

APPENDIX 5

To accompany statement by IPCC Deputy Chair,
Deborah Glass

ipcc
independent
police complaints
commission

Building on experience

Taking stock
of the new
police complaints
system after
four years
operational
experience

A consultation document for information and comment

Independent Police Complaints Commission **Building on experience**

During 2007 and 2008 the Independent Police Complaints Commission (IPCC) carried out a Stock Take of the police complaints system. The IPCC Advisory Board, which comprises representatives of all the IPCC's major stakeholders, was central to this process – from identifying the broad shifts that the Stock Take should try to promote in the police complaints system, to developing proposals for how these changes might happen in practice. The product of the Stock Take, as agreed by the IPCC Commission, is captured within this consultation document.

This document describes how the system is currently performing. It identifies where there is consensus for change, and shows how wider policing reforms (especially the introduction of the new police performance and conduct systems and the recommendations arising from Sir Ronnie Flanagan's Review of the Police Service) provide a real opportunity for continued improvement in the complaints system. It sets out ten practical, evidence-based proposals for change, and concludes by setting out the steps necessary to take the proposals forward.

This consultation invites comment on:

- 1 the analysis of what works well and what does not work so well in the current system
- 2 the ten main proposals and how far they address what does not work so well in the current system.

More specific consultation questions are listed under **Annex A**.

You can let us know what you think by:

emailing: stocktake@ipcc.gsi.gov.uk

writing to: Stock Take Consultation, 90 High Holborn, London, WC1V 6BH

The consultation will run from 23 June until 12 September 2008.

Contents

1.	Introduction	5
2.	Context – drivers for change	6
	2.1 Performance of the current system	6
	2.2 Public perceptions	8
	2.3 The case for change	10
3.	The Stock Take	14
4.	Stock Take proposals	16
5.	Initiatives already underway	17
6.	The ten Stock Take proposals	18
7.	Next steps	39
	Annex A: Consultation questions	40
	Annex B: Flow chart of the current police complaints system (2006/07)	41
	Annex C: Advisory Board members	42
	Annex D: The Stock Take process	43
	Annex E: Initiatives already underway	44

1 Introduction

- 1.1 Calls for an independent police complaints system go back a decade or more. The legislation establishing the current police complaints system was passed in 2002 and the system has now been operational for more than four years. It is therefore some time since the aspirations for an independent police complaints system were first set out. The purpose of the Stock Take was to check how well the system is delivering against the original aspirations, to check if the original aspirations are still appropriate in the current environment, and to continue to improve the system based on evidence and learning from the last four years of operation.

2 Context – drivers for change

2.1 Performance of the current system

2.1.1 In the 1990s and early 2000s the police complaints system came under intense scrutiny. There were strong calls, most notably arising from the Stephen Lawrence Inquiry, for a fundamental shake up of the system in existence at that time. The Lawrence Inquiry, and a subsequent Home Affairs Committee report, described a complaints system that lacked independence and openness and, as a consequence, lacked the confidence of the public. The Government responded to these serious concerns through a series of independent studies and a public consultation exercise, which led to the introduction of the Police Reform Act (PRA) 2002. This Act brought about fundamental change to the complaints system.

2.1.2 The defining aim of the PRA 2002 was to increase public confidence in the police complaints system and, ultimately, the police service as a whole. In order to do this, the Act introduced the Independent Police Complaints Commission (IPCC), which was to have overall responsibility for increasing public confidence in the complaints system.

2.1.3 In addition, and to complement the establishment of the IPCC, the PRA 2002 introduced the following changes:

- Powers for the IPCC to investigate cases independently
- A ‘guardianship’ role for the IPCC, including, powers to set and inspect standards for complaint handling and a power to promote the operational learning arising from the complaints system
- Appeal rights
- An extension of the definition of those who can make a complaint
- A duty to keep interested parties informed
- Replacement of Informal Resolution with Local Resolution, which was intended to improve the process for resolving complaints without formal investigation.

Powers to independently investigate

2.1.4 These changes have now been in place since April 2004. In 2007/08, 497 investigations were started which were either investigated directly by the IPCC or had some external oversight (100 independent, 152 managed and 245 supervised). This compares with 388 cases that had some limited external oversight (supervised) in 2003/04 under the previous system. On

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average an independent investigation carried out by the IPCC takes 172 days, which is similar to the length of time that supervised investigations took under the previous system.

IPCC guardianship

- 2.1.5 In 2005, the IPCC published Statutory Guidance, which has provided a framework of standards against which the complaints system should operate. The IPCC has also produced a range of well-received research reports and several Learning the Lessons bulletins. These publications provide a means to share the learning and experiences arising from our work.

Appeals

- 2.1.6 In the four years since the new system was introduced in 2004, the IPCC has considered 10,979 appeals. In 2006/07 the IPCC considered 2,996 valid appeals. Of these, 1,838 were appeals against the outcome of a police investigation. This means that just under a quarter of police investigations¹ in 2006/07 resulted in an appeal to the IPCC. Under the previous system all police investigations were reviewed by the IPCC's predecessor organisation – this review was a mandatory function as opposed to being instigated by a complainant, as happens with appeals in the current system. The fact that a high proportion of police investigations do not result in appeal to the IPCC could indicate confidence in the way that the police handle investigations into complaints. However, it is necessary to be cautious about this interpretation because other evidence suggests a lack of confidence in the way that complaints are handled (see Section 2.2 on what the public think). The IPCC now completes 87 per cent of non-recording and Local Resolution appeals and 55 per cent of investigation appeals within 25 working days.

Greater accessibility

- 2.1.7 Since the introduction of the new system the number of complaints recorded in a year has almost doubled. In 2006/07 28,998 complaints were recorded. This compares with 15,855 in 2003/04, which was the last year of the previous system. The likely causes of this increase include the extension of the regulations about who can make a complaint (to include third parties or representatives of a complainant), greater awareness of the new system (in the last IPCC Public Confidence Survey 64 per cent of respondents were aware of the IPCC²), clearer expectations of what should be recorded (as set out in the IPCC Statutory Guidance), and the introduction of the IPCC and its Telephone Complaints Centre (TCC). In 2007/08 the TCC forwarded 7,304 complaints directly to the relevant police forces.

¹ Police Complaints: Statistics for England and Wales 2006/07 presents figures on individual allegations finalised by means of investigation (12,683 allegations investigated). Appeals are recorded by the IPCC at a case level rather than by allegation. In order to compare the two sets of data the figures for investigations of allegations were divided by the average number of allegations recorded per complaint case (1.6), which gave a figure of 7,927 investigations. We then worked out the percentage of appeals against investigations (1,838) against 7,927 investigations, which works out as 23 per cent.

² http://www.ipcc.gov.uk/second_confidence_survey.pdf

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- 2.1.8 However, we recognise that confidence in the police is not high in some communities and, related to that, confidence in the complaints system is not high. The results of the IPCC Public Confidence Surveys indicate that young people (aged 15-24) have low levels of satisfaction with their contact with the police, low awareness of the IPCC, and were most tentative about voicing their concerns through the complaints system. This is emphasised further in a qualitative study carried out by Ipsos MORI³ on the public perceptions of the police complaints system. The study found that the “highly disengaged participants tended to be often young, black or minority ethnic participants living in inner cities. This group often had the lowest level of trust in the police, and often experienced negative contact with officers. This group also tended to have the lowest level of faith in any ‘police complaints’ procedure.” Meeting the needs of these communities adequately represents a challenge for the system.

Greater openness

- 2.1.9 The PRA 2002 introduced new legislation specifically aimed at improving transparency and openness in the complaints system; this has been reinforced and applied through guidance issued by the IPCC. There is no doubt that complainants, the police (including the person subject to a complaint) and members of the public now have greater access to information. For example, Investigating Officers’ reports, which could not be disclosed under the previous system, are now disclosed routinely to the complainant and to the officer subject to investigation. It is also becoming more common to make these reports available publically – 36 managed and independent investigation reports are published on the IPCC website.

Local Resolution

- 2.1.10 The PRA replaced *Informal Resolution* with *Local Resolution*. The Act also included changes to the rules that govern when this process can be used, and to whom and when it applies. The use of Local Resolution has increased in comparison to Informal Resolution (from 35 per cent in 2003/04 to 47 per cent in 2006/07). In 2007, Kings College London published two research projects on Local Resolution⁴. One of these compared the way in which low-level complaints were handled pre- and post-April 2004. On a positive note it found that many forces were developing new and different ways to resolve complaints. However, less encouragingly, the research found little evidence that police officers’ understanding of or satisfaction with the process had improved.
- 2.1.11 A flow chart summarising the current system is included at **Annex B**.

2.2 **Public perceptions**

- 2.2.1 As set out above, the intended outcome of the PRA was to increase public confidence in the complaints system. A key responsibility for the IPCC is to promote and measure public

³ http://www.ipcc.gov.uk/ipcc_mori_report.pdf

⁴ http://www.ipcc.gov.uk/accessing_changes_-_lr1.pdf; http://www.ipcc.gov.uk/views_of_police_officers_-_lr2.pdf

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confidence. Recently, both the British Crime Survey and the IPCC Public Confidence Survey have reported information about how the public perceives the police complaints system.

