Police Action Lawyers Group Submission to the Home Affairs Select Committee inquiry into the Independent Police Complaints Commission

July 2012

About the Police Action Lawyers Group

The Police Action Lawyers Group (PALG) is comprised of solicitors, barristers and legal executives who represent victims of police misconduct. Membership is contingent upon lawyers acting for complainants only, so as to ensure that we provide a wholly independent space to discuss complainants' concerns. PALG has a national reach, with its members involved in matters concerning each and every police force in England and Wales. PALG was formed in 1991 and its members are committed to pursuing all available avenues of redress on behalf of their clients. This might involve relying upon the complaint process, pursuing a claim for compensation and/or seeking judicial review of the related decision making processes. In our experience, the primary objective of the vast majority of clients who instruct PALG lawyers is a desire to ensure that the responsible police officers are held accountable for their conduct to the rule of law. To that extent our clients share a common interest with the imperatives of the Home Affairs Select Committee.

Due to our large and varied membership, the collective experience of PALG is considerable. Members of PALG have, in recent years, acted on behalf of the families of Jean Charles de Menezes, Ian Tomlinson and many others who have died in police custody. PALG members currently represent the families of David Victor Emmanuel, Mark Duggan and Sean Rigg.

As a group we have been in a position to liaise with other organisations representing complainants' interests, including INQUEST, Liberty, Justice and MIND. As you are aware, we have also developed a lobbying role, particularly in relation to the police complaints system. To that end our members have appeared before Select Committees, met with ministers, provided guest speakers for conferences and prepared regular briefings. We are grateful for your invitation to provide written and oral evidence in relation to your current review of the Independent Police Complaints Commission.

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Introduction

1. Members of PALG are acutely aware of the vital role the Independent Police Complaints Commission (IPCC) could and should play in assisting our clients to realise their primary objective; to hold police officers to account for disciplinary and criminal misconduct.

2. However, it is with regret that we must inform the Committee that our clients' experiences with the IPCC are rarely positive, often frustrating and sometimes utterly demoralising.

3. In our experience our clients can expect islands of good practice scattered amongst a sea of ineffective conduct in respect of the IPCC's investigatory, supervisory and appellate functions. We are currently in the process of preparing a dossier of case studies to draw our members' experiences to the attention of the IPCC in the hope that the Commission can learn from mistakes made in the past. However, for present purposes we propose to focus on the following themes which have emerged through our review:
   3.1 The flaws in the investigatory process;
   3.2 The IPCC's failure to enforce its own Statutory Guidance on disclosure; and
   3.3 The poor quality of IPCC decision making in its appellate function.

Flaws in the investigatory process

4. The consistent failure by IPCC investigators to decide that officers should be interviewed under either criminal or misconduct caution in death or serious injury (DSI) cases and in supervised or managed police complaints is an issue that causes our clients a grave lack of confidence in the IPCC investigatory process. The issue has been raised most publicly during the IPCC investigation into the death of Mark Duggan, but is a practice that we see regularly. The consequence of a failure to interview under caution is that the accounts of officers, who may have been causatively involved in the death of our clients' loved ones or who may have been accused of having committed criminal offences, are not adequately tested during an investigation. Accordingly, the

investigation misses the opportunity to secure important evidence which in turn raises questions about the extent to which any such investigation can be effective overall.

5. In our experience, the decision not to interview officers under caution cannot be viewed in isolation; it falls within the wider context of decisions taken at the outset by IPCC investigators. This is particularly the case since the introduction of certifying investigations as subject to 'special requirements' in paragraphs 19A-E of the Police Reform Act 2002.[1] Our experience is that the interviewing of officers under caution was a more frequent occurrence prior to this amendment.

6. To be clear, it is not the position of PALG that all DSI cases are conduct matters and that all officers should be interviewed under either misconduct and/or criminal caution; there are plainly cases where there is no basis to consider that criminal or misconduct offences may have been committed.

7. What we are seeing, however, is an unwillingness to review early decisions taken in investigations that a matter is not a conduct matter (in DSI cases) nor a matter which should be subject to special requirements whereby officers should be served misconduct notices and/or interviewed under criminal or misconduct caution. This is often despite evidence emerging during the investigation which may give rise to a reasonable suspicion that an officer has committed a criminal or misconduct offence.

