



## ***Police (Complaints and Conduct) Bill***

**Bill 93 of 2012-13**

**RESEARCH PAPER 12/74** 3 December 2012

This Bill is due to go through all its Commons stages under the Fast-Track procedure on 5 December 2012. It would make two changes to the powers of the Independent Police Complaints Commission. These are designed to enable the Commission to investigate allegations against the police in relation to the Hillsborough disaster. The Bill has reportedly been welcomed by the Opposition. It extends to England and Wales, and parts of it extend to the whole UK.

Pat Strickland

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## Summary

The Independent Police Complaints Commission (IPCC) replaced the Police Complaints Authority (PCA) on 1 April 2004. The Commission is responsible for securing public confidence in the police complaints system, and its main functions are:

- Overseeing the system
- Handling appeals from people who are not satisfied with the way the police have dealt with their complaints.
- Investigating the most serious complaints and allegations of misconduct itself

This ability to carry out its own investigations is a key difference between the IPCC and the PCA. There are three kinds of matters which can be investigated under the system. These are:

- **“Complaints”** about the conduct of a person serving with the police
- **“Conduct matters”**, where no complaint has been made, but there is an indication that a police officer may have committed a criminal offence or behaved in a way which would justify disciplinary matters
- **“Death and serious injury matters”** where there has been no complaint or conduct matter, but where a person has died or sustained a serious injury following certain kinds of contact with the police.

In June 2012 the IPCC submitted evidence to the Home Affairs Committee inquiry which identified a number of possible new powers. It had previously discussed these with the Government. One of them was an additional power to compel police officers to attend interviews. Currently officers can only be required to attend if they themselves are the subject of a criminal or misconduct investigation.

On 12 September 2012, the Hillsborough Independent Panel published a report on the 1989 football stadium disaster which led to the deaths of 96 people. Amongst other things, the Panel’s report found evidence of extensive alteration of police records and attempts to “impugn the reputations of the deceased”.

In its response to the Independent Panel’s report, the IPCC noted that it was not able to investigate all aspects of the police’s conduct. This was because when the IPCC took over from the PCA, a “Transitional Provisions” Order set out that certain old cases could not be investigated under the new framework.

Consequently the *Police (Complaints and Conduct) Bill* would provide for regulations to give the Independent Police Complaints Commission two new powers:

- The first would be to require a serving police officer to attend an interview as a witness. This new power would be introduced through regulations.
- The second new power would be to set aside the relevant articles of the Transitional Provisions Order in “exceptional circumstances” so that the IPCC could investigate certain old cases where the PCA had already been involved.

The Shadow Home Secretary has reportedly welcomed the Bill, having previously called for these and other changes to be made to the police complaints system.

## 1 Introduction

The *Police (Complaints and Conduct) Bill* was introduced on 22 November 2012 and is due to have all its Commons stages under the Fast Track procedure on 5 December 2012.

The Bill would provide two new powers for the Independent Police Complaints Commission (IPCC).

The *Police Reform Act 2002* introduced IPCC with effect from April 2004. This followed concerns about its predecessor body, the Police Complaints Authority (PCA). Under the previous system, complaints were investigated by the police force in question, or by another force, and some investigations were supervised by the PCA. However, the PCA could not itself investigate complaints, and this led to criticisms that it was “the police investigating the police”. Concerns about the openness and independence of the system, as well as other problems such as failure to record complaints and delays in dealing with them, led to criticisms, particularly from the Home Affairs Committee<sup>1</sup> and the Stephen Lawrence enquiry.<sup>2</sup> Further background is provided in [Library Research Paper 02/15](#).<sup>3</sup>

Further information on the IPCC is given in Library Standard Note 2056, [The Independent Police Complaints Commission](#).