2.2.2 The British Crime Survey 2006/07 asked questions of a representative sample of 10,000 people living in England and Wales. The findings suggest that the majority of those who had made a complaint about the police were dissatisfied with the way the police had dealt with it. 64 per cent were very dissatisfied, 15 per cent were a bit dissatisfied and only 20 per cent were either satisfied or very satisfied with the way their complaint was handled.

2.2.3 In December 2007, the IPCC carried out its own public confidence survey, which was run with a nationally representative sample of approximately 4,000 people, and an additional ethnic minority booster sample of approximately 1,000 people. The survey asked a range of questions around the public's perception of the IPCC, the role people felt the IPCC should play, and how they felt complaints should be dealt with.

2.2.4 Of those aware of the IPCC, 67 per cent were fairly or very confident that the IPCC would deal with complaints against the police impartially; 88 per cent felt that they would be treated fairly by the IPCC if they made a complaint; 69 per cent knew that the IPCC was not part of the police.

2.2.5 The survey indicated a high level of general awareness of the IPCC and accurate perception of its powers. 64 per cent of respondents had heard of the IPCC and, of these, a majority were aware of its investigative, guardianship and appeals functions. However, 75 per cent believed the IPCC was responsible for prosecution decisions. This is not the case; prosecution decisions are taken by the Crown Prosecution Service, independently from the IPCC.

2.2.6 Of particular relevance to the Stock Take was the question about the type of activity the IPCC (as opposed to the police) should be responsible for investigating. The findings were as follows:

Statement	% who 'agreed' or 'strongly agreed'
All complaints about the police should be dealt with by the IPCC no matter how minor	47
Only the most serious complaints about the police should be dealt with by the IPCC	49
When someone dies after contact with the police, the IPCC should look into the case, not the police force	77
Cases of serious corruption among police officers should be dealt with by the IPCC	87

2.2.7 Respondents were asked how they wanted different sorts of complaint dealt with:

What should happen in these circumstances	Officer failed to investigate reported burglary	Officer rude when asked for help	Used racist/other offensive language	Physically assaulted/ used too much force at a demo
Receive an explanation	60%	32%	24%	22%
Receive an apology from the officer/force	24%	57%	42%	32%
The officer should be punished	12%	9%	31%	37%
Receive some financial compensation	2%	1%	1%	6%
Don't know	2%	2%	2%	3%

2.2.8 61 per cent of respondents would contact the police to make a complaint; 27 per cent would go to the Citizens Advice Bureau (CAB), a law centre or solicitor.

2.2.9 The picture of public expectations seems clear. Most people expect the IPCC to investigate the most serious incidents and allegations of misconduct independently and they trust the IPCC to do so impartially and fairly. However, most people would expect to go to their local police station with a less serious complaint and want it to be resolved with an explanation, an apology or reassurance that the same thing will not happen again. Nevertheless, a significant minority of people would not make a complaint to the police, want the IPCC to do more and have more punitive attitudes.

2.3 The case for change

2.3.1 This consultation document has described how the police complaints system has developed significantly since 2004, and how overall public perceptions of the new complaints system are generally positive. However, the findings of the British Crime Survey that relate to people who have actually used the system, along with the learning from four years of operational experience, suggest that there is still plenty of scope to improve the system further.

2.3.2 Over the last four years the IPCC has received feedback from its staff, stakeholders complainants and police officers and staff who have been the subject of a complaint. This has

Independent Police Complaints Commission **Building on experience**

been channelled through a number of routes, including research reports, statistical reports, collated information from individual cases, discussions at meetings, legal challenges and letters of concern. Five significant themes around areas of improvement have emerged particularly strongly:

- The system is too focused on apportioning blame and there is not enough focus on resolving the complaint quickly
- Complainants are treated like ‘witnesses’ rather than being the focus for resolution
- The system is still too complex, slow and opaque
- The system is very focused on the top end of conduct matters, but is less effective at dealing with the vast majority of less serious complaints, which nevertheless have a great impact on confidence in the police and the complaints system
- The police complaints system does not demonstrate effectively that it delivers clear outcomes. Current outcomes are measured purely in terms of whether allegations of disciplinary misconduct or criminal conduct are substantiated and what penalty follows. Even then, current data collection systems are not capable of showing clearly on a national basis how disciplinary or criminal outcomes are linked to complaints made. Too often, in low-level complaints, a legitimate individual complainant’s expectation of an apology, explanation or reassurance that things have been put right is not met. Failure to deliver clear non-disciplinary outcomes leads to a perception that anything short of discipline is a soft option.

2.3.3 Significant changes in the wider environment not only provide an opportunity to improve the police complaints system, but demand that such improvements are made. In particular, the current legislative reforms in the police performance and conduct systems provide a context that drives and informs the improvements we would like to see take place in the police complaints system, both on a cultural and on a practical level. There are also other drivers that need to be reflected in the complaints system.

New police performance and conduct systems

2.3.4 The Criminal Justice and Immigration Act 2008 introduces a new system for dealing with police performance and discipline (the Taylor reforms). The new system will require local managers to take much more responsibility for intervening early on in order to manage poor performance or misconduct issues. These local managers will be responsible for ensuring that the highest standards of professional behaviour are upheld. The new system will require an early assessment of the conduct that has led to a complaint in order to establish whether the matter is one of poor performance, misconduct or neither. Where the conduct alleged is determined to involve misconduct, the assessment will also need to determine if it amounts to misconduct or gross misconduct. This early assessment will determine how the issue is

Independent Police Complaints Commission **Building on experience**

subsequently dealt with, ensuring that all matters are dealt with quickly and proportionately. Under the new system, it is anticipated that Professional Standards Departments (PSDs) will deal only with the most serious issues. In order for the new performance and discipline systems to work, the complaints system must also change in order to facilitate a shift away from focusing purely on potential misconduct. The new system must enable more proportionate, local handling of complaints.

Sir Ronnie Flanagan's review of policing

- 2.3.5 Sir Ronnie Flanagan, Chief Inspector of Her Majesty's Inspectorate of the Constabulary (HMIC), has completed a major review of policing for the Home Secretary. His report proposes a new model of policing, which centres on directing resources towards activities that could deliver the greatest reduction of harm to communities. It focuses on cutting bureaucracy and risk aversion by using new technologies, and increasing the discretion of individual officers while ensuring that police officers are accountable for their actions. It also emphasises the importance of getting the interaction between individual officers and individual members of the public right, as policing is a public service that can only be carried out effectively with the support and consent of the public.
- 2.3.6 The complaints system offers the police service an important mechanism for engaging with the public and developing an understanding of their concerns. The Stock Take provides an opportunity to decide how the police complaints system can be changed in order to complement the proposals described by Sir Ronnie Flanagan, especially in terms of increasing the level of accountability of local policing to the public.

Developments in the interpretation of the European Convention on Human Rights (ECHR)

- 2.3.7 Recent case law on Articles 2 (the right to life) and 3 (the right not to be subjected to torture or to inhuman or degrading treatment) of the ECHR has confirmed and strengthened the requirement for more active and earlier engagement by independent investigators where a death or serious injury occurs during or following contact with the police. The IPCC is the body with responsibility for discharging the UK's obligations to conduct an effective independent investigation where Article 2 is engaged in relation to the police. Article 2 will be engaged in cases involving the fatal use of force, deaths in custody or while under arrest, attempted suicide while in custody or under arrest and fatal road traffic incidents (RTIs) involving the police.
- 2.3.8 This is likely to mean that the IPCC will have to carry out more independent investigations than it does at present. The IPCC is working with the relevant organisations to establish the practical ramifications of the case law. However, it is already clear that the IPCC will need to review its current role in order to ensure that its resources are targeted effectively.

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The volume of complaints

- 2.3.9 As previously noted, complaint volumes and associated processes have risen sharply since the new complaints system was established. Complaints nearly doubled from 15,855 in 2003/04 to 28,998 in 2006/07. The numbers of appeals have also increased dramatically. The IPCC received 4,141 appeals in 2007/08 compared with 3,347 in 2006/07, 2,457 in 2005/06 and 1,033 in 2004/05. This increase in volumes creates significant pressure on both the IPCC and on individual police forces, and emphasises the need to ensure that resources are used as effectively as possible.

Resources

- 2.3.10 Significant IPCC resources are tied up in casework processes that have limited impact on the outcome of individual complaints. This inevitably reduces the resources that the IPCC has to investigate the most serious complaints and incidents where the public expects the IPCC to have its greatest role. These pressures will grow as both cases and investigation requirements increase.

