

Response to the Home Office Consultation 'Improving police integrity: Reforming the police complaints and disciplinary systems'

Introduction

This response is made on behalf of the **Police Action Lawyers Group (PALG)**. PALG is an organisation comprised of lawyers who represent claimants in civil litigation against the police throughout England and Wales. PALG was formed in 1991 and its members are concerned first and foremost with the principal objectives of the complainants we represent: to ensure that police are held accountable for their conduct through all available avenues, including the police complaints and disciplinary systems.

Due to the large and varied membership, the collective experience of PALG is considerable. We include lawyers who act on behalf of complainants against virtually every force in England and Wales.

Chapter 2 – reforming the police complaint system in England and Wales

1. Do these proposals strike the right balance between local flexibility and ensuring consistency in how complaints are dealt with throughout England and Wales?

No.

The proposals appear to be based on the assumption, as stated at page 16 of the consultation paper, that: *“By shifting these [triage] functions to the PCCs, individuals directly accountable through the ballot-box, the Government would expect a stronger focus on the needs of complainants”*. This assumption does not appear to be well-founded.

PALG notes that the inaugural PCC elections in 2012 attracted a national turnout of just 15.1%, the lowest recorded level of participation at a peacetime nonlocal government election in the UK.¹ Over a quarter (28%) of people said that they knew ‘nothing at all’ and 48% knew ‘not very much’ about what the PCC elections were about.² The most recent PCC election, for South Yorkshire, attracted a voter turnout of 14.65%.³ In light of these figures the assumption that PCCs are well placed to assess and represent the needs of their constituents in general, let alone the needs of complainants, appears questionable.

Even assuming that PCCs are best placed to assess and act upon the priorities of the majority of their constituents, PALG is concerned that this is not an appropriate way to allocate resources to the police complaints system. In particular, PALG is concerned that PCCs and candidates are likely to campaign on promises to allocate resources to ‘front-line’ policing and away from the police complaints system. Such promises may be influenced by prejudices about the kind of person who is likely to come into contact with the police, and therefore potentially need the police complaints system. In addition, victims of police misconduct frequently come from socially disadvantaged and marginalised groups who may in turn be less likely to vote in the PCC

¹ *Police and Crime Commissioner elections in England and Wales: Report on the administration of the elections held on 15 November 2012* (The Electoral Commission, March 2013)

² *Ibid.*

³ *Labour beats Ukip in South Yorkshire PCC election* (The Guardian, 31 October 2104)

elections. Complainants' concerns are therefore more likely to be overlooked when PCCs are allocating resources.

Importantly, PALG believes that individuals must be guaranteed an effective police complaints system regardless of where in England and Wales they happen to live. PALG is concerned that the current proposals will result in a 'postcode lottery' with complainants receiving a better or worse service depending on arbitrary geographical boundaries.

PALG supports the Government's stated aim of building confidence and trust in the police complaints system. Transferring more functions away from police services to an independent body is likely to assist in this process; however, proper safeguards need to be put in place to ensure that improvements are brought to all areas of the country. Allowing PCCs, elected on very low turn outs, to decide which functions to adopt and how much funding to allocate risks degrading the current system. In our submission the best way of building a consistent and effective police complaints system is to provide additional funding to the IPCC to allow it to carry out a greater number of investigations year on year, with the ultimate aim of the IPCC conducting all formal police complaint investigations and taking on the 'triage functions' outlined in the consultation paper. It may then be that PCCs are the appropriate body to conduct local resolutions. However, in the event the Government believes that PCCs should undertake the triage functions *and* conduct local resolutions it should specify the minimum complaint functions to be adopted by PCCs across the country and set minimum budget percentages to be applied to those functions. To do otherwise risks transferring too much responsibility for the police complaints system to bodies with too little democratic accountability. Dividing responsibility in this way may make it more difficult to monitor the overall effectiveness of the police complaints system and implement improvements.

2. Do you agree PCCs should be given responsibility to consider appeals on the outcomes of complaints dealt with through local resolution?

No.

First, we note that the proposal is not limited to PCCs being given responsibility to consider appeals on the outcomes of complaints dealt with through local resolution. Instead it is proposed that PCC will consider "*appeals about the handling of local resolution complaints and those relating to the performance of an officer*" (emphasis added).⁴ PALG agrees that Chief Constables should no longer consider appeals against complaint outcomes deemed, by local professional standards departments (PSDs), to relate to performance issues (and not therefore to misconduct or gross misconduct). However, the appropriate body to consider these appeals is the IPCC, not the PCCs. This is because PSDs will often assess a complaint as concerning poor performance, when the complainant themselves may be clear that the conduct about which they have complained constitutes misconduct or gross misconduct. Complainants must be entitled to an effective and independent review of their complaint on appeal if the complaints system is to build public trust. Diverting some appeals to PCCs based solely on the assessment made by the PSD would therefore be counter-productive. The importance of treating appeals concerning unsatisfactory performance and appeals concerning misconduct equally is underlined by paragraph 12.31 of the IPCC Statutory Guidance, which warns: "*It can be hard to distinguish*

⁴ *Improving police integrity: reforming the police complaints and disciplinary systems* (Home Office, December 2014) page 16

precisely between unsatisfactory performance and misconduct.” The difficult nature of this assessment means that appeals in very similar complaints could be referred to different appeal bodies under the current proposals.