8. This is to be contrasted with the approach in criminal investigations which does not involve police officers or deaths in custody. In such police investigations, especially following a death which has resulted from lethal force where any culpability is not clear at the outset, or where there are disputed accounts of what in fact took place, we would as a matter of course expect members of the public at the scene of the death to be interviewed under caution. Moreover,

[1] Brought into force by Schedule 23 of Criminal Justice and Immigration Act 2008.

where there is an allegation that a criminal offence may have taken place there is rarely a situation where the first hand account of an individual who allegedly committed that offence is not obtained. Indeed such an interview is often a very valuable piece of evidence that is – quite rightly - secured. Any failure of an accused person to answer questions under caution can be of great evidential value at any subsequent criminal trial, when considered in conjunction with other evidence.

9. The legal route to an interview of officers under caution in a police complaint (as opposed to a DSI matter) is as follows. If an investigator believes that the officer under investigation has (a) committed a criminal offence or (b) behaved in a manner which would justify the bringing of misconduct proceedings, the matter will be certified as being subject to 'special requirements'[2]. Where a complaint has been assessed as such, the investigator must then undertake a severity assessment to consider whether the behaviour, if proven, would amount to misconduct or gross misconduct. Depending on the outcome of this decision, the officer(s) in question must be notified (i.e. served a Regulation 14A notice) of his rights throughout the investigative process, including that an adverse inference may be drawn from any failure to mention a relevant fact. The investigator can only, with these pre-requisites, take a view on whether it is then appropriate to interview the officers under caution.

10. In DSI matters in particular, the IPCC is required to investigate the circumstances of the death and/or serious injury whether or not the conduct of the officers involved is in question. However, where at the outset an officer's conduct is not in question, the investigator has an ongoing duty to review this assessment and to consider whether, throughout the life of an investigation, evidence has emerged to justify assessing the matter to additionally be a 'conduct matter'[3] and therefore certifying it as subject to 'special requirements'.

[2] Paragraph 19B(1) Schedule 3 PRA 2002
[3] Paragraphs 11(2)(a)-(c) of Schedule 3 to the Police Reform Act 2002.

11. If a DSI matter is not certified as subject to 'special requirements'[4] the relevant criteria to interview the officers under caution will not be met.[5] What we are seeing in practice is a reluctance to record DSI matters as 'conduct' matters, either at the outset or upon review throughout the investigation.

12. An example of the failure to take into account new evidence and reverse a decision not to certify a DSI matter as a conduct matter arose during the IPCC investigation into a restraint related death in police custody. Here, IPCC investigators took a view that it was not a conduct matter and there was therefore no basis to interview the officers. That decision remained in force even when the interviews of lay witnesses raised significant factual disputes with the officers' written accounts. Even upon reviewing those discrepancies, the IPCC did not at that point consider whether the matter should then be dealt with as a 'conduct' matter. The officers were never served with misconduct notices and therefore their accounts were never tested in interview, denying the Coroner in the eventual inquest access to what would have no doubt been important and useful evidence.

13. Another PALG member has, in the course of inquest proceedings following a DSI investigation, been provided with evidence in the form of an internal IPCC e-mail which suggested that the decision by the IPCC not to treat an officer as a suspect was premised upon the expectation that the officer would provide a "no comment" interview. This approach provides further evidence of an institutional problem which must be addressed urgently, i.e. the IPCC is not properly taking into account the fact that a 'no comment' interview under caution is in itself valuable evidence and that an adverse inference could be drawn from the officer's failure to give an account in interview which is then later provided. Moreover, we are concerned that the IPCC is making a judgment which assumes knowledge of how an officer might respond. It is not, in our opinion, appropriate for an independent investigator to make assumptions in respect of what might or might not be said.