3 The Stock Take

- 3.1 As guardians of public confidence in the police complaints system, the IPCC has a duty to ensure that the system delivers a high-quality public service. It is important that the IPCC reviews the structure and performance of the system periodically, checking that it delivers against the aspirations on which the system was founded. It is now four years since the introduction of the current system, so there is an opportunity, with our stakeholders, to reflect on what is working, what is not and to consider how the police complaints system can be improved further. It is also important for us to respond to developments in the wider policing environment.
- 3.2 In spring 2007, the Chair of the IPCC announced the Commission's intention to deliver a Stock Take of the police complaints system. The Stock Take is intended to be a check that the system as a whole is heading in the right direction rather than a root and branch review. The objectives of the Stock Take were to work with our stakeholders to:
- Assess the progress made against the original aspirations for the police complaints system
 - Examine how well the current system is working
 - Develop proposals for improving the system.
- 3.3 The IPCC Advisory Board was invited to take a lead role in the Stock Take. The Advisory Board was set up to bring together the different organisations that are involved in the complaints system, and to advise the IPCC on policy and practice. The Advisory Board includes representatives from both police and non-police stakeholders. A full list of its members is attached at **Annex C**.
- 3.4 The Advisory Board first met to discuss the Stock Take in June 2007 and agreed a broad framework for the process. Following a period of evidence gathering, a second meeting followed in October, which involved a two-day residential workshop. This provided the Board with the opportunity to look back at the previous complaint systems, to assess the current system, and to look ahead into the future. They identified a set of five shifts that they would like to see in the police complaints system. These shifts would take the system from where we are now to where the Board would ideally like to be, thus increasing levels of public confidence in its value and effectiveness.
- 3.5 The five shifts identified by the Board are:
- Fix the problem not just the culpability
 - Move from a slow to a fast system

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- More proportionate system
- Reduce the cost of the system
- Instil a learning culture.

3.6 The Advisory Board identified *fix the problem not just the culpability* as the overriding shift. This captures where the real frustration lies within the current system – namely, an almost exclusive focus on the conduct and discipline aspect of a complaint. This focus results in a lack of attention on resolving the complaint itself, and on trying to put right what went wrong. The complexity of the system makes it difficult for potential complainants to navigate or really understand the process.

3.7 The Advisory Board met again in December and worked through a series of case studies. This helped them to consider in more detail the practical changes in the system that would help to deliver the five shifts.

3.8 In addition to talking with our stakeholders we have also carried out considerable consultation within the IPCC, giving those who work on the frontline with complainants, police officers and staff the opportunity to feed in their views about what works well and not so well.

3.9 We have also spoken to and researched the approaches of other organisations with complaint functions outside of the police. These include: The Parliamentary and Health Service Ombudsman, IPSOS Mori, the National Consumer Council, the General Medical Council and Her Majesty's Revenue and Customs.

3.10 The Parliamentary and Health Services Ombudsman recently launched a consultation document on the principles of good complaint handling⁵. The six principles of good complaint handling identified by the Ombudsman are:

- Getting it right
- Being customer-focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement.

3.11 The proposals set out in this document aim to be consistent with these principles.

⁵ http://www.ombudsman.org.uk/pdfs/PGCH_consultation.pdf

4 **Stock Take proposals**

- 4.1 The Advisory Board reached a consensus on the type of initiatives needed to achieve the five shifts and bring about continued improvements in the system. This paper introduces the broad proposals emerging from the Advisory Board.
- 4.2 Sections Five and Six introduce the proposals that have emerged from the Stock Take. Section Five refers to the initiatives that are already underway – these are either close to completion or relate to relatively low-level issues that can be taken forward without wider consultation. Section Six sets out the ten main proposals alongside the evidence behind their suggestion, and some initial ideas, for wider consultation, about how they can be implemented.
- 4.3 Many of these proposals need to be taken together and not in isolation. For example, reducing the bureaucratic checks in the system would need to be balanced with a greater oversight role of the IPCC.
- 4.4 All agencies within the police complaints system have a role in taking forward improvements to the system.

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5 Initiatives already underway

- 5.1 As well as the ten high-level proposals set out in Section Six, we have already identified a number of measures that can be taken quickly to deliver the five shifts and support the ten major proposals. The majority of these changes are specific to the IPCC rather than to the wider complaints system. These are set out in **Annex E**.

6 The ten Stock Take proposals

6.1 The ten proposals are set out below. If introduced in full they would result in significant improvements to the system and to the way that it works. The proposals are about introducing a less rigid definition of a complaint so that the focus of resolving it is placed on putting right what may have gone wrong at the earliest appropriate opportunity. Recognition that local police managers are usually best placed to resolve complaints is at the heart of the proposals. In order to achieve effective local handling of complaints, the role of PSDs and the IPCC would need to be adjusted in order to monitor and support those at the local level and provide confidence to complainants.

6.2 The table below shows how the proposals fit together. Some of the proposals are standalone, but others would need to be introduced as a package. The paragraphs following the table below, explain the proposals in more detail.

	Proposals	
1	Remove the current distinction between conduct, maladministration and service failure matters.	Defining a complaint
2	All complaints to be dealt with at the lowest appropriate level (keeping a direct route to the IPCC for the most serious cases).	Resolving a complaint
3	Local assessment and handling with the aim of resolving complaints and improving service through a range of techniques.	
4	Separate consideration of whether a complaint is 'upheld' from any finding of misconduct / poor performance against an officer ('substantiated'). A complaint can be upheld regardless of whether there is evidence of individual misconduct or poor performance.	
5	Review within the force if complainant still not satisfied.	Reviewing the handling of complaints
6	Review the appeal structure. Introduce one overarching right of appeal to the IPCC, a public interest test and clearer standards showing how appeals to the IPCC will be handled.	
7	Greater oversight role for the IPCC to check force handling of lower-level complaints.	IPCC oversight
8	Introduce measures to make complaints data more meaningful so that they drive improvement in the system.	
9	Remove excessive bureaucracy from the complaints system.	
10	IPCC to normally issue an early interim statement on independent investigations.	Independent investigations

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6.3 Given the findings of the British Crime Survey, which suggest significant dissatisfaction with the way that complaints are handled by the police, any move to devolve responsibility will need to be accompanied by robust oversight and, if necessary, intervention.

6.4 **Proposal 1: remove the current distinction between conduct, maladministration and service failure matters.**

Outcome

6.4.1 Changing the definition of a complaint to place a stronger emphasis on putting right what went wrong rather than solely considering individual conduct.

Evidence

6.4.2 The PRA 2002 defines a complaint in terms of the conduct of individual officers. This results in legitimate concerns being excluded from the complaints system because they do not relate to the conduct of an individual officer. It also means that where such matters are recorded and dealt with through the complaints system, too much emphasis is placed on misconduct, which can take the focus away from putting right what went wrong for the complainant.

6.4.3 Complaints about both service failures and conduct will be recorded in some form in the current system. However, each category of complaint will be dealt with differently. The Advisory Board identified that this creates complexity, confusion and frustration for the complainant.

6.4.4 Other complaint systems operate with a broader definition of a complaint; one that is not limited to issues of individual conduct. For example, literature from the Parliamentary and Health Service Ombudsman states that people may complain to the Ombudsman "if you have suffered because you received a poor service or were not treated properly or fairly – and the organisation hasn't put things right where it could have". Certain limits are placed on the Ombudsman's remit, including Government policy and legislation. We recognise that similar limits would need to be in place if we were to change the definition of a complaint in the police complaints system. In the police complaints system these limits might include matters of force policy (which are for the Chief Constable, Police Authority or Home Secretary to determine), or the lawful application of police officers' powers (which are for Parliament to determine) where there was no allegation of misconduct.

How it could work

Short term

- 6.4.5 The changes that will be brought about by the Criminal Justice and Immigration Act, which has now received Royal Assent, support this outcome. The PRA as amended by the Act will require an early assessment of complaints. If the new threshold test is not met (i.e. the matter is not criminal and would not justify the bringing of disciplinary proceedings), officers would not be given a misconduct investigation notice (currently given under regulation 9) and the matter would be dealt with outside the misconduct system. Most complaints would be dealt with in this way and the emphasis thereafter should be on using the complaint as a means of improving the service.

Medium term

- 6.4.6 The IPCC will work together with the other stakeholders to develop good practice around the handling of complaints (whether they are related to conduct or not). This would be agreed with stakeholders and set out in the next version of the IPCC Statutory Guidance.
- 6.4.7 It would be necessary to reissue the Home Office Circular on Direction and Control, which would align those complaints with the conduct complaints system more closely.

Longer term

- 6.4.8 A wider definition a 'complaint' would be needed in the PRA. The Parliamentary and Health Service Ombudsman approach to setting out their remit for investigating maladministration or failure in service might be a useful model for the police complaints system. Over the last few years they have moved away from attempting to define maladministration to defining good administration, through the publication of reports such as: The Principles of Good Administration, The Principles for Remedy and the forthcoming Principles of Good Complaint Handling.

Obstacles and risks

- 6.4.9 There is a risk that widening the definition of a complaint will create more demand than the system currently has the capacity to deal with. It is also possible that a higher number of recorded complaints will be perceived as evidence of a deteriorating service. The risk can be mitigated by the measures described below to reduce the unnecessary bureaucracy in the system and deal with complaints at the lowest possible level.