Turning to the question of whether PCCs should be given responsibility to consider appeals against local resolutions, we submit this should only happen where a PCC has not conducted the local resolution. To do otherwise would lead to an obvious conflict of interest and an unfair process. We note the Government considers that “*PCCs would need to ensure a degree of separation between decision and appeal to avoid a conflict of interest*”.⁵ This proposed system of self-regulation is insufficiently robust to ensure compliance with the public law requirement of due process. It is also unlikely to engender public confidence in the police complaints system. Even if the Government mandates a mechanism to ensure a separation between decision and appeal, the fact that PCCs would be deciding appeals against their own decisions would undermine the trust required of the public at large and complainants in particular to ensure an effective, workable complaints procedure.

3. Should the government consider going further to streamline appeals? For example (i) by removing the need for the IPCC to hear appeals on cases that they have referred back to police forces to consider and/or (ii) handing these appeals from the IPCC to the PCC for misconduct cases that fall below dismissal?

PALG objects strongly to both these proposals.

As regards (i) our clients are often obliged to make several appeals to the IPCC before PSDs conduct effective investigations. Regrettably, the assumption that an effective investigation will be carried out after one appeal is therefore entirely misguided and not supported by our extensive experience of the complaints system. Complainants must have the right to appeal to the IPCC whenever a PSD fails to conduct an effective investigation. The proposal set out at (i) risks PSDs failing to comply with their duties under the Police Reform Act 2002 during the first re-investigation, knowing that the complainant will have no further right of appeal.

As regards (ii) it is important to appreciate that complaints of misconduct not deemed to meet the threshold for dismissal often concern very serious police failings which can have devastating consequences for complainants and their families. It would be entirely inappropriate for these complainants to be denied a right of appeal to the IPCC. Whilst PALG has concerns regarding the number of former police officers employed by the IPCC (and the implications for that body's independence) we believe the interests of complainants would be served far worse by transferring the responsibility for considering appeals to the PCCs. Not only would PCCs lack the IPCC's experience in determining appeals, we are concerned that the close relationship apparently shared between PCCs and police service would undermine public confidence in PCCs' capacity to determine appeals fairly. For example we note with concern the reference at page 15 of the consultation paper to Northumbria Police recruiting members of police staff to provide “*independent complaint handling*”. The Government's stated aim of increasing public confidence in the complaints system will not be served by increasing the number of appeals against police complaints considered by the police.

⁵ *Ibid.* page 16

4. Should HMIC's remit be extended to include inspection and judgement of the effectiveness of staff working for PCCs responsible for the components of the complaints system set out above in 2.28?

As stated above, if PCCs are to be allocated police complaint functions PALG believes that the Government should mandate the minimum number of functions they should adopt and the minimum amount of funding they should make available to exercise these functions. Assuming such a system were put in place, it would seem sensible to extend the HMIC's remit (with an associated increase in funding) to ensure consistency across the various PCCs.

5. Do you agree with the proposal to extend the definition of a complaint to cover the following? (a) policing practice (b) service failure (c) both

PALG agrees with the proposal to extend the definition to cover both policing practice and service failure. PALG considers that this would simplify the complaints system and provide greater accountability to the public.

6. Do you agree with the Government's proposal that all complaints should be recorded?

PALG fully supports the proper recording of police complaints; however, we are concerned that the Government does not appreciate the likely unintended consequences of simply assuming that all complaints will be recorded following the implementation of these proposals and the right of appeal against non-recording can therefore be removed.

It is important to understand that police complaints are not simply recorded or not recorded. A complaint may involve allegations concerning a range of conduct. For example an individual may complain that they were: assaulted by a police officer; unlawfully arrested; and denied appropriate medical attention whilst in custody. The relevant PSD may then only record one aspect of the complaint. Under the current system this partial non-recording would give rise to a right of appeal to the IPCC. Assuming the appeal is successful the IPCC will direct the PSD to record the complaint fully.

Under the Government's proposals PSDs would be able to satisfy the recording requirement by recording only one aspect of a complaint. This was recently the general practice within the Metropolitan Police Service's Complaint Support Team, until it was provided with guidance by the IPCC stating that where there are several points of complaint each point should be formally recorded. If the Government's proposals are implemented in their current form complainants will either have to: a) judicially review instances of partial non-recording (which is unlikely to be a practical option for many complainants); or b) wait until the conclusion of the investigation before they can appeal on the grounds that their complaint was not properly recorded in the first place. Both courses of action would require spending time and resources which could have been saved by allowing the complainant to appeal a recording decision to the IPCC.

PALG is concerned that removing the right of appeal against non-recording will remove a powerful incentive for PSDs (or PCCs as the case may be) to ensure that complaints are recorded fully and accurately.

In PALG's submission, the discretion not to record a complaint should be removed from PSDs; however, complainants should still retain the right to appeal instances of partial non-recording to the IPCC.

7. Should the terms “discontinuance” and “disapplication” be replaced with the decision to end an investigation into a complaint?

Yes. These terms create unnecessary confusion, given they have the same end result.

