

IPCC Oversight and confidence 2013/14

Casework and Customer Service pilot projects

- **Direction and control**
- **Access**
- **Local resolution**
- **Quality of investigations**
- **Learning and recommendations**

Interim report

Acknowledgements

We would like to extend our thanks to those complainants who participated in our telephone survey and to Ian Hearnden, who conducted the telephone survey on our behalf. This provided useful insight.

We are grateful to all the participating professional standards departments for their cooperation and assistance and demonstrating their willingness to learn.

Finally, we would like to thank our IPCC colleagues for their work and comments on drafts of these project reports.

Foreword

An important part of the IPCC's statutory responsibility is to improve public confidence in the police complaints system. At a time when police behaviour and integrity are under increased scrutiny, it is clearly important that complaints from the public are handled well, and that lessons are learnt if those complaints are valid.

Over the next three years, we will be increasing our own capacity to investigate serious and sensitive matters independently. However, it will still be the case that the great majority of the 30,000 or so complaints made against the police every year will be dealt with locally, by forces themselves – and it must be right that the police themselves seek to resolve complaints as swiftly and effectively as possible.

The Police Reform and Social Responsibility Act (PRSRA) reinforced the responsibility of local forces, by making them rather than the IPCC the appellate body for less serious complaints, and by seeking to support greater use of early resolution. It also created the office of Police and Crime Commissioner (PCC) – and many PCCs are quite rightly taking a great interest in the way their force handles complainants and complaints.

Now that fewer appeals come directly to us, we need to exercise our responsibility for oversight of the whole complaints system differently. These first reports are the outcome of five pilot projects to explore ways of doing so, and will help us develop our oversight and confidence strategy for the future, so that, in cooperation with others, we can feed learning from our complaints work back into the system.

Some underlying themes emerge from these reports. The first is the inherent complexity of the complaints system itself. Some changes were made in the PRSRA, but we believe there are strong arguments for a more radical reform of a system that is still over-legalistic, over-bureaucratic and over-focused on blame rather than resolution. As a consequence, and particularly where matters are dealt with at local rather than force level, it is clear from these reports that forces struggle to apply the legislation and guidance properly.

That was not in general because forces were deliberately trying to exclude people from the system, or dismiss their valid complaints. In part, it was because those making the decisions did not properly understand the intricacies of the legislation; all the PSDs involved were very clear that they needed better training, support and guidance in applying it. But it was also because the approach to complaints handling in local investigation and resolution was not sufficiently consumer-focused: fully engaging with and communicating to complainants, rather than taking a defensive and formalistic approach.

We are very grateful to the forces that participated, which all cooperated fully and helpfully to this analysis of their work. We hope that these reports will be helpful not only to them, but to all PCCs, chief officers and professional standards departments in examining their own practice and approach.

Dame Anne Owers

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Introduction

1. The Independent Police Complaints Commission (IPCC) has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales, under the Police Reform Act 2002 (PRA). The Police Reform and Social Responsibility Act 2011 (PRORA), which came into force in November 2012, changed the way most complaints are handled. Key changes were:
 - Some appeals in less serious cases no longer come to the IPCC but are handled within the force, by the chief officer or his/her delegate.
 - Issues of 'direction and control', rather than specifically about the conduct of officers, now have to be recorded as complaints. Previously, they were outside the PRA complaints system.
 - There is more of an emphasis on resolving less serious matters locally and quickly, through 'local resolution', which no longer requires the explicit consent of the complainant.
2. These changes mean that some matters that could come to the IPCC on appeal will no longer do so. Our direct oversight of the complaints system is reduced, therefore. This is of concern, as we have seen a significant increase in the number and proportion of appeals that we uphold. In local investigations this has risen from 23 per cent in 2010-11 to nearly half in 2013. In addition, in half the cases appealed to us, we find that complaints that should have been recorded have not been. If there is to be public confidence in policing and in the complaints system it is vital that the front end of the system, the local handling that deals with the vast majority of complaints, works as well as it can.
3. For those reasons, we need to ensure that we retain oversight of the whole of the complaints system, but in a different way. We have therefore been developing a model of oversight, carrying out five pilot projects to explore different areas and methods. We chose areas where changes in legislation have provided opportunities to promote best practice, or those where the IPCC no longer has direct oversight. The subject areas chosen were:
 - direction and control
 - access
 - local resolution
 - quality of investigations
 - learning and recommendations
4. This report summarises the findings of those pilot projects, and outlines how we propose to develop this work as part of the IPCC's expansion.

