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**MESYUARAT JAWATANKUASA PILIHAN KHAS MENIMBANG RANG UNDANG-UNDANG  
BILIK MESYUARAT JAWATANKUASA 2, BLOK UTAMA  
BANGUNAN PARLIMEN, PARLIMEN MALAYSIA**

**SELASA, 12 NOVEMBER 2019**

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**AHLI-AHLI JAWATANKUASA**

**Hadir**

YB. Tuan Ramkarpal Singh a/l Karpal Singh [Bukit Gelugor] - *Pengerusi*  
YB. Dr. Su Keong Siong [Kampar]  
YB. Tuan Larry Soon @ Larry Sng Wei Shien [Julau]  
YB. Datuk Seri Panglima Wilfred Madius Tangau [Tuaran]  
YB. Dato' Sri Azalina Othman Said [Pengerang]  
YB. Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar [Santubong]  
YBhg. Datuk Roosme binti Hamzah - *Setiausaha*

**Tidak Hadir [Dengan Maaf]**

YB. Puan Rusnah binti Aluai [Tangga Batu]

**URUS SETIA**

Encik Norzulhilmi bin Nozir Ahmad [Penolong Setiausaha Kanan Seksyen Perundangan dan Prosiding, Bahagian Pengurusan Dewan Rakyat]  
Cik Aiza binti Ali Raman [Penasihat Undang-undang II, Pejabat Penasihat Undang-undang, Pejabat Ketua Pentadbir]  
Puan Lee Jing Jing [Jurubahasa Serentak Kanan I, Seksyen Jurubahasa dan Terjemahan, Bahagian Pengurusan Dewan Rakyat]  
Cik Fatin 'Izzati binti Mohd Radzi [Jurubahasa Serentak Kanan II, Seksyen Jurubahasa dan Terjemahan, Bahagian Pengurusan Dewan Rakyat]  
Puan Wan Noor Zaleha binti Wan Hassan [Pegawai Penyelidik, Seksyen Antarabangsa dan Keselamatan, Bahagian Penyelidikan dan Perpustakaan]

**HADIR BERSAMA**

**Suruhanjaya Integriti Agensi Penguatkuasaan (SIAP)**

YBrs. Tuan Mohamad Onn bin Abd. Aziz [Setiausaha]  
Puan Eda Mazuin binti Abdul Rahman [Penasihat Undang-undang]  
Puan Nurul Atiqah binti Mohamad Alias [Pegawai Undang-undang]  
Puan Farah Nadia binti Tapsir [Pegawai Undang-undang]  
Encik Muhammad Hafizi bin Ismail [Media]  
Encik Hanif bin Jalal [Media]

*samb/-*

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**HADIR BERSAMA (samb/-)****Pusat Governans, Integriti dan Anti-Rasuah (GIACC)**

Encik Noor Rosidi bin Abdul Latif [Pengarah Bahagian Undang-undang]

**Polis Diraja Malaysia (PDRM)**

YBhg. SAC Dato' Mohd Azman bin Ahmad Sapri [Ketua Urusetia KPN (Perundangan)]

**Kementerian Dalam Negeri (KDN)**

YBhg. Datuk Yusran Shah bin Mohd Yusof [Setiausaha Bahagian Keselamatan]

Puan Helina binti Dato' Sulaiman [Penasihat Undang-undang]

Puan Nur Jihan binti Mohd Azman [Peguam Kanan Persekutuan (PUU KDN)]

**Bahagian Hal Ehwal Undang-undang (BHEUU)**

YBhg. Dato' Rohaizi bin Bahari [Timbalan Ketua Pengarah (Dasar dan Pembangunan)]

**Pejabat Penasihat Undang-undang JPM**

YBhg. Datuk Almalena Sharmila binti Dato' Dr. Johan [Penasihat Undang-undang]

**Jabatan Peguam Negara**

Encik Peh Suan Yong [Timbalan Penggubal Undang-undang Parlimen I]

Puan Shukriah Hamidah binti Mohamad [Ketua Unit, Pembangunan Sosial dan Ekonomi]

Cik Nurhafiza binti Marsidi [Penolong Kanan Penggubal Undang-undang Parlimen]

**Malaysia Reform Initiative (MARI)**

Christie Choo Li Chi [Pejabat YPDR (Penyelidik)]

**Pejabat Ahli Parlimen**

Encik Hezry Hashim [Setiausaha Sulit MP Pengerang]

Encik Albert Bingkasan [Pegawai MP Tuaran]

Encik Shamsuddin Abdullah [Pegawai MP Santubong]

Encik Zarif Jumaat [Pegawai MP]

**PEMBENTANG****Universiti Malaya**

YBhg. Datuk Emeritus Prof. Dr. Shad Saleem Faruqi [Fakulti Undang-undang]

**Independent Office for Police Conduct (IOPC)**

Ms. Amanda Gillion Rowe [Regional Director for the North West Independent Office for Police Conduct]

Ms. Juliet Catherine Farall [Head of Presenting Unit Solicitor]

**British High Commission Kuala Lumpur**

Mr. David Thomas [Deputy Head of Mission British High Commission, Kuala Lumpur]

Mr. Tom Soper [1st Secretary (Political) British High Commission, Kuala Lumpur]

Mr. Aaron Dennison [Programme Officer]

## LAPORAN PROSIDING

### MESYUARAT JAWATANKUASA PILIHAN KHAS MENIMBANG RANG UNDANG-UNDANG

#### PARLIMEN KEEMPAT BELAS, PENGGAL KEDUA

Selasa, 12 November 2019

Bilik Jawatankuasa 2, Tingkat 2 Blok Utama, Parlimen Malaysia, Kuala Lumpur

Mesyuarat dimulakan pada pukul 2.36 petang

[Yang Berhormat Tuan Ramkarpal Singh a/l Karpal Singh *mempengerusikan Mesyuarat*]

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**Tuan Pengerusi:** Okey selamat petang tuan-tuan dan puan-puan. Ini adalah *meeting* kami berkenaan dengan *bill* IPCMC ini, para hadirin adalah seperti dulu. Kami mempunyai Ahli Jawatankuasa juga kepada pegawai-pegawai *ex-officio*, Datuk Roosme berada bersama kami juga dan hari ini... [Bertanya kepada Datuk Roosme binti Hamzah] *Okay alright, thank you. So yes, ada satu pengumuman yang ingin saya buat. We were supposed to handing our report by 18, but we have been given an extension of one week to the 25th and the motion will be tabled tomorrow right. So, the Minister has agreed to, you know, an extension of one week. I think it's necessary, it's quite important that we do it and also, we have arranged or we have proposed to do a final townhall session in the East Coast. This time in Terengganu in DUN because I think it's important because we have covered everywhere else north, south, Sabah, and Sarawak.*

*I think its only proper that we also cover the East Coast. So, we will be going to Terengganu this Saturday and I think between 10.00 to 1.00, right?*

**Datuk Roosme binti Hamzah [Setiausaha]:** Yes.

**Tuan Pengerusi:** *So, it will be the final session and I hope you can come Thomas... [Ketawa]. It's a Tanjong Piai election day. Can't campaign what... [Ketawa]*

**Seorang Ahli:** *Unfortunately.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar [Santubong]:** *I will not be able to attend just now because we have our own convention 15, 16 and 17.*

**Tuan Pengerusi:** *I know it's a bit short notice but this final week we have. Since we were given one-week extension I thought we might as well use it. Hi, hi Professor come. Thank you for coming. Okay without further ado, today we have very eminent speaker Yang Berbahagia Datuk Emeritus Prof. Dr. Shad Saleem Faruqi. I think he needs no introduction and he has been very*

vocal about constitutional issues and we look forward to his views on the bill and its amendments particularly in relation to the question of its constitutionality.

