



Home Office review of investigatory arrangements which follow police use of force and police driving related incidents

Summary of IOPC submission

Executive summary

1. We welcome the opportunity to provide input to this review. Given the limited timeframe to provide a response, we have focused on areas of the terms of reference that link most closely to our work and provided as much detail as possible. We would be happy to have further discussions and provide additional information.
2. Police in England and Wales are given considerable powers to protect the public and tackle crime. This includes the power to use force, including lethal force and the ability to drive vehicles outside the rules that apply to other road users. We know that public confidence in policing relies, in part, on robust arrangements for police accountability. The public expect there to be honesty, transparency, and justice when things go wrong and in the most serious cases, they expect independence in this scrutiny.
3. The IOPC has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales and to ensure that it is efficient and effective. We also investigate the most serious and sensitive cases. Our independence assists the state to comply with its duties under Articles 2 and 3 of the European Convention on Human Rights and to maintain public confidence in policing.
4. In her review of the Metropolitan Police Service, Dame Louise Casey considers the importance of policing by consent, including that “*Consent is not unconditional. It relies on the police operating with integrity and with accountability*” and that “*if the Peelian principles are implemented effectively there is little or no need for use of force or compulsion. Conversely, if the principles are not being observed, public co-operation reduces, crime increases and greater force and compulsion are used, creating a negative cycle.*”
5. Good governance and accountability are vital ingredients which contribute to British policing rightly being seen as world-class. They also support public confidence in, and support for, police use of these powers. Rigorous independent scrutiny is not a threat: it is a protection, but we know that accountability and scrutiny can feel deeply uncomfortable for the individuals and organisations involved. It is vital we get the balance right.
6. We are concerned that there remains a persistent narrative within some parts of policing that IOPC decision-making is politically motivated, that we are seeking to prosecute officers and are ‘out to get them’. The facts do not support this.
7. In the majority of our cases, officers are treated as witnesses throughout and when they are subjects, we are more likely to find an outcome of learning or performance improvement, rather than a case to answer for misconduct. Fewer than 1% of officers were subjects of IOPC investigations in 2022-2023. There are

233,832 police officers and staff members in England and Wales. Of these, 231 individuals were the subject of an independent investigation in 2022/23, 107 were determined to have a case to answer for misconduct or gross misconduct, 58 police officers and staff were interviewed under criminal caution; of these, 32 (55 per cent) were referred to CPS for a charging decision.

8. Fatal police shootings are thankfully very rare, and it is equally rare for the firearms officers involved to be subject to criminal or misconduct investigation.
9. Of the last ten fatal police shootings where investigations are complete, two involved officers being investigated for potential misconduct relating to the use of force, and one met the test for criminal investigation. In all others, the principal firearms officer was treated as a witness throughout the investigation.
10. In contrast, particularly in cases where a person has lost their life as a result of use of force or police driving, members of the public will often struggle to understand why officers are not immediately arrested and why officers are not charged more frequently.
11. The government-commissioned Angiolini review of deaths and serious injuries in custody stated that, *'From the perspective of many families who gave evidence to this review there has been a longstanding failure by authorities to hold the police accountable for their mistakes or wrongdoing. There is a very strong perception that police sit above the law, and that a different set of rules apply to them.'*
12. This review provides an opportunity to examine the balance between the need to ensure that officers are confident to use their powers where appropriate and the accountability mechanisms that are a vital part of an effective police service that engenders public confidence.
13. We note that the Home Office has already received input from policing for this review and is likely to receive more. Within our submission we have reflected some of the concerns we hear from both policing and the public, but as an independent body we cannot advocate on behalf of either. We would like to highlight the importance of ensuring that this review is informed by a range of opinions to ensure that the voice of complainants and bereaved families is also reflected in considerations.

