

## Memorandum submitted by The Police Action Lawyers Group

### 1. INTRODUCTION

The Police Action Lawyers Group (PALG) is an organisation comprised of lawyers who represent complainants against the police throughout England and Wales.

PALG is comprised of solicitors, barristers and legal executives who represent complainants against the police throughout England and Wales. PALG members are concerned first and foremost with the principal objectives of the complainants we represent: to ensure that the police are held accountable for their conduct through all available avenues, including the police complaints system, judicial review and compensation claims.

We were established in 1991 and meet every three months. We are London based, with a sub-group in South Yorkshire.

PALG grew out of a desire to share information & expertise, and to ensure that complainant lawyers did not feel they were working in isolation. This was achieved by establishing regular meetings to discuss complainants' concerns and developments in police law & practice.

Due to our 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. Membership is contingent on lawyers only acting for complainants, to ensure that we provide a wholly independent space to discuss complainants' concerns.

All of our work as an organisation is voluntary and we receive no funding of any kind. The group is motivated by a desire to achieve the best possible outcome for our clients, many of whom have suffered the most serious abuse at the hands of the police.

As a group we have also been in a position to liaise with other organisations representing complainant interests, including INQUEST, Liberty, Justice and MIND. We have also developed a lobbying role, particularly in relation to the police complaints system. To that end our members have attended before Select Committees, met with Ministers, and prepared regular briefings.

PALG members have been involved with numerous notable police complaint cases and inquiries, some of which are discussed in the case studies we have provided below. A high proportion of PALG lawyers represent members of the public in external complaints against the Metropolitan Police Service. These cases typically involve allegations of false imprisonment, assault and malicious prosecution, often aggravated by racism. A significant number of our clients are diagnosed with Post-Traumatic Stress Disorder, sometimes exacerbated by their experience of the police complaints system. Some of the most distressing cases we deal with are on behalf of families whose relatives have died in police custody. Many of our members are also active within the INQUEST Lawyers Group.

These submissions are made pursuant to a request from the Rt Hon Keith Vaz MP by way of a letter dated 23 February 2010. This followed the hearing of oral evidence by the Home Affairs Committee on 23 February 2010 on *The Work of the Independent Police Complaints Submission*.

### 2. BACKGROUND: PALG AND THE IPCC

#### 2.1 *The Historical Context*

It is important to bear in the mind the history of the investigation of police complaints in this country.

As the Committee will be aware, the IPCC was preceded by the Police Complaints Authority (PCA). The PCA had long been criticised by complainants and complainant groups for two primary reasons: firstly, that there was no provision for independent investigation (all police complaints were at the time investigated by police officers); and, secondly, for a lack of transparency: complainants were not entitled to see the investigating officers report. There were also problems with delays in the processing of complaints. However at the heart of all these criticisms lay the fundamental problem that complaints against the police were rarely upheld. Complaints would be brought about very serious misconduct issues, including allegations of criminal misconduct. These same allegations would lead to successful civil claims against the chief officer of the relevant force, with compensation being paid to the victim. However the officer(s) responsible would remain in post, undisciplined, because the complaints system appeared unable to deliver on this particular aspect of police accountability. The anomaly between the outcome of civil claims and the outcome of police complaints increasingly brought the complaints system into disrepute.

Complainants brought legal challenges to the complaints system that exposed its weaknesses, particularly around the issue of its lack of independence. Calls for an independent body to oversee and investigate police complaints dated back at least to Lord Scarman's Inquiry into the Brixton Riots in 1981, however they gained particular traction following the publication of the Stephen Lawrence Inquiry report (the "MacPherson Report") in 1999. The report made a specific recommendation regarding the need for an independent body to oversee the investigation of police complaints and this recommendation was accepted by the then Home Secretary.

In 2000, the government issued a consultation paper entitled *Complaints Against the Police: A Consultation Document*. This paper reflected two previous studies: one commissioned by the Home Office entitled *Feasibility of an Independent System for Investigating Complaints Against the Police*, and another by Liberty entitled *An Independent Police Complaints Commission*. PALG prepared a detailed response to the consultation.

In late 2000 the government issued a framework document entitled *Complaints Against the Police: Framework for a New System*. The Police Reform Act 2002 followed a further period of consultation, in which PALG was again involved, and the IPCC took over from the PCA on 1 April 2004.

## 2.2 Early Experience of the IPCC

In the 18 month period following the IPCC's coming to power, complainants and complainant bodies quickly became concerned regarding the quality of decision making by the IPCC, and for the apparent impartiality informing those decisions. This culminated in PALG submitting a dossier to the IPCC in October 2005 entitled *The PALG Experience of IPCC Decision Making and Performance* [see appendix A].