■1440

So, thank you for joining us Professor. Please feel free to share your views both on the bill and the amendments. I believe you have the amendments as well, the 25 which were tabled in Parliament. So, please start, thank you. [Disampuk] So, your submission is on the screen. Okay.

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi [Fakulti Undang-undang, Universiti Malaya]:** Assalamualaikum warahmatullaahi wabarakaatuh. May peace be upon you all. Thank you so much Tuan Pengerusi for the honor of this invitation. It is my privilege to be with all the distinguished Members. I may raise some relevant constitutional issues and also to dwell on some contentious provisions in the bill. But I have to confess to Tuan Pengerusi that the situation is fluid and I am not so sure I have the latest amendments. The one that I have has 64 clauses and I have penciled in the 24 or 25 amendments. May I begin with the relevant constitutional issues? Could I move on?

First of all, of course the issue of the supremacy of the Constitution, Article 4(1). All of us know that the Constitution is the supreme law of the Federation and as such, no law can conflict with the Constitution. At the moment, I don't see any glaring issue of unconstitutionality, but I have to confess that constitutionality Tuan Pengerusi, is a contentious issue and there may be some issues raise later on in the courts. So we have to be prepared for that.

Second issue is equal treatment under the law, Article 8. This article requires equality before the law and equal protection of the law. I have been informed by some police officers who I know, that the bill is singling out the police. It is not singling out immigration or customs where also there is a fair amount of abuse. Police is being singled out, but perhaps that is because the complaints against the police constitute the largest chunk of complaints received by the enforcement agencies. When I had the privilege of being a member of the Institutional Reforms Committee, we were visited by the EAIC. We were told that 60 percent of the complaints received by the EAIC were against the police itself.

So, from the point of view of equality before the law, the notion of equality does not prevent reasonable legislative classification. The rule that like, must be treated alike. Also means that, dissimilarly situated people can be treated differently. So, Bar Council can have their own disciplinary proceedings and architects their own. There is nothing unconstitutional in my view about having its separated commission, about— and for us investigating the police.

*Other issues of constitutionality may well be raised on other issues. I take note Tuan Pengerusi, that— unless I read the law wrongly. The law has no provisions for appeal against serious disciplinary action. For minor disciplinary provisions, there is an appeal, but for serious disciplinary action there— doesn't seem to be a provision for appeal. Someone may say that is unequal treatment under the law, others have the rights to appeal, we only have one recourse.*

*Issue number three and that it'll be more complicated. The authority dismissing or reducing a member of the police force in rank cannot be subordinate to that which, at the time of dismissal or reduction, has the power to appoint. That's Article 135(1). It's a very good safeguard that the dismissing authority must not be inferior in rank to the authority which has the power to appoint. Now, 135(1) have exceptions.*

*Exception one is the subordinate dismissing or reducing authority, may do so if the relevant commission had delegated its powers to it. So, if the Police Force Commission delegates its powers to the commission that you are seeking to create, there is no constitutional problem at all. In the case of the police, the relevant constitutional question will be, is the ICPC. I am using the new name, ICPC. Subordinate to or equal in rank to the Police Force Commission. The way I see things, clearly the ICPC is not equal in rank to the Police Force Commission. Police Force Commission is very highly placed from the Minister to the IGP, to the KSU. These three are very senior people. Whereas we don't really know what the exact composition the ICPC to they would be. Anyway, even the ICPC is subordinate to the Police Force Commission, there should be no problem if the Police Force Commission delegates its disciplinary authority to the ICPC.*

*A second exception is provided in Article 140(1) which excludes Article 135(1). The Article 135(1) is the seniority rule. The Police Force Commission has the power of the appointment, confirmation, emplacement, promotion, transfer and discipline. However, Parliament may by law, confer disciplinary power on some other authority, like the ICPC. With that, the Police Force Commission will be excluded from discipline. So, actually the Constitution itself allows the— I won't say delegation. I would say the conferment of power on an authority other than the Police Force Commission.*

*Exception three is provided in clause (5A) of Article 144 which permits Federal Law to provide for the exercise by any officer or board the powers of a commission. So, whatever powers the commission has, actually can be exercised by an officer or a board and Federal Law can permit that.*

*So, Article 140(1) and Article 144(5A) presumably exclude the Article 135(1) safeguard. The safeguard of seniority. I think that is excluded. Now, the reason why it is excluded is because the law in Article 140 is about the Police Force Commission. The law is very broadly worded and*

*in my view, unwisely worded. It says, no provision of such law creating a new authority shall be invalid on the ground of inconsistency with any provision of this part, Tuan Pengerusi. "Any provision". Doesn't simply say, conflict with Article 135(1), "any provision". What are the provisions? The provision are quite a few actually. The Article 132 to 148, in my humble view, Article 140 cannot exclude all the other provisions of the Constitution. I am on the next page. [Merujuk kepada slaid] Most respectfully submitted. The Constitution must be read as a whole and harmoniously. We cannot say, Article 140 overrides Article 135 and all the other Article 132 to 148.*

*The Constitution must be read as a whole and harmoniously. Article 140(1) could not have intended to exclude all the provisions of Part X, Article 132 to 148. Especially Article 135(1), the seniority rule and Article 135(2), the rule of hearing. All that Article 140(1) does is to permit the creation and legalization of another disciplinary authority besides the Police Force Commission. However, this new authority is not exempted from Article 135(1) on the rank of the dismissing authority. Members of the ICPC must not be inferior in rank to the appointing authority, unless the Police Force Commission delegates its powers to the ICPC.*

#### ■1450

*Given the very senior membership of the Police Force Commission in the Article 140, the Minister, the IGP, the KSU and the members of PFC appointed by the Yang di-Pertuan Agong and two to six members appointed by the YDPA. There is no doubt the ICPC will fall foul of the Article 135(1). Unless the Police Force Commission delegates its powers to the ICPC. The present bill will not be sufficient to get the ICPC going unless the ICPC is clothed with the delegated power by the PFC.*

*So, I wish two caution here Yang Berhormat, the present bill alone will not solve the problem. You have to be supported by delegation by the Police Force Commission. If for some reason the Police Force Commission says, we do not want to delegate. Then I think this bill will have problems under the Article 135(1), because I do not believe that Article 140 just sweep aside everything in Article 130 to 148.*

*Next issue, issue fourth. No public servant shall be dismissed or reduced in rank without reasonable opportunity of being heard. Article 135(2) awards the right of hearing to only two categories of officers— those facing dismissal, those facing reduction. Disciplinary action other than dismissal or reduction in rank like warning, fine, medical retirement, termination under contract, termination in the public interest. There are Yang Berhormat at least about 10 to 12 ways in which the government can deal with a delinquent public servant. The transfer for example, they*

are transferred at 48 hours' notice to Kota Kinabalu from Kuala Lumpur. It does not attract the requirement of hearing under the Article 135(2).