6.5 Proposal 2: all complaints to be dealt with at the lowest appropriate level (keeping a direct route to the IPCC for the most serious cases).

Outcome

- 6.5.1 The desired outcome would be that complaints are dealt with at the lowest appropriate managerial level. Increased local complaint handling would speed up the process and reduce the cost of the system. It could also facilitate local learning from complaints.
- 6.5.2 The mandatory and voluntary referral processes would remain unchanged to ensure that the most serious matters are escalated appropriately without going through the lower-level stages.

Evidence

- 6.5.3 Many complaints involve relatively less serious allegations (45 per cent of allegations in 2006/07 were about either incivility or failure in duty). These complaints are unlikely to lead to criminal or misconduct proceedings and the priority should be given to identifying the complainant's concern and identifying how it can be addressed.
- 6.5.4 The IPCC public confidence survey suggests that most people (61 per cent) would go to their local station to make a complaint.
- 6.5.5 The Advisory Board recognised that those working at the local level are usually in the best position to put things right quickly.
- 6.5.6 The principle of resolving complaints at the lowest appropriate level is already reflected in other complaints systems, notably that used by the Parliamentary and Health Service Ombudsman.
- 6.5.7 The Taylor reforms should see conduct and performance issues dealt with at the lowest appropriate line management level. This is intended to increase the focus on officers' development and improvement, and to identify issues of concern at an early stage, before they become serious and while remedial action can be effective. This outcome should be supported through greater local handling of complaints.
- 6.5.8 In the current system, some complaints are already handled locally, at BCU (basic command unit) level. However, practice varies from force to force and there are forces where all complaints are dealt with by the PSD.

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How it could work

Short term

- 6.5.9 The changes to the police performance and misconduct systems that will be brought about by the Criminal Justice and Immigration Act and associated regulations will help to facilitate more local handling of complaints. The changes in the Act and the new regulations are designed to encourage and empower local managers within the police service to deal with issues of poor performance or misconduct quickly and proportionately.
- 6.5.10 Local handling of complaints should be promoted and supported by the IPCC, and by other key stakeholders, through sharing good practice and expertise.

Medium term

- 6.5.11 The IPCC would need to set out and define the expectation that complaints should be handled at the most local level possible in its Statutory Guidance.

Obstacles and risks

- 6.5.12 There is a risk that some complainants, particularly vulnerable people, would be reluctant to make complaints if they knew that they were going to be handled locally by the force. The public confidence survey reveals that a fear of harassment or other adverse consequences is a greater disincentive to complaining for minority ethnic groups than for the population as a whole. This risk is particularly acute in cases where a poor relationship exists between the complainant and the local part of the force. This risk would be mitigated if prior involvement is taken into account when determining who should handle the complaint in the first instance. The IPCC's TCC could also play a role in mitigating this risk by providing extra advice and support to vulnerable complainants. This risk needs to be balanced against the evidence from the confidence survey that the greatest disincentives to complaining for all groups are the belief that it will not make a difference, and the complexity of the system.

6.6 **Proposal 3: local assessment and handling with the aim of resolving complaints and improving service through a range of techniques.**

Outcome

- 6.6.1 In dealing with complaints, the focus should be on putting things right rather than solely on identifying individual culpability. This should increase complainants' satisfaction and reassure officers that the system is not just about apportioning blame.

Evidence

- 6.6.2 The British Crime Survey suggests that the majority (64 per cent) of those who have made a complaint about the police were very dissatisfied with the way that the police handled their complaint. Greater focus on resolving the complaint could improve complainants' satisfaction with the process.
- 6.6.3 The Public Confidence Survey has indicated that the public often think that the response to a complaint should be an explanation or apology, especially for lower-level complaints. For example, if an officer was rude, 57 per cent of respondents thought that they should receive an apology; and 32 per cent of respondents thought that they should receive an explanation and assurances that the same thing would not happen again. Only 9 per cent thought that the officer should be punished and 1 per cent that they should receive some financial compensation. Even for a more serious allegation, such as an officer failing to investigate a burglary properly, the majority of respondents thought that they should either receive an explanation (60 per cent) or an apology (24 per cent). Significantly fewer thought that the officer should be punished (12 per cent) or that they should receive financial compensation (2 per cent).
- 6.6.4 The Advisory Board has proposed "fixing the problem not just the culpability" as the key shift that needs to take place in the system. The Advisory Board suggested exploring the use of particular techniques to improve satisfaction with the process, such as mediation and conciliatory payments.
- 6.6.5 The results of the Public Confidence Survey suggest that very few complainants think that the complaints system should offer financial compensation. Therefore, the Advisory Board has moved away from the early proposal that conciliatory payments should be made available to the complainant.
- 6.6.6 In 2006/07, 47 per cent of complaint allegations were dealt with by Local Resolution⁶. the current Local Resolution process is geared towards resolving the complaint for the complainant, while local investigation is primarily focused on identifying whether someone did something wrong. There is considerable support for the Local Resolution approach. However, the research carried out by Kings College London in 2007⁷ suggests that, despite pockets of good practice, there is still significant dissatisfaction with the way in which the process currently works. This is felt both by officers and complainants. Local Resolution and local investigation are currently mutually exclusive, but they need not be – some investigation may be necessary to determine whether and how a matter can be locally resolved; formal mediation may be a more effective and less expensive way to deal with even serious complaints than a prolonged investigation.

⁶ http://www.ipcc.gov.uk/complaints_report_2006-07_v6.pdf

⁷ http://www.ipcc.gov.uk/views_of_police_officers_-_lr2.pdf

How it could work

Short term

- 6.6.7 The changes to the police performance and misconduct systems that will be brought about by the Criminal Justice and Immigration Act when it is implemented will help to shift the emphasis away from solely identifying individual culpability. The focus will move towards managing poor performance and encouraging change and improvement.
- 6.6.8 Work is already underway to improve the delivery of Local Resolution through the IPCC Local Resolution project. This is driven by some of the recommendations arising from the Kings College research.

Medium term

- 6.6.9 Local Resolution techniques could be imported into local investigations to increase the focus on dealing with the complainant's actual concerns. This could be implemented through the IPCC Statutory Guidance.
- 6.6.10 The use of independent mediation could be explored in order to improve the resolution of complaints. This approach could be implemented in a number of ways, for example, by identifying a national list of independent mediators that forces can call on. The NHS already uses independent mediators to resolve complaints.

Longer term

- 6.6.11 Primary legislation change could remove the legal distinction between Local Resolution and local investigation. This would require a corresponding change in appeal rights.
- 6.6.12 Research could be carried out into whether requiring an officer or police staff member to attend a resolution meeting is beneficial for the complainant, the person complained against, and wider public confidence.

Obstacles and risks

- 6.6.13 Successful resolution of the complaint from the perspective of the complainant depends on high-quality local complaint handling. However, the Kings College research demonstrates that both complainants and police officers currently lack confidence in, and understanding of, Local Resolution. Significant improvement in levels of understanding, and in delivery of the system by officers on the ground, would be needed in order for this proposal to succeed. This risk could be mitigated by providing clear guidance and standards on the local handling of complaints, which is effectively monitored.

6.6.14 Moving to a new system that aims to resolve complaints will require higher levels of confidence and changes of culture in the current system. This will take time and require effective leadership from all the organisations involved. The implementation of the new performance and misconduct system will play a large part in supporting this change.

6.7 **Proposal 4: Separate consideration of whether a complaint is ‘upheld’ from any finding of misconduct / poor performance against an officer (‘substantiated’). A complaint can be upheld regardless of whether there is evidence of individual misconduct or poor performance.**

Outcome

6.7.1 Increasing the positive incentives in the complaints system to deal with and try to resolve the problem rather than solely identify misconduct / poor performance.

Evidence

6.7.2 The results of the public confidence survey suggest that the biggest disincentives to making a complaint are a concern that it would not make a difference, not knowing how to do so, and concern about not being taken seriously. At present, acknowledgement of the validity of the complaint is tied to whether a misconduct allegation against an individual officer is substantiated.

6.7.3 The Advisory Board has proposed that one way for forces to acknowledge a failure in service, and the fact that the complainant was entitled to expect more, would be to ‘uphold’ a complaint. This would be separate from the consideration of whether that failure of service was a result of misconduct or poor performance on the part of an individual officer (‘substantiated’). This already happens in some forces, but the Advisory Board proposed that this approach be adopted more widely.

6.7.4 Recording the proportion of complaints that are ‘upheld’ could also provide forces with a useful indication of performance. It could provide important intelligence relating to whether lessons have been learned from past complaints. A high proportion of complaints being upheld within a particular force might indicate particular problems with the delivery of operational policing.

6.7.5 On occasions where a person complains that they have come to harm because of police action and it is found that this is not because of individual misconduct but results from a failure in some system, procedure or training then a complaint could be upheld. For example, cases of

mistaken arrest, search or other wrongly targeted action could have a different outcome if finding misconduct is no longer a necessary precondition to upholding the allegation.