Direction and control

5. Until November 2012, complaints about direction and control matters¹ (broadly speaking, matters that related to force policies and operational matters, rather than the conduct of individual officers) did not need to be recorded under the Police Reform Act 2002 (PRA). However, those whose complaints were not recorded, for whatever reason, could appeal to the IPCC. 70 per cent of those appeals were successful, and a significant number were because the complaint had been wrongly categorised as a direction and control, rather than a conduct, matter. Since the PRSRA came into force, direction and control matters are now recordable complaints, which is helpful. However, they form a separate category of complaints, with no effective right of appeal – either against the fact that they have been categorised as direction and control, or against the outcome of the complaint itself.
6. Given that we know that a high proportion of complaints were wrongly categorised under the previous legislation, there is clearly a concern that this will continue to be the case, without any oversight; or indeed that forces might be tempted to categorise complaints in this way precisely to avoid appeal rights, or to avoid appropriately enquiring into an officer's conduct.
7. We decided to examine specific Professional Standards Departments' (PSDs') approaches to this. We identified six PSDs, which had high rates of upheld non-recording appeals under the previous legislation, and which would also provide enough cases to sample. We contacted those PSDs for further information about the number of direction and control cases they had recorded under the new legislation, and from those responses selected four PSDs. We then audited selected files and had discussions with a member of the relevant PSD.
8. We found that 80 per cent of the cases sampled (95 out of 120) were incorrectly categorised as direction and control. However, the evidence did not show that this was done deliberately to avoid due process, appeal rights or proper investigation. We found that 75 per cent of the cases were concluded in a satisfactory way, appropriate to the complaint. Nevertheless, a significant minority were not, and the mis-categorisation deprived those complainants of appeal rights.
9. None of the PSDs sampled had heard of the relevant case law (*North Yorkshire Police Authority v IPCC (Jordan) 2010*) for defining direction and control complaints, as opposed to conduct matters. This lack of knowledge was responsible for 48 per cent of the incorrect decisions. In particular, they were applying the definition of 'general policing standards' too widely: if an issue is specific to a complainant, it cannot be considered to be about

¹ A) Operational management decisions directed to the police force. B) The drafting of operational policing policies and the process leading to their approval. C) Organisational decisions D) General policing standards in the force

general policing standards.

10. In 34 per cent of cases, the categorisation decision was made because of a quick assessment: it appeared that the officer had followed procedure and had done nothing wrong. However, if that were the case, this should be the outcome of an investigation into conduct, not a reason for categorising it as not being about conduct.
11. 75 per cent of wrongly categorised complaints (58 out of 77) were dealt with appropriately, but 25 per cent were not. Even though there is no evidence that the miscategorisation was deliberately designed to avoid this, the fact remains that, for those complainants, there is no appeal right against the decision. It is, therefore, very important that forces are properly trained and supervised in making correct decisions about categorisation.
12. We believe that more training and guidance is needed. We will issue specific guidance on assessing complaints as direction and control, for our own staff and for PSDs. In the meantime, the *North Yorkshire Police Authority v IPCC (Jordan) decision* will be on the agenda of regular IPCC meetings with PSDs.