The current system and suggestions for improvement

14. This review follows concerns raised by policing about the police accountability system, described by the Metropolitan Police Commissioner as '*a system not set up to help officers succeed*'. We apply the legislative framework set out in the Police Reform Act 2002, but as covered in our evidence to the Home Affairs Select Committee, the current system and legislative framework can be frustrating for us, as well as for the police. Our research demonstrates that it is not meeting the needs of the public either, with only 32% now confident that the police deal with complaints fairly.
15. Officers must have confidence that they will not be investigated unnecessarily, and we are aware of the impact that a lengthy wait for an outcome can have, both on police officers and injured or bereaved parties. We have made considerable progress on improving the timeliness of our investigations. In our first five years of operation, we completed over 2,600 investigations with 90% of core investigations now completed in 12 months. However, our investigation is often not the end of the process, and we have raised the need for improvements in timeliness across the system many times. While we prioritise cases as much as we can within current resources, delays can occur owing to processes outside of our control. Proceedings which follow our investigations can take years to conclude.
16. We have also raised concerns that the system can be adversarial with too little focus on learning and performance improvement to raise the standards of policing. The system is far too complex, with three sets of regulations running to over 400 pages and over 500 pages of statutory guidance which practitioners must adhere to. We believe this complexity does not support timely and efficient investigation, rather it creates an environment of delay, legal challenge and a lack of clarity for all involved.
17. We remain of the view that it is time to consider more fundamental reform and that a move towards a '*fitness to practise model*', should be considered. Such a model would ensure only those who meet and maintain the high standards the public expect can enter and stay in the police service. It would create a clear set of national standards for all officers and ensure a focus on professional development to support officers to maintain their accreditation throughout their career. It would also separate employment matters, allowing police chiefs to appoint and dismiss officers they employ without delay. In contrast to most professions, these functions are conflated in policing, which we believe is at the root of some of the concerns now being articulated.
18. Although we believe it may be limited, further improvement is possible within the current system. We make the following suggestions mindful of the current issues which we have raised many times and of the need to ensure that changes should not reduce, or appear to reduce, police accountability, particularly in cases where they may have caused death or serious injury. In this submission we have

identified the following changes to legislation and guidance which we believe could improve timeliness, effectiveness and public and police confidence:

- Amending in law, the definition of a ‘conduct matter’ so that officers are only investigated for criminal offences if there are *reasonable grounds* for suspecting they have committed an offence (as distinct from the current test which is based on an *indication* they may have done so).
 - This would change the test the IOPC (and police professional standards departments) are required to apply when deciding to start a criminal investigation. The test of *reasonable grounds* is the same test applied for members of the public. In practice, this would likely mean fewer criminal investigations are commenced (noting that only 15% of IOPC investigations are currently criminal). It is also likely to mean that the IOPC will, more often, be able to ‘withdraw’ a notice of criminal investigation because the evidence no longer supports this higher bar.
- Repealing the restrictions on the IOPC being able to refer cases to the CPS or to bring disciplinary hearings, without completing the final report. This is a change the IOPC has been requesting for some time and would reduce the length of time an officer is under criminal suspicion. This will mean that in some cases proceedings can be brought more quickly and in others that officers will know earlier that they are not going to be charged.
- Considering whether legislation should be changed to create a higher threshold before a referral is made to CPS at the end of an IOPC investigation so that a referral is made only where there is more likely than not to be a conviction. This would reduce referrals to the CPS, although it would increase the likelihood of complainants and families challenging IOPC decisions through our Victims’ Right to Review (VRR) process. If the threshold is changed, it may help public confidence if this is balanced by the IOPC VRR process being placed on a statutory footing.
- Removing delays in being able to arrange police *witness* interviews and accounts, by making it clear in Home Office Guidance and in the Code of Ethics that witness accounts should not unreasonably be delayed on account of seeking representation, to which there is no legal right. This could improve timeliness of investigations and is in line with the intent of the proposed duty of candour for police officers.
- Bringing into effect powers, already enacted, that would allow IOPC investigators to seize and retain evidence in a non-criminal investigation into misconduct and/or a death or serious injury case. In the absence of being able to use these powers lengthy negotiation is sometimes necessary and evidence pointing to or away from misconduct may be lost.
- Changing the regulations so that in cases where we have directed disciplinary proceedings, the IOPC, rather than the Appropriate Authority, makes the decision of whether to suspend those proceedings until any criminal

proceedings are complete. As the investigator and the body referring to the CPS, the IOPC is better placed to determine if there would be any prejudice. We believe this would result in suspension occurring less often, in line with current guidance and speed up the overall process.

