

The Police Complaints Commission: independent from whom?

Graham Smith puts the creation of an Independent Police Complaints Commission (IPCC) under scrutiny.

When Sir Robert Mark resigned as Metropolitan Police Commissioner he gave as his reason the creation of the Police Complaints Board (PCB) under the *Police Act 1976* (Mark, 1978, ch.16). Although members of the Board had limited responsibilities for reviewing completed complaints investigations and the rarely used power to direct chief officers to initiate disciplinary proceedings, Sir Robert found it unacceptable that 'political nominees' should have a role in policing and thereby undermine the doctrine of constabulary independence. The *Police and Criminal Evidence Act 1984* tinkered with the complaints process by replacing the PCB with the Police Complaints Authority (PCA) and provided it with enhanced powers to supervise police complaints investigations. And, now, Part II of the *Police Reform Bill* (the Bill) provides for creation of an Independent Police Complaints Commission (IPCC), after research by KPMG (2000) and Liberty (Harrison and Cunneen, 2000) and a consultation exercise (Home Office, 2000).

mentioned in *Policing a New Century* is that chief officers must ensure that adequate disciplinary and complaints processes are in place before accreditation is granted to a community safety organisation (Home Office, 2001).

The IPCC represents the latest step in the gradual transfer of responsibility for the investigation of complaints to an independent body, although the expression 'non-police body' may be more appropriate. The IPCC will be a non-departmental public body with a structure similar to the PCA. Her Majesty will appoint the Chairperson, while the Home Secretary will appoint a minimum of 10 members, also being responsible for their remuneration and removal from office. In this regard the reforms do not address some of the criticisms made of the PCA by the European Court of Human Rights (*Khan v UK*). Namely, that the Home Secretary's dual responsibilities for policing and complaints render the PCA insufficiently independent and do not provide for an effective remedy for an alleged violation of rights as required

The question that looms large is – if the police are to be divested of their law enforcement responsibilities, what accountability mechanisms are going to apply in the domain of civilian policing?

The connection between Mark's concerns and the eventual creation of an independent body is important. The largest part of the *Police Reform Bill* is devoted to the structure, powers, duties and relations of the IPCC with the police services (18 out of 79 clauses and two of the eight schedules). However, Home Secretary David Blunkett's White Paper accompanying the Bill (Home Office, 2001) focuses attention on New Labour's developing crime reduction programme and 'extension of the police family'. In its entirety the Bill makes far deeper inroads into the doctrine of constabulary independence than the *Police and Magistrates' Courts Act 1994*. The Home Secretary intends taking for himself greater powers to intervene in operational matters, ease the process for removal of senior officers and grant police powers to civilians. The question that looms large is - if the police are to be divested of their law enforcement responsibilities, what accountability mechanisms are going to apply in the domain of civilian policing? All that is

by Article 13 of the *European Convention on Human Rights*. With the Home Secretary assuming greater responsibility for policing in other parts of the Bill, it is arguable that the IPCC will have less independence than the PCA, particularly in the event of a complaints investigation against an officer in a service where the Home Secretary has resorted to his interventionist powers.

Making a complaint will no longer be restricted to a person who has directly suffered as a consequence of police conduct, and complaints can be formally made to the police service concerned and non-police bodies including the IPCC and Citizens' Advice Bureaux, or through a third party. There will also be a right of appeal to the IPCC if the police decline to record a complaint. Despite some discussion at the consultation stage, the IPCC will not assume responsibility for complaints made in connection with the direction and control of police services. Chief police officers will be responsible for obtaining and preserving evidence in cases

involving officers serving under their direction and control. An apparent lacuna occurs in relation to a complaint made directly to the IPCC where the complainant does not wish the chief officer informed, and IPCC investigators do not have the necessary powers to act immediately to secure evidence at the scene. In such an event the IPCC may effectively disregard the complainant's wishes and inform the chief officer under procedures designed to allow the IPCC to refer matters relating to police conduct which are not the subject of complaints.

The IPCC will be responsible for investigating all cases involving death or serious injury and cases specified by the Home Secretary. In addition, it will have the power to call in to investigate or supervise a police investigation of a case where a complaint has not been made, and chief officers and police authorities will be able to refer cases to the IPCC if considered appropriate. The current informal resolution procedure, where complaints are not investigated, is to be renamed 'local resolution' with the complainant granted a right of appeal to the IPCC solely on grounds of failure to comply with procedure. The IPCC will determine whether its cases are to be investigated by the police service concerned (on its own behalf, or under IPCC supervision or management) or the IPCC, according to the criteria of seriousness and the public interest. The IPCC will have its own team of investigators, who will only be granted the powers of a constable for the purpose of conducting specified complaints investigations. The

IPCC will be able to make arrangements with the police services throughout the UK to second officers on a temporary basis for the purpose of investigating cases.

Complainants will be entitled to information on the progress of their complaint and the outcome, subject to a general harm test, and a right of appeal to the IPCC if dissatisfied with the completed process. Finally, the Home Secretary will draw up regulations for the handling of complaints against the IPCC. The mind boggles at the conundrum of who will investigate the police's investigators!

Although there is much to be said for the proposed new arrangements, as with previous attempts it is unlikely that the government will be able to please the police or their critics. Despite the name, the IPCC does not meet acceptable standards of independence, as a consequence of the Home Secretary's dual policing and complaints responsibilities and the decision not to grant IPCC investigators with the full panoply of police investigatory powers. As a matter of principle, those responsible for policing the police should have the same powers as the police by right, and not merely by prescription. Another problem not mentioned thus far is resource management. The police services will need to maintain their complaints and discipline departments, renamed Professional Standards Units, and, ultimately, the IPCC will be going cap in hand to the Home Secretary for every 'euro' it spends, in competition with every chief officer in the land. Taking the Police Reform Bill as a whole, it would appear that David Blunkett has managed to pull the rug from under the feet of both the police and the civil liberties lobby, and passage of his Bill through the House of Lords will attract much interest. ■

Graham Smith is a lecturer in criminology at the Department of Social Sciences, Nottingham Trent University.

References:

Harrison, J. and M. Cunneen (2000), *An Independent Police Complaints Commission*, London: Liberty.

Home Office (2000), *Complaints Against the Police: A Consultation Paper*, London: HMSO.

Home Office (2001), *Policing a New Century: A Blueprint for Reform*, Cm 5326, London: HMSO.

Khan v UK (2001), 31 E.H.R.R. 45.

KPMG (2000), *Feasibility of an Independent System for Investigating Complaints Against the Police*, London: Home Office Policing and Reducing Crime Unit, Police Research Series Paper No. 24.

Mark, Sir Robert (1978), *In the Office of Constable*, London: Collins.

**Lawyers
helping
Lawyers**
Alcohol • Drugs
Stress • Depression



LawCare

0800 279 6888

Health Support and Advice for Lawyers