear at the outset or where there are disputed accounts of what in fact took place, we would as a matter of course expect members of the public at the scene of the death to be interviewed under caution. Moreover, where there is an allegation that a criminal offence may have taken place there is rarely a situation where the first-hand account of an individual who allegedly committed that offence is not obtained. Indeed such an interview is often a very valuable piece of evidence that is—quite rightly—secured. Any failure of an accused person to answer questions under caution can be of great evidential value at any subsequent criminal trial, when considered in conjunction with other evidence.

9. The legal route to an interview of officers under caution in a police complaint (as opposed to a DSI matter) is as follows. If an investigator believes that the officer under investigation has (a) committed a criminal offence or (b) behaved in a manner which would justify the bringing of misconduct proceedings, the matter will be certified as being subject to “special requirements.” Where a complaint has been assessed as such, the investigator must then undertake a severity assessment to consider whether the behaviour, if proven, would amount to misconduct or gross misconduct. Depending on the outcome of this decision, the officer(s) in question must be notified (ie served a Regulation 14A notice) of his rights throughout the investigative process, including that an adverse inference may be drawn from any failure to mention a relevant fact. The investigator can only, with these pre-requisites, take a view on whether it is then appropriate to interview the officers under caution.

10. In DSI matters in particular, the IPCC is required to investigate the circumstances of the death and/or serious injury whether or not the conduct of the officers involved is in question. However, where at the outset an officer’s conduct is not in question, the investigator has an ongoing duty to review this assessment and to consider whether, throughout the life of an investigation, evidence has emerged to justify assessing the matter to additionally be a “conduct matter” and therefore certifying it as subject to “special requirements”.

11. If a DSI matter is not certified as subject to “special requirements” the relevant criteria to interview the officers under caution will not be met. What we are seeing in practice is a reluctance to record DSI matters as “conduct” matters, either at the outset or upon review throughout the investigation.

48 Paragraphs 11(2)(a)-(c) of Schedule 3 to the Police Reform Act 2002.
12. An example of the failure to take into account new evidence and reverse a decision not to certify a DSI matter as a conduct matter arose during the IPCC investigation into a restraint related death in police custody. Here, IPCC investigators took a view that it was not a conduct matter and there was therefore no basis to interview the officers. That decision remained in force even when the interviews of lay witnesses raised significant factual disputes with the officers’ written accounts. Even upon reviewing those discrepancies, the IPCC did not at that point consider whether the matter should then be dealt with as a “conduct” matter. The officers were never served with misconduct notices and therefore their accounts were never tested in interview, denying the Coroner in the eventual inquest access to what would have no doubt been important and useful evidence.

13. Another PALG member has, in the course of inquest proceedings following a DSI investigation, been provided with evidence in the form of an internal IPCC e-mail which suggested that the decision by the IPCC not to treat an officer as a suspect was premised upon the expectation that the officer would provide a “no comment” interview. This approach provides further evidence of an institutional problem which must be addressed urgently, i.e. the IPCC is not properly taking into account the fact that a “no comment” interview under caution is in itself valuable evidence and that an adverse inference could be drawn from the officer’s failure to give an account in interview which is then later provided. Moreover, we are concerned that the IPCC is making a judgment which assumes knowledge of how an officer might respond. It is not, in our opinion, appropriate for an independent investigator to make assumptions in respect of what might or might not be said.

14. Anne Owers discussed the issue of officer interviews in her recent John Harris Memorial Lecture and noted in particular that there was no power to compel officers to attend an interview in DSI cases unless they were being interviewed on suspicion of having committed a criminal or misconduct offence. She suggested that a way of dealing with this issue would be to increase the IPCC’s powers to include a sanction for officers if they fail to attend interviews, even if that interview is not a misconduct and/or criminal interview. She rejected the argument that there should be a “level playing field” and parity with ordinary criminal proceedings against members of the public and said as follows:

“police officers are legally entitled to use lethal force, but only in circumstances where this was absolutely necessary to preserve life: theirs or others’. So there does need to be a reason, beyond a tragic death, why that test may not have been met in order to invoke the criminal law. There is however an argument to be had about the right threshold for invoking it, and we need to be sure, in each case, that we are not setting it too high, and that we keep reviewing it in the course of the investigation as evidence accumulates.”

15. We consider that this explanation, which our members have heard before from other senior figures within the IPCC prior to Anne Owers’ appointment, does not address the significant concerns of our clients. As explained above, ordinary members of the public who have not been invested with the powers of a Police Constable also have the right to use force, including lethal force, in self-defence. However, the difference is that if someone is killed by a member of the public—even in self-defence—the individual who struck the fatal blow will be treated as a suspect, arrested and given an opportunity to provide his account in an interview under caution. If, during that interview, the suspect does not raise a defence, an adverse inference can be drawn at trial from that failure to give an account. It is entirely unclear why police officers are not treated in the same way; police officers are as capable of committing crimes as the next person.

16. Whilst we welcome Anne Owers’ recognition that the ongoing IPCC failure to interview officers under caution is one that needs to be urgently addressed, her solution—to put in place some kind of sanction for any failure by an officer to give an account without providing the evidential value inherent in a “no comment” interview under caution—does not engage with the issue at the heart of the matter: that IPCC investigators are unwilling to assess matters as ones where a criminal and/or misconduct offence “may” have been committed in the first place. This results in proper evidence not being secured in the form of either an officer’s account or an officer’s “no comment interview”. A sanction, in the absence of an adverse inference from a “no comment” interview, will remain of little evidential value in an investigation.

17. Furthermore, interviews which are not conducted under criminal or misconduct caution are likely to be inadmissible in any subsequent criminal proceedings, rendering them without purpose if evidence is obtained in those interviews which may indicate that officers have committed criminal offences. More worryingly, we are concerned that Anne Owers’ proposed solution will only serve to incorporate within law an opt-out clause for IPCC investigators such that they need not interview officers under caution even where it is appropriate. This will only serve to legitimise the IPCC’s current practice which allows the conduct of officers to remain above the law.

18. The IPCC has been given the role of investigating deaths in police custody to discharge the State’s investigative duty and independent oversight over complaints investigated by the police. Accordingly there is a duty imposed upon the Commission to properly secure evidence and to test that evidence. In an attempt to appear neutral to officers, our clients are often left with the impression that the IPCC has rendered itself ineffective and often complicit in police officers’ attempts to avoid having to answer for deaths that take place in their custody. It is our view that a culture has developed within the IPCC, in the main since the introduction of the 2008 amendments to the 2002 Act, resulting in the mis-application of the correct threshold in analysing when a criminal and/or misconduct offence may have been committed, resulting in investigations lacking the rigour and independence that our clients rightfully expect. It is this culture of viewing officers as witnesses
rather than suspects which is at the root of the problem and which needs to be properly addressed by the organisation on an institutional level.

The IPCC’s Failure to Enforce Its Own Statutory Guidance on Disclosure

19. One of the most important reforms of the Police Reform Act 2002 for complainants was the reversal of the prohibition on the disclosure of an investigating officer’s report at the conclusion of a complaint investigation. For years, complainants were left at the end of an investigation not only with the disappointment of their complaint being rejected, but also being left totally in the dark as to why and how such a decision was made.

20. Guidance on information and documents that should now be provided to a complainant or interested party at the conclusion of an investigation is contained within paragraphs 528 to 526 of the IPCC Statutory Guidance. The guidance states as follows:

528 “The IPCC believes that making a final investigation report available to the complainant or interested person is the most transparent way of showing what the investigation has found, and so it should usually be provided to the complainant or interested person, subject to the harm test and any necessary redactions. There will be very rare occasions when the reasonable application of the harm test will prevent this and redaction cannot remove the risk of harm ...”

534 ... the investigator should normally explain the findings in the report to the complainant or interested person and answer any questions about it ... the report should include a schedule of such statements and other underlying evidence. Copies need not be provided with the investigation report as a matter of course ...

535 If, after receipt of the report, the complainant or interested person requests a copy of any of the statements or other underlying evidence then, subject to the harm test and with redactions where appropriate, a copy should be provided if this can be done without incurring unreasonable expense ... if the information requested is difficult or unreasonably expensive to copy ... the person requesting should be invited to inspect the information.

536 Where appropriate (whether or not the complaint is upheld) the investigator should assist the complainant, preferably in person, to understand the decision made, taking him through the report and any statements or evidence being disclosed.

537 In the vast majority of cases, reports and statements will be short. Where they are being disclosed they could easily be copied and supplied to the complainant.

21. The Statutory Guidance also makes provision for the disclosure of documents to a complainant after a complaint investigation has concluded but pending any appeal to the IPCC on the outcome of that investigation. The chief guidance on disclosure of documents pending appeals in “local” or “supervised” investigations within the statutory scheme is provided in paragraph 556 of the IPCC’s Statutory Guidance (which should be read in conjunction with the preceding paragraphs from 549 onwards). Paragraph 556 addresses disclosure by the police to a complainant or interested person at the end of the local or supervised investigation but prior to any appeal as follows:

“556 Where a complainant has a right of appeal to the IPCC, he or she will need to know the basis on which the report was made in order to decide whether to appeal. However, misconduct action might follow if the appeal is upheld. Therefore, although there is no statutory obligation to do so, the IPCC expect appropriate authorities to provide, subject to the harm test, the investigation report to the complainant at the same time as the decision when the complaint is communicated. Disclosure of any evidence requested will also be subject to the harm test and the impact that this may have upon any later disciplinary proceedings were these to be directed by the IPCC.”

22. The exceptions to disclosure, subject to the harm test, and the impact on disciplinary proceedings, have their origin in Regulation 12 of the Police (Complaints and Misconduct) Regulations 2004. Regulation 12(3) includes the impact of disclosure on “action or prospective disciplinary proceedings”, including where the disclosure may contaminate “evidence of witnesses during such proceedings”.

23. Therefore, in order to withhold documents pending an appeal to the IPCC, the police should be required to show that such disclosure offends the “harm test” or can be “justified” vis-à-vis “actual or prospective disciplinary proceedings” including regarding contamination pursuant to Regulation 12.

24. When the Statutory Guidance was introduced we welcomed the paragraphs on disclosure, given their clarity of purpose and method. Our experience is that the Guidance appears to be working in relation to encouraging forces to provide investigating officers’ reports at the conclusion of an investigation. Much less common, however, is the disclosure of evidence underlying the reports (or even the listing of that evidence in the report as envisaged by paragraph 534). This is despite clear encouragement in this section of the Guidance for such disclosure.

51 ie where disclosure would have a real risk of significant adverse effect on national security; prevention of crime; or is disproportionate; or where non-disclosure is necessary in the public interest.
25. Regrettably, what most complainants now experience is a blanket refusal by the police to disclose any documents other than the investigating officer’s report. Where forces fail to adhere to the Statutory Guidance and the IPCC is invited to intervene, it has very rarely done so.

26. Indeed, it is a matter of great concern that it is now the policy of the Metropolitan Police Service to refuse to disclose underlying documents pursuant to the Police Reform Act; not just where appeals are pending but at the conclusion of complaint investigations in which the IPCC has direction and control when all appeals have been exhausted.

27. In January 2011, upon it becoming apparent that there was a repeated failure on the part of police forces to disclose relevant documents in accordance with the IPCC Statutory Guidance PALG sent submissions to the IPCC. The Metropolitan Police set out their position in a letter dated 4 April 2011 in which they explained that documents underlying an investigation should rarely, if ever, be permitted to be disclosed to a complainant and that the force would not comply with the Statutory Guidance.

28. In response, PALG prepared submissions in August 2011 in which we responded to the justifications advanced by the Metropolitan Police for its approach as follows:

28.1 PALG has never suggested that complainants should inevitably receive disclosure. We recognise that a balancing exercise will usually be necessary.

28.2 The approach adopted in relation to this issue in the IPCC Statutory Guidance is the correct and lawful approach for the following reasons:

— It takes proper account of the various disclosure obligations and restrictions placed on the IPCC and DPS by statute pursuant to the Police Reform Act, Data Protection Act, Freedom of Information Act and Human Rights Act;

— It strives to achieve confidence in the police complaints system by striking a balance between openness and preserving the integrity of evidence;

— It recognises that disclosure decisions are fact sensitive.