- Changing Home Office Guidance to encourage the use of accelerated proceedings in cases where there is video and documentary evidence sufficient to prove the charges. This would remove the delay in obtaining further evidence.
- Considering whether there is a way to balance the legislative requirements for investigation updates with the need for them to be meaningful and good quality.

19. Additionally, there are areas where we believe that we, the police and/or our other partner agencies can work to remove barriers to timely and effective investigations and improve the confidence of officers and others in our work. These include:

- The Home Office working with the pathologists to ensure their reports are provided to investigations in a timely manner. Investigations involving deaths are often delayed on account of waiting for them.
- Improving arrangements between the IOPC and the NPCC to remove delay in the provision of reports from police subject matter experts. These reports are very often required in cases involving driving and the use of force to explain the training on tactics used and whether they have been applied correctly.
- The IOPC ensuring that key police witnesses in an IOPC Death or Serious Injury investigation (who may be concerned that they will become subjects in the investigation) are updated regularly on progress (as victims, their families and subject officers would be).
- Taking forward our work with the CPS to update our MOU, building on the introduction of URNs so that we can both access data on case progression from JOINT and to use it to improve timeliness.
- Over the next 12 months, working with the NPCC lead for Roads Policing, and CPS to review how the amendments to road traffic law, to take account of police driver expertise in considering offence of dangerous and careless driving are working in practice. This will include considering whether police drivers may be likely to be found guilty of dangerous or careless driving when a non-police driver would not and whether poor performance which would not be an offence under previous legislation is criminalised.
- The Home Office working with staff associations to ensure that where legal advice is being provided to officers, this can be done quickly and avoid delay

to investigations. The Home Office may also wish to consider whether time limits for the provision of witness accounts (unless there are exceptional circumstances) would help speed up investigations.

- Working with forces and the NPCC to make sure there is a better understanding of the legal requirements on forces to provide unredacted material to the IOPC for its investigation, including in cases where anonymity for officers may be sought whilst also providing reassurance that such material will be handled securely. This should remove delays caused by forces wishing to redact or pixelate material before it is provided to the IOPC.
- Working with the College of Policing, forces and the NPCC so that there is sufficient refresher training for police officers and staff that they are aware of changes to guidance, case law and legislation that affect how they use their powers.
- Working with the College of Policing and forces to ensure inductions for police officers and staff cover the role of the IOPC and Code of Ethics, explaining their importance in supporting and improving policing.
- Considering how the IOPC can expand its direct engagement with police officers (particularly those in roles such as firearms officers) to build understanding, trust and confidence in our role and the complaints system.
- Progressing the IOPC's move to the College of Policing's Professional Investigating Programme accreditation for its investigators. This will mean that the experience and competencies of IOPC investigators will become directly comparable to those of the police and should remove any (in our view misplaced) concerns about the quality of training of our investigators.
- Working with the NPCC to remove delays in senior officer cases where forces wish to find an out of force officer to perform the role of appropriate authority.
- The Home Office reviewing the leaflet for family members explaining what happens after a death in custody to consider whether this could be adapted or something similar developed for other deaths, including those involving police driving.
- The Home Office considering whether support can be put in place (for example an advocacy scheme) for complainants so that they can navigate a complex system and reduce any real or perceived power imbalance.
- The Home Office, NPCC, IOPC and other partners working to increase public awareness of the powers available to police and accountability mechanisms to provide reassurance and increase public confidence.

- The IOPC continuing our efficiency and productivity programme to identify and act on opportunities to further improve our work and its timeliness.

20. A key part of the misconduct system is that where proceedings are held, they are able to consider whether a person is suitable to serve as a police officer or whether their conduct was such that they should be removed from the service. For this reason, we strongly support the ruling of the Supreme Court which found that the legal test concerning the use of force in self-defence in misconduct proceedings is the civil law test. We do not believe that there should be any change to this. This supports an assessment of whether an officer has exercised reasonable judgment within all the circumstances.

We would be happy to provide any further information that would support the Home Office in carrying out this review and to discuss any proposals that emerge from it.

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