8. What more can be done to make the system easier for the public to understand?

The current complaint system is difficult for the public to understand because of its complexity. Simplification of the current scheme would assist with improving the public’s understanding of it.

The present guidance for complainants issued by the IPCC refers the complainant to review the guidance for police forces for further information on how complaints are dealt with. For ease of reference, this information should be provided in a single document, and jargon should be avoided or explained. For example, it is difficult for the public to grasp the difference between a “local resolution” and a “local investigation”.

More detailed information should be sent to complainants after they have made their complaint. PALG often find that whilst complainants are able to find out relatively easily how to make a complaint, they do not easily understand what is expected of the investigator, be that the IPCC or the local police force. They do not easily understand their rights of appeal at the outset of their complaint or that they should ensure that their complaint is correctly recorded. Often, this only becomes obvious to them once they have instructed solicitors or after they receive the response to the complaint.

PALG consider that complainants should be provided with this information as a matter of course at the time of receiving an acknowledgement to their complaint.

9. What should the government do to make it easier to determine whether a complaint is persistent and vexatious?

It is not clear how this recommendation fits with the recommendation to end the non-recording of complaints. Under the current system, complaints do not have to be recorded if they are persistent or vexatious. If non-recording is abolished, then complaints previously labelled as persistent and vexatious would need to be recorded.

Vexatious complaints are going to be a feature of the complaints system no matter how it is reformed. The complaints system must balance the need to ensure transparency and accountability with the resources implication that investigating every complaint has. PALG would be very concerned about any proposals to make it harder to bring a complaint. It cannot be assumed that a complainant who makes a number of complaints is vexatious, merely by the fact that they have made several complaints. The circumstances of each complaint therefore require full consideration.

Many complainants who make repeat complaints in a way that might classify them as persistent, do so because they do not feel that they received a satisfactory response to their original complaint or that not all aspects of their complaint were investigated. PALG consider that if greater consideration was given to the original complaint at the outset and that the full aspects of that complaint were better captured, the number of persistent complaints would decrease over

time. Complainants should be regularly updated throughout the investigation of their complaint and mandatory requirements for police forces to do so should be implemented.

PALG is also concerned about how this fits in with the proposal for super-complaints. If an individual makes a complaint regarding an issue that has already been made the subject of a super-complaint, that further complaint should not be treated as persistent or vexatious. Moreover, individuals should not be discouraged from making complaints where other organisations have taken up the same issue. This should be made clear in any proposed change to determining persistent and vexatious complaints.

10. Are any improvements needed to the way in which the police deal with complaints from victims of crime?

PALG understands that some victims of crime who make complaints about the way the investigation into their case was conducted are told that their investigation was discontinued because of resource issues. The IPCC statutory guidance provides the distinction between direction and control and conduct matters and sets out at paragraph 3.25 that where there is any doubt, the complaint should not be treated as a direction and control matter. However, PALG is concerned that this distinction is not always obvious when complaints are made by victims into the way an investigation into their cases are handled. One improvement for victims would be to ensure that all complaints of this nature fall within the scope of the police complaints system with the same right of appeal as other police complaints. This should be the case even if the proposal to extend the definition of a complaint to include service failure and policing practice at question 5 is not adopted.

Complainants of this nature needed to be informed at the outset that they may be entitled to seek redress through the CPS Victims' Right to Review scheme and also that they may wish to consult a solicitor promptly after the resolution of their complaint regarding potential judicial review. Victims often approach solicitors after the limitation period for bringing a judicial review has passed and are therefore denied appropriate redress.

11. Should the government introduce a super-complaints system for policing?

PALG supports the proposal to introduce a super-complaints system as long as the following criteria are met.

First, such a system should not interfere with an individual's right to make a complaint about the same issue as a super-complaint.

Second, PALG has concerns about the definition of a 'designated organisation'. PALG would want to ensure that this definition is drafted widely so that informal groups are able to make super-complaints if needed. It should be the issue complained of that identifies a complaint as a super-complaint rather than the make-up of the group pursuing the complaint. If a systemic failing is identified, a group should not be barred from making a super-complaint simply because it does not fall within a prescribed list. This would frustrate the transparency and accountability of the complaints system and would result in arbitrary decisions being made.

12. Is the IPCC the correct body to receive a super-complaint?

PALG considers that the IPCC to be the only body that has the necessary skills to adequately investigate a super-complaint and therefore should be the body to receive it. This should not prevent HMIC from receiving a super-complaint and referring it on to the IPCC for investigation. Depending on the nature of the super-complaint, the IPCC should have the right to seek input from other bodies with relevant expertise such as HMIC.

13. What additional powers would the IPCC, HMIC and the College of Policing need?

The IPCC would need additional powers of disclosure to ensure that they have access to all relevant evidence. This should include but not be limited to documents held by individual police forces. It should also include the power to receive information from police forces who are not the subject matter of the super-complaint. If necessary, the IPCC should have the power to extend the subject of the super-complaint to other police forces should it identify information which suggests that the issue is not exclusive to one police force.

The IPCC should have the power to compel witness evidence from police forces.