28.3 In refusing to provide disclosure the Metropolitan Police relied upon an assertion that those who provide evidence during the police complaints process do so “confidentially” and with a “legitimate expectation” that their statements would not be disclosed. However, we pointed out that there was no factual or legal basis for this assertion. In fact, our collective experience is that witnesses in police complaint or DSI investigations were rarely, if ever, given the expectation of non-disclosure by investigators, and nor should they be. In highly sensitive cases it may be that witnesses are reassured that their identity will be protected by way of redaction or an application for Public Interest Immunity; however for the Metropolitan Police to assert that non disclosure should be guaranteed to witnesses as a matter of routine was extraordinary;

28.4 We pointed out the imbalance in the provision of documents to officers compared against the documents a complainant can expect to receive; the Metropolitan Police in particular are well known for disclosing witness statements to impugned officers as part of extensive “disclosure packs” before officers have even provided their accounts to the investigation, including in interviews. We reminded the Commission that PALG and the IPCC had long deprecated that practice due to the obvious risk it poses to the integrity of officers’ accounts.

29. Our submissions were designed to assist the IPCC in enforcing its own Statutory Guidance, to remind the Commission of the importance of its guidance on this subject and to assist the organisation in satisfying its guardianship functions. The Statutory Guidance on disclosure provided an example of what could be achieved by a truly independent body.

30. However, the failure of the IPCC to act upon police forces, including the Metropolitan Police, breaching the Statutory Guidance provided evidence of the Commission’s failure to provide true independent guardianship over the police complaints system, to the detriment of complainants. Indeed, despite PALG requesting at the conclusion of our submission of August 2011 that the IPCC take further steps to safeguard the rights of complainants in the face of the clear breach of its guidance, no further effective action was taken by the Commission for many months.

31. It was not until February 2012 that the IPCC confirmed its view in correspondence that the position of the Metropolitan Police “over emphasises the need not to prejudice disciplinary proceedings” and that “where disciplinary proceedings are not a possibility or in train, this argument should not be used to prevent disclosure”. The IPCC also confirmed that it did not understand the Metropolitan Police suggestion that evidence gathered during a police complaint is generated “confidentially” in the sense that the complainant cannot have disclosure of this evidence because of a duty of confidence to the relevant witness. The IPCC letter went on to say that the Commission was “…in broad agreement with you that the [Metropolitan Police] approach to disclosure is unnecessarily restrictive…”

32. However, despite being in broad agreement with us, the IPCC declined to take further steps to enforce its current guidance. Instead, the Commission confirmed that it was now in the process of finalising its…

52 It is also not a practice followed by the police when interviewing criminal suspects.
consultation draft of revised Statutory Guidance and that it would consider taking into account any submissions made by PALG in respect of disclosure issues when finalising its new statutory guidance.

33. In PALG’s submission the stance taken by the Commission is indicative of its lack of teeth in the face of decisions made by police forces not to adhere to its Statutory Guidance. If it were to enforce its own guidance on disclosure this would have materially improved the experience of complainants. It is simply not possible to effectively appeal a decision where the underlying documents upon which the basis the decision has been made have not been provided to a complainant. How can the decision making process of the investigator be scrutinised without reference to the evidence before them? Furthermore, the refusal to provide documents to a complainant where there is no prospect of disciplinary or criminal proceedings defies both the spirit and the letter of the guidance.

34. Whilst we understand that the Commission is due to bring forward new Statutory Guidance this will only have a positive impact if there is more effective enforcement of the revised guidance than there was of the previous guidance. It also means that those complainants whose matters are currently being investigated remain in limbo as to their rights until that new guidance has been published and is in force.

35. The failure of the IPCC to enforce the transparency which should have resulted from its Statutory Guidance on disclosure serves to damage its reputation in the eyes of our clients. The Commission becomes complicit in the decision of police forces to withhold from them information and documents which have been generated about their own police complaint.

DEcISION MAKING IN THE IPCC’S APPELLATE FUNCTION

36. Given the large number of decisions made by the IPCC in respect of its appellate function concerning local or supervised investigations conducted by police forces, the final part of this paper focuses on recurrent themes experienced by our clients which reflect the poor quality of decision making during this process.

37. Our clients have often experienced IPCC caseworkers either failing to grasp the extent of the IPCC’s appellate powers or, worse still, confusing “independence” with “neutrality”.

38. The most common failing our clients experience is a refusal by the investigating police force to uphold a complaint simply on the basis that the account provided by a complainant conflicts with accounts provided by the officer complained against, or his colleagues. Indeed, it is on the basis of this failure to critically analyse conflicting accounts that the vast majority of police complaints are not upheld with a finding that there is “no case to answer” as the police force, and thereafter the IPCC on appeal, decide that the complaint is “not capable of proof”. Many complainants engage in the police complaints process with a degree of trepidation when they know the investigation is entrusted to police officers who are often from the same police force as those who are the subject of their complaint; the feeling of dejection when such decisions—taken without any critical analysis of the evidence—are rubber stamped by the IPCC is often palpable.

39. The failure to critically analyse competing accounts includes a failure on the part of the IPCC to decide whether the accounts provided by police officers lack credibility and whether, therefore, the complainant’s account should be preferred and a complaint should be upheld. In fact, complaints are often not upheld even in the face of significant inconsistencies between officers’ accounts or the availability of a more cogent and compelling account from a complainant.

40. There is a recently reported case which provides evidence of this flawed approach. In the case of O’Brien v IPCC53 permission was granted by the Administrative Court for a litigant in person to challenge, by way of judicial review, a decision made by an IPCC caseworker. The basis for the grant of permission was set out at paragraph 2 of the judgment and included the following:

“I. Permission is granted in relation to the challenge to the decision that PC Wainwright was not guilty of misconduct in respect of alterations to the witness statements of Mr Doran and Mr Broadbridge. It is arguable that:

(a) The IPCC caseworker has applied the wrong test in directing himself that: ‘In the absence of independent or corroborating evidence, allegations of police misconduct were incapable of being proven’.

(b) The IPCC caseworker failed to consider whether there was further material, specifically that which the claimant had obtained through his data access request, which could have been obtained and considered as part of the police investigation.

2. Permission is granted in relation to the challenge to the decision not to uphold the appeal in respect of the decision not to refer to the CPS on the basis that:

(a) The decision follows on from and is affected by the decision that PC Wainwright was not guilty of misconduct in relation to the alterations to the witness statements.

(b) The IPCC caseworker has arguably applied the wrong test.”

41. In response to the grant of permission the IPCC agreed to quash its decision not to uphold the appeal and re-consider the appeal afresh.

42. In many of our cases our clients bring police complaint proceedings having been arrested and then unsuccessfully prosecuted at the behest of the officers complained against. Whilst the above example provides evidence of the IPCC having failed to critically analyse the credibility of officers’ accounts, we have also experienced the IPCC failing to accord sufficient evidential weight to the evidence of independent witnesses and even to the comments that District and Crown Court judges have made in acquitting a complainant of any criminal wrongdoing.

43. The failure of IPCC caseworkers to accord due weight to judicial rulings is particularly worrying; whereas the IPCC caseworker would not usually have the benefit of witnessing officers’ accounts being aired and tested against the available evidence in open court, judges sitting in criminal proceedings have. Therefore their views, whilst not binding upon a subsequent court (or the IPCC), are an example of often available and valuable evidence that is overlooked by caseworkers—if a criminal court decided an officer could not be believed having heard their evidence, that finding should trigger caseworkers to more thoroughly critically analyse an officer’s account provided to a subsequent complaint investigation.

44. In respect of another deficit in the appellate function: the failure of IPCC caseworkers to grasp the extent of their appellate powers, one member reports a case where the complainant had complained, amongst other things, that her arrest had been unlawful as the arresting officer lacked reasonable grounds for her arrest but had arrested her nonetheless. The complaint, conducted by the relevant police force, was not upheld. An appeal was lodged and the IPCC caseworker refused to uphold the appeal. The justification for this IPCC decision was that: “it is for the courts and not the IPCC to consider the lawfulness of the arrest. The role of the IPCC is to consider whether there has been any misconduct by the office.” This failure to identify breaches of the police Standards of Professional Behaviour in matters such as unlawful arrest, is addressed below and may help to explain the discrepancy where a complaint is considered “not capable of proof” but where the complainant goes on to secure restitution in the course of a civil claim for damages arising from the same events.

45. In the particular case cited, the complainant challenged the IPCC decision on the appeal by way of an application for judicial review. The IPCC refused to review its decision in response to a letter of claim and proceedings were commenced in the Administrative Court. It was only when permission was granted by the court that the IPCC agreed to refer the matter back to the relevant police force for a redetermination on the points which the complainant had argued in her application for a judicial review.

46. As explained above, many complainants pursue successful civil proceedings against the police as a route to achieving accountability when their complaint has not been upheld. It is also worthy of note that, when compared against the problems encountered with disclosure as described in the last section, a complainant can expect disclosure of documents relevant to their case from the police through civil proceedings.

47. Whilst we appreciate that there may, on occasions, be reasons other than police misconduct why a police force chooses to pay damages to a complainant in the course of subsequent civil proceedings, the vast disparity between the number of civil claims for damages which are settled by police forces or successful following a civil trial as compared with the number of police complaints upheld must provide pause for thought. In fact, our experience is that the failure of the IPCC to uphold a client’s appeal has no detrimental impact on the chances of success in a civil claim against the police force in question. Moreover, we note that the vast majority of civil claims in which restitution is secured are the culmination of a process which often involves the police complaint being categorised as “not capable of proof,” even on appeal to the IPCC.

48. One response to this discrepancy on behalf of police forces has been that civil claims deal with civil liability whereas the police complaints system is designed to address disciplinary and criminal misconduct. However, this approach suggests that despite police forces around the country regularly paying damages and offering apologies in response to civil claims for assault, false imprisonment, malicious prosecution and breaches of the Human Rights Act, in those cases the officers involved should not be recommended for misconduct or criminal proceedings, despite their actions or inactions having led to our clients’ unlawful treatment. Moreover, unlawful conduct leading to civil liability often includes disciplinary or criminal misconduct on the part of officers. For example, in a civil claim for assault, it is likely that the conduct complained of also includes breaches of the Standards of Professional Behaviour\(^44\) in respect of the “use of force”. A claim for false imprisonment is also likely to involve similar breaches in addition to breaches of standards in respect of “authority, respect and courtesy” and “duties and responsibilities”. Where the civil claim is for malicious prosecution there are obviously a number of potential criminal and disciplinary breaches at play. Within this context it is noteworthy that the standard of proof in both civil proceedings and disciplinary proceedings is one and the same; the balance of probabilities. Therefore, it is striking that where the same standard of proof applies civil litigation often results in securing accountability whereas the police complaints process rarely provides the same outcome.

Conclusion

49. In conclusion PALG is concerned that the IPCC must improve in a number of respects if it is to secure the trust and confidence of victims of police misconduct and those who bear witness to the same.

\(^{44}\) Contained within the Schedule to The Police (Conduct) Regulations 2008.
50. We do not necessarily believe that the IPCC requires greater powers in relation to the matters outlined in this submission. Rather, it must effect institutional change in order to better utilise the powers it has, particularly with regard to the interviewing of officers under caution and the enforcement of its Statutory Guidance more effectively and more appropriately, pursuing cases through the Administrative court if necessary.

51. Whilst the advent of the Police Reform Act has led to improvements in the transparency that complainants can expect by way of disclosure of the investigating officer’s report at the conclusion of an investigation, the failure to ensure that complainants are kept properly informed about the reasons why their complaint has been upheld or refused and the IPCC’s apparent complicity in this approach causes many clients to question its courage.

52. Finally, the failure of IPCC caseworkers to understand their own powers, to apply the correct evidential test when determining appeals and the failure to critically analyse accounts does little to help gain confidence in the system, to root out officers who should be guilty of disciplinary or criminal misconduct or to improve police practices. Such conduct, in our view, suggests that supervision of casework must improve to the extent that caseworkers no longer confuse their duty of independence with a duty to remain neutral in the face of strong evidence in support of a complaint, and have the confidence and courage to find in favour of complainants when evidence is available to support such a conclusion.