How it could work

Short term

- 6.7.6 Forces could choose to offer an acknowledgement or an apology when dealing with a complaint where it appears that there has been a failure in service.

Medium term

- 6.7.7 The IPCC could work with the police and other stakeholders to develop a standard relating to 'upholding' complaints. This could be reflected in the updated Statutory Guidance.

Longer term

- 6.7.8 The proportion of complaints 'upheld' could be built into the complaints statistics that are reported for every force.

Obstacles and risks

- 6.7.9 An ongoing challenge is that police officers will continue to be reluctant to offer an apology for fear that it will be taken as evidence of individual misconduct, even though this is prohibited by law. This risk will be mitigated by the changes in the Criminal Justice and Immigration Act when it becomes law. The PRA, as amended by the new Act, will require an early assessment of whether the conduct alleged amounts to a criminal offence or conduct that would justify the bringing of disciplinary proceedings. If it would not amount to either then the handling of the complaint will be separated from the misconduct system.
- 6.7.10 There is a risk that using the proportion of complaints 'upheld' as a comparative measure of force performance could provide an incentive not to 'uphold' complaints, denying the advantages that would follow from offering an acknowledgement of a failure in service. This risk could be mitigated by the IPCC setting a clear national standard on what would constitute a complaint being 'upheld' and then using the guardianship function to check how this standard is being applied in practice.
- 6.7.11 Recording and reporting the proportion of complaints that are upheld would require changes to the IT systems used by the police. The likely costs and technical difficulty involved would need to be assessed.

6.8 **Proposal 5: review within the force if complainant still not satisfied.**

Outcome

- 6.8.1 Ideally the force should get the resolution of the complaint right first time, but when they fail to do this the force should have an opportunity at a more senior level to resolve the complaint successfully.
- 6.8.2 This will also provide senior staff with the opportunity to gather learning quickly on local complaint handling and to drive performance in complaint handling.

Evidence

- 6.8.3 A significant proportion of complaints currently result in appeals to the IPCC because the complainant is not satisfied with the way that their complaint has been handled initially. However, the force is often in a better position than the IPCC to put things right. Appeals to the IPCC create an extra layer of complexity, can set unrealistic expectations and delay any opportunity for the force to restore their relationship with the complainant. This burden could be reduced by offering forces a second chance to put things right, saving the additional time and cost of complaints being escalated immediately to the IPCC.
- 6.8.4 Most complaint systems in other jurisdictions (for example, health or employment) will have an internal appeal mechanism prior to an external body, such as an ombudsman or tribunal, being involved. The Parliamentary and Health Services Ombudsman, for instance, states that people may complain to the Ombudsman "if you have suffered because you received a poor service or were not treated properly or fairly – and the organisation hasn't put things right where it could have". It is important that the organisation concerned has had an opportunity to put the matter right. In the police complaints system this could include an internal appeal or review mechanism before a complaint comes to the IPCC.
- 6.8.5 The Advisory Board has proposed that PSDs could act as a second level for dealing with complaints within forces. The advantage of having a PSD or a different part of the force reviewing the initial decision is that they are likely to be more removed from the original incident and handling. They are therefore able to take a wider force view on how best to resolve the complaint. It is already the case that some PSDs quality assure how their BCUs locally resolve complaints. Developing and spreading this practice could form the basis of forces having a second chance to resolve complaints. The IPCC would support forces by helping to test and model this proposal, setting clear standards for how resolution of a complaint should be achieved, and minimising any extra effort involved.
- 6.8.6 One of the five shifts identified as desirable is to increase what we learn from the complaints system. Introducing a second level of handling within the force would not only give opportunity to review the initial decision, but also to gather learning and intelligence centrally on what works in their force.

Independent Police Complaints Commission **Building on experience**

- 6.8.7 We recognise that the police and other stakeholders have concerns about the merit and practicality of this proposal. These concerns are around the fact that the extra stage could slow down the system and create a barrier to complainants. Therefore, we are keen to consult more widely and to test this proposal before deciding whether to implement it.

How it could work

Short term

- 6.8.8 The changes to the police performance and misconduct systems that will be brought about by the Criminal Justice and Immigration Act will help to encourage forces to deal with matters at the lowest appropriate managerial level.

Medium term

- 6.8.9 The next version of the IPCC's Statutory Guidance could set out an expectation that forces will attempt to provide a two-tier approach to complaint handling. The Statutory Guidance should provide standards on good complaint handling that PSDs can use to assess the quality of local handling and to decide whether intervention is required.
- 6.8.10 It would be possible, without changing legislation, to develop a process where the first level decision is provisional and complainants have the opportunity to challenge it before it is finalised. A challenge would go to the PSD / second level for a final / force decision to be made. The right of appeal to the IPCC would apply only after the final force decision had been made.

Obstacles and risks

- 6.8.11 Adding another level to the process might increase the time taken to resolve complaints if most complainants nevertheless exercise their final right of appeal to the IPCC. There is an associated risk that complainants will drop out of the process if it appears to take too long. Therefore, consideration of the impact that this would have on existing timescales for dealing with complaints – and the standards that would need to be introduced for each stage of the complaints process in order to avoid unnecessary delays – would be necessary.
- 6.8.12 Given these obstacles, it will be important to consult more widely on the merits and practicality of this proposal, and to test it before deciding whether to implement it.

6.9 Proposal 6: review the appeal structure. Introduce one overarching right of appeal to the IPCC, a public interest test and clearer standards showing how appeals to the IPCC will be handled.

Outcome

- 6.9.1 Replace the existing three rights of appeal (against the non-recording of a complaint, against the Local Resolution process and against the outcome of an investigation) with one overarching right of appeal against the force handling of a complaint, while reducing the number of appeals that come to the IPCC where there is little difference it can make to the outcome and where the issue is relatively minor. Provide incentives for forces to get the handling of complaints right from the outset, and to ensure that IPCC consideration of appeals results in improvements to the system.

Evidence

- 6.9.2 Under the current system, there has been an increase in the number of appeals received by the IPCC (1,033 in 2004/05, 2,457 in 2005/06, 3,347 in 2006/07 and 4,142 in 2007/08). Although the right of appeal to the IPCC provides complaints with an important safeguard, only a minority of these appeals are upheld (724 in 2006/07). This suggests that the IPCC is adding limited value through its consideration of appeals. The introduction of a public interest test, particularly where there is an effective two-tier internal system, would enable IPCC resources to be concentrated where they add most value.
- 6.9.3 When the IPCC receives an appeal against a local investigation, it is currently obliged to consider all aspects of the investigation, not just the issues specified in the appeal.
- 6.9.4 The Advisory Board has acknowledged that the current system is complex, both in relation to the three different types of appeal and to the way that they are assessed. A simpler system would be easier for everyone involved in the process to understand (both in terms of setting expectations and understanding the outcome).
- 6.9.5 The Parliamentary and Health Services Ombudsman operates an assessment process to screen cases. The process consists of two parts – ‘could we’ and then ‘should we’ investigate. Firstly, to address the ‘could we’ element, they determine if the complaint is within their jurisdiction, or whether it is premature (i.e. if the organisation subject to the complaint has not had an opportunity to resolve the complaint itself) and there are no compelling grounds to take the complaint on despite it being made early. Secondly, the ‘should we’ is around making a discretionary decision. Is there evidence of maladministration or service failure? If so, the next step is to establish whether it has resulted in an injustice that has not been addressed, and whether there is a possibility of a worthwhile outcome. This significantly reduces the number of cases they investigate (about 6 per cent of all parliamentary complaints they receive). This might provide a useful model to use for appeals in the police complaints system.

Independent Police Complaints Commission **Building on experience**

How it could work

Medium term

- 6.9.6 The IPCC Statutory Guidance could set out a revised framework (but this would be constrained by the current legislation) for dealing with appeals. The IPCC might want to consider fairness of process and outcome by checking that complaints have been handled in a way that is consistent with national standards.

Long term

- 6.9.7 Legislation would be needed to change the current appeal rights to create one right of appeal to the IPCC against the force response to a complaint.
- 6.9.8 Legislation would be needed to create a public interest test for the IPCC to consider appeals. The test should take account of realistic expectations of outcomes, not only disciplinary but also learning. The seriousness of the allegation alone would not necessarily determine whether the IPCC considers an appeal. For example, a complainant may make an allegation of very serious corruption that is without foundation and should not reach the public interest threshold, whereas a much lower-level complaint could highlight real failings and an appeal should be considered by the IPCC.

Obstacles and risks

- 6.9.9 A public interest test would be, to some degree, subjective. It would reduce the IPCC's intervention in individual cases despite current evidence of dissatisfaction with police handling of complaints. However, there is evidence that this approach works – for example, the Parliamentary and Health Services Ombudsman has a similar test. This approach would free up IPCC resources to meet public expectations about its involvement in the most serious cases.