[4] Paragraph 19B(1) Schedule 3 PRA 2002
[5] Paragraph 19D Schedule 3 PRA 2002

14. Anne Owers discussed the issue of officer interviews in her recent John Harris Memorial Lecture and noted in particular that there was no power to compel officers to attend an interview in DSI cases unless they were being interviewed on suspicion of having committed a criminal or misconduct offence. She suggested that a way of dealing with this issue would be to increase the IPCC's powers to include a sanction for officers if they fail to attend interviews, even if that interview is not a misconduct and/or criminal interview. She rejected the argument that there should be a 'level playing field' and parity with ordinary criminal proceedings against members of the public and said as follows:

> *'police officers are legally entitled to use lethal force, but only in circumstances where this was absolutely necessary to preserve life: theirs or others'. So there does need to be a reason, beyond a tragic death, why that test may not have been met in order to invoke the criminal law. There is however an argument to be had about the right threshold for invoking it, and we need to be sure, in each case, that we are not setting it too high, and that we keep reviewing it in the course of the investigation as evidence accumulates.'*

15. We consider that this explanation, which our members have heard before from other senior figures within the IPCC prior to Anne Owers' appointment, does not address the significant concerns of our clients. As explained above, ordinary members of the public who have not been invested with the powers of a Police Constable also have the right to use force, including lethal force, in self-defence. However, the difference is that if someone is killed by a member of the public – even in self-defence – the individual who struck the fatal blow will be treated as a suspect, arrested and given an opportunity to provide his account in an interview under caution. If, during that interview, the suspect does not raise a defence, an adverse inference can be drawn at trial from that failure to give an account. It is entirely unclear why police officers are not treated in the same way; police officers are as capable of committing crimes as the next person.

16. Whilst we welcome Anne Owers' recognition that the ongoing IPCC failure to interview officers under caution is one that needs to be urgently addressed, her solution – to put in place some kind of sanction for any failure by an officer to give an account without providing the evidential value inherent in a "no comment" interview under caution – does not engage with the issue at the heart of the matter: that IPCC investigators are unwilling to assess matters as ones where a criminal and/or misconduct offence 'may' have been committed in the first place. This results in proper evidence not being secured in the form of either an officer's account or an officer's 'no comment interview'. A sanction, in the absence of an adverse inference from a 'no comment' interview, will remain of little evidential value in an investigation.

17. Furthermore, interviews which are not conducted under criminal or misconduct caution are likely to be inadmissible in any subsequent criminal proceedings, rendering them without purpose if evidence is obtained in those interviews which may indicate that officers have committed criminal offences. More worryingly, we are concerned that Anne Owers' proposed solution will only serve to incorporate within law an opt-out clause for IPCC investigators such that they need not interview officers under caution even where it is appropriate. This will only serve to legitimise the IPCC's current practice which allows the conduct of officers to remain above the law.

18. The IPCC has been given the role of investigating deaths in police custody to discharge the State's investigative duty and independent oversight over complaints investigated by the police. Accordingly there is a duty imposed upon the Commission to properly secure evidence and to test that evidence. In an attempt to appear neutral to officers, our clients are often left with the impression that the IPCC has rendered itself ineffective and often complicit in police officers' attempts to avoid having to answer for deaths that take place in their custody. It is our view that a culture has developed within the IPCC, in the main since the introduction of the 2008 amendments to the 2002 Act, resulting in the mis-application of the correct threshold in analysing when a criminal

and/or misconduct offence *may* have been committed, resulting in investigations lacking the rigour and independence that our clients rightfully expect. It is this culture of viewing officers as witnesses rather than suspects which is at the root of the problem and which needs to be properly addressed by the organisation on an institutional level.

The IPCC's failure to enforce its own Statutory Guidance on Disclosure

19. One of the most important reforms of the Police Reform Act 2002 for complainants was the reversal of the prohibition on the disclosure of an investigating officer's report at the conclusion of a complaint investigation. For years, complainants were left at the end of an investigation not only with the disappointment of their complaint being rejected, but also being left totally in the dark as to why and how such a decision was made.

20. Guidance on information and documents that should now be provided to a complainant or interested party at the conclusion of an investigation is contained within paragraphs 528 to 526 of the IPCC Statutory Guidance. The guidance states as follows:

> *528 "The IPCC believes that making a final investigation report available to the complainant or interested person is the most transparent way of showing what the investigation has found, and so it should usually be provided to the complainant or interested person, subject to the harm test[6] and any necessary redactions. There will be very rare occasions when the reasonable application of the harm test will prevent this and redaction cannot remove the risk of harm …"*
>
> *534 … the investigator should normally explain the findings in the report to the complainant or interested person and answer any questions about it … the report should include a schedule of such statements and*

[6] i.e. where disclosure would have a real risk of significant adverse effect on national security; prevention of crime; or is disproportionate; or where non-disclosure is necessary in the public interest

other underlying evidence. Copies need not be provided with the investigation report as a matter of course …

535 If, after receipt of the report, the complainant or interested person requests a copy of any of the statements or other underlying evidence then, subject to the harm test and with redactions where appropriate, a copy should be provided if this can be done without incurring unreasonable expense … if the information requested is difficult or unreasonably expensive to copy … the person requesting … should be invited to inspect the information.