ABOUT THE POLICE ACTION LAWYERS GROUP

The Police Action Lawyers Group (PALG) is comprised of solicitors, barristers and legal executives who represent victims of police misconduct. Membership is contingent upon lawyers acting for complainants only, so as to ensure that we provide a wholly independent space to discuss complainants’ concerns. PALG has a national reach, with its members involved in matters concerning each and every police force in England and Wales. PALG was formed in 1991 and its members are committed to pursuing all available avenues of redress on behalf of their clients. This might involve relying upon the complaint process, pursuing a claim for compensation and/or seeking judicial review of the related decision making processes. In our experience, the primary objective of the vast majority of clients who instruct PALG lawyers is a desire to ensure that the responsible police officers are held accountable for their conduct to the rule of law. To that extent our clients share a common interest with the imperatives of the Home Affairs Select Committee.

Due to our large and varied membership, the collective experience of PALG is considerable. Members of PALG have, in recent years, acted on behalf of the families of Jean Charles de Menezes, Ian Tomlinson and many others who have died in police custody. PALG members currently represent the families of David Victor Emmanuel, Mark Duggan and Sean Rigg.

As a group we have been in a position to liaise with other organisations representing complainants’ interests, including INQUEST, Liberty, Justice and MIND. As you are aware, we have also developed a lobbying role, particularly in relation to the police complaints system. To that end our members have appeared before Select Committees, met with ministers, provided guest speakers for conferences and prepared regular briefings. We are grateful for your invitation to provide written and oral evidence in relation to your current review of the Independent Police Complaints Commission.

Shamik Dutta
Co-Chair, Police Action Lawyers Group

July 2012

Joint supplementary written evidence submitted by the Police Action Lawyers Group and INQUEST [IPCC 25a]

POLICE ACTION LAWYERS GROUP RECOMMENDATIONS FOR CHANGE AT THE IPCC

Further to the written and oral evidence provided to the Home Affairs Select Committee the Police Action Lawyers Group has drafted the following non-exhaustive list of recommendations for change at the IPCC:

(1) The IPCC should recognise that complainants and their families are “victims”.

(2) When a referral is made to the IPCC for the investigation of a “DSI” matter, IPCC investigators must assess at the outset whether officers “may have” committed criminal and/or misconduct offences. If so, the matter should be recorded as a “conduct” matter affording the investigator the power to interview officers under caution. Currently, we are seeing a propensity not to record matters as conduct matters and therefore not to interview officers under caution even where criminal or misconduct offences “may have” been committed (for example in restraint related death cases). Therefore, there should be better guidance and training so IPCC investigators are clear that they should afford themselves the power to interview officers under caution in all DSI cases except where it is “not possible” that a criminal or misconduct offence has been committed.
(3) There should be an IPCC team to attend scenes of death very quickly following police contact in order to take control of the scene and begin the process of gathering evidence. The IPCC should also take a key role in the prevention of the contamination of officers’ early accounts by preventing the officers colluding over such accounts.

(4) Commissioners should have more direction and control over investigations instead of leaving critical decision making in the hands of investigators who are often ex-police officers. This is subject to there being better accountability for those Commissioners which may be secured through Commissioners being answerable to external reference groups.

(5) There should be better IPCC systems to identify when cases must be sent urgently to the CPS to fall within statutory time limits for charging officers for summary only offences.

(6) The IPCC should instruct a broader panel of experts and all instructions to experts (including to pathologists) should be in writing.

(7) The IPCC should notify a family when a post mortem in a DSI matter is due to take place and notify them of their rights in relation to that post-mortem. If the family cannot be located then the IPCC should take on the role of ensuring that such post mortems are subject to audio/visual recording and also to ensure that an independent pathologist is instructed.

(8) The IPCC should ensure the accuracy of any statements released to the press and should also correct any misinformation in relation to an incident which has made its way into the public domain.

(9) The IPCC should not consider itself constrained by ACPO policies or guidance.

Police Action Lawyers Group and endorsed by INQUEST

December 2012

Written evidence submitted by INQUEST [IPCC 26]

INQUEST’S EXPERTISE

1. INQUEST is the only independent charitable organisation in England and Wales that provides a specialist, comprehensive advice service on contentious deaths, their investigation and the inquest process to bereaved people, lawyers, other advice and support agencies, the media, parliamentarians and the wider public. It has a proven track record in delivering an award-winning, free, in-depth complex casework service on deaths in state detention or involving state agents. It works on other cases that also engage article 2, the right to life, of the European Convention on Human Rights and/or raise wider issues of state and corporate accountability.

2. Our specialist casework service gives INQUEST a unique perspective on how the whole system operates through our monitoring of the investigative and inquest process. We work with bereaved families from the outset, facilitate their legal representation and work alongside them until the conclusion of the investigation, inquest and other legal proceedings. It enables us to identify systemic and policy issues arising from avoidable deaths and the way they are investigated and ensure this is fed through to government, policymakers and parliamentarians.55 Our evidence to this HASC draws on this expertise and, in particular, our evidence base from Family Listening Days and our surveys of bereaved families including Unlocking the Truth: Families’ Experiences of the Investigation of Deaths in Custody (2007),56 an extensively researched and referenced report which describes the experiences of families bereaved by deaths in custody from the time of death to the conclusion of the investigation and inquest and situates them within the political, recent historical and legal context.

3. Reflecting our expertise, INQUEST was the sole non governmental member of the Forum for Preventing Deaths in Custody and was represented on the Ministerial Roundtable on Prison Suicides and the Independent Police Complaints Commission Advisory Board. It now participates in the Ministerial Council on Deaths in Custody through representation on the first tier, the Ministerial Board on Deaths in Custody which has replaced both the Forum and Roundtable. INQUEST’s co-director Deborah Coles is also a founding member of the cross government sponsored Independent Advisory Panel on Deaths in Custody, the second tier of the Ministerial Council.

4. INQUEST also co-ordinates the INQUEST Lawyers Group (“ILG”) which is a national network of over two hundred lawyers who are willing and able to provide preparation and legal representation for bereaved families. Membership is open to all lawyers who represent bereaved families. INQUEST, and members of the ILG, have worked with a large number of families where their relative died in police custody or following contact with the police. We have seen the response of the Police Action Lawyers’ Group and (particularly as many members of INQUEST Lawyers’ Group are also members of PALG) would endorse a number of their observations.

55 INQUEST’s co-director Deborah Coles gave evidence to a predecessor Home Affairs Committee inquiry into the IPCC in February 2010 (alongside Marcia Rigg whose brother Sean Rigg died in police custody in August 2008): http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhaff/366/10022302.htm

56 Available to order through INQUEST’s website: www.inquest.org.uk
INTRODUCTORY COMMENTS AND STATISTICS

5. We address a number of questions posed in the HASC’s Terms of Reference for this inquiry including:
   — Whether the Commission has improved the scrutiny of police practices.
   — Whether the Commission has the right powers and resources to carry out its role effectively.
   — Whether investigations lead to improvements in police practices.
   — The Commission’s role in scrutinising third parties commissioned to carry out policing duties.
   — How the work of the Commission could be effectively scrutinised.

6. Since the IPCC was established in April 2004 there have been 448 deaths relevant to our work. Of those 247 were custody-related deaths and deaths following police contact, 23 fatal shootings, and 178 deaths relating to police vehicle incidents. We have worked directly on 111 of the custody-related deaths and deaths following police contact and 16 of the fatal shootings by police, as well as 10 police pursuit-related deaths and seven road traffic incidents. INQUEST therefore has both a broad overview and detailed experience of the IPCC’s investigations into these deaths as a direct result of our complex casework service.

7. Statistics gathered from INQUEST’s Casework and Monitoring show that a high percentage of those who die in police custody57 are from black and minority ethnic communities (BAME). For example, in 2008 BAME deaths accounted for 32% of all deaths in police custody. In 2009 this figure dropped to 27%, fell to 7% in 2010 and rose dramatically to 38% of all deaths in 2011. The IPCC’s recently published statistics on deaths in police custody for 2011–1258 revealed that nearly half (seven out 15) of those who died in or following police custody were identified as having mental health problems.

8. People die in police custody in a broad range of circumstances including in police cells as a result of medical neglect, as a result of self-inflicted harm and following the use of force by police officers (such as CS spray, batons, firearms, restraint techniques). Many of the deaths raise issues of: negligence; systemic failure to care for vulnerable people; inappropriate use of police cells as “places of safety”; institutional violence, racism, sexism and inhumane treatment.

9. Whilst the number of deaths involving the use of force by the police is a small proportion of the total number of deaths in custody, these deaths have often been the most controversial. Since 1990, inquests into deaths in police custody have resulted in nine unlawful killing verdicts, none of which has yet resulted in a successful prosecution.59

10. People from BAME communities and people with mental health problems have been disproportionately represented in our casework on deaths involving the use of force or gross medical neglect. These deaths have revealed a use of violence on some occasions that is greatly disproportionate to the risks posed raising questions about the attitudes and assumptions of some state officials and pre-conceived ideas about the propensity to violence of particular groups of people. This has also profoundly impacted on police and community relations, resulting in a lack of confidence in the investigation system and considerable public anger.

11. We welcome the HASC inquiry into the IPCC and hope it will have a central focus on the investigation of deaths in police custody given the particular parliamentary and public disquiet about these deaths.

12. Finally, we would also draw the HASC’s attention to the importance of measuring the IPCC’s handling of investigations into deaths in custody against the standards set out in law: including the right to life in Article 2 and the prohibition on torture, inhuman and degrading treatment in Article 3 of the European Convention on Human Rights (as incorporated by the Human Rights Act).

13. The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, has clearly set out the legal requirements concerning independent and effective determination of complaints against the police.60 In relation to an Independent Police Complaints Body (IPCB), the UK equivalent to which is the IPCC, he said:
   
   29. An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. An independent police complaints body (IPCB) should form a pivotal part of such a system.
   
   30. Five principles of effective police complaints investigation have been developed in the jurisprudence of the European Court of Human Rights on Articles 2 and 3 of the ECHR:
   
   1. Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;

57 Throughout this evidence we use the term “death in police custody” to mean a death in police custody or following contact with the police or fatal shooting by police
58 Available from www.ipcc.gov.uk
59 Of the nine unlawful killing verdicts, three were subsequently overturned following legal challenges. There have been six attempted prosecutions of police officers but none have been successful. At the time of writing, PC Simon Harwood is currently on trial for the manslaughter of Ian Tomlinson. For fuller details of these figures and the deaths please see the details on INQUEST’s website: http://www.inquest.org.uk/website/statistics/unlawful-killing-verdicts
60 12 March 2009 https://wcd.coe.int/ViewDoc.jsp?id=1417857&Site
2. Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
3. Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
4. Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and
5. Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

14. Throughout our evidence we refer to these principles as we believe they are an important touchstone against which to measure the work of the IPCC.

WHETHER THE IPCC HAS IMPROVED THE SCRUTINY OF POLICE PRACTICES

15. Any evaluation of the IPCC must begin with consideration of the context in which the organisation was established, and the climate of distrust and lack of public confidence in the police complaints system. The conclusions of a predecessor Home Affairs Select Committee Inquiry into Police Disciplinary and Complaints Procedure (January 1998) and the Stephen Lawrence Inquiry in 1999, coupled with many years of campaigning by bereaved families, lawyers, complainants, police monitoring groups and human rights organisations led to the Police Reform Act 2002, which established the Independent Police Complaints Commission in 2004.

16. The new Commission was welcomed and everyone involved, whilst retaining a healthy scepticism, hoped that it would make a real difference to the independence and transparency of the investigation of complaints against the police. In particular INQUEST hoped that bereaved families would have more confidence in the new system and that the approach of the IPCC would be fair and impartial resulting in just outcomes of the investigations. Indeed we warned in our publication Unlocking the Truth: Families Experiences of the Investigation of Deaths in Custody that:

The new processes are evolving. Experiences of the previous processes described by families are important indicators of what can go wrong and how damaging the consequences can be. In any new process there will be initial problems. The reformed system needs to be open and prepared to face the challenges and difficulties that may arise and to review, revise and develop new policies and procedures if necessary. It is important that the same flawed culture and systemic failings that undermined public confidence in the past is not recreated. 61

17. So far these aspirations have not been met and there has not been a corresponding development of trust and confidence in the new system amongst bereaved families and other complainants with which it has the most direct contact.