6.10 **Proposal 7: greater oversight role for the IPCC to check force handling of lower-level complaints.**

Outcome

- 6.10.1 Complaints to be resolved at the lowest level appropriate, but oversight in place to ensure that this is effective and that the system is accessible to all potential complainants.

Independent Police Complaints Commission **Building on experience**

- 6.10.2 The IPCC oversight aspect of the IPCC's guardianship role will be more targeted. Forces that are performing well will experience relatively light-touch oversight, while forces that are not performing well will receive more intensive oversight. Performance will refer to both the accessibility of force complaint systems and to how complaints are handled.
- 6.10.3 The IPCC guardianship role will continue to develop in order to use the analysis of complaints data to support improvements in operational policing.

Evidence

- 6.10.4 The Advisory Board members identified investigating the most serious cases and oversight of lower-level complaint handling as the key functions of the IPCC.
- 6.10.5 The proposals detailed above would reduce the IPCC's role in low-level complaints and place a much greater emphasis on resolving complaints at the lowest possible local level. Given that the evidence shows that the public is dissatisfied with the way that the police handle complaints, this approach risks increasing that dissatisfaction if complaint handling standards are not improved. The proposals above are intended to improve those standards, but in view of the IPCC's overall responsibility for confidence in the complaints system, it will need to ensure that its oversight role is focused and effective.
- 6.10.6 The IPCC's Public Confidence Survey suggests that 47 per cent of the public think that the IPCC should deal with all complaints, no matter how minor, and 49 per cent think that the IPCC should deal only with the most serious complaints.
- 6.10.7 Even though there is evidence of increased learning within the complaints system, this is most visible in relation to the most serious matters (i.e. those mentioned in the Learning the Lessons bulletin). Therefore, there is a key role for the IPCC in ensuring that forces have set up processes to learn from low-level complaint handling.

How it could work

Medium term

- 6.10.8 The IPCC is leading a major project to work with all stakeholders to design and implement a Performance Framework for the police complaints system. The standards in the Performance Framework will be based on the IPCC Statutory Guidance. This framework will be the linchpin of performance management across the system. It will provide a consistent evidence base to support forces to monitor and improve their performance, and support the IPCC to exercise its guardianship role. The work on the framework will look at how it used by the IPCC, HMIC and the Association of Police Authorities (APA) to strengthen oversight and monitoring of PSDs, and force handling of complaints. This links to Sir Ronnie Flanagan's Review of Policing,

Independent Police Complaints Commission **Building on experience**

which emphasised the importance of organisations working together to clarify their roles in inspection and auditing.

Obstacles and risks

- 6.10.9 Resources will need to be realigned within the IPCC to ensure that the oversight role is properly resourced. This realignment will be supported by the IPCC Change Programme, which is designed to ensure that our structures and resources are organised efficiently to best support our aims.

- 6.11 **Proposal 8: introduce measures to make complaints data more meaningful so that they drive improvement in the system.**

Outcome

- 6.11.1 Measures to improve understanding of performance in the complaints system and drive improvement will be developed and published. A better understanding of performance would help forces and other organisations involved in the complaints system to learn and improve their services. The publication of these measures would also provide positive incentives to improve performance and quality of delivery.
- 6.11.2 Measures reduce scope for misinterpretation of data resulting from these changes, but do not provide disincentives to record complaints properly.

Evidence

- 6.11.3 The Advisory Board has identified a need for clearer measures of performance in the complaints system. There is a lack of evidence about the performance of individual forces, which cannot be inferred from the annual police complaints statistics in their current form. For example, a high number of complaints could show that service is poor, but it could also indicate that access to the complaints system is good.
- 6.11.4 There is a lack of evidence about how the current system as a whole is performing. For example, there has been limited research into complainant and officer satisfaction with the process since the new system was introduced in 2004.

Independent Police Complaints Commission **Building on experience**

How it could work

Short term

- 6.11.5 The new recording standards will enable greater levels of consistency in complaint recording and increase confidence in the data that the system produces.
- 6.11.6 Greater emphasis should be given in published data to ‘upheld’ complaints and ‘upheld’ appeals. ‘Upheld’ complaints provides a better indication of force performance than complaints made. ‘Upheld’ appeals to the IPCC provides an incentive to resolve complaints at a local level and, combined with an increased oversight role for the IPCC, would discourage attempts not to record or uphold valid complaints. This would make comparative analysis (either within one force over time or between different forces) more meaningful than at present.

Medium term

- 6.11.7 The IPCC is already undertaking work to develop a Performance Framework for the complaints system as a whole, for the IPCC and for individual forces. This should dramatically improve the understanding of current performance within the complaints system. Alongside this the IPCC will need to update its Statutory Guidance and Recording Standards to ensure that appropriate measures of performance are captured in future.
- 6.11.8 The IPCC plans to carry out regular research on complainant and officer satisfaction with the complaints process in the future. This research will feed into the performance measures of the complaints system.

6.12 **Proposal 9: remove excessive bureaucracy from the complaints system.**

Outcome

- 6.12.1 Review the direct complaint, appeal, dispensation, discontinuance, application for Local Resolution, referral and withdrawal processes to enable the complaints system to operate more quickly and with transparency, but without undermining essential safeguards.

Evidence

- 6.12.2 The flow chart included at **Annex B** demonstrates the considerable complexity of the current system. This complexity makes it difficult to explain how complaints will be handled, and adds to the time taken to resolve complaints.

Independent Police Complaints Commission **Building on experience**

- 6.12.3 A number of different processes within the police complaints system have been identified as being unnecessarily bureaucratic by the Advisory Board, and by those staff who play a role in delivering the system.
- 6.12.4 There is growing evidence of a small number of persistent vulnerable complainants, whose needs cannot be met by the complaints system. The IPCC is currently working with its stakeholders to develop more appropriate ways of dealing with these individuals.

Direct complaints

- 6.12.5 Currently, complainants can make their complaint to the IPCC rather than directly to the police. The IPCC must then seek the complainant's consent to pass the complaint on to the police. There can be considerable delays in the complaint reaching the police while the IPCC waits for the complainant's consent to pass it on. The system could be speeded up by requiring complaints to be made directly to the police. However, in the last financial year 11,432 complaints were received directly by the IPCC. Operational experience suggests that complainants are often frustrated when told their complaint will nevertheless have to be passed to the force concerned. Some members of the public would clearly value an independent route into the complaints system, but the current system does not offer this.

Appeals

- 6.12.6 Some aspects of the process for considering appeals against non-recording have been identified as particularly bureaucratic by IPCC staff. They are frustrated by the situation where they are considering an appeal and it is clear that it should be upheld and the complaint should be recorded, but also that the IPCC would grant a dispensation if one was applied for (for example, because the complaint is clearly an abuse of the procedures or because it is out of time). In this situation the IPCC has no choice but to uphold the appeal even if it is clear that the force will apply for and be granted a dispensation. This process is not only time-consuming for the police and the IPCC; it raises the expectations of the complainant that their complaint will be dealt with.

Dispensations and discontinuances

- 6.12.7 Both IPCC and police staff have reported frustrations with the requirement for forces to apply to the IPCC before dispensing with a complaint or discontinuing an investigation. There is an argument that this requirement adds unnecessarily to police and IPCC workloads. In 2006/07, the IPCC completed 2,327 applications for dispensation, of which 2,025 (87 per cent) were granted. It also dealt with 218 applications for discontinuance, of which 169 (78 per cent) were granted.
- 6.12.8 In addition, IPCC staff have commented that the distinction between dispensations and discontinuances is unnecessarily bureaucratic. Forces submit applications for dispensation that the IPCC thinks should be discontinuances and vice versa. The IPCC does not consider

Independent Police Complaints Commission **Building on experience**

these applications, and instead returns the applications to the forces to be re-submitted. This delays the whole process and creates extra work for both the IPCC and the forces.

Applications for Local Resolution

6.12.9 The requirement for forces to apply to the IPCC to use Local Resolution in serious cases where there is no prospect of obtaining the evidence to substantiate a complaint is a safeguard to ensure that serious complaints are not locally resolved inappropriately. However, this requirement runs counter to Proposal 3 above – that the primary focus in every case should be on resolving the complaint for the complainant.

6.12.10 In practice, very few applications for Local Resolution of serious cases, which are fairly technical and bureaucratic to process, have been received by the IPCC (19 applications, all of which were granted, were completed by the IPCC in 2006/07). The low numbers involved suggest either that IPCC approval is not sought when it should be, or that formal investigation is being used when an alternative form of resolution may be feasible.

Mandatory referral categories

6.12.11 When the new complaints system was introduced in 2004, forces were required to refer all serious arrestable offences to the IPCC. The Serious Organised Crime and Police Act 2005 removed the legal category of serious arrestable offence. The law now requires all 'relevant offences' (any offence for which a person aged 18 or over, not previously convicted, may be sentenced to imprisonment for seven years) to be referred. This new category covers considerably more than the previous category (for example, an allegation of theft of a chocolate bar from a staff canteen would fall into the new mandatory referral category). Requiring these cases to be referred is unnecessarily bureaucratic if the IPCC will then just refer them back, or require them to be investigated locally by the police.