*I will quote cases have emphasized the despite the silence or omission of Article 135(2). "Such person will be protected by principle of natural justice which apart of Common Law". Why is that so? Because Common Law is parts of our law under the Article 160(2). Article 160(2) is the definitional clause of what is the meaning of the word law.*

*In addition, our quote have in the last few years being rather creative and said. The concept of law in Article 5, the concept of liberty, the concept of life must be interpreted prismatically. So, life includes livelihood, livelihood job. So, the overall attitude of the quote says that such person will also be protected by Article 5 and Article 8 get into due process inequality. So, if hearing is not given, it won't be enough for the Pejabat Peguam Negara to say Article 135(2) does not require hearing. Article 135 may not but natural justice does and Article 5 and Article 8 require due process and the equality.*

*So, it is recommended that in the light of the development and administrative law, the new bill that Yang Berhormat-Yang Berhormat are handling should go beyond 135(1). Explicitly black and white could run the right of hearing to all police personal facing discipline proceeding whether there is dismissal or reduction or any other disciplinary proceeding, subject however to the Constitutional exceptions in Article 135(2).*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *I think Professor that one the AG Chambers must bear in mind. We just see the finish product. [Bercakap tanpa menggunakan pembesar suara]*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, yes.*

**Encik Peh Suan Yong [Timbalan Penggubal Undang-undang Parlimen I, Jabatan Peguam Negara]:** *I miss that. Sorry Yang Berhormat. What is this?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *This is about natural justice.*

**Encik Peh Suan Yong:** *Oh, yes. Natural justice.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *...Natural justice in every bill that you draft. [Bercakap tanpa menggunakan pembesar suara]*

**Encik Peh Suan Yong:** *Yes. We will bear that in mind. I think the right to be heard for people facing demotion and dismissal for two categories.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *That one the Constitution provide s135(2) for dismissal or reduction hearing. What I'm humbly submitting is this. There are eight to 10 other ways of punishing. For most of them, under the Constitution, they are not protected. But I know that Public Officers (Conduct and Discipline) Regulations 1993 has a mandate does*

require but not for all cases. For example, I could be transfer tomorrow to Kota Kinabalu with the 48 hours' notice and no hearing needs to be given. I could be retired in the public interest, sorry, terminated in the public interest. No hearing is required.

So, what I am humbly suggesting is given the way the quote cited ... [Telefon berdering] I am so sorry. [Ketawa] I am so sorry Yang Berhormat. I hope this is not contempt. [Ketawa]. I apologize.

**Tuan Pengerusi:** *It will be recorded in the Hansard. [Ketawa]*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *I was trying to call Syazwan. That is why I turn it on. I turn it off and I turn it on again. [Disampuk] Yes, yes.*

*There are 10 to 12 ways in which a person can be subjected to penalties. Article 135 clause (2) covers only two. Public Officers (Conduct and Discipline) covers a few others but there are some categories where there is no procedural safeguard whatsoever and my humble request is actually, we should give hearing to everyone.*

**Tuan Pengerusi:** *Would you think that it should be expressly stated?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Expressly stated.*

**Tuan Pengerusi:** *As a separate clause that all discipline actions is subject to hearing.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *I think that exactly what Professor said Mr. Chairman. [Bercakap tanpa menggunakan pembesar suara]*

**Datuk Roosme binti Hamzah:** *Yang Berhormat, mic ya.*

**Tuan Pengerusi:** *Your mic, mic.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *If every bill, Professor said must reflect the need to have a natural justice to be done.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, yes. Thank you.*

**Encik Peh Suan Yong:** *Professor, just to confirm, clarification. So what Professor's opinion is that 140(1), the proviso to 140(1) and the proviso to 135(1) the second proviso is not sufficient to exclude the needs for natural justice in cases of dismissal and demotion.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *May I please repeat. What I was saying is this. Article 135(2) gives the right to hearing only in two cases and that two actually there are some exception which I will be mentioned in a few minutes. What I'm humbly suggesting is this, that the quotes are now being creative and prismatic. As a legal advisor to UiTM for many years, I know that there are 10 to 12 ways you can actually put the noose around the neck of a public servant. What I am suggesting is we should give hearing in as many cases as possible, explicitly.*



*So that people do not go to the court and say Article 5 and Article 8— they invoke Article 5 and Article 8. I just trying to preempt people from going to the court and relying on Article 5 and 8 to challenge lack of hearing. I will be happy to send on another notes on this point.*

*So, the new bill should go beyond 135 clause (1), should go beyond 135 clause (2) and explicitly grant the right of hearing to all police personnel. There are sadly five constitutional exceptions which exclude the requirement of hearing. When the criminal charge has been proved, where it is not reasonably practicable on the ground of the security where the police officer to be disciplined such as they are under detention, supervision, banishment etc. and when where the service was terminated in the public interest.*

*I am sure Tuan Pengerusi maybe remembering this. At one time when civil servants were retired on ground of health, they were not given a hearing. This is are one case with says no. Even though Article 135 does not require hearing, before you retire someone, you have to put before him the medical report, you have to allow his medical doctor to challenge your government doctor. So, I think the quotes are giving hearing, requiring hearing in more and more cases.*

*Thank you Yang Berhormat. That is all I have to say for the Perlembagaan. To sum it up, I do not think there is any clear unconstitutionality provided the Police Force Commission delegates power. But if it does not delegates, then I think there is a problem.*

■1500

**Tuan Pengerusi:** *How do you propose that be done? I think if the PFC does not delegate, then we are in trouble, isn't it? It cannot take off.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, yes.*

**Tuan Pengerusi:** *So, is there any way in which that can be explicitly done to ensure that delegation comes about?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *The Constitution, Article 135 clause (1) is supreme and its provisions cannot be done away with by the bill before the honorable members. Article 140 allows the creation of a new agency to handle discipline. That is undoubted. Another authority beside the Police Force Commission can be created. What I'm humbly submitting is this, members of this authority are bound by Article 135 clause (1). They must not be inferior in rank.*

**Dato' Sri Azalina Othman Said [Pengerang]:** *So Professor, may I? Professor, can I make an assumption that the clause in the existing bill states clearly, the member of Commission cannot be an existing police officer or retired. Does that also indirectly unconstitutional because it must be within the peers that discipline another personality in certain organization? Would it be deemed to be also not proper for the personality of the commission? Or is that considered...*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *I would think that is all right. In fact, my personal view would be this Yang Berhormat that the whole purpose of this bill is to make the commission as free of police control as possible. So, retired police officers and all should not be sitting, otherwise it is the same old story where the police are investigating the police. That is a challenging issue as to how do you determine seniority of people from different services. I think that is it.*