## 2.3 The Advisory Board

The IPCC Advisory Board was created with the stated intention of providing its stakeholders with a forum for being heard. PALG were represented on the Board from the outset, despite scepticism on the part of its members that its involvement might be deemed an endorsement.

Following long held concerns that, among other things, concerns raised during Board meetings were not being addressed, PALG tendered its resignation from the Advisory Board on 11 January 2008. A copy of the resignation letter is attached, at Appendix B.

## 3. THE POSITION NOW—AN INDEPENDENT AND EFFECTIVE COMPLAINTS SYSTEM?

The IPCC has on a number of occasions cited three primary factors in support of claims of effectiveness and independence. These are:

1. That substantially more complaints are now made each year;
2. That more complaints “in actual numbers” are now being substantiated; and
3. That a significant majority of the general public believe that their complaints would be dealt with fairly by the IPCC.

IPCC Chair Nick Hardwick made much of the above during the recent “File on 4” programme on BBC Radio 4 entitled *“How well does the IPCC police the police?”* [the transcript of which is attached at Appendix C]

Whilst it is clear that a greater number of complaints are now made against the police than were made in the days of the PCA, fewer of those complaints are in fact being upheld in real terms. In the final three years under the PCA, between 12 and 13% of complaints nationally were upheld. That figure has been in steady decline under the IPCC, falling to 10% in the latest statistics released (2008–09).

The figures above can appear especially stark when put into the context of individual forces. The Metropolitan Police is the largest police force in England and Wales. In 2008–09, only 4% of the 3,807 complaints made against the Metropolitan Police were upheld. This figure too has declined under the IPCC, coming down from 13% in 2004–05.

A fundamental issue here is what happens when the IPCC is faced with an account of abuse of power by a complainant and an account by officers, with little corroborative evidence on either side. In these circumstances the IPCC routinely concludes that it cannot uphold the complaint because of insufficient evidence. Indeed the IPCC chair Nick Hardwick confirmed that the IPCC cannot assist in such cases at a PALG meeting last year. Yet on the same evidence, and on the same standard of proof, a civil court is able to determine where the truth lies. It does this by testing each party's account. Police forces' legal advisors also reach conclusions on the likelihood of winning or losing a civil claim and settle many of our client's civil claims accordingly.

The IPCC's claim to public confidence is founded upon an MORI survey of individuals who had no actual experience of the IPCC. PALG members were consulted by the National Audit Office (NAO) in 2008 on the subject of the IPCC. The NAO, surprised that no survey of those who had actual experience of the IPCC had been commissioned, instructed that this be done. The result was that around 80% of those questioned stated themselves to be “dissatisfied” or “very dissatisfied” with the manner in which their appeal had been dealt with.

One of the myths about police complaints investigations is that they are “independent”, even if that is a key component of the Commission's title. The fact is that the vast majority of complaints, some of them about very serious assaults, are investigated by police officers from the same force as the “complained about” officer.

The 2008–09 statistics and annual report from the IPCC shows the following:

- (a) Only 88 complaints out of over 31,000 complaints cases (containing over 50,000 allegations) were independently investigated by the IPCC, and “managed” another 130 investigations. 42 independent investigations involved deaths in custody, as did 16 of the managed investigations.
- (b) Around 90% of investigations completed result in a finding that the allegations were unsubstantiated.
- (c) Allegations of discriminatory behaviour, serious assault, and “other assault” have the lowest “substantiation” rate at 3%, 5% and 4% respectively.
- (d) There were 397 allegations of serious assault and 7168 of other assault. There were over 1,500 allegations of discriminatory behaviour.
- (e) Some police forces dealt with up to 67% of complaints by way of “local resolution” by which there is no formal investigation at all.
- (f) The complaint substantiation rate for police forces varies between 23% (Northants) and 3% (Cheshire).

We are concerned with some of the implications of these figures.

- (a) It is still the case that minute numbers of complaints are upheld. We do not believe that 97% of complaints about serious assault are groundless or without foundation, or that almost 7,000 false complaints of assault were made last year;
- (b) The differentials between forces in substantiating complaints strongly suggests a “post-code lottery” and inconsistent standards of investigation by local police forces. Urgent research and investigation is required to ascertain why, for example, a complaint is over seven times more likely to be upheld in Northamptonshire as opposed to Cheshire.
- (c) If deaths in custody are removed from the figures then the IPCC is only independently investigating about 45 other cases a year out of the 31,000 total.

It is clear from the statistics that we do not have an independent police complaints system, even for the vast majority of various serious complaints. It would also appear clear from the above statistics that there are large numbers of police officers responsible for serious assault and other assaults who have not been held accountable for their actions.