18. Whilst it is inevitable that the IPCC, as the visible investigator, may become the focus of anger and dissatisfaction that more appropriately belongs with the police whose acts or omissions may have contributed to or caused a death, family complaints cannot merely be explained away in this manner. There has been poor practice and flawed decision making involved in the IPCC approach to some investigations and it is this which has affected overall confidence in the complaints system.

19. The problems with the IPCC were underlined by the formal disengagement from the IPCC’s advisory board by representatives of PALG in February 2008. This highly publicised move had been precipitated by “dismay and disillusionment” at “the consistently poor quality of decision-making at all levels of the IPCC” and unsuccessful attempts to raise concerns through the IPCC Advisory Board62 where “follow-up on agreed action points has been pitifully poor.” 63

20. INQUEST has continued to engage, contribute and try to assist the IPCC by sharing our experience and enhancing their understanding of the issues arising from our casework with bereaved families. However, it has not been a positive experience. Echoing the experience of PALG, INQUEST has repeatedly raised issues about the conduct of investigations in meetings with the IPCC with the frustrating end result being no discernible change. In addition, we have seen a failure by the IPCC to understand or appreciate the historical context from which it came. This has been sometimes been exemplified by an over-eagerness to adopt highly defensive positions when faced with any criticism—a reaction which only serves to strengthen critical perceptions of the police complaints system.

21. We have identified, in recent cases, worrying trends in the way the families have been treated by the IPCC that are reminiscent of previous discredited practices. Without a thorough awareness and honest examination of these trends, their links to past problems and what caused them, it is difficult for the IPCC to avoid the same bad practices or to recreate the same flawed culture and systemic failings that previously undermined public confidence.

61 Chapter 4.
62 INQUEST was also represented on the IPCC Advisory Board that was eventually disbanded.
63 http://www.guardian.co.uk/politics/2008/feb/25/police.law1
22. INQUEST welcomed the appointment of Dame Anne Owers’ as the new Chair of the IPCC in February 2012. Her track record in being challenging, independent and committed to improving prison regimes during her time as Chief Inspector of Prisons was exemplary. The early signs are that she will be similarly robust at the IPCC and we have noted a positive change in tone in the organisation’s approach since she started work. We have also welcomed the Chair’s direct leadership of the review of the IPCC’s handling of investigations into deaths following police contact and her commitment to it involving families, community groups and legal representatives.

23. However, one of INQUEST’s key observations about whether the IPCC has delivered against the original aspirations is that there is often a gulf between the stated policy and objectives set out by the leadership of the organisation and the practice of some of those tasked to meet those aspirations. This dislocation between policy and practice is not helped by a lack of clear, agreed protocols that frame the approach to the investigation of deaths. To ensure a uniform approach the IPCC should put in place clear, coherent and consistent national protocols setting out standards and expectations on key areas of concern we discuss below. Crucially, IPCC guidance and protocols must then be monitored and enforced to ensure they are working in practice.

24. The new Chair, together with the appointment of new Commissioners later this year, offers a valuable opportunity to bring about a wholesale change in culture and effectiveness at the IPCC so that the aims stated in their new business plan of “Independence, Excellence and Accountability” are realised throughout the IPCC at all levels and the organisation, finally, starts to fulfil its statutory purpose.

**Issues Relevant to the HASC Inquiry Arising from INQUEST’s Casework**

25. Although there have been some examples of good practice in the conduct of IPCC investigations into deaths and serious injury (“DSI”) there is still great inconsistency of approach. The following issues arise directly from our casework with bereaved families and their legal representatives and INQUEST have previously raised them with IPCC Commissioners and staff.

A. Failure to treat deaths in custody as potential crimes

26. A thorough and well conducted IPCC investigation is of obvious importance. First it is crucial if bereaved families are to have confidence in the investigation of their relative’s death. Second, it provides the foundation for decisions on whether to prosecute anyone in relation to the death—either at an individual or senior management level. Third, the investigation also informs the subsequent inquest into the death. INQUEST’s experience is that a poorly conducted investigation directly impacts on the ability of the coroner’s court to properly examine all the relevant circumstances of the death. If the IPCC is to meet the principles set out for effective police complaints (see para 13 above) and for their investigations to be “adequate” they “should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible”.

27. The task for the IPCC in the aftermath of a contentious death following police contact is clear: to immediately begin an independent, effective, accountable, prompt, public and inclusive investigation so that the rule of law is seen to be upheld and applied equally to all citizens including those in the police uniform.

28. In particular, IPCC investigators should be able to take immediate control of a potential crime scene during the crucial “golden hours” and early days of the investigation. However, as INQUEST’s co-director Deborah Coles noted in her oral evidence to the HASC in February 2010:

*One of the ongoing concerns of families in these kinds of cases is the failure to treat deaths in custody or following police contact as potential crimes and do that important evidence-gathering at the beginning of the investigation. Certainly in terms of the death of Sean Rigg, the lawyers involved have made a number of complaints to the IPCC about what they believe are failings in securing crucial forensic evidence.*

29. INQUEST is still concerned about the IPCC’s prompt seizure and preservation of evidence (including forensic, CCTV and other evidence from the scene). Many of the issues with the quality of the IPCC’s initial investigations relate to the guiding approach to these deaths and to the promptness with which they are carried out. However, INQUEST also recognises that the IPCC suffers from a lack of adequate resources resulting in their reliance on scenes of crime officers from the investigated force being responsible for preservation of evidence. We do not think this meets the standards for an effective police complaints system highlighted at paragraph 10 of this evidence: particularly the need for “practical independence” and no “institutional or hierarchical connections between the investigators and the officer complained against”.

30. This is an area where consideration could be given to greater specialist resources for the IPCC including, for example, the possible establishment of a vetted IPCC panel of specialist scenes of crimes officers from police forces around the United Kingdom from which a “flying squad” could be quickly selected and deployed following a death.

31. Bereaved families have repeatedly told us that they are concerned that IPCC investigations lack a thorough approach, do not pursue avenues of inquiry properly and fail to treat untested police versions of events with caution. At a Family Listening Day organised by the Independent Advisory Panel on Deaths in Custody, families have also recorded their complaints of “incompetence” and inefficiency with one participant saying “we found that we had to investigate ourselves—the IPCC took seven months to interview the police officers, and nine months to interview the ambulance call takers”.

32. The need for prompt interviewing of witnesses, in particular of police officers, has been a ongoing issue in a number of death in custody cases the IPCC is investigating. The direct, first hand accounts of police officers who were at the scene at the time of death clearly constitute important evidence—particularly when a death occurs in police custody where they may be the only accounts of what happened available. It is an ongoing concern for INQUEST that this evidence is not more routinely gathered and available to IPCC officers who were at the scene at the time of death. The direct, first hand accounts of police officers, and nine months to interview the ambulance call takers”.

33. The failure to interview police officers—either at all or promptly—is perhaps the most significant reason for bereaved families’ and the public’s lack of confidence in the robustness of IPCC investigations.

34. The importance of police officers being interviewed after the use of lethal force or following a death in their custody is an essential part of the checks on their powers. It would help assure the public (including bereaved families, communities and wider society) that those police officers will be called to account and their acts or omissions will be assessed against the law.

35. Currently the IPCC has powers to arrest and interview under caution if they have reason to believe that a criminal offence may have been committed. As discussed in detail in their evidence to the HASC, the experience of members PALG (many of whom are also members of ILG) suggests the legal changes in 2008 mean that it is now even less likely that police officers are interviewed because of the application of a revised threshold test. We would echo their comments—especially PALG’s response to recent statements made by Dame Anne Owers about the interviewing of police officers (at paras 14 to 18 of their submission).

36. Additionally, we note that Council of Europe’s Commissioner for Human Rights’ statement (see paragraph 13 above) sets out that the requirements of a thorough and comprehensive police complaints investigation include: “where issues of criminal culpability may arise, interviewing police officers accused or suspected of wrongdoing as a suspect entitled to due process safeguards and not allowing them to confer with colleagues before providing an account” [our emphasis]. INQUEST would endorse these comments and urge that the controversial practice of officers conferring with colleagues when writing up notes be tackled.

C. Instructions to experts

37. INQUEST believes that choice of experts by the IPCC and the quality of their instructions to those experts has impacted on the quality and outcome of investigations.

38. Firstly, we would expect the IPCC to have an in-depth knowledge of the work of relevant experts in relation to contentious deaths (including those in any form of custody or following contact with state agents) and about their professional practice and standing. It is crucial any experts that are instructed by the IPCC (including pathologists, medical experts, specialists asked to comment on the use of force and police procedure) have a broad expertise and understanding of contentious deaths. Our experience is that there is currently an over-reliance on experts that predominantly carry out work for police forces. INQUEST suggests consideration be given to the IPCC setting up a panel of trusted, independent experts (from which investigators and Commissioners would be able to select and approach the relevant specialists for particular investigations).

39. Secondly, we are concerned about the poor quality of instructions given by the IPCC to experts. Investigators should be cautious about including untested police versions of events in their instructions and should be aware that, during investigations into deaths, events and circumstances can evolve and change as information comes to light. As well as selecting experts who understand this and are experienced enough to deal with this context, investigators should ensure their instructions reflect this and are reviewed as the circumstances require. In the most contentious cases we would suggest that consideration be given to obtaining experienced counsel’s opinion on IPCC instructions to experts.

D. Access to information and disclosure

40. For a bereaved family trying to engage in an IPCC investigation the organisation’s reluctance to provide early and full disclosure (or to clearly explain why they can not provide this in early stages of investigations and when they expect to do so) fosters mistrust and is alienating and unhelpful. IPCC guidance provides that contact on the progress of the investigation should be made every 28 days. Families have repeatedly told us that they want most, and what they understand being informed about progress to mean, is that they will
be told what has occurred and be given documents relevant to the investigation which they can consider. However, families we have worked with feel they were not kept up to date and involved in the progress of the investigation. Of the others who felt they had been involved and informed, many were dissatisfied because the information given was inadequate, difficult to obtain or delayed.

41. Currently IPCC practice varies according to the complexity of the case, the relationship that is built up with the investigator, whether the family is legally represented and the quality of that representation. Obtaining disclosure of documentation is a complex and time-consuming task even for the most experienced lawyers. The lack of consistent application of their own policy Making Information Available67 and standard practice about disclosure of evidence during the investigation to bereaved families should be addressed as a matter of urgency. As part of this process, the IPCC should seek the input and experience of INQUEST and members of the ILG who represent bereaved families.

42. In parallel, there needs to be a concerted focus across the IPCC to improve, standardise and speed up processes around disclosure.

43. The introduction by the IPCC of statutory guidance in 2010 (directed at police forces) which deals with disclosure of evidence is to be welcomed but, as the evidence to the HASC from PALG demonstrates, there are serious ongoing issues about how this is applied in practice and, worryingly, how the IPCC deals with breaches of the statutory guidance by police forces.

E. Poor treatment and communication with bereaved families

44. The involvement of bereaved families in the investigation and inquest process after a death engaging Article 2 of the ECHR is enshrined in law (Amin; Jordan v United Kingdom). The Council of Europe Commissioner for Human Rights has stressed that “victim involvement” is an important principle of an effective police complaints system and bereaved people should be involved “in order to safeguard his or her legitimate interests”. It is a source of concern that families have consistently complained of poor communication and treatment by the IPCC during investigations.

45. Again, clear protocols are needed from the IPCC which deal with the provision of written and oral information to families. A list of relevant recommendations INQUEST has previously made is included at Appendix A. This sets out specific suggestions including the importance of a full discussion with the bereaved family at an early stage of the IPCC investigation to set out clearly what type of information they can expect and when it is likely to be provided to them. There have been worrying incidences in recent cases where initial advice and information given by the IPCC to families on the circumstances of death and the investigation has later transpired to be inaccurate or based on opinion rather than fact. This has resulted in the setting up of unnecessarily confrontational and suspicious communication processes between IPCC investigators and families.