Withdrawals

6.12.12 The Police (Complaints and Misconduct) Regulations require the police to notify the IPCC if a complaint that was originally made via the IPCC is subsequently withdrawn. This is unnecessarily bureaucratic given that the IPCC does not have any role in these circumstances other than to note the fact the complaint has been withdrawn.

How it could work

Short term

6.12.13 Work should continue with stakeholders to develop proposals for dealing with persistent, vulnerable complainants.

Independent Police Complaints Commission **Building on experience**

Medium term

- 6.12.14 The IPCC's TCC plays an important role in the post-2004 police complaints system and there is opportunity to develop it further to enhance the service to complainants. In the medium term, we will explore with our stakeholders how the TCC's role could be developed.
- 6.12.15 Changes would be needed to the Police (Complaints and Misconduct) Regulations to remove the requirement for the police to notify the IPCC if a complaint that was originally made via the IPCC is subsequently withdrawn.
- 6.12.16 The IPCC should work with stakeholders to consider how the new mandatory referral category of 'relevant offence' can be made to work effectively, ensuring that appropriate cases are referred while minimising the bureaucracy associated with cases that do not require IPCC attention but which do fall into the new, broader, category. This may require change to legislation.

Long term

- 6.12.17 Legislation would need to change in order to rationalise the existing three rights of appeal (against the non-recording of a complaint, against the Local Resolution process and against the outcome of an investigation) into one right of appeal against the force handing of a complaint (as set out in Proposal 6).
- 6.12.18 Legislation would need to change in order to enable forces to dispense with or discontinue cases that meet the current criteria without applying to the IPCC. Complainants would need to have the right to appeal against this decision as part of the one overarching right of appeal.
- 6.12.19 Legislation would need to change in order to remove the requirement for forces to apply to the IPCC to use Local Resolution in serious cases.

Obstacles and risks

- 6.12.20 The ability to complain via the IPCC, the three rights of appeal, the mandatory referral categories, dispensations, discontinuances and applications for Local Resolution have all been built into the system to provide safeguards for complainants. Although some elements of these processes are currently excessively bureaucratic in terms of the way they operate, they were put in place to provide safeguards against perceived abuses of the system. An effective appeals system, the IPCC's oversight role and greater transparency of the system will all be critical to ensuring that public confidence in the system is maintained.

6.13 **Proposal 10: IPCC to normally issue an early interim statement on independent investigations.**

Outcome

- 6.13.1 An open and transparent complaints system that reassures the public that serious incidents and complaints are handled quickly and fairly.

Evidence

- 6.13.2 The results of the IPCC Public Confidence Survey emphasise the fact that when people make a complaint a key element of what they want is an explanation of what went wrong. In more high-profile cases, the wider public, as well as the individual complainant, wants an explanation of what went wrong and reassurance that it will not happen again.
- 6.13.3 The Advisory Board has proposed that an early public report should be issued on independent investigations to reassure the public that an incident is being investigated thoroughly and fairly, that urgent operational issues are being addressed and that inaccurate information is corrected.
- 6.13.4 The Advisory Board has identified examples of other situations in which this type of early public report is already issued successfully. For example, the Ontario Civil Commission on Police Services has provided an undertaking to the public and those subject to investigation that their investigations will provide a substantive update within 30 days in order to ensure transparency and to maintain public confidence in the complaints system. This is not dictated by the legislation, but is part of the practice of the investigation. Of the investigations conducted this year, 86 per cent have included a substantive public update as part of the overall investigation.

How it could work

Short term

- 6.13.5 The IPCC could decide to routinely issue an early interim statement on independent investigations. This would explain the circumstances of an incident as far as they are known, and the lines of enquiry that are being followed.

Medium term

- 6.13.6 The Statutory Guidance could set out clear expectations of the IPCC in regards to issuing statements on investigations. This could include timescales.

Obstacles and risks

- 6.13.7 The facts of an incident are not always clear during the early stages of an investigation and there is a risk that issuing an early statement on the circumstances of an incident could result in misleading information being made public. This risk could be mitigated by avoiding speculative detail about the circumstances surrounding the incident.
- 6.13.8 There is a risk that some parties involved in a particular case, including the complainants/ interested parties or the officers involved in the incident, will be opposed to the publication of an early statement on the basis that it favours one party to the case. Arguments against publication would be weakened if it was standard practice always to issue an early statement.
- 6.13.9 There is a risk that early publication of the apparent circumstances of an incident could jeopardise future criminal or disciplinary proceedings. Any potential prejudice would need to be considered and weighed against the public interest in disclosing information in the statement.

7 Next steps

- 7.1 To make the proposals outlined in this document work effectively we need to test them further. This will involve seeking the views of police and non-police stakeholders beyond the Advisory Board. Certain proposals will be suitable for piloting. The IPCC itself will have to change to in order to achieve the proposals and to ensure that it has the means to effectively monitor and evaluate any changes to the system brought about by the Stock Take. The Performance Framework, which is being introduced to the police complaints system next year, will be an important tool to monitor and measure the effectiveness of the changes brought about by the Stock Take.
- 7.2 This paper sets out initial broad proposals. It is based on research into public expectations and detailed consultation with individuals on the IPCC's Advisory Board, which includes representatives from all the IPCC's major national statutory and non-statutory stakeholders.
- 7.3 We will now consult more widely though the publication of this paper on the IPCC's website and detailed consultation with the IPCC's stakeholder organisations.
- 7.4 The proposals set out here may be brought into effect in five ways:
- Through publication of revised IPCC Statutory Guidance. This will require formal consultation, which could begin by April 2009
 - Through the ongoing development of the Performance Framework
 - Through changes to the IPCC's own operational practice set out in a revised Operations Manual (due for completion by March 2009)
 - Some changes to statutory regulations (secondary legislation), subject to Ministerial approval
 - A small number of changes to legislation, which depend on legislative opportunities, subject to Ministerial approval.

Annex A Consultation questions

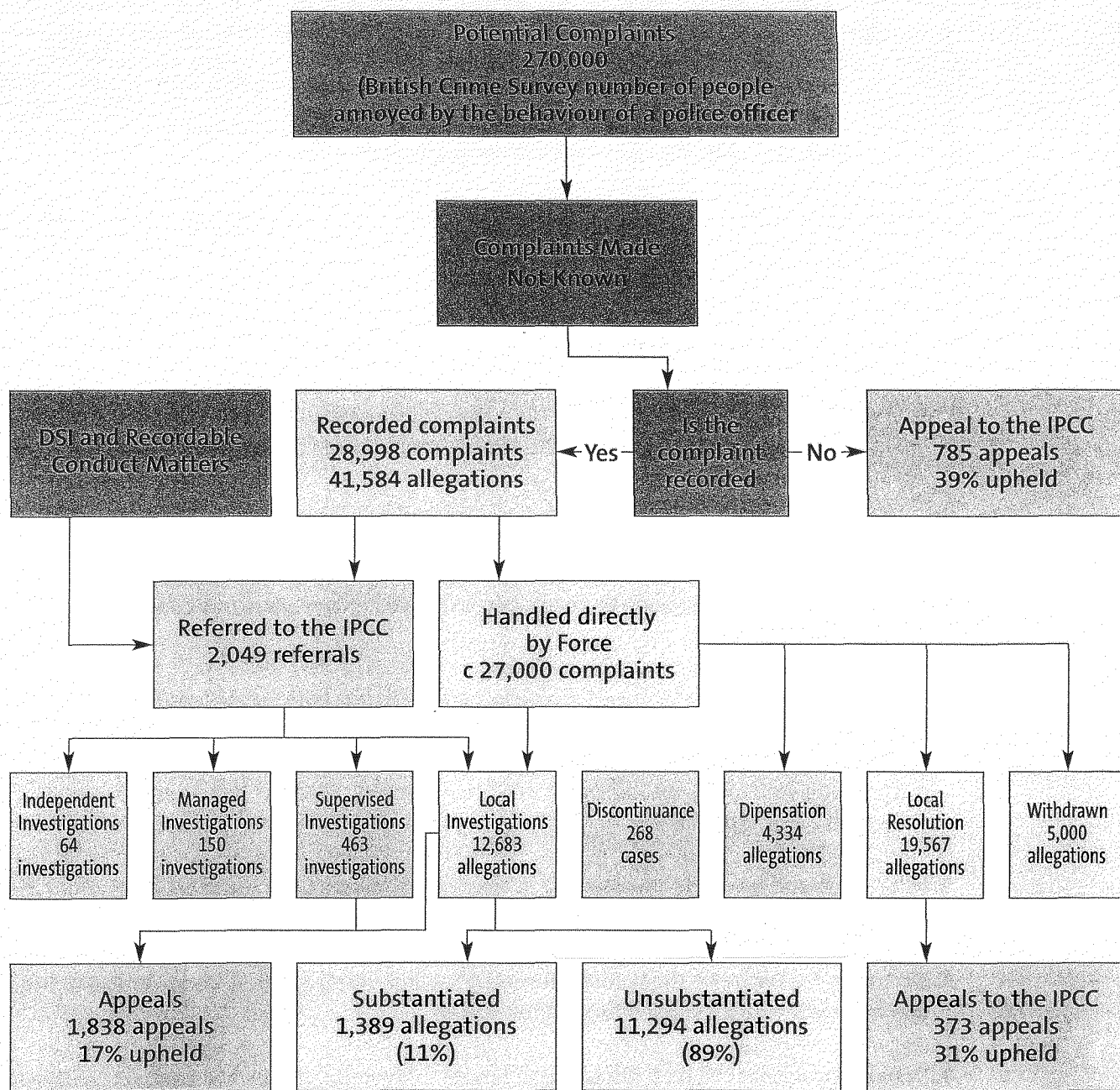
The IPCC would like to hear your views on the findings of the Stock Take.