**Dato' Sri Azalina Othman Said:** *That is very subjective.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Very subjective issue indeed.*

**Dato' Sri Azalina Othman Said:** *Yes. How do you define it? Seniority.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *For example, members of the arm forces could sit, people of the rank of KSU, KSN— I suppose. I am just talking off the cuff, the salary scale could be looked into. But my humble submission is Article 135 clause (1) applies unless the Police Force Commission has delegated its powers to the new authority whatever name it is called.*

**Tuan Pengerusi:** *But does the Article 140 if I am not mistaken there is a proviso, isn't it, which allows for the formation of a new body.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Formation, yes.*

**Tuan Pengerusi:** *Does that not automatically overtake or over— I mean take over the earlier body?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, that is the view of many of my colleagues. It automatically takes over. My humble view is, it allows the function of the Police Force Commission to be exercised by another body. However, that other body's composition will still be regulated by 135 clause (1) unless the Police Force Commission has delegated power. I am just giving a hypothetical example, I will be just now— suppose, I am appointed as a member of a new body, but I am a pretty junior person. Surely, I cannot compete with the members of the Police Force Commission. So, I think that issue of seniority is a tough nut to crack for this committee. Yes, Yang Berhormat.*

**Dr. Su Keong Siong [Kampar]:** *Yes Professor. I am just on this point. When you talk about the rank, it should not be inferior to the authority body, PFC. So, does it mean that you exclude the civil society member, senior member of civil society and all this? It is because you have to be a rank of KSU and higher or even IGP and higher. I mean that...*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *I think that is a tough issue, really. I do not have the answer to that. That means we will have to go by a criterion where you can rank*

people. That means it is always only official persons and civil society leaders and all will be excluded.

**Dr. Su Keong Siong:** Also, in this act, the section 6 particularly exclude IGPN from most civil servants. So, you will exclude both in a sense that...

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** Tuan Pengerusi, may I please go back just to— I was myself of this view that in lieu of that clause which says Article 140 says you can appoint another body. I thought well there is no problem, any other body could be created no matter how high aloft. But then I came across the clause which says and that is what actually trouble me. The clause which says that, “No provision of such in new law creating a new body shall be invalid on the ground of inconsistency with any provision of this part.” If it simply said with Article 135 clause (1), I would have been very happy.

Any provision of this part means— so this new body does not have to give anyone a hearing because Article 135 clause (2) is left out. By the way, Part X also includes the Attorney General, Article 145. That means this commission is not bound by Article 145 either. This is an omnibus exclusion and that is why I think this exclusion is simply meant for the purpose that though the Police Force Commission is the disciplinary authority, the law allows... [Disampuk] Parliament to create another body. But the procedures of this other body, the due process before this body, I think that is still regulated by the Perlembagaan. Unless we want to exclude 132, 3, 4, 5, 6, up to 148— as I said even the provision for your office is not binding now on the new body that has been created. It is because Article 145 is part of Part X, Part X of the Constitution. It could not be such a wide exclusion.

**Dato’ Sri Azalina Othman Said:** It cannot be just blanket...

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** It cannot be a blanket exclusion of this sort. That means tomorrow the new body will say, “Hello, we are not bound by the requirement to give hearing, Article 135 is excluded.”

**Encik Peh Suan Yong:** Prof, sorry to interject. Prof, what about the exclusion is only in relation to disciplinary control? It is because Article 140(1) is about disciplinary control, it is not about prosecution or withdrawal prosecution. So, it must relate to disciplinary control.

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** Fully I agree with that. So, let us say I am a member of the body, and I say to the accused, “You have no right to a hearing.” He says, “Why?” “Oh, all provisions of these part are excluded.” I do not think that was the intention of the Constitution makers.

**Dato’ Sri Azalina Othman Said:** [Bercakap tanpa menggunakan pembesar suara]

**Tuan Pengerusi:** I think that will be quite easily challenged in court, isn’t it?

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *It is very easily challenged in the court of law.*

**Tuan Pengerusi:** Yes.

*[Ahli-ahli berbincang sesama sendiri]*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** Yes, yes. *Due process under Article...*

**Tuan Pengerusi:** 5.

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *...5, under Article 8. My humble submission is even Article 135 clause (2) is not excluded. The only thing that is excluded in my humble view is that in place of the Police Force Commission that is now a new body created by the wisdom of Parliament. But all other provisions must apply. Otherwise, it will be challenged easily in the court of law. I do not think we want to do that.*

**Tuan Pengerusi:** Yes, the whole idea is to avoid such challenges before it is passed. So, that is why we are trying to filter out all these unnecessary problems.

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** Tuan Pengerusi, *I feel very strongly about this, the provision of Constitution especially when you create law. Sometimes you feel that Parliament just create the law without looking into the Constitution. That is what happened to Sarawak. That is what Sarawak is screaming now about Article 2. It is because of the Emergency 1969, they override all these things extend and create another law to say that, that emergency could be extended, we never went into the process like this. When we go through the process like this, at least people like Professor Shad Faruqi can tell us. Then, we can have our mind open to that kind of thing rather than listening only directly only one person from the AG Chambers who may be influenced by the administration.*

*Again, law is always two sides, contentious. So, the only arbitration that we have is court. That is why before we decide, properly think about this argument from both sides. Once we know, then we feel at least at ease to decide yes and no before the bill can be brought to Parliament. Thank you.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** Tuan Pengerusi, *I will think some more about the challenge Dato' Sri Azalina gave just now in a nice way. So, how do we handle this issue of rank and then... [Disampuk]*

#### ■1510

*Yes, Yang Berhormat also mentioned that means other than official person with the rank, NGOs, civic-minded citizens cannot be included because they don't have much of the rank. So, I think we have to— I'll try get back to— KIV on this point. I don't have off the cuff answer. [Ketawa]*

**Tuan Pengerusi:** *I think that is quite important aspect.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** Yes, indeed. Composition of the new body.

**Dato' Sri Azalina Othman Said:** It is because Professor, the SPP has only three personality— the KSU, the Minister and the IGP. All three of this individual are able on a lot of issues of promotion, disciplinary, termination. So, if these 12 men or 12 women, men women coming in, can they give such authority? It is because usually police is command and control. I was thinking about it these 12 personalities, even if you put it under the Suruhanjaya Perkhidmatan Awam, the only issue is the element of seniority, the rank giving— That will be a very subjective how do you interpret, how do you call, how do you instruct, how do you question. I think that one is also to be considered. But I do understand the purpose of having an outside personality, so there is no power of influence. I think that is the basically the justification on it.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** I think we have...