Chapter 3: Reforming the police disciplinary system

14. What factors should be considered when sanctions are benchmarked?

- (i) Seriousness of misconduct**
- (ii) Public interest**
- (iii) Intent on behalf of the officer involved**
- (iv) Previous conduct of the officer**
- (v) Other (please specify)**

PALG agree with all of the above factors including an additional one, which is that the impact on the victim should be considered when sanctions are benchmarked. PALG submit that the terms 'misconduct' and 'gross misconduct' may offer a victim of police misconduct some clarity about the standards of misconduct that will meet sanction, and therefore they do serve some purpose in considering and making it clear what amount of misconduct will meet which sanction.

PALG raise the fact that this question hints to a wider area of concern that the sanctions delivered to officers do not reflect the conduct that is being punished and there is an inconsistent approach to the discipline of officers. There are concerns that the same conduct could be meeting different sanctions amongst different police forces. The Chapman Report discusses the concept of a '*zero-tolerance*' policy about for certain specified conduct following which an expected sanction should apply.⁶ PALG submit that the factors considered in deciding any such policy should be rigorously explored and in addition lead to further consultation. All of the above factors should be considered when deciding upon behaviours which would come under such a policy.

15. To what extent do you agree or disagree that the performance management process should be streamlined, bringing it into line with the process for misconduct?

- (i) Strongly agree**
- (ii) agree**
- (iii) neither agree nor disagree**
- (iv) disagree**
- (v) strongly disagree**

⁶ An Independent Review of the Police Disciplinary System in England and Wales, Chip Chapman, October 2014, hereafter 'The Chapman Report', pp. 12-13 and 74-75

PALG agree with the proposal at paragraph 3.30 of the consultation which would appear to be a sensible approach to police disciplinary matters. It does not bring about greater clarity to the police disciplinary system to have a separate system for dealing with underperformance to that dealing with misconduct. There will be areas of difference in the detail between each area which should be further clarified.

16. To what extent do you agree that inspector is the appropriate rank at which to take decisions about matters below dismissal?

- (i) Strongly agree**
- (ii) agree**
- (iii) neither agree nor disagree**
- (iv) disagree**
- (v) strongly disagree**

PALG consider that the rank of inspector is too low and superintendent is the appropriate rank to take decisions about matters below dismissal, subject to further clarification and consultation on what conduct would be sufficient to meet the dismissal test. Sanctions falling short of dismissal may include written warning or final written warning, indicating conduct which could be quite serious.

Police superintendents are responsible for strategic decision making, standards and day to day police and it is appropriate that they are directly involved in disciplinary sanctions. This should ensure greater consistency of disciplinary sanction and ensure superintendents are properly accountable for the conduct of their subordinates. Inspectors may well be too closely connected to the officer(s) subject of the disciplinary proceedings and/or their management decision making may be implicated in the circumstances giving rise to the disciplinary proceedings such that they do not have the necessary objectivity for the public to be satisfied that the system is capable of ensuring proper accountability.

PALG are concerned that the central proposal at paragraph 3.32, incorporating the Chapman Review recommendation that a severity assessment test should replace a simple dismissal test, does not form part of this consultation, although the consultation notes that it should be clear to all parties which cases will usually lead to dismissal and which do not. This is an important proposal which should be considered thoroughly.

PALG agree that it would be sensible to outline what conduct would lead to dismissal, both for the officer concerned and the complainant of the alleged misconduct. PALG urge the Government to consult of a proposed form of a dismissal test so that the bar is not raised impossibly high, and the misconduct that may meet dismissal is subject to public approval. PALG note that The Chapman Review highlights discontent on the part of some police forces and/or individual officers that the availability of 'severity assessments' have led to 'over-assessment'.⁷ There is concern that the views of complainants and their representatives have not been taken into account when assessing the use of severity assessments and the possible replacement of this with a dismissal test.

PALG are concerned with the idea of adopting an approach which leaves out the option of assessing the conduct itself so that lessons can be learned in the future, which is possibly lost with a narrow focus on whether the conduct simply meets a threshold that is required to meet dismissal. PALG would like to strongly raise concern that it is important that investigations into complaints are not weakened because they do not meet the dismissal test. For example, there could be conduct which is capable of meeting the threshold to constitute a breach of Article 3 of the European Convention on Human Rights but perhaps it would not definitely lead to dismissal. The Government is requested to explain this proposal in further detail.

⁷ The Chapman Review, pg. 65 paragraph 5.3

PALG support the development of communication to complainants on what conduct could meet the threshold for dismissal. This could be in addition to use of severity assessments and not a replacement. The Government is urged to consider this proposal more thoroughly.

17. To what extent do you agree that time limits should be considered for disciplinary proceedings?

- (i) Strongly agree**
- (ii) agree**
- (iii) neither agree nor disagree**
- (iv) disagree**
- (v) strongly disagree**

17(a) If you agree, how long should the time limit be?

PALG agree that some time limits should be considered for disciplinary proceedings. This would offer some clarity on the length of the intended proceedings to all those taking part.

PALG are concerned however that the time limits are available to be varied by discretion and the particular circumstances of a complainant's case. The Government have hinted that this would be taken into account in paragraph 3.34 where a time limit would not apply to 'very complex cases and where there is a parallel criminal investigation. PALG are concerned that consideration of the particular circumstances of the complainant's case are taken into account.