536 Where appropriate (whether or not the complaint is upheld) the investigator should assist the complainant, preferably in person, to understand the decision made, taking him through the report and any statements or evidence being disclosed.

537 In the vast majority of cases, reports and statements will be short. Where they are being disclosed they could easily be copied and supplied to the complainant.

21. The Statutory Guidance also makes provision for the disclosure of documents to a complainant after a complaint investigation has concluded but pending any appeal to the IPCC on the outcome of that investigation. The chief guidance on disclosure of documents pending appeals in 'local' or 'supervised' investigations within the statutory scheme is provided in paragraph 556 of the IPCC's Statutory Guidance (which should be read in conjunction with the preceding paragraphs from 549 onwards). Paragraph 556 addresses disclosure by the police to a complainant or interested person at the end of the local or supervised investigation but prior to any appeal as follows:

"556 Where a complainant has a right of appeal to the IPCC, he or she will need to know the basis on which the complaint was decided in order to decide whether to appeal. However, misconduct action might follow if the appeal is upheld. Therefore, although there is no statutory obligation

to do so, the IPCC expect appropriate authorities to provide, subject to the harm test, the investigation report to the complainant at the same time as the decision when the complaint is communicated. Disclosure of any evidence requested will also be subject to the harm test and the impact that this may have upon any later disciplinary proceedings were these to be directed by the IPCC."

22. The exceptions to disclosure, subject to the harm test, and the impact on disciplinary proceedings, have their origin in Regulation 12 of the Police (Complaints and Misconduct) Regulations 2004. Regulation 12(3) includes the impact of disclosure on "action or prospective disciplinary proceedings", including where the disclosure may contaminate "evidence of witnesses during such proceedings".

23. Therefore, in order to withhold documents pending an appeal to the IPCC, the police should be required to show that such disclosure offends the "harm test" or can be "justified" vis-à-vis "actual or prospective disciplinary proceedings" including regarding contamination pursuant to Regulation 12.

24. When the Statutory Guidance was introduced we welcomed the paragraphs on disclosure, given their clarity of purpose and method. Our experience is that the Guidance appears to be working in relation to encouraging forces to provide investigating officers' reports at the conclusion of an investigation. Much less common, however, is the disclosure of evidence underlying the reports (or even the listing of that evidence in the report as envisaged by paragraph 534). This is despite clear encouragement in this section of the Guidance for such disclosure.

25. Regrettably, what most complainants now experience is a blanket refusal by the police to disclose any documents other than the investigating officer's report. Where forces fail to adhere to the Statutory Guidance and the IPCC is invited to intervene, it has very rarely done so.

26. Indeed, it is a matter of great concern that it is now the policy of the Metropolitan Police Service to refuse to disclose underlying documents pursuant to the Police

Reform Act; not just where appeals are pending but at the conclusion of complaint investigations in which the IPCC has direction and control when all appeals have been exhausted.

27. In January 2011, upon it becoming apparent that there was a repeated failure on the part of police forces to disclose relevant documents in accordance with the IPCC Statutory Guidance PALG sent submissions to the IPCC. The Metropolitan Police set out their position in a letter dated 4 April 2011 in which they explained that documents underlying an investigation should rarely, if ever, be permitted to be disclosed to a complainant and that the force would not comply with the Statutory Guidance.

28. In response, PALG prepared submissions in August 2011 in which we responded to the justifications advanced by the Metropolitan Police for its approach as follows:

28.1 PALG has never suggested that complainants should inevitably receive disclosure. We recognise that a balancing exercise will usually be necessary.