Access

13. There are some complaints – a small minority – that do not need to be dealt with in the complaints system set up under the Police Reform Act (PRA). If these exemptions apply, complaints may not be recorded at all, or recorded and then ‘disapplied’ (that is, the force can choose to deal with them in some other way), or the investigation can be stopped – ‘discontinued’. Effectively, this prevents people from having access to the complaints system that is overseen by the IPCC.
14. In many cases, applying these exemptions involves a subjective assessment of the merits of the complaint. There are three such exemptions in the PRA: that complaints are vexatious, oppressive, or an abuse of procedure. The Police Reform and Social Responsibility Act (PRSRA) added a fourth exemption in 2012: that a complaint is fanciful. If so, it need not be recorded².
15. Our experience under the PRA was that the three existing exemptions were sometimes misapplied. We were therefore concerned about the addition of a further, even more subjective, exemption. In addition, the IPCC is no longer the decision-maker in relation to the great majority of decisions to disaply; this is now dealt with in the force, usually by the

² **Fanciful:** if, and only if, no reasonable person could lend any credence to it.

Vexatious: made without foundation which is intended, or tends, to vex, worry, annoy or embarrass.

Oppressive: made without foundation and is intended, or likely, to result in burdensome, harsh or wrongful treatment of the person complained against.

Abuse of procedure: where there has been manipulation or misuse of the complaints system in order to make or progress a complaint which, in all the circumstances of the particular case, should not have been made or should not be allowed to continue.

chief officer or his or her delegate. If complaints are not recorded at all, there is a right of appeal to the IPCC; but, if a complaint is recorded and then subsequently disappplied, the appeal right is usually to the force. As a consequence, forces could use disapplication as a way of avoiding any IPCC oversight of the complaint, using what we have termed the 'disapplication loophole'.

16. We chose six PSDs that had made a comparatively greater number of applications to dispense or discontinue complaints on subjective grounds under the previous legislation, and of which the IPCC had refused a proportion. We asked for further information on the number of complaints not recorded, disappplied, or discontinued, under the new legislation. Numbers were too low for analysis, so we extended the request to six more PSDs. This resulted in nine PSDs being sampled, using an audit of 59 files, supplemented by discussion with a member of each PSD.
17. We found that 36 per cent of cases sampled had been incorrectly categorised as fanciful, vexatious or abuse of procedure. This was most pronounced in relation to allegedly fanciful cases, where only two of the 18 cases sampled were correctly classified. Half of the allegedly vexatious cases (three out of six) were wrong; but, most of the abuse of procedure cases were correctly classified (19 out of 24), as were both of the oppressive cases. In one out of ten cases, there was insufficient information or rationale to decide whether the decision was correct or not. Just over a quarter of the complainants involved had a stated mental health issue, communication difficulties, or behaviour that could indicate mental health problems.
18. In the 'vexatious' cases, it was clear that the incorrect decisions were because the complainant, rather than the complaint, was being judged. In the 'fanciful' cases, the most common reason for a wrong decision was that the decision-maker was making a judgment about the likelihood of the original incident or assertion having happened, rather than judging the complaint.
19. We found that the standard of explanation provided to complainants varied widely. In many of the incorrectly decided cases no explanation was given. One PSD, however, sent letters of an excellent standard, with explanation and a customer focus.
20. We checked whether there was a disproportionate number of disapplications (with no right of appeal to the IPCC) compared to non-recorded complaints (where there is a right of appeal to us), to see whether forces might be using disapplication, rather than non-recording, to avoid appeal rights. We found evidence to suggest that the 'disapplication loophole' was being used to prevent IPCC oversight of recorded cases in only one of the nine PSDs.
21. While a relatively high proportion of the complainants in this sample had mental health or communication difficulties, we were unable to carry out the additional work needed to establish whether this is proportionate to the number of complainants in general. More work needs to be done to

- establish whether access for these protected groups is being restricted.
22. The standard of explanation in letters sent to complainants was often inadequate. In three cases, no letter was sent; in a further 41 per cent of cases there was no explanation to support the decision. One PSD, however, sent letters of an excellent standard, clearly written and with a customer service focus.
 23. None of the PSD assessors had received specific training on making these decisions, and all would welcome training and further guidance.