46. Inadequate provision of information, in particular about where to obtain independent advice and support impacts directly on the capacity of families to effectively participate in the investigation process. An important way to increase bereaved people’s involvement is by the IPCC enabling access to that advice and support—in particular the unique specialist services of INQUEST.

47. Deaths following contact with the police are likely to be highly contentious and raise difficult and disturbing issues for all involved in dealing with the aftermath. From our recent experience INQUEST is concerned that this has not been recognised by the IPCC and that staff and investigators need to be better supported by the organisation (including by senior colleagues and Commissioners). In addition we query whether those working in front-line roles at the IPCC have been able to access good quality training which better equips them to plan for and manage meetings, set agendas and deal professionally and sensitively with bereaved families.

F. IPCC media handling and announcements

48. For many families the timing of public announcements about information and decisions relating to their relative’s death is highly sensitive. The impact of IPCC public statements on family confidence with the system is highly significant. While issuing statements and giving clear information to the media is to be welcomed it must be clear what information in these statements is fact and what is assumption. All statements made should be subject to a harm test.

49. Worryingly, IPCC information put in the public domain has sometimes been misleading.68 In March 2012 INQUEST submitted evidence to the Leveson inquiry which examined misinformation following deaths involving the use of lethal force by the police. We have observed a pattern, particularly in relation to contentious deaths in police custody or following contact with the police, where partial and untested information about the initial post mortem findings (conducted on behalf of the coroner and sometimes reported before the report is complete) is reported by the media as fact, thereby creating an impression that acts or omissions of the police have played no part in the death. The IPCC have a role to play in ensuring that the information they provide

67 Available from IPCC website
68 For more detailed analysis see INQUEST’s submission to the Leveson Inquiry: www.levesoninquiry.org.uk/evidence/?witness=inquest
to the media is accurate and based on fact alone and that any misinformation from the police or the IPCC itself is corrected immediately.

50. The most recent example of how damaging this can be for the public’s confidence in the IPCC can be found in their media handling following the death of Mark Duggan on Thursday 4 August 2011. Whilst the IPCC later put out a statement that said one of their staff members had “inadvertently” misled the media, the damage in terms of family and community confidence in the independence of the investigation had been done. INQUEST has repeatedly reported to parliamentarians, policy makers and investigators that ensuring that the early stages of an investigation are handled with absolute integrity and propriety is crucial to the family having any confidence in the process.

51. The IPCC has recently issued new guidance on “Communicating with the media and the public in IPCC Independent and Managed Investigations”. The guidance, directed at the police, recognises that “in the early stages of an investigation, the information which is available is likely to be incomplete and/or unverified” and recommends that if the police “identify material misinformation or areas of concern regarding rebuttal, they should immediately bring them to the attention of the IPCC by contacting the Press Office.” It does not specifically deal with the issue of misinformation in the press from police sources but recommends that “any briefing or comment should be attributed to a named police spokesperson. Unattributed comment or off-the-record briefings should be avoided” whilst finally stating that the timing and content of any statements issued by the police are “a matter for the police, for which a named senior officer should be responsible.” Though the IPCC guidance encourages the police not to make unattributed comments it does not prohibit either practice or off the record briefings. Given its limited scope and tentative language, the guidance is unlikely to tackle the long established pattern of misinformation.

52. However, as a minimum the IPCC must review their communications strategy following a death or serious injury to ensure that they do not continue to be implicated in (and damaged by) this process of misinformation.

G. Delay

53. Delays to inquests are a feature of police custody deaths. The length of time that the IPCC takes to conduct investigations contributes to this. Giving evidence to the HASC in February 2010, INQUEST’s co-director said:

“Sad, it is an important point for the Committee here, the delay both in the IPCC investigation and then, once the report is finished, the coroner can set the inquest date. One of the big problems at the moment in these kinds of cases — because they are Article 2 jury inquests — is that there is serious delay, it is quite common for families to wait two or three years before the inquest takes place and that adds to the grieving process.”

54. The HASC will be interested to note that the inquest into the August 2008 death of the brother of Marcia Rigg, who gave evidence alongside INQUEST, finally started in June 2012: nearly four years after his death and two years after she originally gave evidence to the HASC.

55. The Rigg family’s experience is, sadly, not an isolated one. Families who took part in the Independent Advisory Panel on Deaths in Custody Listening Day in March 2010 detailed similar experiences of delays. One person noted “if the police and IPCC had been more open, done things quicker and properly then we would have trusted them more.” Another bereaved mother noted: “The investigation was lengthy and traumatic. On two occasions I had to take the IPCC and the police to judicial review because of the way they conducted themselves during the investigation and the bias that was shown. We wanted the investigation to be carried out in a fair and just manner but found the process extremely exhausting at a time of deep bereavement as we were fighting a system that was still marginalising families of victims of deaths in custody. It took five years to reach the inquest”.

60 INQUEST have previously described how similar high profile cases—for example the deaths of Ian Tomlinson and Jean Charles de Menezes (see Briefings on www.inquest.org.uk)—had been “mislabeled”. The public had been assured following costly IPCC investigations into media handling that the same process of allowing inaccurate information to remain in the public domain uncorrected would not happen again. The Metropolitan Police Authority Stockwell Scrutiny report of 2008 asserted “The MPS is a very different organisation than it was in July 2005... Both the organisation and individuals within it have learned from the experience. The shortcomings shown up in Stockwell Two will not re-occur.” But despite the impression being given following Stockwell 2 and the media handling report following the death of Ian Tomlinson that lessons were learned the same damaging process of inaccurate information being given to the media occurred again.

60 The matter of misinformation was the subject of a complaint by Mark Duggan’s family and this was formally recorded by the IPCC. A formal apology was made in writing to the family by Amanda Kelly, Director of Business Services at the IPCC.


62 For example, less than a week after the IPCC Guidance was issued and following the police shooting of a 25 year old man in Forest Hill on 19 February 2012, the Metropolitan Police Service released a general statement which asserted “a number of knives were recovered from the scene” without attributing this to a named police spokesperson (see http://content.met.police.uk/News/Man-shot-by-police-in-Lewisham/1400006745524/1257246745756). The IPCC investigation into this incident is ongoing.

WHETHER THE IPCC HAS THE RIGHT POWERS AND RESOURCES TO CARRY OUT ITS ROLE

56. Before considering whether the IPCC needs additional powers and resources we would stress that it is of crucial importance that the organisation critically examines their use of their current powers and provides clarity (in the form of published protocols, agreements and guidance) about how they carry out these powers. In addition, a more generous interpretation and robust enforcement of their existing powers would help address a number of the issues INQUEST has highlighted in this submission.

57. Given the need for the IPCC to be (and appear to be) organisationally independent and, critically, to embed a culture of independence in those who work there, we question whether the IPCC currently has the right human resources to carry out its statutory role. Injecting independence and fairness was a key objective in moving from the discredited Police Complaints Authority (PCA) and is crucial in ensuring public confidence in the IPCC. INQUEST has long been concerned by regulatory capture at the IPCC—that is, the culture and approach of the organisation appears to have been unduly influenced by those it regulates, in the police, rather than being fair and impartial.

58. In part we believe this is related to the high proportion of former police officers or former police employees in senior investigative positions including that (as of November 2011) eight out of nine IPCC Senior Investigators and 38% of Deputy Senior Investigators are ex-police officers. INQUEST welcomes both the new Chair’s recognition that “it is very important that we get the balance right in our investigative teams and staff”75 and her reference to a extensively researched report published by Liberty in 200076 which accepted that up to a quarter of investigators could be ex-police staff without compromising the principle of independent oversight.

59. To address the current imbalance we think there is a greater role for Commissioners to play in injecting authority, independence and critical oversight of investigations. With the appointment of five or six new Commissioners expected in November 2012 the IPCC must take the opportunity to review the role of Commissioners.

60. Earlier in this evidence we highlighted how a lack of adequate resources for the IPCC has resulted in a reliance on scenes of crime officers from forces being investigated (paras 29–30) and suggest this is an area where consideration be given to the provision of extra resources.

RIPA reform

61. The issue of how sensitive material subject to the Regulation of Investigatory Powers Act 2000 (“RIPA”) is dealt with at inquests has been a matter of concern for government and parliament and is increasingly posing problems for the IPCC. It has been debated twice in parliament in the last five years (in both the Counter Terrorism Bill 2008 and the Coroners and Justice Bill 2009). Intercept evidence is currently inadmissible in all legal proceedings including coronial proceedings. INQUEST has previously argued that a change in the law is required so that inquests that necessarily involve intercept material are not stalled as a result of the general bar on the admissibility of this type of evidence. To date there has been one fatal shooting by police where the inquest was unable to proceed—that of Azelle Rodney who died in 2005.77 The problem has also potentially been raised in relation to the death of Mark Duggan.

62. On 29 March 2012 IPCC Deputy Chair Deborah Glass said:

“As a general rule we seek to find ways round any such obstacles. However, in some circumstances our hands are tied by the law. One such provision is s.17 of the Regulation of Investigatory Powers Act 2000. The impact of this is that not only can some information not be disclosed, we cannot even explain why we cannot disclose the information, as this itself would be a breach of the law. In our view this places investigatory bodies in the invidious position of being unable to provide families, and the public, with meaningful information on the investigation or even explain that the information cannot be provided. We believe this law needs to be changed.”

63. INQUEST supports this call for a change in the law.

WHETHER INVESTIGATIONS LEAD TO IMPROVEMENTS IN POLICE PRACTICES

64. We support the shift in the IPCC’s work towards a more integrated approach that ensures lessons are learned systemically. We think the IPCC has made some significant and positive progress in this area. However, INQUEST argues that the IPCC should be empowered to monitor, follow-up and challenge police forces where issues raised in investigations are not adequately addressed—particularly where this failure may have contributed to further deaths.

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77 The inquest into his death was withdrawn from the coronial jurisdiction/court and a public inquiry headed by a high court judge starts in September 2012. The inquest was unable to proceed because the redactions required as a consequence of RIPA rendered the evidence meaningless. The redacted matters went to the heart of explaining the reasons why Azelle Rodney was shot.
65. This recommendation is informed by the fact that, although the IPCC has produced a number of useful and important thematic reports and lead some impressive work on the *Learning the Lessons Bulletin*, the IPCC promotion of good practice alone has not had as much of an impact as it should.

66. *Learning the Lessons Bulletin* is a well-designed and carefully compiled series of digests drawing out systemic issues and learning from investigations and inquests into deaths in police custody to help forces improve their policies and practices. Topics covered recently include “dealing with people who are drunk and incapable”, “recognising when a person needs medical attention”, “protocols with the health and ambulance services”. But there has not been a sufficiently robust strategy to disseminate and promote those projects beyond IPCC key stakeholders and ensure that the good practice set out in publications such as *Learning the Lessons* actually trickles down to police forces and leads to change in practice on the ground. For example, a recurring theme in the “*Learning the Lessons*” bulletin has been the treatment (and deaths) in police custody of people with mental health or substance abuse issues. We note that the most recent statistics published by the IPCC have once again highlighted the high proportion of deaths in police custody of this vulnerable group of people. The figures echo INQUEST’s recent casework experience where people who were clearly vulnerable or in distress have been taken into police custody rather than to a hospital or mental health unit.

**The IPCC’s Role in Scrutinising Third Parties Commissioned to Carry Out Policing Duties**

67. INQUEST is concerned that police forces are increasingly considering outsourcing essential police duties such as running custody suites and cells and transporting people in custody to private sector providers.

68. Recent investigations and inquests into deaths raise significant questions about the role of private contractors in:

- The provision of police custody suites (for example: the death of Gary Reynolds in March 2008 in Brighton Police Custody Centre in Hollingbury where Reliance provided custody assistants whose standard of care was inadequate; the death in May 2010 of Sharon McLaughlin in the Reliance-run Worthing Custody Centre* where the inquest found officers had failed to properly care for her; the March 2012 inquest into the death of Bogdan Wilk following his detention in Preston Police Custody Centre where the jury criticised the care provided by Medacs);

- the running of Secure Training Centres for children and young people in custody (for example, the January 2011 inquest into the death of 14 year old Adam Rickwood at the Serco-run Hassockfield STC);

- UK Border Agency escorting services (for example, the October 2010 death of Jimmy Mubenga whilst being escorted by G4S staff); and

- healthcare provision in a number of prisons (for example the June 2012 inquest into the death of Shaun Beasley in the G4S and Primecare-run healthcare facility at HMP Parc).