**Dato' Sri Azalina Othman Said:** But rank and five.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Yes. We have problem a little bit here, the constitutional liability on the question of superiority or subordination of that new creation to the police force commission. So, that is subjective. Most probably if people want to decide, they will refer to the government, go back to the government. If you go to the palace, there is different kind of protocol and the government has their own protocol. But still reference will be intrench practices of the country. So, NGO will not be in there. If that is the case, perhaps the— suddenly the police force commission will become superior because of the present of the Minister, KSU and IGP.

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** Yang Berhormat, I suppose in 135 clause (1) when it first drafted, at that time grassroots democracy was not so much in contemplation in 135 clause (1). Obviously, the issue of having civil society leaders was not in contemplation. But now, time has changed. So— but we got the constitutional problem here. [Ketawa]

**Tuan Pengerusi:** That will require amendment to the constitution, isn't it?

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** Yes.

**Tuan Pengerusi:** What about other aspect Professor, like for example the power to examine under 26 of the bill? That have been some criticism on this for example, what it says is basically that you know, an officer will have to— can be summon to give a statement and examine and so on. If he fails to do that, he commits an offence under 26(4), and he is liable to imprisonment or fine. So is that a violation of our right to silence for example which anybody

enjoyed under the CPC, under 112 where you know, you can remain silent and you are not open to any prosecution. But here, an officer is under 26(4). What are your views on that?

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *I will agree with Tuan Pengerusi. There actually, punishing people for their right to silence, it is the violation of their constitution right. I have further objection, this provision 27 clause (4) of RM10,000 fine and imprisonment not exceeding two years. In a way, criminalizes this new body. I would have thought this new body is meant to be a disciplinary body. But now, it is overlapping with criminal powers... [Disampuk] Punishing, yes.*

**Tuan Pengerusi:** *That is what I meant. You see because there are few provisions. I just pointed out one. There are few more which provides for an offence, punishment and so on. I think that goes against the spirit of the bill, isn't it?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, for example in the university. What I view when we punish someone, it is punishment basically of a civil nature. We have no power to send anyone to jail and the fine also is limited to RM500. But here, it is RM10,000 and jail not exceeding— I think there is a little bit confusion in this law and that is that we don't quite know— don't know whether this is a disciplinary authority or it is all so having criminal powers.*

*Unless the intention here is the disciplinary authority will refer the delinquent person to another authority which has the power to prosecute like the Malaysian Anti-Corruption Commission or the police itself or some other agency. But from the way the law is framed in 26 and 27, "Any person who contravenes this section commits an offence and shall...", it is subjective such and such. Now, it is not clear who imposes the fine up to RM10,000. Is it the chairman of this authority would say, "I'm fining you the maximum RM10,000" or does the chairman refer the case to some other authority. It will be better if this law was amended to simply enable the authority to refer the case to someone else. Someone else with criminal powers.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Yes. But still, it is— that is penal consequence. It is an offence. So, I think what the Prof— I don't know if I understand you correctly is that you refer it to the MACC for example, or the police itself...*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *The police itself.*

**Tuan Pengerusi:** *But then we enter another dilemma, isn't it? You asking the police to investigate themselves. Isn't it? So that's an issue now.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes Yang Berhormat. That is definitely an issue.*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara]* Sometime the police won't disclose in certain information because of the OSA. That was also being debated that sometime the police refusal to explain certain narrative is because they bound by official secret. So, those are the challenges that they faced. So, they caught between the devil and the deep blue sea. Thank you.

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** Yang Berhormat, *all institutions are as good as the people who administer them. If the police or immigration, custom or any other authority really want to find loophole in the law in order to escape accountability, there is not much that can be done. But I think any advances that could be made would be advisable. I see Yang Berhormat's point that the police will may not prosecute and there are clear cut cases where the previous investigative authority report to the police and no action was taken.*

**Dr. Su Keong Siong:** *Even the case of Indira Gandhi when there is specific court order, the police never going to arrest, you know. That is all thing may happen if you refer to the police.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes. It is not just police. In the case of 'bin Abdullah'. The Court of Appeal says the father has the right to register the child under his name. The next day the Director General of the registration department says, "No, no. We have our own policies". So, the registrar is able to defy the Court of Appeal even though the birth and registration law is the federal law. It is not a Syariah state law and yet, they can say no, we have our own policies. So, it is not just the police across the board in this problem. The bureaucracy in state, within the state. [Ketawa] Deep state.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *I think I believe— Mr. Chairman, this is the solution to this— still I going back. It must be a disciplinary offence as well rather than make it— criminalize it. This kind of thing must be also disciplinary offence. I am sure. Let say I am the investigating officer of the case, then a lawyer because this problem was raised during the last discussion that we had with NGOs. When they say, "Oh, let say I go to police station asking for this document, that document, the police then refused to give me this document". So under this one, you can make a report for asking documents. Now, let say this one you just set it to criminalize that kind of incident, then the policemen will not investigate cases anymore.*

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*Why should I investigate a case? Just let it be. I get into trouble because of this. Just because the lawyer asking me for some documents. So, got to see the practical aspects of the law that we are going to choose. Let's suppose if the request is reasonable, which is in the bound of what they can give and cannot give under their own rules, the police own rules. Then, the police*

*don't give, that becomes a disciplinary offence and then can be taken action against him. That will be sufficient. I am sure that will not deter them from stopping work.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Tuan Pengerusi, your expertise is in criminal law. Is there— I am sure it is not my field. Does the CPC and all apply— the rights under CPC applies in disciplinary proceedings?*

**Tuan Pengerusi:** *Disciplinary proceedings, I think— what do you mean, with public officers?*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Public officers, students, staffs— yes.*

**Tuan Pengerusi:** *I think public officers they are— they come under the general orders, isn't it?*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Ya, general orders.*

**Tuan Pengerusi:** *Ya, not the CPC. So, there is a specific procedure there. The Perintah Am, not the CPC.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *So, if I may take up the point by Yang Berhormat, we convert it into “a disciplinary matter”, rather than “a criminal matter” under section 26 and section 27. Someone who is uncooperative for whatever reason, could be cited for indiscipline, rather than criminalizing with the RM10,000 fine. I am just wondering whether that could be the way out.*

**Tuan Pengerusi:** *But, the— just say for example. If a person refuses— an officer refuses to answer, it's a bit strange that he can do so under the CPC, but he can't do it, do so here. I think that might be a challenge that might be mounted later on the grounds of his rights to remain silence. You see, under the— so, even if you were to couch it in terms of disciplinary offence, it will still mean that his rights to silence is compromised, isn't it?*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Yes.*

**Tuan Pengerusi:** *So, I think that is a challenge here.*

**Beberapa Ahli:** *Ya.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *That is the question I was asking whether the rights to silence applies in...*

**Tuan Pengerusi:** *I think that is the constitutional rights, isn't it?*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Ya.*

**Datuk Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Constitutional rights...*

**Tuan Pengerusi:** *I don't know. I am just thinking aloud.*

**Datuk Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *You see, I used to be a senior police officer before. We preside to the disciplinary cases. We listen to everybody, but sometimes the*



police may simply appear before you and said, “Oh, I did that, but I am very sorry. I got a wife, two or three children”, something like that. They excused us. They never deny that they did something wrong. They always asked for leniency for reason that they are mistaken. So, all our experience in hearing disciplinary cases, there always be somebody who just stands their silence. So, what happen? The presiding officer will decide based on the investigations of the case alone. A right to silence.

