

## APCC Response – HASC Inquiry on Police Complaints – Sept 2020

### Introduction

The Association of Police and Crime Commissioners (APCC) is the national body that supports Police and Crime Commissioners (PCCs), and other local policing bodies (LPBs) across England and Wales, to provide national leadership and influence change in the policing and criminal justice landscape.

Please find below the APCC submission on the HASC Inquiry on the role and remit of the Independent Office for Police Conduct in relation to the police conduct and discipline system.

A number of PCCs may have submitted responses to you directly, but this document sets out a summary of the key matters raised by our members in their individual responses to us, and in relation to discussions we have had with our members over time in a variety of forums.

This document provides an overview of the key points made to us by members, particularly common themes raised by them.

### Background

The Inquiry follows many years of work to devise, legislate and implement a new complaints and misconduct system within policing. The primary legislation relating to these reforms was passed in 2017, and elements of it (notably the creation of IOPC and transfer of responsibilities from the old IPCC) were implemented shortly afterwards. However, the remaining elements, especially the statutory instruments to implement the reformed misconduct and discipline system within police forces and local policing bodies, was not brought into force until February this year. The delay was largely due to lack of Parliamentary time at the height of the Brexit debate for the Home Office to lay the detailed regulations governing the new system.

This resulted in the newly created IOPC working within the old conduct and complaints system for some years.

Key drivers for devising a new complaints system were that the old system was seen as bureaucratic, lengthy, adversarial and focused on blame rather than improvement, lacking in independence and unresponsive. It was ill equipped to handle customer service issues, as opposed to misconduct issues, and meant that performance issues of this nature had to be referred into 'direction and control' processes, or translated into a misconduct complaint to achieve any outcome, thus clogging up an already bureaucratic process with multiple points of appeal, leading to significant delays.

The new complaints system has resolve many of these structural issues. Customer service and performance type complaints can now be handled separately and resolved quickly, without being fed into the more formal (Schedule 3) misconduct process. This initial handling and resolution process can be undertaken by the local policing body, where they have given notice to the Chief Constable that they intend to do so, but in most areas is undertaken by the force at present. The local policing body can also choose to take on continuing contact with a complainant throughout a case, including where it has been referred into the formal misconduct process. Where performance is an issue in a complaint, this can be referred through the force to a line manager to deal with under practice requiring improvement mechanisms.

Where complaints are subject to Schedule 3, these must still be recorded and investigated (the more serious and sensitive ones by the IOPC, less serious misconduct issues by forces – although IOPC can call these investigations in if they have concerns). Following investigation, and where it has found that there is a misconduct case to answer, the case will be referred to a misconduct panel, chaired by an independent legally qualified person, which will determine the outcome and appropriate sanction. Where a complainant is not satisfied with the outcome, they have a right to request a review at the point of outcome (this will be undertaken by either the local policing body or the IOPC, depending on the seriousness of the case).

Complaints against Chief Constables (and equivalents) remain the responsibility of LBP/PCCs, but investigations must now be carried out by IOPC (as opposed to the possibility previously that they could be carried out by another force).

The timing of the implementation of this system in February 2020 fell shortly before PCC elections were due in May 2020 (subsequently deferred to May 2021), and several PCCs felt they should not take on initial handling of complaints before this election. Therefore, although only a few local policing bodies have taken on the initial handling of complaints to date, it is likely that these numbers will increase after the PCC elections. One PCC's office has taken on both the initial handling of complaints and continuing contact with complainants throughout the process. Initial handling and continuing contact are seen as key means of contact with local communities, and a way of improving confidence in policing, if handled well.

## General Points

This section summarises a few general points raised in PCC responses:

1. There is a general feeling that it is too early to judge whether the new system is a success. Anecdotal evidence suggests more complaints are being made, but this may be evidence of greater confidence in reporting issues, rather than greater problems in police conduct. However, of those that are received, the vast majority are being resolved quickly through the initial process and not being referred into Schedule 3 for investigation.
2. The feeling is that IOPC have got to grips with the legacy delays they inherited from their predecessor. They consulted with us extensively and constructively on their development of the statutory guidance on the new complaints system - we think it is a clear and de-jargonised guide for a very complex subject. They have also been extremely helpful in helping local policing bodies/PCCs and their staff to prepare for the new system and feedback on progress through the workshops which they continue to run.

## Specific Questions

### 1. The role and remit of the IOPC within the police conduct and discipline system

IOPC are responsible for the complaints system as a whole and have co-oversight responsibilities with PCCs/local policing bodies in relation to police complaints, with the latter overseeing complaints within their force, and IOPC having oversight of the whole system. This allows for the identification of duplicate errors/lessons to be learnt across multiple Forces, helps to ensure consistency in the application of the complaints regulations, and provides a sort of complaints audit function. IOPC was granted a number of new powers and duties as a result of the reforms to the complaints system,

such as the ability to call in investigations from local forces, aimed at making the system more independent and timely.

They publish 'Lessons Learnt' documents on a regular basis summarising good practice in specific themes. The production of the Statutory Guidance 2020 document by the IOPC has been an extremely helpful guide to the new system, and they have also provided regional guidance to support the PCC/LBB review function in some areas. IOPC has also been extremely helpful in providing workshops for PCC/LPBs and their staff to inform them about the new system and discuss progress or issues in implementing these changes.

One suggestion has been made by a PCC in terms of improving the IOPC function – this is to suggest that it would be helpful to introduce a 'Central Referral Unit' within IOPC that could act as an initial point of contact to respond to complaint handling enquiries from Forces and/or PCCs/LPBs, as well as complaints which are submitted to multiple police forces by the same complainant. This would help to improve consistency and potentially also identify gaps where there is a need for further reform.