## 2 What does the Independent Police Complaints Commission do?

### 2.1 The guardianship function

The IPCC has a number of statutory functions set out in section 10 of the *Police Reform Act 2002*. For example it must:

- Make sure arrangements for the complaints system are “efficient, effective and contain and manifest an appropriate degree of independence”
- Make sure that public confidence in the system is established and maintained.<sup>4</sup>

### 2.2 Complaints and other matters

The system set out in the 2002 Act doesn’t just cover complaints. There are three different “matters” for which the IPCC must make suitable arrangements and the terminology involved is important for understanding the Bill. They are:<sup>5</sup>

- **Complaints**, where someone has actually complained about the conduct of a person serving with the police
- **“Conduct matters”**, where no complaint has been made, but there is an indication that a police officer may have committed a criminal offence or behaved in a way which would justify disciplinary matters
- **“Death and serious injury (DSI) matters”** where there has been no complaint or “conduct matter”, but where a person has died or sustained a serious injury where they were (broadly) in the care of the police.

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<sup>1</sup> Home affairs Committee, [Police Disciplinary and Complaints Procedures](#), 15 January 1998, HC 258 1997-98

<sup>2</sup> Home Office, [The Stephen Lawrence Inquiry: Report of an independent inquiry by Sir William Macpherson of Cluny](#), CM 4262-I, February 1999, p.333

<sup>3</sup> Library Research Paper 02/15, [Police Reform Bill \(HL\) \(Bill 48 of 2001-02\)](#) 14 March 2002, pp

<sup>4</sup> Section 10(1) *Police Reform Act 2002* (as amended)

<sup>5</sup> Ibid, section 10(2), *Police Reform Act 2002* (as amended)

Although the IPCC, unlike its predecessor, does have the power to investigate complaints itself, this is only used in the most serious cases; only 126 such investigations were commenced in 2011/12.<sup>6</sup>

### 2.3 How are complaints investigated?

The Act sets out a number of different ways of resolving **complaints** (as opposed to DSI or conduct matters):

- **Local resolution** to which a complainant may agree in less serious cases, such as complaints about rudeness or incivility.
- **Local investigations**, which are carried out entirely by the police.
- **Supervised investigations**, where the IPCC sets out what the investigation should look at, and receives the report, but the police actually carry out the investigation under their own direction and control
- **Managed investigations**, which are carried out by police forces under the direction and control of the IPCC
- **Independent investigations** which are carried out by the IPCC's own investigators.

A total of 52,019 allegations were finalised in total in 2011/12. 13,961 were finalised through local resolution and a further 28,510 were finalised through investigations. The remainder had other outcomes such as being withdrawn or discontinued.<sup>7</sup> Of the allegations investigated, the breakdown by investigation type was as follows:

- 28,187 were local
- 191 were supervised
- 61 were managed
- 71 were independent<sup>8</sup>

### 2.4 Changes made by the *Police Reform and Social Responsibility Act 2011*

This Act, which introduced Police and Crime Commissioners, also made changes to the police complaints system. Most of the changes came into force on 22 November 2012.<sup>9</sup> The changes include:

- Extending the system to include complaints about the direction and control of the force; previously there was a different system for complaints about these matters<sup>10</sup>
- Giving the police greater discretion to record complaints locally<sup>11</sup>

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<sup>6</sup> Home Affairs Committee, *Written evidence submitted by the Independent Police Complaints Commission*, June 2012

<sup>7</sup> Source: IPCC, *Police Complaints Information Bulletins*. Information derived from the quarterly bulletins for individual police forces for 2011-12.