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *We have to reflect on that some more. I would agree with you, constitutional law can be interpreted broad enough to include the rights to silence under the rights to live or the rights to speak. I can speak and I can also remain silence.*

**Tuan Pengerusi:** *The privilege to self-incrimination, isn't it? I think you have that privilege. So, I don't know. I am just thinking aloud here, because I have...*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *It is in the CPC.*

**Tuan Pengerusi:** *It is, it is. So, it is not here.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *It is not here.*

**Tuan Pengerusi:** *So, how do you reconcile? It not being here, but in the CPC, which applies to everybody. So, in other words, there might be a challenge on the grounds that the police are being discriminated, aren't they? Not treated equally as others would under the CPC which is again, unconstitutional.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Yes, yes.*

**Tuan Pengerusi:** *But, those— if such a challenge was mounted, it would affect only those provisions, isn't it? Not the entire bill, I think.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Not the entire bill.*

**Tuan Pengerusi:** *Only those provisions which will be struck down as unconstitutional.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Severability.*

**Tuan Pengerusi:** *That is right, ya.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Severability, yes.*

**Tuan Pengerusi:** *So, if I understand you correctly Professor, are you saying that there is no— this bill is constitutional subject to the delegation?*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Yes.*

**Tuan Pengerusi:** *By the PFC?*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Yes.*

**Tuan Pengerusi:** *Okay.*

**Dr. Su Keong Siong:** *Tuan Pengerusi, can I just seek for clarification? I think all of us agree that this proposed bill, such as section 26 and section 27, imposed criminal element to it.*

To me, these two sections, especially the penal clause is to ensure sort of compliance how to— the IPCMC should carry out the investigation. To me, even given the rights to the officer— the rights to silence the officer would not really jeopardize it. Because, even if you don't want to answer, nothing stopping the IPCMC from carrying out the investigations and make a decision. It is just like any other comparison with Bar Council, I mean the Disciplinary Board. The lawyer cannot— I mean, answers the allegations against him, but it does not stop the Disciplinary Board from proceeding.

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** Yes.

**Dr. Su Keong Siong:** I think that would solve— help in removing this. It is not really critical, in the sense that, fatal to say there is no penal clause, there will be no compliance of this IPCMC investigation procedures. Would that be correct to say it?

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** The case can proceed, otherwise too. Yes indeed, it does all the time and the court, yes.

**Dato' Sri Azalina Othman Said:** But I think for the Bar Council with the disciplinary done by the PFC kan?

**Seorang Ahli:** No, no, no. DB.

**Dato' Sri Azalina Othman Said:** It is not by— among the Members of the Bar, no? Outsiders?

**Seorang Ahli:** No, no. DB is a separate entity.

**Dato' Sri Azalina Othman Said:** Oh, I see. So, now we are suggesting the disciplinary body is a separate entity?

**Seorang Ahli:** Yes, yes. Disciplinary body... [Bercakap tanpa menggunakan pembesar suara]

**Dato' Sri Azalina Othman Said:** So, now for this we are suggesting...

**Dr. Su Keong Siong:** [Bercakap tanpa menggunakan pembesar suara] ...not necessary to have that penal clause if you don't comply, you must answer. Then only they can proceed. To me, I think what is important is the workings of this investigation procedures. An officer can refuse to answer, but it doesn't stop the commissioner to carry out the investigations and give a ruling on it, I think.

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** So, even if these clauses are removed, it will not cripple the bill at all, yes.

**Tuan Pengerusi:** Under 112, expressly says, I think we don't have to— Sorry, it expressly says— I am trying to get it here, of the Federal Constitution. You got it? Sorry, of the CPC.

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *CPC, yes. I was wondering which 112. [Ketawa]*

**Tuan Pengerusi:** *CPC, CPC. It does say that you know, I think that will be an obstacle. I'll just read it out. Do you have a copy of it there, by any chance?*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Oh ya, thank you. [Setiausaha menyerahkan buku Akta Kanun Tatacara Jenayah kepada Tuan Pengerusi] Ya, examination of witnesses by police which is similar to the section 24 just now, I think— section 24 or section 26? You see, section 112(2) of the CPC, “A police officer making a police investigation under this Chapter may examine orally any person...”— so on. “Such person shall be bound to answer all questions relating to the case put to him by that officer: Provided...” There is a— you know, this is the part, “...that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.” So, that is the rights, privilege against self-incrimination. So, that does not exist in this bill. I think that is a critical issue because obviously this is something which is entrenched, I think in our criminal jurisprudence. So, even I think under the— like for example, Bar Council. A person who is discipline, he doesn't have to answer what. He doesn't have to reply to the show cause if he doesn't wish to and he is not subject to punishment for not doing so. You see? So, I think that part needs to be— I think, relooked very urgently, in light of section 112.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Could we then— I mean, section 26 and section 27 to add the point about no self-incrimination?*

**Tuan Pengerusi:** *Ya, something like section 112(2) which I just read out just now.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Yes, yes.*

**Dr. Su Keong Siong:** *That it would make that section 26 all correct, no penal sanctions if you refuse to comply.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Yang Berhormat, I have some issues about the bill. I will make it as quick as possible. The screen has gone black. [Merujuk kepada skrin slaid]*

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*In my discussion with some police fans the issue was raised that same authority investigating, the same authority adjudicating and I agree that it could be a serious breach of rule against bias in natural justice, if the same person or person double up as an investigators and judges but there is not breach of natural justice., if the authority has separate units or departments and their job separated. One doing the investigations and one doing the adjudication. In the*

university we do that all the time. The hal ehwal pelajar does all the investigations but there is a Disciplinary Board of the same university that actually makes the decisions.

So, there is no breach of natural justice. If the same person is not putting on two different hats, so I think this objection can be disregarded. Then most probably I wish to point out section 34 of the law describes the punishment. Section 34 is incredibly vague, warning, fine. Fine how much? Forfeiture of emoluments, how many forfeitures? Deferment of salary, how many deferments? So, you got to be specific. I think the punishment in section 34 should be specify and there is no need for any great work here, the Public Officers (Conduct and Discipline) Regulations provided the guidelines. This is section 34.

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara]*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** 34. YB, now it will be 34. Section 34 in the new amendment. In an amendment, sorry.

**Tuan Pengerusi:** Since we are on 34, the old 34 is a threats.

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** Yes.

**Tuan Pengerusi:** It comes under offences. Again, should there be a section on offences in a bill like this, which concern disciplinary offences— disciplinary misconduct. So, for example— because this was raised I think when we went to JB where one of the officers had raise this threats. I am looking at the old bill without the amendments, 34.

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** Yes, 34.