It is our view that the current state of affairs does not comply with human rights law. In relation to serious assaults, we note that the State has the responsibility to ensure that there is an official effective investigation of arguable cases of serious mistreatment. In *Assenov v Bulgaria* (1998) 28 EHRR 652 the ECtHR set out that “arguable cases” of serious mistreatment in breach of Art 3 require “an effective official investigation...as with that under Article 2.” At [102] the Court said:

*“The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms in (the) Convention’, requires by implication that there should be an effective official investigation. This obligation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.”*

In an opinion dated 12 March 2009 the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, set out what in his view should be the requirements concerning independent and effective determination of complaints against the police. In relation to an Independent Police Complaints Body (IPCB), the UK equivalent to which is the IPCC, he found that:

29. *An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. An independent police complaints body (IPCB) should form a pivotal part of such a system.*

30. *Five principles of effective police complaints investigation have been developed in the jurisprudence of the European Court of Human Rights on Articles 2 and 3 of the ECHR:*

1. *Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;*
2. *Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;*
3. *Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;*

4. *Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and*

5. *Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.*

34. *Primary legislation should provide for the operation of an IPCB with general responsibilities for oversight of the police complaints system and express responsibility for investigating Article 2 and 3 complaints in accordance with the ECHR independence principle. Arrangements in the form of, for instance, secondary legislation, regulations, statutory guidance and protocols, will be required to enable the police and IPCB to work together in partnership and ensure that all complaints are handled fairly, independently and effectively.*

It is our view that the approach of the Commissioner reflects the law, and that, because the vast majority of complaints alleging an arguable breach of Art 3 are still investigated by the local police force, the necessary levels of independence are not being provided by the IPCC, even though the statutory framework for this to happen is in place. The problem for the IPCC is the limited resources available for investigation (even though there is no evidence that an independent investigation is more expensive than an investigation by a local police force).

There are ongoing cases testing the lawfulness of the current system. In the recent *Morrison* case Mr Justice Nicol held that it was not possible to say in advance that a local investigation would not comply with Art 3, because of the possibility of a criminal trial against police officers and the right of appeal to the IPCC. That decision is currently being considered by the Court of Appeal. In *Fox v UK*, a challenge to the independence of an investigation into serious assault is being considered by the European Court of Human Rights and the application has been communicated to the UK government for observations.

In relation to the IPCC system of appeals we note that there were 4,131 appeals in relation to investigation of complaints by local police forces in 2008–09 and that most of these were against the “outcome” of an investigation. Although the statistics say that 22% of the “outcome” appeals were upheld, what is not explained in the statistics is that “outcome” covers (i) appeals against the information provided by the police; (ii) the findings of the investigation (eg whether a complaint is substantiated); and (iii) the action the police propose to take (eg whether misconduct proceedings will be instituted). It is our view that a breakdown of the figures provided is required to allow complainants and the general public to obtain a proper impression of the appeals system. We also note that it is not possible to see from the level of successful appeals in relation to each police force. As noted above the “postcode lottery” of police complaints investigations is a particular concern that we have.

Further in relation to appeals, we are concerned about the ability of the IPCC to process over eighty appeals a week. We are concerned that low level case managers are used to decide appeals in the majority of cases and the experience of our members is that the quality of decision making is often poor. The only way to challenge an appeal decision by the IPCC is by way of an expensive application for judicial review (the IPCC is not able to “review” decisions which are clearly wrong at a higher level). Cases that have gone to a full hearing such as *Dennis* (2008) and *Herd* (2009) have shown that decisions can be irrational and/or fail to understand the basis of the appeal. We note the NAO’s concerns about the IPCC’s lack of internal quality assurance processes. It seems to us that appeals should always be considered by properly trained and experienced staff.

There is a sting in the tail too in relation to impact of the creation of the IPCC upon civil claims, which as highlighted above have historically been vital in calling to account police officers who abuse their powers. Whilst complainants are seemingly little or no better off now under the IPCC than they were the PCA, the “vener” of independence means that their decision-making is considered by many to be more rigorous. In particular, where a complainant applies to the Legal Services Commission (LSC) for funding to pursue a civil claim, the LSC will have regard to the complaint outcome in deciding whether to make a grant of funding. Indeed, the funding code applied by the LSC has been amended in the wake of the creation of the IPCC specifically to require an individual to pursue the complaints process before seeking such funding (save in certain circumstances) Many of our clients then have their funding applications refused on the grounds that their complaint did not succeed. This is a deeply troubling development for police accountability in the UK.

In conclusion we would say the following:

1. That there is an historical failure to deliver on police accountability;
2. That the IPCC has failed to solve these historical problems; and,
3. That complainants are arguably now in a worse position due to the credence given by organisations such as the Legal services Commission to the findings of the IPCC.