28.2 The approach adopted in relation to this issue in the IPCC Statutory Guidance is the correct and lawful approach for the following reasons:

- It takes proper account of the various disclosure obligations and restrictions placed on the IPCC and DPS by statute pursuant to the Police Reform Act, Data Protection Act, Freedom of Information Act and Human Rights Act;

- It strives to achieve confidence in the police complaints system by striking a balance between openness and preserving the integrity of evidence;

- It recognises that disclosure decisions are fact sensitive.

28.3 In refusing to provide disclosure the Metropolitan Police relied upon an assertion that those who provide evidence during the police complaints process do so "confidentially" and with a "legitimate expectation" that their statements would not be disclosed. However, we pointed out that there was no factual or legal basis for this assertion. In fact, our collective experience is that witnesses in police complaint or DSI investigations were rarely, if ever, given the expectation of non-disclosure by investigators, and nor should they be. In highly sensitive cases it may be that witnesses are reassured that their identity will be protected by way of redaction or an application for Public Interest Immunity; however for the Metropolitan Police to assert that non disclosure should be guaranteed to witnesses as a matter of routine was extraordinary;

28.4 We pointed out the imbalance in the provision of documents to officers compared against the documents a complainant can expect to receive; the Metropolitan Police in particular are well known for disclosing witness statements to impugned officers as part of extensive "disclosure packs" before officers have even provided their accounts to the investigation, including in interviews. We reminded the Commission that PALG and the IPCC had long deprecated that practice due to the obvious risk it poses to the integrity of officers' accounts[7].

29. Our submissions were designed to assist the IPCC in enforcing its own Statutory Guidance, to remind the Commission of the importance of its guidance on this subject and to assist the organisation in satisfying its guardianship functions. The Statutory Guidance on disclosure provided an example of what could be achieved by a truly independent body.

30. However, the failure of the IPCC to act upon police forces, including the Metropolitan Police, breaching the Statutory Guidance provided evidence of the Commission's failure to provide true independent guardianship over the police complaints system, to the detriment of complainants. Indeed, despite PALG requesting at the conclusion of our submission of August 2011 that the IPCC take

[7] It is also not a practice followed by the police when interviewing criminal suspects.

further steps to safeguard the rights of complainants in the face of the clear breach of its guidance, no further effective action was taken by the Commission for many months.

31. It was not until February 2012 that the IPCC confirmed its view in correspondence that the position of the Metropolitan Police *"over emphasises the need not to prejudice disciplinary proceedings"* … and that *"where disciplinary proceedings are not a possibility or in train, this argument should not be used to prevent disclosure".* The IPCC also confirmed that it did not understand the Metropolitan Police suggestion that evidence gathered during a police complaint is generated "confidentially" in the sense that the complainant cannot have disclosure of this evidence because of a duty of confidence to the relevant witness. The IPCC letter went on to say that the Commission *was "…in broad agreement with you that the [Metropolitan Police] approach to disclosure is unnecessarily restrictive…"*

32. However, despite being in broad agreement with us, the IPCC declined to take further steps to enforce its current guidance. Instead, the Commission confirmed that it was now in the process of finalising its consultation draft of revised Statutory Guidance and that it would consider taking into account any submissions made by PALG in respect of disclosure issues when finalising its new statutory guidance.

33. In PALG's submission the stance taken by the Commission is indicative of its lack of teeth in the face of decisions made by police forces not to adhere to its Statutory Guidance. If it were to enforce its own guidance on disclosure this would have materially improved the experience of complainants. It is simply not possible to effectively appeal a decision where the underlying documents upon which the basis the decision has been made have not been provided to a complainant. How can the decision making process of the investigator be scrutinised without reference to the evidence before them? Furthemore, the refusal to provide documents to a complainant where there is no prospect of disciplinary or criminal proceedings defies both the spirit and the letter of the guidance.

34. Whilst we understand that the Commission is due to bring forward new Statutory Guidance this will only have a positive impact if there is more effective

enforcement of the revised guidance than there was of the previous guidance. It also means that those complainants whose matters are currently being investigated remain in limbo as to their rights until that new guidance has been published and is in force.

35. The failure of the IPCC to enforce the transparency which should have resulted from its Statutory Guidance on disclosure serves to damage its reputation in the eyes of our clients. The Commission becomes complicit in the decision of police forces to withhold from them information and documents which have been generated about their own police complaint.