**Tuan Pengerusi:** Which provides for an offence of threats against person who give evidence and that's an offence. A person who hinders or attempts to hinder any person from giving evidence before the commission or by threats to do so and so on shall be commits an offence and shall, on conviction, be liable to a fine. So, on conviction means what here? That means it'll be conviction by court of law or by this commission or— I think— does it go to court? And if it does, I think it has to be investigated by the police, isn't it?

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** Yes, indeed.

**Tuan Pengerusi:** So, things like this again valid concern which worries in our sessions. And again in subsection (2), there's another offence which is provided for there and I think objection has also been taken in respect of contempt. There is section for contempt... *[Disampuk]* Section 35. The pre amended 35.

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** Yes. It's all in all the laws seem to be converting the disciplinary body in to a criminal body.

**Tuan Pengerusi:** Yes, that's what I think.

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *And I think that's an objections will feature.*

**Tuan Pengerusi:** *Yes.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *We should confine ourselves to discipline of the police force and I'll then try too.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *[Bercakap tanpa menggunakan pembesar suara]*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Yes. I also wrote that Yang Berhormat in my essay here that there should be a distinction between disciplinary civil and criminal proceedings. The IPCMC powers of investigation must assiduously refrain from leaning on the Criminal Procedure Code powers of criminal investigation. The bill must be vetted to ensure that the civil nature of the investigation and proceeding is preserved. Rather converting into quasi-criminal, quasi-civil authority which I don't think is quiet...*

*And on section 37(1)(b)— YB, I'm relying on the new section 37(1)(b) is in the amendment. It says the decision of the Minor Misconduct Disciplinary Appeal Board. The board may vary the punishment to a lesser one. But the board cannot enhance. I don't know why this should be so. The board can reduce the penalty but cannot increase. I thought appeal boards they can move it up, they can move it down. Why should the board be restricted in this manner.*

**Tuan Pengerusi:** *I think there is a similar provision for this in powers of revision by the court. Where in criminal revision, the court can— I think they can look at the entire decisions if it's tainted they can change it or review it. But I think they cannot enhance it for some reason. There is some similarity. So, maybe this is where it was borrowed from.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Normally all appeal boards have the power to raise or to reduce but here— anyway if— I just want to point out that I notice that the variations is to reduce, not to enhance. Then, section 37 clause (2) there is a very unusual use of the word 'review', I'm quite confuse. I don't know what is intended here this is section 37, new section 37 clause (2). Yes, I have it here.*

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara] The minor misconduct.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *The Minor Misconduct Disciplinary Appeal Board shall not review decision made under subsection (1). I don't know what this means. It is already made the decision, what there to review? Is it having a second thought? Normally once you make a decision, you functus officio?*

**Tuan Pengerusi:** *Ya.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *That's it. The court cannot call up tomorrow and say, eh I had a dream and I had a second thought. [Ketawa] And also the word 'review' is wrong, Yang Berhormat. Review is socialized, prohibition, mandamus, injunction, declaration, quo warranto. We should not use the word 'review' here. So I have a problem with section 32 clause (2) as an administrative law student.*

**Tuan Pengerusi:** *Would it entire bill, the commission be subject to the judicial review? Just like how you know certiorari, mandamus...*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *There is no way you can stop it, Yang Berhormat. If I want to take it to a court of law, there is no way you can stop it. Article 4, Article 121, Article 128, there is no way anyone can stop the court from...*

**Tuan Pengerusi:** *Semenyih Jaya and all will apply here.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Definitely. There is no way. Now even [Tidak jelas] clauses have lost their sting.*

**Tuan Pengerusi:** *Yes.*

**Datuk Emeritus Prof. Dr. Shad Salem Faruqi:** *Finality clauses after Semenyih. Yang Berhormat, on sections 7 clause (4) Yang di-Pertuan Agong has powers to dismiss a commissioner in his absolute discretion. We all know that will be basically the Prime Minister, not the Yang di-Pertuan Agong and I would humbly object to this appointment of the members of the commission may at any time be revoked by the YDPA. I think there should not be such power. This is out of sync with modern trend in constitutional administrative law, the power to dismiss must be qualified by the procedural safeguards.*

*I know that in the Universities and University Colleges Act, Minister has a power to remove vice chancellor, chairman but for USM we were able to put in clause the "...Minister may with cause...", added the word 'with cause' he can remove. So, there should be some provision, otherwise basically the PM, it's not the Yang di-Pertuan Agong. The PM who is in fact dismissing the members of commission at any time whatsoever. I think this is very capricious.*

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**Tuan Pengerusi:** *What about the— there also been argument about the involvement of the PM in the appointment of the members. Do you think that might be— it can be open to abuse?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, I'm sure. Yes, I'm sure that is so.*

**Tuan Pengerusi:** *I'm not saying that it will but it is something which can be improved in that section gives the PM too much powers. If that is so, is there any way to improve it?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Ya, I think Tuan Pengerusi this was the lesser of the two evils. The other alternative would be the Minister in charge. That's the Home Minister but that's the greater evil actually. [Ketawa] Because Minister himself is...*

**Dato' Sri Azalina Othman Said:** *Both are evil.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Both are evil. [Ketawa] So, you are talking the lesser evil. You are quite safe, Yang Berhormat. [Ketawa] We are— protective.*

**Tuan Pengerusi:** *All this is a part of Parliamentary proceedings, all of you.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Proceedings yes Article 63 applies, yes, yes. [Ketawa]*

**Tuan Pengerusi:** *But not immune to sedition. So...*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Then may I please raise one more issue— there are no appeals exist for minor misconducts, section 35 to 37. What about major infraction? Is there any provision for appeal against the decision of the Disciplinary Board under the new section 31. I may have missed out. I don't see any right to appeal but surely there should be right of appeal. Section 31 is a disciplinary authority. So, section 31 clause (3), there is a Disciplinary Board. I don't see any provision for right of appeal from the decision of the Disciplinary Board. I think in the normal course, I think there should be right of appeal. At least one level of appeals every level.*

*And I want to say something which I know most of you will smile about, officers. This is section 16 clause (3). So, officers of the commission can be judicial legal service officers, advocates and solicitors. I just want to request you, what is wrong with academicians? [Ketawa] Why not academicians also? Of experience, I'm not talking about myself, I'm too old. But if there can be advocates and solicitors and there can be legal officers from the JLS, why can't there be law academicians, senior law academicians from the faculties?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Another, I think we went through that one already just now, appeal against— what is small minor disciplinary offences? In the police force the present one...*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *...There is always an appeal. Right up to the IGP.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, yes.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes, they started from the district level...*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Right...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *To the commissioner level, then to IGP level.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Last one up to the commission level. That's how the process, four stages. But how can the law simply takes away that right to appeal?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *I think that's...*

**Tuan Pengerusi:** *Most disciplinary bodies like Bar Council and all, they have an appeal process. Appeal in the Bar Council there is, right, Thomas?*

**Dr. Su Keong Siong:** *Yes, yes.*

**Tuan Pengerusi:** *Ya, Bar Council.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Tuan Pengerusi, that's all that I have to say. Thank you so much.*