69. We would urge caution in the further outsourcing of the government’s custodial responsibilities unless significant improvements are made to the transparency, accountability and responsiveness of these private bodies (not least to ensure proper compliance with the legal obligations imposed by Articles 2 and 3 of the ECHR).

70. The IPCC must be given powers to investigate third party private contractors involved in policing—particularly in the context of deaths in custody. It is essential that any deaths or serious injuries that occur in police settings run or managed by third party contractors are subject to the same scrutiny and investigation as those that take place in the custody of conventionally run police services.

**How the Work of the IPCC could be Effectively Scrutinised**

71. We welcome the HASC Inquiry as an opportunity for parliamentarians to scrutinise the approach and work of the IPCC. INQUEST thinks this full-scale inquiry should be a regular occurrence—perhaps once every two to three years. In addition, the Chair and senior management of the IPCC should appear before the HASC once a year in conjunction with the publication and laying before parliament of the organisation’s annual report.

**Concluding Comments**

72. The lessons that can be learned from the experiences of bereaved families and their representatives are important to any scrutiny of the work of the IPCC. In 2007 INQUEST made a number of recommendations for improvements to IPCC practice in our research report *Unlocking the Truth: Families’ Experiences of the Investigation of Deaths in Custody*. Although we made these recommendations five years ago they are as pertinent today as they were then because the pace of change has been regrettably slow. We include these as Appendix A to this evidence.

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78 [www.learningthelessons.org.uk](http://www.learningthelessons.org.uk)
79 Available from [www.ipcc.gov.uk](http://www.ipcc.gov.uk)
73. Finally, as part of our input into the IPCC’s ongoing review of its handling of Article 2 cases, INQUEST is collating the views and experiences of families and members of the INQUEST Lawyers’ Group. We look forward to giving oral evidence to the HASC later in the year when we hope to be in a position to share some of that information and would be able to expand on some of the issues highlighted in this written evidence.

INQUEST  
July 2012

APPENDIX A

INQUEST RECOMMENDATIONS FOR THE IPCC
(extracted from Unlocking the Truth: Families’ Experiences of the Investigation of Deaths in Custody (2007)\(^1\))

The Independent Police Complaints Commission …. must:

— recognise that the expectations of families are very different from those of the state institutions involved;

— understand that in the immediate aftermath of the death there can be tension between the need to proceed with the investigation and the potential and actual intrusion into the human experience of the aftermath of sudden and unnatural death;

— put in place clear, coherent and consistent national protocols for the structure of the relationship between the investigating officials and all others in direct contact with bereaved people;

— ensure that investigations follow an agreed basic protocol;

— ensure investigators are explicit about the purpose of their initial meeting with the family and approach it as a two step process: first to provide families with information about themselves and the investigation process and second to get information from families about their relative to provide background to the investigation;

— complete investigations within agreed time limits;

— offer a meeting with the family and their lawyer to discuss the investigation report;

— update investigation reports following the inquest to take into account inquest evidence, jury findings and any coroner’s comments or rule 43 reports prior to publication;

— publish the reports and the authorities’ responses to them; and

— use the reports and findings both to inform subsequent investigations and to promote better practice.

IPCC Commissioners, all investigators and Family Liaison Officers and Family Liaison Managers should:

— receive training on the specific needs and concerns of families bereaved by deaths in custody;

— receive such training with specific input from those organisations working with such families; and

— ensure there is clear demarcation between meetings at which the family are an equal stakeholder and interviews where the families are required to provide information to assist the investigation process.

Bereaved families should be entitled to:

— an oral explanation of and a letter about the investigation process from its beginning outlining their rights and the role that they can play including reference to legal representation, proposed timescales for disclosure of information and completion of the investigation, sources of support and advice including information about INQUEST, advice on funerals, expenses, etc;

— clear explanations about the purpose of any meetings;

— funding to enable them to attend meetings with the investigators and/or their lawyers;

— information about progress of and full involvement in the process;

— a choice as to how they receive information gathered as part of the investigation;

\(^1\) Available to order through INQUEST’s website: www.inquest.org.uk
— receive information about the investigation irrespective of whether they are involved;
— adequate time to absorb findings of the investigation in order to raise any concerns they might have about the draft report; and
— mandatory disclosure of the investigation report.82

Written evidence submitted by the Association of Chief Police Officers [IPCC 27]

INTRODUCTION

1. The ACPO Professional Standards Portfolio has specific responsibility within ACPO for raising and maintaining professional standards in the Police Service. In broad terms, the portfolio:
   (a) Provides ACPO oversight of emerging threats and responds to national issues which impact on the Police Service’s professional standards.
   (b) Leads for ACPO on the development of preventative strategies to combat risk and emerging threats to operational policing and the reputation of the Police Service.
   (c) Identifies commonality with other ACPO business areas, (such as the Ethics portfolio), to reduce instances of, and improve the handling of public complaints to achieve improved public satisfaction and confidence in the Police Service. The portfolio oversees the integration of professional standards issues into the strategies, policies and procedures of other ACPO business areas as appropriate.
   (d) Identifies opportunities to integrate unsatisfactory performance of officers and staff into professional standards, with a clear emphasis on ethical policing behaviour as opposed to mere compliance with regulations, and to improve public confidence in the Police Service through organisational learning.

2. The Professional Standards Portfolio is split into three areas, each led by a Chief Officer: The Complaints and Misconduct Working Group; the ACPO Counter Corruption Advisory Group (ACCAG); and the ACPO Vetting Working Group. These areas come together quarterly at the ACPO Professional Standards Committee which I chair.

3. The Chief Executive and Director of Investigations of the IPCC form part of the Complaints and Conduct Working Group and also attend the Professional Standards Committee. Senior members of the IPCC also work closely with ACCAG on a number of strategic areas.

4. ACPO strongly supports and works in close liaison with the IPCC in the discharge of the range of its statutory responsibilities. This is a stance that ACPO has taken since the IPCC was established recognising the value and the necessity of independent scrutiny and governance of public complaints and the value of the independent oversight of investigations into alleged police misconduct.

5. The wider Police Service, and more importantly, the public we serve expect that ACPO and the IPCC have an effective working relationship. We fully respect the independence of the IPCC and we recognise the value the IPCC brings to the guardianship of public complaints and misconduct investigations.

6. The Service relies upon the understanding, the engagement and the sense of purpose of the IPCC to enable it to discharge its responsibilities to improve standards of policing and to deliver a fair and effective policing Service, whether at local, regional or national level. Likewise the IPCC relies on senior Police Service leaders to be open and transparent and to engage and to play a full part in generating a learning environment where improvements to policing are at the forefront of our collective thinking.

7. ACPO and the IPCC share the common goal of wanting to improve standards and the quality of policing services. This includes dealing firmly with those officers and staff who prove to be wholly unsuited to the office they hold and the powers they have at their disposal. We want to educate and reform those officers and individuals who—for whatever reason—have been found to have exhibited standards of performance of duties that have fallen short of expectations. ACPO recognises and supports the IPCC in providing the public and the Police Service with confidence that there will be fairness and equity in response to criticism, and that findings of investigations will be accurately reported as expeditiously as possible.

8. In those incidents where investigations or concerns have led to the conclusion that the standards of conduct have been found not to have fallen below those expected and that the right action has been taken for the right reasons, we expect the IPCC to reassure the public that is in fact the case. Our experience is that the IPCC is fully prepared to undertake this responsibility just as it is capable and confident of holding the Service to account.

9. ACPO engage in debate, dialogue and discussion with the IPCC and my experience is that the IPCC has proved to be genuine and resolute in its understanding of policing in England and Wales and how law enforcement agencies work together for the common good. The independence of the IPCC should not prevent

82 See Chapter 4 for full text.
the development of joint work between it and ACPO for the good of the Service, this is exemplified by the recently jointly published work on the Abuse of Police Powers.

10. The relationship between ACPO and the IPCC is one of mutual respect. This does not mean there are not inevitable differences of opinion over issues, but these differences of opinion do not inhibit a constructive relationship focused on a joint desire to improve services wherever possible.

11. I now turn to comments on each specific aspect of the terms of reference of the inquiry

**Whether the Commission has Improved the Scrutiny of Police Practices**

12. I have seen convincing evidence that the IPCC has improved scrutiny of police practices, through its own independent investigations and through those it has managed or supervised. There is no doubt that the IPCC has played a definitive role in the scrutiny of complaints against police and allegations of misconduct and has recognised the balance between individual accountability and organisational failings.

13. Recommendations from IPCC investigations have not only held individuals to account but where necessary have made clear and direct links to deficiencies in working practices.

14. Examples of the IPCC making recommendation which have led to improvements in guidance and practice include: IPCC improvements to policing practices and safer transportation and handling of detainees; improving standards of care for those in custody; addressing public safety issues arising from police pursuits; and better informed assessments of vulnerability, risk, threat and harm.

15. The IPCC has gained a unique perspective and understanding on the Service’s use and deployment of armed officers. This has resulted in the introduction of more effective and transparent post incident responses where death or serious injury has occurred in the police use of firearms, making recommendations which have assisted the Service to improve.

16. I consider the IPCC has worked hard to identify and promote learning. This ranges from the publication of thematic reports which inform and develop national thinking and policy making through to the involvement and commitment to organisational learning with the IPCC publication of frequent and informative Learning the Lessons bulletins.

17. The IPCC provides necessary independence and oversight. It makes recommendations which will assist the Service to make improvements. The detailed investigations it has conducted or managed place it in a unique and informed position to fulfil its scrutiny functions, leading to improved police practices.

**Whether the Commission has the Right Powers and Resources to Carry Out its Role Effectively**

18. ACPO considers that the IPCC has broadly sufficient powers to conduct fair and equitable investigations. We in the Police Service are acutely aware of the impact of the comprehensive spending review on our own budgets in seeking to protect and sustain front line policing services without doubt the IPCC will be alive to similar considerations.

19. I recognise the IPCC’s stated intention to forecast demand for its services accurately and to resource that demand as effectively as possible. I also acknowledge the IPCC’s intention to improve timeliness, and in so doing, provide greater resilience and focus to high profile investigations.

20. Issues of timeliness and resilience raise concerns across many levels of the Service in respect of investigations. Whilst it is clear certain investigations have a higher profile than others, it is recognised by ACPO that all those investigations that the IPCC have oversight of have at least a potential to be high profile. The Police Service is well acquainted with the often difficult balance to be maintained between expediting an investigation and its thoroughness. The IPCC is no different in this regard, and it is increasingly vital to the reputational standing of the IPCC that independent investigations can be conducted with all due regard to timeliness, which is often wholly dependent upon the resource available and prioritisation of demand.

21. Any real or perceived delay in holding individuals or the Service to account can undermine confidence in the IPCC, and by association, the Service. ACPO are conscious of the extent of criticism of the IPCC from some quarters, and whilst we do not share this (for reasons set our earlier in this evidence), it is in the best interests of the Service to assist the IPCC as best it can to reach conclusions that are both timely and thorough.

22. In recent years, the IPCC has quite properly reduced the number of managed investigations in favour of undertaking more independent investigations, which it recognises instils greater public confidence. What is perhaps less well recognised is the extent to which IPCC independent investigators work in close liaison and cooperation with force’s Professional Standards investigators upon whom they rely as the gateway or interface into the force subject of any particular investigation.

23. The working relationships between the IPCC and the Force’s Professional Standards Investigators, demonstrates sound practice. This aspect of cooperative working needs to be recognised and viewed as part of any consideration of resourcing issues for the IPCC, particularly in Article 2 ECHR cases where the IPCC discharges the obligation on the state to ensure that an effective investigation is undertaken.
24. There are firmly established procedures for referring Article 2 incidents to the IPCC. In fatal police shootings or those involving a death in custody, referrals must be expeditious. In reality, this means as soon as the incident occurs a telephone briefing with the IPCC’s on-call senior investigator will be given. This briefing is subject to on-going dialogue. Recently the IPCC has moved from regional to national coverage, and an on-call senior investigator can often be based some distance from the force reporting the incident. Whilst more regionally based deployment is still practised by the IPCC, the initial response to emerging incidents largely remains dependent upon mutual cooperation and the effective briefing and deployment of both force and IPCC resource.