<sup>8</sup> Ibid

<sup>9</sup> *Police Reform and Social Responsibility Act 2011 (Commencement No. 7 and Transitional Provisions and Commencement No. 3 and Transitional Provisions (Amendment)) Order 2012*, SI 2012/2892

<sup>10</sup> *Police Reform and Social Responsibility Act 2011*, schedule 14, paragraph 4

<sup>11</sup> Ibid, paragraph 9

- Giving the police greater discretion about dispensing with complaints,<sup>12</sup> or discontinuing investigations<sup>13</sup>
- Allowing the IPCC to recommend or direct that a police force takes action to remedy unsatisfactory performance by police officers<sup>14</sup>

## 2.5 The IPCC's appeals function

People who are not happy with the outcome of their complaint may have a right of appeal to the IPCC. Until recently this applied where:

- The police did not record the complaint
- The investigation was done by the police force itself
- The investigation was by the force but supervised by the IPCC

Once again, changes were made to the system by the *Police Reform and Social Responsibility Act 2011* to give Chief Officers the responsibility for appeals against outcomes in less serious complaints that are locally resolved. Instead of appeals being automatically made to the IPCC, they will now be made to the "relevant appeal body", which will be either the Chief Officer or the IPCC. Details of both the previous and current system can be found on the [Appeals](#) pages of the IPCC website.<sup>15</sup>

## 3 Structures, staff and resources

The IPCC provided the following summary in its June 2012 submission to the Home Affairs Committee:

The IPCC is run by a Chair, Deputy Chair and ten 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.

In 2011/12 the IPCC received a delegated budget of £34.3m. 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.<sup>16</sup>

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<sup>12</sup> Ibid, paragraph 10

<sup>13</sup> Ibid, paragraph 13

<sup>14</sup> Ibid paragraph 14

<sup>15</sup> Accessed 29 November 2012

<sup>16</sup> Home Affairs Committee, *Written evidence submitted by the Independent Police Complaints Commission*, June 2012, paragraphs 4-5

## 4 Wider debate on the future of the IPCC

The IPCC has been the subject of considerable scrutiny in recent years. In 2008 the National Audit Office noted improvements in the Commission's performance against targets, despite a significant increase in its workload. However it noted regional variations in that performance and the need for improvements in the quality assurance procedures for investigations.<sup>17</sup>

The Home Affairs Committee published a report on an inquiry into the IPCC just before the General Election in 2010.<sup>18</sup> The report noted that in 2008-09, fewer than 1% of all complaints made against the police were directly investigated by IPCC staff, so that in 99% of cases, the complaints procedure remains the "police investigating the police".<sup>19</sup> The Committee recommended that "ex-police officers should not end up investigating possible ex-colleagues in their former force".<sup>20</sup> It also noted the need for the IPCC to play a stronger role in ensuring that forces' Professional Standards Departments offer apologies more often in cases of poor service, and the need for a more "complainant-centred approach". It noted that the Commission remained "overworked" concluding: "It is clear to us that the IPCC requires reform of some kind". The Committee hoped that its successor would be able to address these issues in greater detail in the next Parliament.<sup>21</sup>

The present Government responded to the Committee's report in April 2011,<sup>22</sup> pointing to the introduction of Police and Crime Commissioners, who will have a duty to ensure that chief constables deal with complaints efficiently and effectively. The Government also pointed to measures in the *Police Reform and Social Responsibility Bill* (see section 2.4 above) to introduce greater flexibility into the handling of complaints.<sup>23</sup>

In its own response to the Committee, the IPCC agreed that "the system is too slow and bureaucratic and is not sufficiently complainant-focussed"<sup>24</sup>. The Commission pointed to its statutory guidance as one way in which it had moved towards complainant focussed investigations but said that more fundamental changes would require changes to legislation to be agreed by Parliament.