## **2. Progress in reforming the complaints system, including speeding up decision making**

As mentioned previously, the reforms to the complaints system as a whole were significantly delayed beyond the introduction of the primary legislation, although elements, such as the creation of IOPC and the transfer of the IPCC functions to it, were implemented relatively quickly. The delays to the wider reforms were largely due to lack of Parliamentary time at the height of the Brexit debate for the Home Office to lay the relevant regulations governing the new system.

This meant that for 2-3 years IOPC were operating within the old complaints system, but they did do much in that time to tackle the legacy issues of complaints inherited from their predecessor which remained unresolved in the system for several years. Some of this was down to external parties – such as coroners/inquests, courts or CPS, but IOPC have managed to finalise nearly all these cases. We understand that at present, there is only one legacy case remaining in the system.

In relation to the rationale for reforming the wider system, this has already been discussed and has been widely supported by PCCs/LPBs. The new structure should provide a more responsive and independent system, but it is too early to judge yet the overall success of the reforms.

These have only been in place for a few months, but feedback from PCCs/LPBs suggests that it is working quite effectively. The great majority of cases are being resolved quickly through initial handling processes, rather than being referred to the formal misconduct process. Examples include things like securing an apology from the police officer concerned, or simply an explanation of why something happened in the way it did, which can often close the matter. Where the complaint arose from poor behaviour or performance by police officers, these are being referred to line managers to deal with as practice requiring improvement.

For most PCCs/LPBs the element of the new system they see most is the review process at the point of outcome at the end of the process. The fact that most PCCs/LPBs have already had several reviews referred to them is evidence that forces are dealing with complaints in a timely manner – and our members generally think this is working well, and is a vast improvement on the previous multiple points of appeal within the system. However, recommendations from the reviewing body to the Chief

Constable do not have to be implemented by the force – they can choose to take some other course of action or no action – and this is seen as a weakness in the system.

### **3. How the IOPC is working with individual forces and policing bodies, including HMICFRS, in order to respond to complaints**

Generally, IOPC liaise with individual forces and PCCs/LPBs through their regional offices and most PCCs report that there is a good relationship with IOPC at this level. We are aware that IOPC is keen to work with PCCs/LPBs on their co-oversight of force systems, to consider how to mutually complement each other to ensure learning is fully embedded in forces. At national level, the APCC and IOPC have agreed it might be helpful to develop a protocol setting out this relationship in more detail, although this has yet to be developed. We also have engagement with them in relation to the workshops they continue to run for PCC/LPB staff on progress and issues in implementing the new systems, and in relation to preparing their Lessons Learnt publications.

Overall, we believe the relationship is extremely constructive at both local and national level.

### **4. The need for the IOPC's new powers (introduced in February 2020), and their expected impact**

Much of this has been discussed earlier in our submission. Suffice to say here that PCCs/LPBs believe there was a strong case to reform the complaints system to make it more open, responsive, independent and focused on improvement. The powers granted to IOPC are an important element in achieving these aims, particularly greater independence in the system. The old system too often looked like the police investigating the police without sufficient external checks. This was unsustainable and not conducive to improving public confidence in policing.

The legislation also introduced new duties on the IOPC as well as powers, notably Regulation 13 (timeliness of investigations), which places a duty on the both Chief Constables and IOPC (depending on who is responsible for investigation) to provide the complainant with a written explanation if an investigation is not completed within 12 months. This obligation has to be repeated at certain points if the investigation continues beyond other timelines, and we believe this is a helpful discipline to assist timeliness.

### **5. Whether further reforms are required to secure public confidence in the police conduct and discipline system**

In general, we feel it is too early to judge whether the system is working well and is addressing fully the problems identified with the previous system – but this is something that should be revisited again in the next year or two. However, there are a few specific issues emerging with the new system and we include below some suggestions from our members on changes which might be helpful to address these:

- As mentioned earlier, the fact that recommendations made to the force by PCCs/LPBs through review mechanisms can be ignored is a weakness and it might be helpful to strengthen the weight of recommendations.
- Another specific issue raised with us is around repetitive complaints. Although some guidance was included on this as part of the reforms, there is provision in the legislation that a complainant can insist on their complaint being formally recorded and fed into Schedule 3. While this is a sensible measure for complaints that cannot be resolved through initial

handling, it does open a doorway for repeat and historic complainants to exploit the process. This leads to unnecessary bureaucracy requiring recording, a No Further Action decision and a right to review to either the PCC or IOPC. It might be sensible to close off the avenue to formal complaints handling in certain specific cases to address this issue.

- The make-up of police misconduct panels has evolved over the last four years. They are now chaired by an independent legally qualified person, and additionally comprise a lay person and a senior force representative (unless the case is against a Chief Officer, in which case this seat is taken by HMIC). Therefore, panels no longer contain a majority of force representatives and this has opened up situations where the Chief Constable disagrees with the decision of the panel. Unlike the officer subject to the complaint, the Chief has no right to request a Police Appeals Tribunal to reconsider the outcome. This has led to some instances where the Chief Constable has JR'd the decision of the misconduct panel, as their only recourse to seek a different outcome. Generally, this has been in cases where the Chief considers the sanction imposed insufficient. It might therefore be helpful and save considerable time and legal expense, if Chief Constables were able to refer decision of misconduct panels to a Police Appeal Tribunal, as well as officers subject to the complaints process being able to do so.
- One PCC has suggested that it might be helpful for IOPC investigators to have further training to enable them to have a greater understanding of the impact of allegations made against PCCs and Senior Officers when complaints have originated from 'persistent complainants'. This is particularly vital when the complaints made are part of a continued campaign of stalking and harassment.

## Conclusion

We hope this response is a helpful summary of views and would be happy to discuss the issues raised with you further, if helpful.

**APCC Secretariat – September 2020**