25. It is critically important to the IPCC that their investigations in the circumstances set out above immediately focus on the over-riding requirement to identify, secure and preserve independent witness evidence as a matter of priority. In practice this sometimes can take days not hours, and it is often the experience of the Police Service that the effective resourcing of such lines of enquiry can be a challenge for the IPCC.

26. ACPO is acutely aware of the concerns of families where people lose their lives during police contact, and the ability of the IPCC to manage family liaison effectively and expeditiously is a concern to the Service.

27. There are sometimes questions asked about the extent to which the IPCC is reliant upon former police officers. The IPCC has gathered and sustained its own independence and draws upon investigative experience from a variety of sources and sectors. ACPO believes that the training and experience of some former police officer provide a valuable resource for IPCC, particularly in relation to the conduct of complicated investigations. The IPCC can rely upon the integrity and the professionalism of former officers in being best able to scrutinise and hold to account former colleagues in misconduct, or complaint investigations in any shape or form. The balance of such resource is, of course, a matter for the IPCC, but their ability to draw upon the capabilities of former police officers enhances, rather than reduces the effectiveness of the IPCC.

28. One impact of the Police Reform and Social Responsibility Act 2011 and the advent of the Police (Complaints and Misconduct) Regulations 2012 in November this year will see some shift of casework from the IPCC to police forces, most notably in respect of assessing and determining appeals against the outcome of investigations. These changes largely address proportionality at the lower end of the scale of seriousness and should afford the IPCC some opportunity to provide greater focus on matters of more significant public profile.

**Whether Investigations Lead to Improvements in Police Practices**

29. ACPO recognises that the learning outcomes of IPCC independent, managed and supervised investigations have led to improvements in policing practices.

30. The commitment of the police service and the IPCC alike to the Learning the Lessons bulletins is evidence of tangible and pragmatic means by which the IPCC influences policing practices for the better.

**Whether Improving Police Services should be Formally included in the Commission’s Remit**

31. ACPO support the IPCC’s approach to the transparent publication of the outcome of investigations and the emphasis, where appropriate, on organisational learning.

32. ACPO Professional Standards portfolio is committed to improving standards of professional behaviour and the quality of the service provided to the public. The work of the IPCC in practice contributes to the continued improvement of Police Services.

33. In those cases where standards of policing or individual conduct has been found to have fallen short of expectations, effective resolution invariably includes assurances to complainants and those adversely affected that steps are taken at the requisite level to mitigate, reduce or prevent future re-occurrence.

34. Improvements to policing services are brought about wherever and whenever possible as a result of exposure of the facts, the attendant circumstances and the underlying contributory factors. Bringing about improvements to policing services should have significant prominence in all aspects of the IPCC’s remit.

35. Improving policing services should be a commonly held objective of all parties in policing, and particularly those charged with the responsibility of holding the police to account, whether internally or externally.

**The Commission’s Role in Scrutinising Elected Police Commissioners**

36. ACPO Professional Standards acknowledges the IPCC’s statutory obligations in respect of conduct matters concerning an elected Police and Crime Commissioner (PCC) and its responsibilities for determining whether to investigate matters of criminal conduct through either an independent or a managed investigation. It is difficult at this stage to make any realistic gauge of any impact on investigative capacity.
The Commission's Role in Scrutinising Third Parties Commissioned to Carry Out Policing Duties

37. The increase in use of third parties in the provision of policing services has consequences for the Service's own professional standards in ensuring clarity of accountability for the standards of work and conduct carried out under the direction and control of a Chief Constable, or services the public might see as inextricably linked to those provided by any individual force. ACPO believes the IPCC should have the same oversight of complaints or allegations of misconduct in relation to third parties carrying out policing duties as it does over the Service. Should third parties carry out the provision of policing services then the public are entitled to expect a high quality service and the opportunity for redress should there be a failure to meet appropriate standards.

38. ACPO believe that the IPCC's remit should enable them to consider any public complaint or allegation of misconduct in its totality. This at times will require it to investigate or oversee an investigation which may involve another agency in the Criminal Justice system. The IPCC should not be restricted in an investigation which seeks to establish the truth and it should, therefore have a remit which allows it to consider the actions of members of these agencies should an investigation into police misconduct require that.

The Commission's Role in Considering Complaints which may Relate in Part to other Bodies Involved in the Justice System, such as the Crown Prosecution Service

39. ACPO believes that the IPCC should have the ability to undertaken unfettered investigations in order to establish the truth. At times this will require the IPCC to enquire into the activities of other partner agencies within the Criminal Justice System and this indeed has been the case in investigations carried out by the IPCC to date. Further it will require the IPCC to comment upon the actions of other agencies and it is correct they should have the ability to make such comments. This does not, however, mean that the IPCC should become the regulatory body for other agencies. The extent to which the IPCC should pass comment upon the activities of other agencies should relate directly to their investigations into matters pertaining to the Police Service.

Whether the Right Balance is Achieved Between Independent, Managed and Supervised Investigations

40. The IPCC have significantly increased the proportion of independent investigations and reduced the proportion of managed investigations. This is with a view to reinforcing its independence and further enhancing the confidence of the public. This move is supported by ACPO and raises the question of the future of managed investigations.

41. ACPO questions the value of supervised investigations. It is recognised that there may be post investigation value in that there would be information available to the IPCC which would assist in commenting on issues of national concern for example, stop and search. It is the experience of the Service that there is little added value of a "supervised investigation" during the investigation process.

How the Work of the Commission Could be Effectively Scrutinised

42. ACPO believe that the decisions relating to the scrutiny of the IPCC are matters for others to decide. However it seems that whatever scrutiny mechanisms are put in place the IPCC would wish to demonstrate transparency and accountability to the public if it is to maintain public confidence in its independence. ACPO further believe that such public confidence in the independence of the IPCC is wholly beneficial to the Police Service.

Mike Cunningham
Chief Constable of Staffordshire Police and ACPO Lead for Professional Standards

October 2012

Written evidence submitted by the Crown Prosecution Service [IPCC 28]

This paper has been prepared to assist members of the Home Affairs Committee in their inquiry into the Independent Police Complaints Commission (IPCC). It deals with the role of the Crown Prosecution Service (CPS) and its interaction with the IPCC.

Background

The Committee will be considering the full range of the IPCC's activities. The CPS deals with a limited number of IPCC activities but these may be serious and high profile matters, and are set out in further detail below.
THE CROWN PROSECUTION SERVICE

The CPS was set up in 1986 under the Prosecution of Offences Act 1985 as an independent authority to prosecute criminal cases investigated by the police in England and Wales. In undertaking this role, the CPS:

— advises during the early stages of investigations;
— determines the appropriate charges;
— keeps all cases under continuous review and decides which cases should be prosecuted;
— prepares cases for prosecution in court and prosecutes the cases with in-house advocates or instructs agents and/or counsel to present cases; and
— provides information and assistance to victims and prosecution witnesses.

CPS AREAS

The CPS is divided into 13 geographical Areas across England and Wales. Areas boundaries align with Police Force Area boundaries but each CPS Area comprises several Police Force Areas. For example, CPS London covers the combined areas of the City of London Police Service and Metropolitan Police Service. Each Area is led by a Chief Crown Prosecutor (CCP) who is responsible for the provision of a high quality prosecution service in his or her Area. A “virtual” 14th Area, CPS Direct, is also headed by a CCP and provides charging decisions to the police.

A large number of complaints against police officers are still dealt with by the relevant police force, under the supervision of the IPCC, and are handled by CPS Areas.

CASEWORK DIVISIONS

The CPS has four Casework Divisions, one of which is Special Crime and Counter Terrorism Division (SCCTD).

SCCTD is headed by Sue Hemming and has offices in London, York and Leeds. Where the investigation is independent or managed by the IPCC, IPCC cases are dealt with exclusively by Special Crime, one of four operational units within the Division.

Special Crime is responsible for advising on and prosecuting some of the most sensitive and demanding cases. Many are high profile and on occasion complex, often attracting strong media interest. Areas of work include deaths in custody, assisted suicide and euthanasia, serious public corruption, election offences, corporate manslaughter, gross negligence medical manslaughter, serious allegations against police officers, prosecutions of CPS employees, leaks by public officials to journalists and cases involving high profile individuals.

Special Crime is headed by a Deputy Head of Division, Malcolm McHaffie.

HOW IPCC CASES ARE HANDLED BY SCCTD

Since 1 April 2012 all cases managed or independently investigated by the IPCC are referred directly to Special Crime for prosecution decisions.

The Division has agreed two guidance documents with the IPCC:

1. Memorandum of Understanding (MOU) dated 24 February 2011; and

The MOU sets out broad principles governing how we will work together and the guidance gives practical advice to both investigators and prosecutors on best practice for obtaining and giving early advice in appropriate cases.

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83 PRA 2002 Schedule 3 part 3 paragraph 15 says that where a complaint, recordable conduct matter or DSI (death or serious injury) matter is considered by the Commission to be one that should be investigated, the form of investigation can only be an investigation by:
(a) the relevant police force on its own behalf (“local investigation”)
(b) the relevant police force under supervision of IPCC (“supervised investigation”)
(c) the relevant police force under the management of the IPCC (“managed”)
(d) the IPCC (“independent”)

The type is determined by the IPCC on consideration of the seriousness and public interest.
TYPES OF CASE REFERRED TO SCCTD BY IPCC

A snapshot of the SCCTD caseload of ongoing IPCC cases (pre or post charge) at the end of September 2012 is as follows:

- Death in custody or following contact with the police, including shootings: 9 cases
- Assaults: 6 cases
- Perjury: 3 cases
- Failure to investigate and falsifying records: 2 cases
- Dangerous driving: 2 cases

IPCC INVESTIGATIONS RELATING TO DEATHS IN CONTACT OR IN CUSTODY

Jean Charles de Menezes 2005: The Metropolitan Police Service was prosecuted for health and safety offences. The CPS concluded that it was not possible to bring a homicide charge against any officers because the prosecution was unable to rebut their belief as to his intentions—albeit that their belief was wrong.

Andrzej Rymarzak 2009: Mr Rymarzak was unconscious through drink/drugs and he died in a police cell after the on-call doctor failed to rouse or properly examine him. The doctor was acquitted of manslaughter by the jury.

Ian Tomlinson—PC Simon Harwood struck Mr Tomlinson with his police baton and pushed him over shortly before he died at the G20 riots on 1 April 2009. He was acquitted by the jury in 2012.

Mark Saunders 2008: No prosecution—The CPS concluded that it was not possible to rebut the police defence of self-defence.

THE COMPLEXITIES IN IPCC CASES INVOLVING DEATHS IN CUSTODY OR FOLLOWING CONTACT WITH POLICE OFFICERS, INCLUDING SHOOTINGS

Special Crime has specific arrangements in place for dealing with cases involving deaths in custody or in contact with police officers including shootings. These arrangements are in line with the recommendations of the then Attorney General’s “Review of the Role and Practices of the Crown Prosecution Service in Cases Arising from a Death in Custody 2003”.

This category of cases includes deaths in police cells, prisons, secure hospitals and deaths following interaction with the police whether the deceased was technically “in custody” or not. The IPCC deals only with deaths in connection with police action and in police custody, not with deaths in prison or immigration custody.

Only senior lawyers who are specifically designated are permitted to review death in custody cases in Special Crime. Their reviews are examined by their line manager (the “Unit Head”) and then by the Head (or Deputy Head) of Division. They are then submitted to the DPP for final approval. In any case where the decision is not to proceed, if the DPP is not satisfied that it is “plain beyond doubt” that there is no case to answer then experienced external counsel will be instructed to advise. Again, this is in accordance with the Attorney General’s review of deaths in custody.

DOES THE IPCC HAVE THE RIGHT POWERS AND RESOURCES TO CARRY OUT ITS ROLE EFFECTIVELY?