In addition to comments on the general questions set out at the front of the paper, the IPCC would welcome views about the following questions:

1. Do you agree that we should remove the current distinction between conduct, maladministration and service failure matters? (Proposal 1)
2. Do you agree with the principle of handling the majority of complaints at the local level? (Proposals 2 and 3)
 - a. What needs to happen to ensure that forces are able to resolve the majority of complaints locally?
 - b. Could certain groups be excluded from the police complaints system if we move to more local handling of complaints? What arrangements could prevent this from happening?
3. How can we make sure that the system delivers better non-disciplinary and criminal outcomes? (Proposals 4 and 8)
 - a. How can we communicate to the public a realistic idea of what outcomes are likely to follow a complaint?
4. What system should be in place for reviewing complaints that are not resolved by the initial handling? (Proposals 5 and 6)
 - a. What are your views on the IPCC introducing a public interest test in considering appeals? (Paragraph 6.9.8)
5. What type and intensity of oversight is required to support the move towards more local handling and resolving of complaints? (Proposals 7 and 8)
6. Do you agree with the suggestions for reducing bureaucracy listed under proposal 9? Do you have any further suggestions? (Proposal 9)
7. Do you agree that the IPCC should make more information publically available early on in independent investigations? (Proposal 10)
8. Do you think the proposals will impact on public confidence either positively or adversely? If adversely, do you have any suggestions about the changes we can make to address the adverse impact?
9. Any other comments.

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Annex B Flow chart of the current police complaints system (2006/07)



OUTCOMES

<p style="text-align: center;">CRIMINAL</p> <p style="text-align: center;">Number of convictions resulting from complaints?</p>	<p style="text-align: center;">DISCIPLINED</p> <p style="text-align: center;">Number and type of sanctions resulting from complaints?</p>	<p style="text-align: center;">ORGANISATIONAL LEARNING</p> <p style="text-align: center;">3 Learning The Lessons Bulletins</p>
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Annex C **Advisory Board members**

Association of Chief Police Officers (ACPO)

Association of Police Authorities (APA)

Citizens Advice Bureau (CAB)

Crown Prosecution Service (CPS)

Her Majesty's Inspectorate of the Constabulary (HMIC)

Her Majesty's Revenue and Customs (HMRC)

Home Office

Inquest

Metropolitan Police Authority (MPA)

Metropolitan Police Service (MPS)

National Black Police Association (NBPA)

Police Action Lawyers Group (PALG) – until June 2007

Police Federation of England and Wales

Police Superintendents Association

Public and Commercial Services Union (PCS)

UNISON – Police Staff Service Group

Annex D The Stock Take process

Milestones in the Stock Take process

Date	Milestone
Spring 2007	Announcement by Nick Hardwick of the intention to do a Stock Take of the police complaints system.
June 2007	Advisory Board invited to take a leading role in the Stock Take.
Summer 2007 onwards	Evidence gathering (including researching other complaint systems).
September/October 2007	Road shows held in IPCC regional offices to enable IPCC staff to contribute information about what they think should change.
October 2007	Advisory Board residential workshop held in which the five shifts for the police complaints system were identified.
November 2007	IPCC Commission agreed the five shifts and emerging proposals from the Advisory Board residential workshop.
December 2007	Advisory Board meeting in which four case studies were worked through, leading to more detailed agreement about the practical changes needed in the system to achieve the five shifts.
January to March 2008	Development of the detailed proposals.
February 2008	IPCC focus group held to capture staff views on the proposals emerging from the Stock Take, how we can make them work and what the key challenges and obstacles might be.
March 2008	Update sent to Advisory Board members with outline of the final proposals.
March/April 2008	Finalisation of report and recommendations.
April 2008	Final Advisory Board meeting.

Annex E Initiatives already underway

Fix the problem not just the culpability

	Initiative already underway	Benefit
1	Introduction of the new police performance and conduct systems through the Criminal Justice and Immigration Bill.	The PRA (as amended by the Criminal Justice and Immigration Act 2008) requires an early assessment of a complaint to determine whether the alleged conduct indicates that a criminal offence may have been committed or that the officer has behaved in a manner that would justify the bringing of disciplinary proceedings. If neither is the case, then the handling of the complaint will be separated from the misconduct system, allowing for a greater emphasis on putting right what went wrong rather than on individual conduct. This should result in fewer Reg 9 notices (Regulation 14 in the new regulations) being issued.
2	The IPCC is sharing press statements with forces and complainants before public release.	This allows the relevant parties to see the content of press statements and offers reassurances that they provide the public with a transparent account of the focus of the investigation.
3	The IPCC is delivering training to its casework managers about determining investigation appeals: <ul style="list-style-type: none"> • to ensure that decisions reflect a proportionate approach to investigation • and to underline the fact that a review of appeal findings is not only a review of misconduct decisions, it also focuses on the complaint. 	<p>This helps to improve the quality and timeliness of decisions relating to appeals.</p> <p>This ensures that both the IPCC and forces place a greater focus on the complaint rather than on the conduct.</p>

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Move from a slow to a fast system

	Initiative already underway	Benefit
4	Introduction of the new threshold for referral to the CPS through the Criminal Justice and Immigration Act.	Delays in the system are reduced because the IPCC and the police will refer fewer cases to the CPS.
5	The IPCC Commissioner no longer signs off investigation plans for managed and independent investigation.	An IPCC Commissioner does not review and approve a plan for every investigation, speeding up the process. This will be of particular benefit when the number of Commissioners is reduced. The Commissioner will continue to have overall responsibility for the investigation.

More proportionate system

	Initiative already underway	Benefit
6	The IPCC does not produce a media strategy for every case.	Not all cases attract significant media attention so some cases will not need a media strategy. A more proportionate use of resources would be to make an assessment and produce a media strategy only where needed.
7	The IPCC will focus its internal review process on the most high-risk and high-profile cases.	Not every case requires a full internal review. The decision to review should be based on the seriousness and the risk of the case, and on the opportunity to share learning.
8	IPCC Investigators no longer have to complete 7.3 forms (which are used to record formal approval of an Investigating Officer) for independent and managed investigations.	Completing the 7.3 form adds unnecessary bureaucracy to the internal IPCC process. Investigator's suitability to lead an investigation can be assessed without the form being completed.
9	The IPCC will carry out ongoing assessments of the mode of investigation and re-determine the mode if it is not appropriate.	A more flexible approach will allow resources to be targeted more efficiently.

Reduce the cost of the system

	Initiative already underway	Benefit
10	The IPCC will concentrate its investigation resources on independent and managed cases and carry out fewer supervised cases.	IPCC supervision does not add significant value so reducing the amount of supervision frees up IPCC resources, which can then be used to greater effect elsewhere in the system. It should also reduce confusion about the role of the IPCC (which is fairly limited in a supervised investigation).

Instil a learning culture

	Initiative already underway	Benefit
11	Stronger emphasis on delivering quality, practical organisational learning recommendations.	A stronger focus on learning should reassure complainants, officers and the wider public that incidents are less likely to recur.

Other initiatives already underway as a result of the Stock Take

	Initiative already underway	Benefit
12	The IPCC will increase the use of its current powers (such as call in) in order to demonstrate our role and independence.	A main proposal arising out of the Stock Take involves strengthening the IPCC's guardianship role. We can use existing powers, some of which are used only rarely, to do this. Consideration should be given to whether it is appropriate to increase the use of these powers in order to increase public confidence by showing that, despite the majority of complaints being handled at a local level, mechanisms and tools exist to ensure accountability.
13	The IPCC will provide complainants with an explanation of the process at the outset of every investigation. It will then provide regular updates throughout the process.	The complainant has clear expectations of what they can get out of the system, which should mean that they are less likely to be dissatisfied at the end of the process.
14	The IPCC will provide a full explanation of the complaints/discipline process alongside a Regulation 9 notice. It will then provide the officer with subsequent updates.	The officer has a clear understanding of how an investigation will be handled, which should increase their confidence in the process.

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