For example, if there are on-going inquest proceedings which are likely to produce evidence relevant to the officer(s) conduct it may not be appropriate to commence a disciplinary hearing before these are concluded.

18. Do you agree that police disciplinary hearings should be held regionally rather than locally?

Yes.

PALG would broadly support this proposal because it would lead to greater consistency being applied across the board, greater experience delivered in dealing with cases and it would avoid the possibility of "localism and notions of back-room deals", as is outlined in The Chapman Report⁸. The Government is requested to give assurances that accessibility will be a focus as this could be lost by a regionalised approach and adequate notice should be given to a complainant before the commencement of a disciplinary hearing.

19. Given the proposed changes to handling mitigations, are there any additional safeguards that would need to be put in place?

PALG broadly supports the proposed recommendations to dealing with mitigations⁹ and the Government's proposal to deal with them. It is agreed that formality should be brought to the process and that the officer should provide evidence that they had formally and earlier declared the mitigating circumstance to ensure where, mitigating circumstances are taken into account in disciplinary proceedings, there is a proper degree of transparency and fairness so that the outcome is explicable to complainants. The sense of unfairness, disappointment and confusion that may otherwise result is highlighted in The Chapman Report¹⁰.

If mitigation has been taken into account in reaching a disciplinary sanction, that should be disclosed to the complainant. Guidance on what mitigation will be considered in the course of

⁸ The Chapman Report, figure 16 on page 67

⁹ The Chapman Report, p. 76, recommendations 31 and 32.

¹⁰ The Chapman Report, p.75, paragraph 5.24

disciplinary proceedings should be consulted on and published to improve transparency and prevent frustration with the process for the complainant and the IPCC.

22. To what extent do you agree that the proposed way of appointing lay members is the most effective?

- (i) Strongly agree**
- (ii) agree**
- (iii) neither agree nor disagree**
- (iv) disagree**
- (v) strongly disagree**

22(a) If you disagree, what alternative approach should the government consider?

22(ii) Agree – it makes sense to have the largest possible pool of lay members available to attend appeal hearings to address any issues about timeliness of the process. The timely conclusion of disciplinary proceedings is in the interests of complainants who want to see a proactive, robust process and a just outcome in a reasonable timeframe which allows them to move on with their lives.

Allowing the potential for lay members to attend appeal hearings across a larger geographical area may well assist in improving consistency nationally. Lay members have an important function in improving public confidence in the police, this can only be assisted through the greater neutrality (whether perceived or actual) which drawing lay members from further afield may bring.

23. Are there any practical reasons why dismissal with notice is justified in certain cases?

The arguments against retaining the sanctions of ‘dismissal with notice’ and ‘extension of a final written warning’ are clearly expounded in paragraph 5.14 of the Chapman Review. The sanctions run counter to the public interest in a robust approach to police discipline. There is no good reason why police officers whose conduct has been found to justify dismissal should be afforded greater leeway than a person in any other employment context would.

We can think of no situation in which dismissal with notice should be justified.

24. For how long should warnings remain on officers’ records?

We agree that the current length of time warnings remain on officers’ records (12 months under the Police (Performance) Regulations 2012 and 12 months/18 months for a final written warning under the Police (Conduct) Regulations 2012) is too short. We note that the Chapman Review found that most Professional Standards Departments supported warnings remaining on officers’ records for five years. The increased length of time should be at least this long.

We accept that a system of police discipline designed to be rehabilitative in every case where dismissal is not warranted must allow an officer to move on from a written warning, however we would support further regulation providing guidance on the length of time written warning should remain which acknowledges the seriousness and nature of the index event and whether further complaints had been made against the officer in the past or while the written warning remains current.

In particular we consider:

- A final written warning should remain on an officer's record for as long as he or she remains a police officer in recognition of the seriousness of that sanction and that it may have followed on from any earlier written warning;
- warnings for certain other particularly serious conduct should permanently remain, for example sexual misconduct;
- Any similarity between the conduct giving rise to the original warning and any new allegation should extend the time a written warning remains on an officer's record;
- If any future complaints or disciplinary proceedings against the officer are initiated while the warning remains on the officer's record, it should remain pending the outcome of that investigation or disciplinary proceedings and taken into account when deciding any further disciplinary sanction;
- We support the recommendations of the Chapman Review at paragraph 5.20 of the report, in relation to ensuring that future warnings are escalatory and have an 'impact and mark time element'.

25. To what extent do you agree or disagree with the principle of bringing together the staff and police disciplinary systems into one single system?

- (i) Strongly agree**
- (ii) Agree**
- (iii) Neither agree or disagree**
- (iv) Disagree**
- (v) Strongly disagree**

25(a). If you agree, which option do you prefer?

- (i) Option one**
- (ii) Option two**

Tentative agreement – there is a strong argument for bringing staff and police disciplinary systems into a single system in relation to police staff *exercising policing functions*, for example PCSOs and detention officers. The government regulation of police officers is appropriate and key to the Office of Constable, given police officer's important public servant function and the significant powers entrusted to them. The regulations imposed upon police under the Office of Constable are strongly in the public interest for ensuring a level of accountability that subjecting police officers to ordinary employment rights would not allow, for example the power of chief constables to suspend a police officer to prevent their retirement in order to escape disciplinary proceedings (Police (Conduct) (Amendment) Regulations 2014). Where both police officers and civilian detention staff are implicated in a police custody death, for example, is an unjust anomaly that a police officer can be suspended pending disciplinary proceedings but a police staff member cannot be prevented from retiring avoiding the same.