There have recently been suggestions that the IPCC should move away from employing ex-police officers. We recognize the concerns about perceptions, however, ex police officers are familiar with the criminal law and with presenting their investigations to the CPS and the courts.

Special Crime and the IPCC are setting up joint training days for IPCC investigators over the next two months.

Liaison between SCCTD and the IPCC has improved significantly over the last two years. The MOU and guidance in place facilitates early contact between investigator and prosecutor with a view to setting strategy and giving early advice. It also allows early consideration to be given to the discontinuance of an investigation where it is clear that there is no prospect of prosecution and if appropriate. This means that the resources of both the IPCC and the CPS can be more effectively focused on those investigations that need them.

THE IPCC’S ROLE IN SCRUTINISING THIRD PARTIES COMMISSIONED TO CARRY OUT POLICING DUTIES

We would welcome the clarification of the IPCC’s powers to deal with third parties because this would make investigations easier to handle where all but non police suspects are eliminated from enquiries.

THE IPCC’S ROLE IN CONSIDERING COMPLAINTS RELATING TO THE CPS

The current position in relation to police investigations of CPS employees is that the case would be referred to the Special Crime Division. We see no difficulty in the IPCC referring cases involving criminal allegations against CPS employees to Special Crime, in the same way police forces currently do. This would of course require a widening of the IPCC’s investigative powers.
Conclusion

The CPS is taking steps to work with the IPCC to improve investigations so that stronger prosecution cases can be built. We consider that improvements are being made and look forward to making further progress.

Crown Prosecution Service
November 2012

Supplementary written evidence submitted by the Crown Prosecution Service [IPCC 28a]

Letter from Keir Starmer QC, Director of Public Prosecutions, to the Chair of the Committee, 3 December 2012

When I appeared before the Home Affairs Select Committee on 13 November, I promised to write to you to set out the difficulties in prosecuting cases relating to those who die in custody.

When I refer to “deaths in custody” I am using a broad definition of these types of cases. I include not only those where a person is under arrest in a cell but also deaths resulting from police shootings and deaths where there has been some interaction between the police and the deceased. Nevertheless I consider that these cases can be broken down into three broad categories police shootings, restraint cases and cases where the responsible person fails to act—and I will deal with each of them in turn.

Police Shootings

In these cases my prosecutors would be considering charges of murder or manslaughter.

Police officers who stop persons they believe to be armed and dangerous and who shoot them will argue that they acted in reasonable self-defence or in the defence of others. It is for the prosecution to disprove this, not for the suspect to prove it.

By section 3 of the Criminal Law Act 1967 “A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large”. Section 3 reflects the common law rule that a person is entitled to use such force as is reasonably necessary to protect himself or another or property.

By section 76 of the Criminal Justice and Immigration Act 2008, where in proceedings for an offence an issue arises as to whether a defendant is entitled to rely on the common law defence of self-defence or section 3, the question of the degree of force used by the defendant was reasonable in the circumstances is to be decided by reference to the circumstances as the defendant believed them to be.

By sub-section 4, “If D [the defendant] claims to have held a particular belief ... (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but (b) if it is determined that D did genuinely hold it, D is entitled to rely on it ... whether or not (i) it was mistaken, or (ii) (if it was mistaken) the mistake was a reasonable one to have made.”

For example, where a police officer is faced with a person pointing an unloaded gun at him, if he genuinely believes that the gun is loaded, however unreasonably, and shoots to kill, he is entitled to rely on the argument that his use of force was reasonable in the circumstances and for the purpose of legitimate self-defence. It is then for the prosecution to prove that the force used was disproportionate to the perceived threat or that the mistake was so unreasonable as to prove that in fact the officer did not genuinely hold the belief he claimed to hold.

The 2008 Act also gives statutory force to the judicial maxims that a person cannot “weigh to a nicety” the exact measure of any necessary action and that evidence of a person’s having only done what he honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose. This means that, for example, a police officer faced with a split-second decision on whether to shoot or not and acting as he instinctively thinks necessary is able to make a strong argument that he only took reasonable defensive action, which will be very difficult for the prosecution to rebut.

Restraint Cases

In these cases my prosecutors would be considering charges of either unlawful act or gross negligence manslaughter.

The law is that an accused is guilty of unlawful act manslaughter if it is proved that he intentionally did an act (not an omission) which was unlawful and dangerous and that that act had caused death. It is not necessary to prove that he intended to kill. It is also not necessary to prove that he knew the act was unlawful and dangerous as the test is whether all sober and responsible people would recognise that the act was dangerous, not whether he did so.

Most restraints would appear dangerous to a lay observer so the question is principally one of lawfulness.

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On ordinary principles of joint enterprise, if a group of police officers set out with the intention of inflicting a beating on a detainee they would all be liable for the assault, whoever threw any particular punch. However, if they set out on a lawful restraint but one police officer committed an unlawful act, the others would only be liable for that if they gave intentional encouragement or assistance to the act.

For the offence of gross negligence manslaughter it is necessary to prove that the officers individually, not as a group, breached their duty of care to the detainee, that the breach of the duty of care caused the death and that the officer’s individual conduct was so truly exceptionally bad as to amount to a crime against the State deserving of punishment. Minor acts of negligence by a series of officers in, for example, a custody suite cannot be aggregated into one act of gross negligence by all of them.

FAILURES TO ACT

Here again my prosecutors will be considering gross negligence manslaughter and the points above remain true.

Where a custody sergeant or prison officer is appointed to have charge, or takes charge, of a prisoner they will have a duty of care towards him. Not every officer in an establishment will have a duty of care towards all prisoners.

Where there is a failure to act it is necessary to show that, if the officer with a duty of care had acted correctly, for example by sending an ill prisoner to hospital when first alerted to his illness, the prisoner would have survived. It is insufficient to show that he might have survived. In cases where the prisoner is suffering from serious but undiagnosed illness, this can be a difficult barrier to overcome.

Lastly, the committee also requested case figures relating to ACPO ranks. They are attached at Annex A.

Keir Starmer QC
Director of Public Prosecution
Crown Prosecution Service
December 2012

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Annex A

CASES INVOLVING ACPO RANKS REFERRED TO CPS SPECIAL CRIME & COUNTER TERRORISM DIVISION BY THE IPCC

Caseload of ongoing IPCC cases (pre or post charge) with numbers of Chief Constable and Deputy or Assistant Chief Constables as subjects:

“No. of cases” is as at 13.11.12:

<table>
<thead>
<tr>
<th>Case type</th>
<th>No. cases</th>
<th>CC subjects</th>
<th>DCC/ACC subjects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death in custody/contact/non lethal tazer use</td>
<td>13</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Assaults</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Perjury</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Failure to investigate/falsifying records</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dangerous driving</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sexual misconduct</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Racism</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Data misconduct</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Hillsborough</td>
<td>1</td>
<td>0 (resigned)</td>
<td>0</td>
</tr>
<tr>
<td>Irregularities in disclosure in criminal trial</td>
<td>1</td>
<td>1</td>
<td>3 (dismissed)</td>
</tr>
<tr>
<td>Fraud</td>
<td>1</td>
<td>1 (dismissed)</td>
<td>0</td>
</tr>
<tr>
<td>Abuse of power—misconduct in public office</td>
<td>1</td>
<td>0</td>
<td>1 (dismissed)</td>
</tr>
</tbody>
</table>
Written evidence submitted by Bhatt Murphy Solicitors [IPCC 34]

Further to your conversation with my colleague Shamik Dutta yesterday, I write to give you a synopsis of the issues concerning the interviewing of officers in IPCC investigations. To assist you I have also attached a flowchart which outlines the IPCC’s investigative powers in this area.

1. When someone dies in custody and a referral is made to the IPCC for investigation, IPCC investigators must assess at the outset whether officers “may have” committed criminal and/or misconduct offences. If so, the matter (which is known as a “DSI matter”) should be recorded as a “conduct” matter.

2. The investigator is then empowered to serve notices upon officers notifying them that their conduct is in question and the investigator accordingly has the power to interview relevant officers under caution. Inversely if the case is not recorded as a “conduct” matter, the investigator will not have the power to interview those officers under caution.

3. The significance of an interview under caution is that it provides the officers whose conduct is in question with the appropriate safeguards in circumstances where there may be criminal or misconduct proceedings, and ensures that any evidence obtained in that interview is admissible in any such proceedings. If those officers are not interviewed under caution, arguments can be raised against the admissibility of those interviews in any eventual criminal proceedings.

4. As we set out in our evidence to the HASC, what we are seeing on the ground is that DSI investigations are not being recorded as “conduct” matters even where it appears that the threshold of “may have committed criminal and/or misconduct offences” has clearly been met, for example in restraint-related deaths. The investigator therefore concludes his/her report without interviewing the relevant officers at all, let alone in a manner which might produce evidence to form the basis of a prosecution or disciplinary proceedings. It is then not until an inquest many months or even years after a death that the officers’ accounts are provided under oath and tested.

5. The tendency of IPCC investigators not to record these cases as “conduct” matters and therefore not to afford themselves the power to interview officers under caution is a major issue of concern to the families of individuals who die in police custody. This is particularly so in cases such as restraint related deaths, where it is clear that officers “may have” committed a misconduct and/or criminal offence. In our view, “may have” is a low threshold. This subjective decision not to record cases that do meet the relevant criteria as “conduct” matters is often taken at the outset of an investigation and therefore serves to frustrate the entire purpose of the investigation: to establish how a loved one has died and whether or not any police officers are responsible. Families quite understandably feel that such a decision, which thereafter means that investigators do not have the power to interview officers under caution, shows a lack of impartiality on behalf of the investigator, who will often be a former police officer.

6. The IPCC is seeking legislative change to require officers to be interviewed (not under caution) where a decision has been made that they are not suspected of having committed criminal and/or misconduct offences. In our view this misses the point. There are plainly occasions where it is right for an investigator not to conclude that misconduct and/or a criminal offence “may have” been committed, for example in some self-inflicted deaths where there is no question of gross negligence manslaughter having been committed. We agree that in those limited circumstances it may be of assistance to the family if the IPCC had a power to interview officers who may have seen or heard something relevant even though they were not directly involved in a death.

7. Our grave concern arising out of these suggestions is that the introduction of new powers to interview officers will simply provide a further excuse for IPCC investigators to do what they are already doing: not interviewing officers under caution even when the low threshold of “may have committed criminal and/or misconduct offences” is met. It is therefore our view that whether new powers to compel witnesses to be interviewed are brought in or not, IPCC investigators need clearer guidance on how to exercise their existing powers lawfully and properly and in a manner that does not frustrate the entire purpose of an investigation. Unless there is change in this area, we anticipate further ineffective and unsatisfactory IPCC investigations and further families left in the dark as to how their loved ones have died.

Bhatt Murphy Solicitors

November 2012
IPCC powers to interview officers

A death in custody occurs.

Is the matter the subject of a complaint?

Is the matter a conduct matter?

The investigator must consider whether the case is a conduct matter in accordance with the definition outlined in s12(2) of the Police Reform Act 2002:

(2) In this Part "conduct matter" means (subject to the following provisions of this section, paragraph 2(4) of Schedule 3 and any regulations made by virtue of section 23(2)(d)) any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have—

(a) committed a criminal offence; or
(b) behaved in a manner which would justify the bringing of disciplinary proceedings.

Is the matter subject to special requirements?

19B Schedule 3 PRA 2002 provides that where a matter has been assessed to be a 'conduct matter', or where a complaint has been made, an investigator must undertake an assessment of the seriousness of an investigation i.e. whether the individual under investigation may have committed a criminal offence or behave in a manner which would justify the bringing of disciplinary proceedings. If so, the investigator must certify the investigation as one subject to 'special requirements' pursuant to s19B(1)(b) of Schedule 3 PRA 2002.

If the matter is subject to special requirements, the investigator must undertake a severity assessment pursuant to para 19B(4)(a) and (b). The investigator must consider whether the alleged misconduct, if proven, would amount to misconduct or gross misconduct, and if it were subject of disciplinary proceedings, the form that those proceedings would be likely to take. At that stage the officer should be given notification by way of a Regulation 14A notice or Regulation 15 notice.

Sophie Naftalin, Bhatt Murphy
November 2012