Local resolution

24. Under the new legislation, the complainant's consent is no longer needed to resolve a complaint locally. However, complainants now have a right of appeal against the outcome of the local resolution process, whereas previously they could only appeal about whether the process had been followed. These changes were expected to improve the quality of local resolutions, ensure a focus on reaching a resolution, and reduce bureaucracy.
25. For this project, the IPCC was keen to identify good practice that could be shared. We looked for PSDs that had the highest rate of local resolution under the previous legislation, with a relatively low rate of appeal and of appeals upheld. This would indicate PSDs that had tried to develop and expand customer-focused local resolution. We contacted six PSDs, and looked at the number of local resolutions carried out and not appealed under the new legislation. We carried out an audit of files and spoke to a member of the PSD. We also commissioned independent researchers to carry out a separate telephone survey of 25 complainants who had gone through local resolution.
26. Our file sampling found that a very high proportion of cases had been dealt with appropriately. 91 per cent had been correctly classified as suitable for local resolution; 84 per cent had an appropriate action plan; 86 per cent had appropriate outcomes. However, the results of the survey of complainants were disappointing: only five of the 25 felt that their expectations had been fully met, and nearly two-thirds were fairly or very dissatisfied with the final outcome. Communication and the effective engagement of the officers involved appear to be crucial issues. Mediation was under-used.
27. We found some examples of good practice, with good quality communication and outcomes, where investigators had considered the bigger picture and wider learning. The most effective local resolutions had evidence of: involving the complainant, particularly with the action plan; providing appropriate information about the process, including its limitations; telling complainants the outcomes; and, providing officers' explanations for their actions or behaviour. Most complainants had had, or been offered, face-to-face meetings. The quality of the meeting was sometimes inadequate, however. Outcomes were often communicated by letter, which does not provide meaningful resolution. Some of those

interviewed said they had not been told about, or were unaware of, the outcome.

28. We did not see evidence of local resolution being imposed, even though complainants' consent is no longer required. The six PSDs recognised that the process would not work if a complainant was entirely opposed.
29. Complainants were offered a face-to-face mediated process with the officer(s) complained about in very few cases. This appears to reflect a continuing reluctance on the part of many officers to take an active and reflective part in such proceedings. Even when mediation was attempted, the few people involved did not feel it was successful; it clearly requires specialist skills.
30. The discrepancy between the actual outcomes in these cases, in PSDs that are committed to effective local resolution, and the perceptions of complainants surveyed is a concern. This suggests the need for more specific training and support for those involved, and/or the use of external expertise.

Quality of investigations

31. Even with an expanded IPCC, the great majority of complaints, even those that require some investigation, will be dealt with by local forces. In 2012/13, 28,901 allegations were investigated locally³. Under the new legislation, the IPCC is no longer always the appeal body for complainants dissatisfied with the process or outcome of those investigations. For the system to work effectively, with the best use of everyone's resources, it is essential that these local investigations are thorough and effective – and that was the reason the IPCC launched its Right First Time campaign in 2011. The aim was to reduce bureaucracy, and the need to reinvestigate complaints that were not handled properly.
32. There are still significant concerns about effective complaints handling at local level. Two years ago, we upheld 23% of appeals from those whose complaints had been investigated by the force itself: in 2013, this had risen to 45%. The Home Affairs Select Committee's recent report referred to the 'complaints roundabout' whereby ineffective local investigations are appealed to the IPCC, but on return to forces, the re-investigation is also inadequate, and there is a further appeal. The IPCC's recent findings on the Metropolitan Police Service's handling of complaints alleging race discrimination raised some fundamental issues about the way investigations into complaints in general were handled. It showed there was a lack of customer focus, and a failure properly to apply the IPCC's statutory guidance or the requirements of the legislation.
33. For those reasons, we wanted to do further work to see what is happening and help us assist PSDs to improve their customer focus and get investigations right first time. For this pilot project, we chose one large

³ All 43 territorial police forces and British Transport Police

force which accounts for a large number of appeals we receive, a high proportion of which are upheld. We analysed upheld appeal decisions made in the last six months, to identify any trends. We then conducted a focus group with a number of investigating officers of all ranks to help us understand the underlying reason for those trends.