For this reason Option One is to be preferred. It may not be appropriate or necessary for all police staff to be subjected to the police regulatory system and we therefore consider that the correct balance is to be struck by drawing the distinction between police staff *exercising policing functions* to be subject to police conduct and performance regulations and the remainder of police staff continuing to be subject to employment law.

26. What issues should the government consider before deciding whether it should implement options one or two?

As the Chapman Review notes, decision making surrounding the prospect of removing the Office of Constable and subjecting police officers to the ordinary employment regime requires far greater research, report and consultation on the implications of the proposed change. There must be no dilution of the ability of police officers to be held to account for the exercise of policing functions.

27. Which option for compelling police officers to answer IPCC questions do you think the government should pursue:

- (i) Option one**
- (ii) Option two**
- (iii) Option three**

Option 2 is favoured for striking the right balance between the public interest in police officers, as state agents, public servants and under the Office of Constable, being obliged to cooperate with IPCC investigations and the common law principles underpinning the right to remain silent.

Chapter 4 – strengthening protections for police whistle blowers

28. To what extent do you agree that the IPCC should have the power to manage the early stages of an investigation brought to their attention directly by a whistle blower before informing the force?

- (43) strongly agree**
- (ii) agree**
- (43) neither agree or disagree**
- (iv) disagree**
- (43) strongly disagree**

We strongly agree that the IPCC should have the power to manage the early stages of an investigation.

43. How should cases reported by whistleblowers to the IPCC which fall below serious and sensitive be dealt with?

It is proposed that cases which are not serious and sensitive are referred for investigation to the police force. We suggest that the IPCC should investigate all cases and not only those that are serious and sensitive. The fact that a complaint has been made by a whistleblower is sufficient to justify an investigation by the IPCC. The risk of a referral to the police force is likely to result in less whistleblowers making complaints for fear of reprisals and the other consequences mentioned in the report.

29. To what extent do you agree the introduction of sealed investigations will increase the ability of the IPCC to carry out investigations and prevent the possibility of collusion, destruction of evidence or pressure being applied to an investigation:

- (43) strongly agree**
- (ii) agree**
- (43) neither agree or disagree**
- (iv) disagree**
- (43) strongly disagree**

We agree that the introduction of sealed investigations is likely to increase the ability of the IPCC to carry out an effective investigation. It is proposed that this is likely to happen only in a small number of cases. However, the decision should be authorised by a senior member of the IPCC, possibly a Commissioner to ensure that the complaint justifies a sealed investigation. There should be a provision enabling the authorising member of the IPCC to release information from the sealed investigation where it is considered in the public interest.

43. At what point(s) in the process do you think a whistleblower should have a right to feedback?

Throughout the course of the investigation and at regular intervals.

32. For each of the issues set out above, please state whether a whistleblower should or should not have a right to be consulted by the IPCC

We suggest the whistleblower should be consulted at each of the stages listed at (a) to (d). To ensure the integrity of the process and that whistleblowers have confidence in the complaint system being effective regular consultation should take place.

33. To what extent do you agree with the proposal to give whistleblowers the opportunity to request an independent review of any decision that they have a case to answer regarding their conduct?

- (43) strongly agree
- (ii) agree
- (43) neither agree or disagree
- (iv) disagree
- (43) strongly disagree

We agree with this proposal where the alleged misconduct arguably arises out of the fact that the officer has become a whistleblower.

34. To what extent do you agree or disagree that the identity of a police whistleblower should be protected by law?

- (43) strongly agree
- (ii) agree
- (43) neither agree or disagree
- (iv) disagree
- (43) strongly disagree

We disagree that the identity of a whistleblower should be protected. It is important to ensure an open and transparent process that the identity of officers are revealed.

35. Are there circumstances where guidance should recommend that prosecutors consider the SOCPA provisions for police whistleblowers with information about serious criminality in their force?

Where an officer is suspected of a criminal offence, he should be subjected to the usual criminal process. If the misconduct of the whistleblower is sufficiently serious to warrant a criminal investigation it will be in only exceptionally rare circumstances that immunity should apply.

Chapter 5 – the role and powers of the IPCC

36. Are further changes needed to strengthen or clarify the mandatory referral criteria?

Yes.

First, Regulation 4 of the Police (Complaints and Misconduct) Regulations 2012 should be amended so that any allegation of a sexual offence or corruption by a police officer must be referred to the IPCC. PSDs should not have the discretion to avoid making referrals where they do not consider the alleged conduct to be 'serious'.

Second, Regulation 4 should be amended so that complaints concerning the inappropriate use of force or unlawful arrests should be referred to the IPCC where it is alleged that treatment was aggravated by discriminatory behaviour. This change is necessary to prevent PSDs from concluding that these serious complaints are not liable to lead to misconduct proceedings and therefore do not require referral to the IPCC.

