

Police complaints in the reform era

Graham Smith reviews the process that led to the creation of the IPCC.

One of New Labour's first police reforms was to overhaul police disciplinary procedure. There was no need for legislation. The Home Affairs Committee (1997) looked at police discipline and complaints and recommended extensive reform of discipline and further research into complaints. The Home Secretary accepted its proposals, and new regulations enhancing police managers' disciplinary powers came into effect in April 1999. The principal concern with the complaints process was that the police investigated the police and the Police Complaints Authority's (PCA) oversight role was limited to supervising police investigations. It took the Stephen Lawrence Inquiry, two feasibility studies, much consultation, the *Police Reform Act 2002*, and another five years before the Independent Police Complaints Commission (IPCC) replaced the PCA and commenced operations in April 2004.

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far reaching change is the addition of two new types of complaints investigation – independently by IPCC investigators and IPCC managed police investigations – to the supervised and unsupervised (local) police investigations that were available under the old system. The IPCC is obliged to take responsibility for serious complaints and, under Article Two (the right to life) of the *European Convention on Human Rights*, controversial deaths in police custody should be investigated independently. There is also a fifth type of procedure for dealing with complaints. With the complainant's consent, complaints which, if substantiated, would not lead to criminal or disciplinary proceedings can be dealt with according to the local resolution process and do not require formal investigation. In addition, the *Police Reform Act* provides the IPCC with an appellate function and it can direct a police service to record a complaint, release information to a complainant, reinvestigate supervised and local investigations or recommend disciplinary action following such investigations

(IPCC 2005a).

With a team of about 80 investigators, in its first operational year the IPCC investigated 31 complaints, managed 126, and supervised 598 (IPCC 2005b). (A total of 959 appeals were heard: unfortunately figures are not yet available on outcomes.) Given the importance attributed to independent procedures as a measure of democratic and accountable policing, the IPCC's limited capacity to undertake investigations is likely to leave the new system open to criticism. As a consequence of the limited powers and resources at the IPCC's disposal, it is apparent that its investigative role is primarily symbolic. It is hoped that the IPCC's direct intervention in the cases it investigates and manages, where its investigators direct and control police investigations, along with its appellate role, will serve to encourage best practice throughout the complaints process.

Unsurprisingly, the IPCC has talked up its other statutory responsibilities and has made much of its openness and transparency in an attempt to secure support for the new system. Interpretation of its broad oversight and advisory functions – setting and monitoring of complaints standards, promoting confidence, ensuring accessibility and promoting excellence – as providing it with 'guardianship' of the system (IPCC 2005a) has been widely accepted. By innovatively packaging its wide-reaching responsibilities and promoting itself as the guardian of the complaints system, the IPCC has managed, for the time being at least, to limit criticism of its operational weaknesses. Moreover, in light of the ongoing transformation of the police under the government's reform programme, the IPCC has expanded its influence and become one of the core institutions in an increasingly complex policing network. This is due, in no small part, to the privileged position it enjoys as the central depository for data on problematic police encounters with the public, on the one hand, and the ways in which they are dealt with, on the other. It is uniquely placed to comment, and advise, on police community relations and police administration.

It is evident that the IPCC has quickly established itself as a key stakeholder in policing, something that the PCA did not manage to achieve in 18 years. However, this situation has to be understood in a police reform context and may only be temporary. The IPCC's long term prospects for success will depend largely on the operation of an improved, fair and effective complaints system and its ability to secure public confidence and trust. In order to achieve this aim, it will have to overcome the dilemma of increasing complainant satisfaction in the process

without undermining police confidence.

This task has not been made any easier by 'extension of the police family' under the reform programme and employment of community support officers and other police personnel with designated powers. The IPCC also has oversight responsibilities for complaints against these employees whose *staff* status is significantly different to that of the constable. A labyrinthine complaints and discipline system is beginning to emerge for constables who independently exercise a panoply of powers, are subject to a Code of Conduct and disciplinary regulations drafted by Parliament; staff officers who are employed by police authorities under local terms and conditions, are not subject to a code of conduct, are (broadly) subject to the ACAS employment code and are permitted to join a trade union; and contracted staff with custody and escort responsibilities who are not employed by the police authority although, in this regard, complaints against them are overseen by the IPCC. The potential for a divided police service was noted by HM Inspectorate of Constabulary in its thematic inspection on force modernisation (2004) and the IPCC seeks to guard against further disunity by urging that there should be a 'parity of outcomes' in complaints cases (2005a:16).

As the number of community support officers increases from the current level of just over 6,000 to the 2008 target of 24,000, and as they assume more frontline policing duties which are liable to lead to an increase in complaints, there is a danger that the IPCC may have to deal with some disharmony in the extended police family. Further complications may also arise

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this year when the IPCC takes on responsibility for complaints against Serious Organised Crime Agency investigators, who, if serving police officers, will have to resign from office for the duration of their employment with the Agency and perform their duties with powers designated by its Director General.

Another responsibility transferred to the IPCC, from the Home Office Research, Development and Statistics Directorate, is the collation of complaints statistics. Figures are not yet available for the IPCC's first operational year and it is expected that they will show a significant increase in the number of recorded complaints. However, it will be several years before it is possible to assess performance with any degree of accuracy. Extensive legislative reform and the drafting of the Statutory Guidance (IPCC 2005a) have required significant revision of protocols and a new range of data sets will become available, which will cause considerable interruption to analysis of complaints trends in the short term.

A particularly welcome development is the IPCC's intention to publish figures on civil actions against the police. Civil actions against the police emerged as a popular alternative remedy for police misconduct in the 1980s and 1990s and were a major catalyst for complaints reform (Smith 2006). Despite their importance, the Metropolitan Police Service is the only force which has consistently published annual statistics on civil claims and it has not been possible to obtain a comprehensive national picture. The Met has had more success defending civil

actions in recent years and reduced the number of payouts by about 75 per cent in the last five years or so (Metropolitan Police Service 2005). However, this may not be the same for other forces and the general impression is that suing the police is still popular. Soon after the IPCC's launch, the Legal Services Commission, which is responsible for granting legal aid in civil cases, consulted on funding arrangements for claims against the police and decided to revise its decision making guidance in 2005 (available at <http://www.legalservices.gov.uk>).

Arguing that an improved police complaints system has been introduced, the Commission may refuse funding to a claimant if a complaint is considered to provide a more appropriate remedy. There is no evidence to support the claim that the complaints system under the auspices of the IPCC has improved, and the speed with which access to the civil courts has been restricted is a cause for concern. At a time when the government speaks of increasing police accountability under its reform programme, it is most disturbing to discover that the availability of a mechanism which demonstrated the need for police reform in the first instance is an early casualty of that reform process.

In conclusion, much has changed since the return to office of a dynamic and reforming Labour Party in 1997. Creation of the IPCC was a core element in the first phase of the government's police reform programme and, as the scope of police reform has widened, the IPCC has quickly emerged as an established part of a new public police network. At the same time, the reform process has directly impacted on IPCC operations and it is precariously located at the hub of an increasingly complex system for the delivery of police services. It is difficult to envisage when a line will be drawn under the police reform programme, and it remains to be seen whether the IPCC, as a product of the reform process, will be able to achieve the confidence and trust of the public and the police which are so necessary for its survival.

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