The Home Affairs Committee announced a further inquiry into the IPCC on 24 May 2012. The issues which have been raised in oral and written evidence so far have included:

- The IPCC's own assessment of its need for additional powers
- Perceived inconsistencies in decisions about which cases are suitable to be independently investigated.<sup>25</sup>
- Continuing concerns about the IPCC's employment of former officers to investigate complaints.<sup>26</sup>

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<sup>17</sup> National Audit Office, *The Independent Police Complaints Commission*, 14 November 2008

<sup>18</sup> Home Affairs Committee, *The work of the Independent Police Complaints Commission*, 7 April 2010, HC 366 2009-10

<sup>19</sup> paragraph 7

<sup>20</sup> paragraph 31

<sup>21</sup> paragraph 46

<sup>22</sup> *The work of the Independent Police Complaints Commission :the Government reply to the Eleventh Report from the Home Affairs Committee session 2009-10*, Cm 8056, April 2011

<sup>23</sup> Police Reform and Social Responsibility Act 2012, schedule 14

<sup>24</sup> "The IPCC notes the report of the Home Affairs Select Committee into the work of the IPCC that was published today", *IPCC Press Release*, 7 April 2010

<sup>25</sup> Home Affairs Committee, *Written Evidence submitted by the Police Superintendents Association of England and Wales*, June 2012

- Concerns about an alleged reluctance of the Commission to decide that officers should be interviewed under either criminal or misconduct caution in death or serious injury cases, and delays in interviewing them.<sup>27</sup>

Dame Anne Owers, who was appointed chair of the IPCC in February 2012, addressed this last issue in her *John Harris Memorial Lecture* in July 2012,<sup>28</sup> arguing that the police's legal powers to use lethal force in certain circumstances meant that "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." However she acknowledged that there was "an argument to be had about the right threshold for invoking it".

David Lammy MP was reported by the *North London Journal* as calling for the IPCC to be given a "complete overhaul" after it was revealed that the officers involved in the fatal shooting of Mark Duggan refused to be interviewed and the Commission had no power to force them to attend.<sup>29</sup> Mr Lammy also reportedly criticised the IPCC "for leaving the family of Mark Duggan 'floundering' and for failing to robustly communicate their independence after his death."<sup>30</sup> The *Independent* reported that the IPCC was "extremely frustrated by obstacles preventing officers being more transparent with relatives" in the Mark Duggan case, and calling for changes to the law.<sup>31</sup>

At their conference in September 2012, the Liberal Democrats passed a motion entitled "Empowering the IPCC" calling for a "wider and more robust mandate" for the Commission. They suggest that the IPCC's remit should be expanded to cover private security contractors working for police and custody services.<sup>32</sup> Currently contracted out staff performing roles other than detention or escort officers do not fall within the IPCC's remit.

In December 2011, Labour announced a new Independent Commission on the Future of Policing to be chaired by Lord Stevens.<sup>33</sup> At the Labour Party Conference, on 3 October 2012, Yvette Cooper called for the IPCC to be abolished and replaced by a Police Standards Authority "to raise standards, pursue powerful investigations and ensure there are proper safeguards in place".<sup>34</sup> She cited high profile cases such as the Hillsborough cover-up, delays to the investigations of the death of Ian Tomlinson at the G20 protests and allegations of phone hacking and issues arising in undercover policing. Lord Stevens' Commission is expected to report in spring 2013.<sup>35</sup>

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<sup>26</sup> See for example the Uncorrected Transcript of the oral evidence of Doreen Lawrence, whose son Stephen was murdered in 1993, Home Affairs Committee, *Oral Evidence taken before the Home Affairs Committee, Independent Police Complaints Commission*, 14 July 2012

<sup>27</sup> See for example Home Affairs Committee, *Written Evidence submitted by the Police Action Lawyers Group*, July 2012

<sup>28</sup> Dame Anne Owers, *Independent oversight of police complaints: the IPCC eight years on*, John Harris Memorial Lecture, 3 July 2012

<sup>29</sup> "Officers involved in Mark Duggan shooting refuse to be interviewed", *North London Journal*, 3 May 2012

<sup>30</sup> "MP hits out at IPCC for leaving Mark Duggan's family 'floundering'", *Guardian*, 8 September 2012

<sup>31</sup> "IPCC urges shootings law change", *Independent*, 29 March 2012

<sup>32</sup> "We need an expanded and more robust IPCC mandate", Liberal Democrats, Sunday 23 September 2012