Third, Regulation 4(2)(iv) should be amended to read: "*a criminal offence or behaviour which is liable to lead to misconduct proceedings and which in either case, in the view of the complainant or the appropriate authority, may have been aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the Commission*" (proposed amendments underlined). This will bring the Regulations in line with the IPCC's *Guidance on Dealing with Allegations of Discriminatory Behaviour*.¹¹ It will also end the practice of some PSDs refusing to refer complaints to the IPCC where, in the PSD's view, the complaint does not disclose sufficient evidence of discrimination.

Fourth, the IPCC Statutory Guidance should be amended to make clear that complaints concerning failures by the police to comply with their duties under the Equality Act 2010 to make reasonable adjustments are complaints regarding disability discrimination.¹² The amendments should make clear that the appropriate authority should actively consider whether a complaint concerns conduct of this nature, and that it is not necessary for complainants to mention the relevant test or legislation in order for their complaint to be recorded as concerning disability discrimination.

Finally, the Government should introduce a new right of appeal to the IPCC against a decision not to refer a complaint. At present complainants' only way of challenging these decisions is by way of judicial review (which is not a practical option for many complainants).

37. What are the practical implications of removing the option to conduct managed or supervised investigations?

At present, managed and supervised investigations should be held where the IPCC considers a complaint is sufficiently serious to merit an investigation with its oversight, but not sufficiently serious to justify an independent investigation. PALG is concerned that the current proposals would result in complainants in these serious cases being denied an investigation benefitting from the IPCC's oversight. As such, PALG would only support the removal of managed or supervised investigations in the event that all complaints which would have previously qualified

¹¹ Paragraphs 75 and 76

¹² Section 20 Equality Act 2010

for such investigation are conducted independently by the IPCC. This would accord with the Government's stated aim of ensuring that the IPCC "*will be able to investigate all serious and sensitive cases*".¹³ However, if the Government does not feel able to make this change (and provide the IPCC with the necessary additional funding) then it should not remove the option of managed or supervised investigations.

38. In what circumstances should the IPCC be able to seek police support to assist them in their investigations?

PALG agrees that the police should only be involved in independent complaint investigations in exceptional circumstances. In particular, PALG submits that any use of police resources during IPCC investigations must be approved directly by the relevant IPCC Commissioner on the grounds that the investigation could not be carried out effectively without police involvement. Only the minimum police involvement necessary to achieve this objective should be permitted. Before making their decision the Commissioner must take into account representations made by the complaint(s) or interested person(s) in circumstances where it is reasonable to do so. A central record must be kept of all decisions to employ police resources and the reasons for those decisions. This record should be made publically available (subject to necessary redactions). Regular reviews should be held to identify ways in which the IPCC can reduce its reliance on police resources, including via the allocation of extra staff and training to the IPCC.

39. To what extent do you agree with the proposal to give the IPCC a power of initiative?

- (43) strongly agree
- (ii) agree
- (43) neither agree or disagree
- (iv) disagree
- (43) strongly disagree

PALG agrees with this proposal.

We note that the IPCC already has the power to direct an appropriate authority to record a matter that has come to the IPCC's attention which is a recordable conduct matter but has not been recorded. The appropriate authority must comply with that direction.¹⁴ The IPCC may then require any complaint or recordable conduct matter to be referred to it by the appropriate authority.¹⁵ It may assist the Government to achieve its aim of making the police complaints system more understandable if this two-stage process were replaced with the proposed power of initiative.

The power of initiative should be exercisable whenever there is an indication that the service provided by or through the conduct of those serving with the police did not reach the standard a reasonable person could expect.¹⁶ The IPCC should not have to consider there to be an indication that a person serving with the police may have committed a criminal offence or

¹³ *Improving police integrity: reforming the police complaints and disciplinary systems* (Home Office, December 2014) page 45

¹⁴ Paragraph 11, Schedule 3, Police Reform Act 2002

¹⁵ Paragraph 13, Schedule 3, Police Reform Act 2002

¹⁶ This form of words is drawn from the test for upholding a police complaint (see IPCC Guidance: *Appeals against investigation concerning complaints made on or after 1 December 2008*)

behaved in a manner which would justify disciplinary proceedings (the test for recording a conduct matter)¹⁷ in order to exercise the power of initiative.

Chapter 5: The role and power of the IPCC

40. To what extent do you agree with the proposal to clarify the IPCC's ability to determine complaints effectively?

PALG agrees with this proposal and has responded to the IPCC's consultation on its proposed changes to the Statutory Guidance in light of the West Yorkshire judgment (https://www.ipcc.gov.uk/sites/default/files/Documents/consultations/consultation_response_form_Statutory_Guidance_SG_Dec2014.pdf).

41. To what extent do you agree with the proposal to strengthen the IPCC's powers of remedy?

PALG agrees with this proposal subject to some qualifications.