34. We found that 73 per cent of upheld appeals had been investigated at local management level, rather than by the force's PSD. In over half of all cases (53 per cent), we disagreed with the conclusions reached; in 20 per cent of cases, not all the allegations had been addressed; in 19 per cent of cases, the decision had been poorly explained, with a lack of information to the complainant.
35. In six per cent of appeals, allegations of discrimination had not been effectively investigated - either not investigated at all, or not following the IPCC's guidelines.
36. From analysing the cases, and from discussions with the investigating officers, it was clear that complainants were often not contacted at the start to establish terms of reference and the scope of the investigation. Evidence-gathering was often one-sided, focusing on police evidence only. There was a lack of training in interview techniques, so that officers were not asked for more detailed information when interviewed. We also identified a number of other standard investigative practices that were not followed.
37. There is clearly a need for better support and guidance for those investigating complaints, especially when they are handled at local management level. The IPCC needs to ensure it uses its powers to direct re-investigations consistently; PSDs should examine all such directions to see what lessons need to be learned and to ensure that the re-investigation is thorough.

Learning and recommendations

38. There are 43 territorial police forces and four special police forces⁴ in England and Wales. Each force has a different structure and different ways of handling and implementing learning and recommendations that are made, either internally or externally. The IPCC is about to acquire the power to require forces to respond formally to our recommendations, and the planned expansion will give us the opportunity to change the way we interact with forces and communicate learning and recommendations. We will need to ensure that we are consistent in what we share and recommend; and we also need to be sure that there are effective mechanisms for implementing required changes.
39. We asked 39 PSDs to provide details of the mechanisms they use to share learning or recommendations. Thirty-three PSDs responded. We

⁴ British Transport Police, Civil Nuclear Constabulary, Ministry of Defence Police and the National Crime Agency

also looked at our own internal mechanisms for sharing information.

40. As expected, each PSD had a different way of sharing learning and recommendations, though there were similarities. We identified some risks: mixed messages; duplicated data entry; a lack of active auditing or monitoring. The IPCC itself needs to improve its knowledge management strategy, and link the different systems for communicating with forces.
41. A number of PSDs handled recommendations from different sources in isolation from each other, resulting in mixed messages to staff. Several forces stored data in several different locations, some of them with restricted access. Often this meant updating several systems for one matter.
42. Most of the mechanisms for auditing described to us were passive in nature – there were no obligations for the intended audience to confirm that the message had been received and understood. If auditing did occur, it was often only maintained as a result of one individual's persistent effort. Mechanisms for on-going monitoring of whether changes had in fact been implemented varied significantly between PSDs, both in terms of the seniority and personnel involved.
43. The IPCC has three routes for communicating information and learning to forces: through its casework and customer services directorate, its investigations directorate, and its Learning the Lessons bulletin. These systems are not well linked, and are supported by a number of different databases, without any overall responsibility for tracking and monitoring.
44. Ensuring positive change following complaints or investigations is critical to public confidence in policing. That is why a crucial part of the IPCC's expansion programme is to improve our analytical and knowledge management capacity, and to work effectively with other bodies, such as the College of Policing and HM Inspectorate of Constabulary, and with Police and Crime Commissioners. Forces need also to ensure that they have the capacity and capability to effectively implement learning and recommendations.

Further work

45. We have created the Oversight Digest, a publication scheme for sharing guidance and advice as a result of our oversight work.
46. Each edition will either be generated from a review of the oversight issues raised by day-to-day operational IPCC work, or by the findings of targeted projects on particular themes. Good practice in recent investigations or PSDs may feature. Editions will include practical guidance as well as case studies.
47. In addition, the *North Yorkshire Police Authority v IPCC (Jordan) 2010* judgement has been placed on the agenda of every IPCC PSD meeting.
48. The PSDs that participated in the direction and control, access, local resolution and quality of investigations projects have been sent their individual reports.
49. The detailed reports on direction and control, access, and local resolution have been published. The quality of investigations and learning and recommendations reports will be published once further work has been done.
50. The learning from these pilots will inform the IPCC's change programme, in particular in relation to knowledge management and working with others to improve practice and increase confidence in the complaints system.
51. We will consult with external stakeholders on some of the issues identified in our projects and seek their views on our work for 2014/2015.