<sup>33</sup> *The Independent Commission on the Future of Policing*, Labour Party, 6 December 2011

<sup>34</sup> *Yvette Cooper's speech to Labour Party Annual Conference 2012*, 3 October 2012

<sup>35</sup> "Labour announce plans to replace police complaints commission", *The Guardian*, 3 October 2012

## 5 Why is the Bill necessary?

The IPCC has identified a number of additional powers which it considers necessary and which would require primary legislation.<sup>36</sup> It has discussed these with the Government and listed a number of them in evidence to the Home Affairs Committee in June 2012. The IPCC also raised another problematic limitation in its powers in its response to the recent report of the Hillsborough Independent Panel. The purpose of the Bill is to give the IPCC two new powers which are considered necessary for it to carry out its investigation into the police conduct with regard to the Hillsborough disaster.

### 5.1 The report of the Hillsborough Independent Panel

On 12 September 2012, the Hillsborough Independent Panel published its report on the tragic events which took place on 15 April 1989 when 96 people lost their lives in a crush at Hillsborough Stadium.<sup>37</sup> The report raised questions about possible culpability for the deaths and also other issues which might amount to misconduct on the part of police officers such as perverting the course of justice. The Prime Minister, David Cameron, made a statement on the same day which set out some of the issues:

First, there is new evidence about how the authorities failed. There is a trail of new documents which show the extent to which the safety of the crowd at Hillsborough was “compromised at every level”. The ground failed to meet minimum standards and the “deficiencies were well known”. The turnstiles were inadequate. The ground capacity had been significantly over-calculated. The crush barriers failed to meet safety standards, and there had been a crush at exactly the same match the year before. Today’s report shows clearly that lessons had not been learned.

The report backs up again the key finding of the Taylor report on police failure, but it goes further by revealing for the first time the shortcomings of the ambulance and emergency services’ response. The major incident plan was not fully implemented; rescue attempts were held back by failures of leadership and co-ordination; and, significantly, new documents today show that there was a delay from the emergency services when people were being crushed and being killed.

Secondly, the families have long believed that some of the authorities attempted to create a completely unjust account of events that sought to blame the fans for what happened. The families were right. The evidence in today’s report includes briefings to the media and attempts by the police to change the record of events. On the media, several newspapers reported false allegations that fans were drunk and violent and stole from the dead.

The Sun’s report sensationalised these allegations under a banner headline “The Truth”. This was clearly wrong and caused huge offence, distress and hurt. News International has co-operated with the panel and, for the first time, today’s report reveals that the source for these despicable untruths was a Sheffield news agency reporting conversations with South Yorkshire police and Irvine Patnick, the then MP for Sheffield Hallam.

The report finds that this was part of police efforts “to develop and publicise a version of events that focused on...allegations of drunkenness, ticketlessness and violence”.

In terms of changing the record of events, we already know that police reports were significantly altered, but the full extent was not drawn to Lord Justice Taylor’s attention.

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<sup>36</sup> Home Affairs Committee, *Written evidence submitted by the Independent Police Complaints Commission*, June 2012, paragraphs 17-20

<sup>37</sup> *Report of the Hillsborough Independent Panel*, HC 581 2012-13, 12 September 2012

Today's report finds that 164 statements were significantly amended, and that 116 explicitly removed negative comments about the policing operation, including its lack of leadership.

The report also makes important findings about particular actions taken by the police and coroner while investigating the deaths. There is new evidence which shows that police officers carried out police national computer checks on those who had died, in an attempt, and I quote directly from the report,

“to impugn the reputations of the deceased”.

The coroner took blood alcohol levels from all of the deceased, including children. The panel finds no rationale whatsoever for what it regards as an “exceptional” decision. The report states clearly that the attempt of the inquest to draw a link between blood alcohol and late arrival was “fundamentally flawed”, and that alcohol consumption was

“unremarkable and not exceptional for a social or leisure occasion”.