- 1 The consultation raises the possibility of the IPCC being able to award compensation for financial loss. PALG agrees with that proposal. However, it is not clear how it could be given effect within the present system or the proposed system that appears to be envisaged in the rest of the consultation, and we note the following that regard:
 - a) As matters stand, the IPCC only investigate, manage or supervise a small minority of complaints, and it is only more serious complaints that are even referred to the IPCC. Similarly, under the proposed system, it appears that it will only be 'serious and sensitive cases' that will be considered by the IPCC. Complaints that concern financial loss, e.g. lost or damaged property, will therefore not be considered by the IPCC, unless the loss is incidental to some more serious complaint (and for the reasons in the following sub-paragraph there are obstacles to the IPCC awarding compensation in such cases.) Therefore, in both the present and proposed systems, the majority of complaints concerning financial loss would simply not come to be considered by the IPCC.
 - b) It appears, as set out in the above sub-paragraph, that under the present and proposed systems, complaints concerning financial loss will only come to be considered by the IPCC where the loss is incidental to some more serious complaint. More serious complaints that are considered by the IPCC are likely (if not always) to be subject to special requirements such that the investigator will be required to make a determination of whether there is a case to answer for misconduct/gross misconduct. In such a case where such a determination is required, if the financial loss arose out of the same events as the misconduct issue (which is likely), in light of the West Yorkshire case, there would be constraints on the IPCC's ability to make any finding that would lead to the payment of compensation.
- 2 Similar concerns arise in respect of the suggestion that the IPCC should have the power to recommend an apology: under the present and proposed systems it would not apply in the majority of cases as they are not ever considered by the IPCC; in those cases that are considered by the IPCC, in light of the West Yorkshire case, there would be constraints on the IPCC's ability to make any finding that would lead to the recommendation of an apology.

¹⁷ Section 12, Police Reform Act 2002

- 3 In short, PALG considers that it would be in the interests of complainants (and the interests of all concerned) if there were a means by which simple financial loss could be compensated without the need for a civil action for damages, and if apologies could be recommended in appropriate cases. However, for the reasons set out above, there appear to be serious practical obstacles to the implementation of that proposal. PALG would be interested to know more detail about how it is proposed this will be implemented.

42. To what extent do you agree with the proposal to give the IPCC the power to present cases at disciplinary hearings?

PALG agrees with this proposal.

- 1 PALG's agreement to this proposal is one reached reluctantly as it entails an acceptance that chief officers cannot be relied upon to take effective action when officers are identified as having a case to answer for misconduct. It is most unsatisfactory that it appears to be necessary to legislate for such a state of affairs. However, in light of the problem identified in the Chapman Review, which is borne out by the experience of those for whom PALG members act, PALG supports the proposal because given chief officers' failure on this matter, taking it out of their hands appears to be complainants' best hope of achieving some accountability.
- 2 It is also with considerable hesitation that PALG would accept that any faith can be put in the IPCC to address this problem, since it is a state of affairs that has developed and persisted under the watch of the IPCC. The recent case of a complainant represented by a PALG member illustrates not just how chief constables fail in this area but also how the IPCC has been unable and unwilling to address those failings:
 - a) The matter concerned complaints against officers of Greater Manchester Police investigated by the force under the management of the IPCC. The investigation found that one officer had a case to answer for misconduct. GMP indicated that it did not intend to take any action against the officer and the IPCC exercised its power to direct that the matter proceed to a misconduct meeting. GMP convened a misconduct meeting accordingly. However, a matter of minutes before the misconduct meeting began, the complainant and his representatives were informed by the presenting officer from GMP that the case that would be presented to the panel was that there was no case to answer. Unsurprisingly, the panel found the misconduct not proven.
 - b) The course of action taken by GMP was in breach of its obligations under the Police Reform Act 2002, having received a direction from the IPCC. The complainant immediately raised his concerns with the IPCC (who were present at the meeting) and again after the meeting. It transpired that the IPCC had known for several days. However, while the IPCC raised some concerns with GMP, when told the meeting proceed on that basis nonetheless the IPCC did not take any further steps, such as to seek an injunction from the High Court, to prevent the meeting from proceeding. After the meeting, they were urged by the complainant to seek judicial review of the outcome, but refused to do so.
 - c) In short, GMP decided that because it did not agree with a direction given by the IPCC it would ignore that direction. GMP made a mockery of the oversight role of the IPCC and succeeded in subverting the police complaints system put in place by Parliament. GMP's action was plainly vulnerable to challenge by way of judicial

review, being in breach of the PRA. By deciding to permit GMP's actions to go unchallenged the IPCC rendered meaningless its powers of oversight and direction, and severely diminished its role in the police complaint system.

- 3 Unfortunately such weakness and lethargy all too often characterise complainants' experience of the IPCC. PALG however agrees that if responsibility for the presentation of some misconduct cases is to be taken from chief officers, the IPCC is the body only to whom that responsibility can be transferred. What is essential then is that those carrying out the role within the IPCC must have the will and the ability to do so properly. If they do not, the effect will be to achieve the worst of both worlds: not only will the police officers concerned remain unaccountable, but chief officers will be absolved of their responsibility for that state of affairs.

43. What changes to the organisational structure of the IPCC would support the IPCC to increase its caseload and public confidence in the complaints system?

The consultation gives no detail whatsoever about the contemplated 'different ways of working to accommodate the additional number of investigations' or the possible 'changes [that] can be made to [the present] structure to allow the IPCC to be more flexible and responsive to an increased caseload.' PALG considers itself unable to respond to this question.

5 February 2015