Decision making in the IPCC's appellate function

36. Given the large number of decisions made by the IPCC in respect of its appellate function concerning local or supervised investigations conducted by police forces, the final part of this paper focuses on recurrent themes experienced by our clients which reflect the poor quality of decision making during this process.

37. Our clients have often experienced IPCC caseworkers either failing to grasp the extent of the IPCC's appellate powers or, worse still, confusing 'independence' with 'neutrality'.

38. The most common failing our clients experience is a refusal by the investigating police force to uphold a complaint simply on the basis that the account provided by a complainant conflicts with accounts provided by the officer complained against, or his colleagues. Indeed, it is on the basis of this failure to critically analyse conflicting accounts that the vast majority of police complaints are not upheld with a finding that there is "no case to answer" as the police force, and thereafter the IPCC on appeal, decide that the complaint is "not capable of proof". Many complainants engage in the police complaints process with a degree of trepidation when they know the investigation is entrusted to police officers who are often from the same police force as those who are the subject of their complaint; the feeling of dejection when such decisions – taken without any critical analysis of the evidence - are rubber stamped by the IPCC is often palpable.

39. The failure to critically analyse competing accounts includes a failure on the part of the IPCC to decide whether the accounts provided by police officers lack credibility and whether, therefore, the complainant's account should be preferred and a complaint should be upheld. In fact, complaints are often not upheld even in the face of significant inconsistencies between officers' accounts or the availability of a more cogent and compelling account from a complainant.

40. There is a recently reported case which provides evidence of this flawed approach. In the case of O'Brien v IPCC[8] permission was granted by the Administrative Court for a litigant in person to challenge, by way of judicial review, a decision made by an IPCC caseworker. The basis for the grant of permission was set out at paragraph 2 of the judgment and included the following:

> *"1. Permission is granted in relation to the challenge to the decision that PC Wainwright was not guilty of misconduct in respect of alterations to the witness statements of Mr Doran and Mr Broadbridge. It is arguable that:*
>
> *(a) The IPCC caseworker has applied the wrong test in directing himself that: "In the absence of independent or corroborating evidence, allegations of police misconduct were incapable of being proven".*
>
> *(b) The IPCC caseworker failed to consider whether there was further material, specifically that which the claimant had obtained through his data access request, which could have been obtained and considered as part of the police investigation.*
>
> *2. Permission is granted in relation to the challenge to the decision not to uphold the appeal in respect of the decision not to refer to the CPS on the basis that:*
>
> *(a) The decision follows on from and is affected by the decision that PC Wainwright was not guilty of misconduct in relation to the alterations to the witness statements.*
>
> *(b) The IPCC caseworker has arguably applied the wrong test.*

41. In response to the grant of permission the IPCC agreed to quash its decision not to uphold the appeal and re-consider the appeal afresh.

[8] [2011] EWHC 3407 (Admin)

42. In many of our cases our clients bring police complaint proceedings having been arrested and then unsuccessfully prosecuted at the behest of the officers complained against. Whilst the above example provides evidence of the IPCC having failed to critically analyse the credibility of officers' accounts, we have also experienced the IPCC failing to accord sufficient evidential weight to the evidence of independent witnesses and even to the comments that District and Crown Court judges have made in acquitting a complainant of any criminal wrongdoing.

43. The failure of IPCC caseworkers to accord due weight to judicial rulings is particularly worrying; whereas the IPCC caseworker would not usually have the benefit of witnessing officers' accounts being aired and tested against the available evidence in open court, judges sitting in criminal proceedings have. Therefore their views, whilst not binding upon a subsequent court (or the IPCC), are an example of often available and valuable evidence that is overlooked by caseworkers – if a criminal court decided an officer could not be believed having heard their evidence, that finding should trigger caseworkers to more thoroughly critically analyse an officer's account provided to a subsequent complaint investigation.

44. In respect of another deficit in the appellate function: the failure of IPCC caseworkers to grasp the extent of their appellate powers, one member reports a case where the complainant had complained, amongst other things, that her arrest had been unlawful as the arresting officer lacked reasonable grounds for her arrest but had arrested her nonetheless. The complaint, conducted by the relevant police force, was not upheld. An appeal was lodged and the IPCC caseworker refused to uphold the appeal. The justification for this IPCC decision was that: *"it is for the courts and not the IPCC to consider the lawfulness of the arrest. The role of the IPCC is to consider whether there has been any misconduct by the officer."* This failure to identify breaches of the police Standards of Professional Behaviour in matters such as unlawful arrest, is addressed below and may help to explain the discrepancy where a complaint is considered "not capable of proof" but where the complainant goes on to secure restitution in the course of a civil claim for damages arising from the same events.