Over all these years, questions have been raised about the role of the Government, including whether they did enough to uncover the truth. It is certainly true that some of the language in the Government papers published today was insensitive, but, having been through every document—and every Government document including Cabinet minutes will be published—the panel found no evidence of any Government trying to conceal the truth. At the time of the Taylor report, the then Prime Minister was briefed by her private secretary that the defensive and “close to deceitful” behaviour of senior South Yorkshire officers was “depressingly familiar”. It is clear that the then Government thought it right that the chief constable of South Yorkshire should resign. But, as the right hon. Member for Leigh has rightly highlighted, Governments then and since have simply not done enough to challenge publicly the unjust and untrue narrative that sought to blame the fans.<sup>38</sup>

South Yorkshire Police contacted the IPCC on the same day and, following advice, referred the matter to the IPCC on 2 October 2012.

## 5.2 The IPCC's response

The IPCC published its decision in response to the Panel's report on 12 October 2012 setting out the potential misconduct which had been disclosed.<sup>39</sup>

13. The report itself makes no direct allegations against any individual or institution. It sets out a series of disclosures, backed by documents, which raise serious and troubling questions about the actions of many parties, individuals and institutions, both in the public sector and outside it. Some of the disclosures raise potential criminal offences. Others may amount to misconduct that falls short of criminality. Many of the areas covered in the report have been investigated before, and the disclosures raise questions about both the thoroughness of those investigations and the conclusions that were reached.

14. The potential criminal and misconduct issues disclosed by the report fall into two broad categories:

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<sup>38</sup> [HC Deb 12 September 2012 c282-306](#)

<sup>39</sup> IPCC, *Decision in response to the report of the Hillsborough Independent Panel*, October 2012. See also IPCC Press Release, *IPCC announces decision in response to Hillsborough Independent Panel's report*, 12 October 2012

- Allegations that go to the heart of what happened at Hillsborough on 15 April 1989, that individuals or institutions may be culpable for the deaths;
- Allegations about what happened after the disaster, including that evidence was fabricated and misinformation was spread in an attempt to avoid blame.

The decision document set out a large number of matters which the IPCC proposed to investigate. However, it noted the fact that it was “legally prevented” from looking at some matters which had previously been investigated under the supervision of the Police Complaints Authority.

### ***Investigating old cases***

The *Independent Police Complaints Commission (Transitional Provision) Order*<sup>40</sup> provides that where an investigation into a complaint had already started before 1 April 2004, then that complaint would be handled under the Police Complaints Authority legal framework, so that the IPCC would not be able to investigate it.<sup>41</sup> It also provides that any complaint received after 1 April 2004 about conduct that occurred before that date would not be covered by the new law.<sup>42</sup> Furthermore, forces cannot record complaints or other matters if they have previously been the subject of an investigation or were otherwise dealt with under the previous legislation.<sup>43</sup>

Two paragraphs in the IPCC’s decision document make reference to the effect of this in relation to the Commission’s ability to investigate police conduct with respect to Hillsborough:

40. The following examples are set out in the report:

- the early lie by Chief Superintendent Duckenfield about the gate being forced open, which was corrected by the Chief Constable that evening. This was investigated by the West Midlands Police under the supervision of our predecessor, the Police Complaints Authority. As such, while the IPCC deplores such dishonesty, **we are legally prevented from investigating this issue further, and it therefore will not be investigated;**

(...)

52. The referral for manslaughter needs to be considered in the context of the previous decision not to bring prosecutions, the involvement of our predecessor, the Police Complaints Authority, and the decision-making processes of other relevant bodies. We note the Director of Public Prosecution’s intention to review the documentation now available, and the Attorney General’s consideration of whether to seek a quashing of the original inquest, to allow new inquests to take place. We will, therefore, liaise with the Director of Public Prosecutions, and will work with him and any Coroner appointed, to carry out any further investigation that may be required, either before or after any new inquests are held. **We will take advice on any legal limitations that may be presented by the prior involvement of the Police Complaints Authority or our lack of jurisdiction over other bodies, and identify the appropriate body to investigate any individual or entity we cannot.**<sup>44</sup>

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<sup>40</sup> [SI 2004/671](#), as amended by the [Independent Police Complaints Commission \(Transitional Provisions\) \(Amendment\) Order 2004](#) SI 2004/1092

<sup>41</sup> Article 2

<sup>42</sup> Article 3

<sup>43</sup> Article 4

<sup>44</sup> IPCC, [Decision in response to the report of the Hillsborough Independent Panel](#), October 2012, p10 and p13

### **Requiring officers to attend interviews**

Schedule 3 of the *Police Reform Act 2002* sets out the procedures for investigating complaints, “conduct matters” and “death and serious injury matters”. These were explained in section 4.2 above, but in brief, a “conduct matter” is where there has been no complaint but it appears that criminal or disciplinary proceedings would be justified, and a DSI matter is (broadly speaking) one where a person has died or been seriously injured in the care of the police.

Part 2 of Schedule 3 covers the handling of conduct matters, and this sets out “special procedures” where there is an indication that a serving officer may have committed a criminal offence or “behaved in a manner which would justify the bringing of disciplinary proceedings.”<sup>45</sup> In particular, paragraph 19D provides for regulations to determine how the interview will be conducted. The relevant regulations require the officer in question to attend the interview.<sup>46</sup> There is no power to compel the officer to answer questions – they have the right to remain silent or answer with “no comment”.

The result is that only those officers who are suspected of criminality or misconduct can be compelled to attend an interview; there is no equivalent power to compel officers who may be a witness to a matter under investigation to do so.

The IPCC set out its thoughts on this issue in its evidence to the Home Affairs Committee in June 2012:<sup>47</sup>

#### **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.

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<sup>45</sup> Paragraphs 19A to 19E of Schedule 3 of the *Police Reform Act 2002*, as inserted by schedule 23 of the *Criminal Justice and Immigration Act 2008*

<sup>46</sup> Now contained in regulation 19(7) of the *Police (Complaints and Misconduct) Regulations 2012* SI 2012/1204. Previously in regulation 14D7) of the *Police (Complaints and Misconduct) Regulations 2004* (SI 2004/643) (as amended).

<sup>47</sup> Home Affairs Committee, *Written evidence submitted by the Independent Police Complaints Commission*, June 2012

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.

## 6 Introducing the new powers

The *Guardian* published a report on 21 October 2012 which said that Labour would be demanding emergency legislation to strengthen the IPCC's powers:

Labour will tomorrow demand emergency legislation to compel serving and retired police officers to appear before the Hillsborough inquiry amid doubts that it lacks the necessary power to fully investigate the cover-up into the deaths of 96 Liverpool fans.<sup>48</sup>

The Home Secretary, Theresa May, made a statement to the Commons the following day when the IPCC published its decision document on Hillsborough:<sup>49</sup>

As I have previously said, I remain committed to ensuring that the IPCC has all the powers and resources it needs to carry out its investigations thoroughly, transparently and exhaustively. The Government are already looking at what additional powers the IPCC will need, which includes proposals to require current and ex-police officers who may be witness to a crime to attend an interview, and whether this might require fast-track legislation. I therefore welcome what the shadow Home Secretary set out at the weekend about the opportunity for us to sit down and discuss the proposals, and to see whether fast-track legislation is the right way forward—I think my office has already been in touch with hers to try to get a suitable date in mind.<sup>50</sup>

The shadow Home Secretary, Yvette Cooper, was reported as welcoming the legislation.<sup>51</sup>

The Bill's [Explanatory Notes](#) make it clear the Opposition and others have seen the Bill before it was published:<sup>52</sup>

A draft of the Bill was sent to the Shadow Home Secretary, the Chair of the Home Affairs Select Committee, the Shadow Home Affairs spokesperson in the House of Lords and the Convenor of Crossbench Peers on 16 November 2012.