45. In the particular case cited, the complainant challenged the IPCC decision on the appeal by way of an application for judicial review. The IPCC refused to review its decision in response to a letter of claim and proceedings were commenced in the Administrative Court. It was only when permission was granted by the court that the IPCC agreed to refer the matter back to the relevant police force for a re-determination on the points which the complainant had argued in her application for a judicial review.

46. As explained above, many complainants pursue successful civil proceedings against the police as a route to achieving accountability when their complaint has not been upheld. It is also worthy of note that, when compared against the problems encountered with disclosure as described in the last section, a complainant can expect disclosure of documents relevant to their case from the police through civil proceedings.

47. Whilst we appreciate that there may, on occasions, be reasons other than police misconduct why a police force chooses to pay damages to a complainant in the course of subsequent civil proceedings, the vast disparity between the number of civil claims for damages which are settled by police forces or successful following a civil trial as compared with the number of police complaints upheld must provide pause for thought. In fact, our experience is that the failure of the IPCC to uphold a client's appeal has no detrimental impact on the chances of success in a civil claim against the police force in question. Moreover, we note that the vast majority of civil claims in which restitution is secured are the culmination of a process which often involves the police complaint being categorised as "not capable of proof," even on appeal to the IPCC.

48. One response to this discrepancy on behalf of police forces has been that civil claims deal with civil liability whereas the police complaints system is designed to address disciplinary and criminal misconduct. However, this approach suggests that despite police forces around the country regularly paying damages and offering apologies in response to civil claims for assault, false imprisonment, malicious prosecution and breaches of the Human Rights Act, in those cases the officers involved should not be recommended for misconduct or criminal

proceedings, despite their actions or inactions having led to our clients' unlawful treatment. Moreover, unlawful conduct leading to civil liability often includes disciplinary or criminal misconduct on the part of officers. For example, in a civil claim for assault, it is likely that the conduct complained of also includes breaches of the Standards of Professional Behaviour[9] in respect of the "use of force". A claim for false imprisonment is also likely to involve similar breaches in addition to breaches of standards in respect of "authority, respect and courtesy" and "duties and responsibilities". Where the civil claim is for malicious prosecution there are obviously a number of potential criminal and disciplinary breaches at play. Within this context it is noteworthy that the standard of proof in both civil proceedings and disciplinary proceedings is one and the same; the balance of probabilities. Therefore, it is striking that where the same standard of proof applies civil litigation often results in securing accountability whereas the police complaints process rarely provides the same outcome.

Conclusion

49. In conclusion PALG is concerned that the IPCC must improve in a number of respects if it is to secure the trust and confidence of victims of police misconduct and those who bear witness to the same.

50. We do not necessarily believe that the IPCC requires greater powers in relation to the matters outlined in this submission. Rather, it must effect institutional change in order to better utilise the powers it has, particularly with regard to the interviewing of officers under caution and the enforcement of its Statutory Guidance more effectively and more appropriately, pursuing cases through the Administrative court if necessary.

51. Whilst the advent of the Police Reform Act has led to improvements in the transparency that complainants can expect by way of disclosure of the investigating officer's report at the conclusion of an investigation, the failure to ensure that complainants are kept properly informed about the reasons why their

[9] Contained within the Schedule to The Police (Conduct) Regulations 2008

complaint has been upheld or refused and the IPCC's apparent complicity in this approach causes many clients to question its courage.

52. Finally, the failure of IPCC caseworkers to understand their own powers, to apply the correct evidential test when determining appeals and the failure to critically analyse accounts does little to help gain confidence in the system, to root out officers who should be guilty of disciplinary or criminal misconduct or to improve police practices. Such conduct, in our view, suggests that supervision of casework must improve to the extent that caseworkers no longer confuse their duty of independence with a duty to remain neutral in the face of strong evidence in support of a complaint, and have the confidence and courage to find in favour of complainants when evidence is available to support such a conclusion.