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<sup>48</sup> ["Hillsborough: Labour calls for police officers to be forced to give evidence"](#), *Guardian*, 21 October 2012

<sup>49</sup> [HC Deb 22 October 2012 c719-804](#)

<sup>50</sup> [HC Deb 22 October 2012 c721](#)

<sup>51</sup> see for example "New powers will ensure officers give evidence", *Liverpool Echo*, 23 October 2012

<sup>52</sup> [Police \(Complaints and Conduct\) Bill Explanatory Notes](#) Bill 93-EN, 22 November 2012

## 7 Why the Fast Track procedure?

Library Standard Note 5256, *Fast Track Legislation*, explains the improvements to emergency legislation procedure which were recommended by the House of Lords Constitution Committee. In keeping with these recommendations, the *Explanatory Notes* set out in some detail why this procedure is considered appropriate in this case. The main reasons, in brief, are:

- The fact that the Hillsborough investigations are already underway, so that the new powers are urgently needed
- The fact that the Shadow Home Secretary, the Chair of the Home Affairs Committee, the Lords Shadow Home Affairs Spokesperson and the Convenor of Crossbench Peers have already seen a draft of the Bill
- The fact that the Home Affairs Committee is currently investigating the IPCC, so that this inquiry will afford further Parliamentary scrutiny of the issues

## 8 The Bill

**Clause 1** of the Bill would insert a new regulation-making power into schedule 3 of the *Police Reform Act 2002*. The new paragraph 19F sets out a non-exhaustive list of what the regulations may contain including “requiring a serving officer to attend an interview”. The *Explanatory Notes* set out that, even though no sanctions are provided for in the Bill, they would be available:

Although the Police (Complaints and Misconduct) Regulations 2012 contain no express sanction in relation to a failure to comply with the requirement, an effective sanction is available by virtue of the Police (Conduct) Regulations 2012. These Regulations provide that misconduct means a breach of the standards of behaviour which are set out in Schedule 2 to these Regulations. A failure to attend an interview in breach of a statutory duty is considered to be a breach of one or more of the standards of behaviour listed in the Schedule, for example Duties and Responsibilities. In a case where the chief officer has issued a standing or specific order in relation to this matter, that failure to comply would also be a breach of the Orders and Instructions behaviour. Therefore, the sanction for failure to comply with a requirement to attend for interview is (or is potentially) that the officer in question becomes the subject of misconduct proceedings.<sup>53</sup>

**Clause 2** is designed to enable the IPCC to investigate kinds of old cases which it cannot currently under articles 2, 3 and 4 of the *Independent Police Complaints Commission (Transitional Provision) Order*<sup>54</sup> (see section 7.3 above) if it considers there are “exceptional circumstances”.

**Clause 3** deals with extent and commencement. The Bill would extend to England and Wales, and some parts would also extend to Scotland and Northern Ireland. This is because, whilst the IPCC only covers territorial police forces in England and Wales, its remit

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<sup>53</sup> paragraph 36

<sup>54</sup> SI 2004/671, as amended by the *Independent Police Complaints Commission (Transitional Provisions) (Amendment) Order 2004* SI 2004/1092

also extends to UK wide bodies such as the Ministry of Defence police<sup>55</sup> and the Serious Organised Crime Agency.<sup>56</sup>

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<sup>55</sup> Section 26, *Police Reform Act 2002* (as amended)

<sup>56</sup> Ibid, section 26A. The National Crime Agency is due to replace the Serious Organised Crime Agency under provisions in the [Crime and Courts Bill 2012-13](#), which at the time of writing is nearing the end of its progress through the Lords before being introduced in the Commons.