**Tuan Pengerusi:** *Thank you so much Professor. I think it was very...*

**Dato' Sri Azalina Othman Said:** *Enlightening.*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *We have been schooled. [Ketawa]*

**Datuk Roosme binti Hamzah:** *Practical schooling isn't practical.*

**Dato' Sri Azalina Othman Said:** *YB authority.*

**Tuan Pengerusi:** *Because the constitutional point has to be addressed first before we go into anything else. So it's the most important, if not the most important issue. We had a few people who have come in before this who have spoken against it, some for it. So, we have to look at it in totality. Thank you again Professor for your time.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *May I just ask Tuan Pengerusi, when is Yang Berhormat time limit?*

**Tuan Pengerusi:** *We are to hand in our report by the 25<sup>th</sup> which is about a week.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Oh, I see. Another asking, if I have something to add, I would like to send it to Datuk Roosme.*

**Tuan Pengerusi:** *Yes, please. Yes, please feel free to email it to us. No problem.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Just a point, I would like to register my objection on that 25<sup>th</sup> also because I mentioned nothing less than six months. But we're given number of weeks. It is simply not enough to cover, the issue so big about the discipline on police force. Thank you. I hope you record it.*

**Tuan Pengerusi:** *You can raise it. I would be happy with six months.*



**SAC Dato' Mohd Azman bin Ahmad Sapri [Ketua Urusetia KPN (Perundangan), Polis Diraja Malaysia (PDRM)]:** *Mr. Chairman, just one question to the Professor. I'm talking about section 6, appointment for the commission. So, there is no appointment from the ex-police. So, the thing that Professor, this we— just one of the representatives in the commission so that the ex-police can advise and give some knowledge to the commission, not to convince the other nine. Can we say that it is a natural justice also?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *As far I know no natural justice is involve, the person who is retired is not involved. I'm not so sure. I don't think any natural justice is involved in— if the person is accused, then of course natural justice involve you should get a hearing but the argument that ex member should be involved, I think the whole idea of this commission was to steer it away from as many police personnel as possible, otherwise it's the same old story.*

**Dato' Sri Azalina Othman Said:** *Sorry Prof, there is one issue on retirement where it says that offences occurred whereby when a person retired it can be brought forward. I think in the normal general orders usually for cases of six months. I think that's the limitation period for government retirees on offences. I think there is a clause there on retirement for limitation period. I think there is a clause there on such offences.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *I think I missed that out.*

**Tuan Pengerusi:** *I think you are referring to where retirees can be subject to...*

**Dato' Sri Azalina Othman Said:** *Ya, there is an offence.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Oh, I see, I see.*

**Dato' Sri Azalina Othman Said:** *What's the constitutional position on that for government servant? I thought there is a time limit, wouldn't there be? I'm not sure about that.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, if someone is already retired, then the police force has no jurisdiction over him. If I retire from the university, the university can report to the police if I committed a crime but they can't summon me to the Disciplinary Board of the university if I'm not in the university anymore. But of course, the legality or the criminality of the act will be determined at the time it was committed and not the fact that someone has retired. So, the act of course maybe wrong if it is a crime.*

**Tuan Pengerusi:** *So, if a— I think what Yang Berhormat Pengerang asking is, correct me if I'm wrong. Would the commission have jurisdiction over those retirees since they are no longer apart of the force?*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *I would think so no, I would think no because if someone is not part of the force, he is not part of the force.*

**Tuan Pengerusi:** *So, any provision I think which provides for that would not be effective, would it? I mean, we are...*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, yes, oh I see. Then we must take that out. But of course, it could be reported to the police for a crime. That's a different matter but for discipline, once you are not part of force, you are not part of the force.*

**Dato' Sri Azalina Othman Said:** *When you retired, you retired-lah.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Yes, yes. Thank you so much.*

**Tuan Pengerusi:** *Thank you.*

**Datuk Emeritus Prof. Dr. Shad Saleem Faruqi:** *Thank you, thank you.*

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*[Sesi bergambar bersama Ahli-ahli Jawatankuasa dan Yang Berbahagia Datuk Emeritus Prof. Dr. Shad Saleem Faruqi]*

*[Wakil daripada British High Commission Kuala Lumpur dan Independent Office for Police Conduct (IOPC) mengambil tempat di depan Jawatankuasa]*

**Tuan Pengerusi:** *Hai, good afternoon, welcome and welcome to our select committee meeting. Thank you for being here with us. This is the delegation, if I may just introduce you to the rest, of the Independent Office for Police Conduct (IOPC) in the UK. I am pleased to have with us Mr. David Thomas, Deputy Head of Mission British High Commission in Kuala Lumpur; Mr. Tom Soper, the 1st Secretary (Political) British High Commission; Ms. Amanda Gillion Rowe, the Regional Director for the North West Independent Office for Police Conduct in the UK; Ms. Juliet Catherine Farall, Head of Presenting Unit Solicitor of the IOPC in the UK and I— is there a fifth Mr. Aaron? Oh, he's here. Mr. Aaron Dennison, the Programme Officer of the British High Commission. Five of you.*

*Thank you for coming here. I think it's pretty short notice. I think you just arrived recently?*

**Ms. Amanda Gillion Rowe [Regional Director, Independent Office for Police Conduct (IOPC)]:** *On Saturday.*

**Tuan Pengerusi:** *On Saturday. How long are you here for?*

**Ms. Amanda Gillion Rowe:** *Until Friday.*

**Tuan Pengerusi:** *Right, okay. I hope you enjoy some good food after this. [Ketawa] So before we start, I'll just briefly— just to brief you what we do or what we are doing is that the— this is a Special Select Committee setup for the purpose of a getting feedback and studying draft propose bill which is call the IPCMC Bill, Independent Police Misconduct Commission— am I got that right? IPCMC Bill which is now being debated in Parliament.*

**Datuk Roosme binti Hamzah [Setiausaha]:** *Independent Police Complaints of Misconduct Commission.*

**Tuan Pengerusi:** *Yes, this is the full. Independent Police Complaints of Misconduct Commission or the IPCMC Bill which has been tabled in Parliament in this session but it has been referred to the committee for the purpose of looking into various amendment which have been also table as part of the bill. So, obviously this is something which is new. It's never been implemented or introduced in Malaysia before.*

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*It is body overseeing police misconduct if you like. There have been controversy, there have been criticism, there have been obviously people who has supported the bill. So, it is quite wide and we have gone around the country to get feedbacks particularly from the police themselves who are obviously— they have their concerns in that. I think the main concern is that— of being investigated by an independent body. I think that is something which is not going down too well understandably, but I think it is also on the other side of the spectrum been— those who have been advocating for this for a long time now.*

*In fact, the IPCMC— this bill first came about in 2005. It has been put in abeyance for various reasons since, where there has been— there are other bodies which we will come to, shortly, overseeing police disciplinary conduct. So, if this bill— and NBF until the 25<sup>th</sup> which is next week to submit our report. It was initially the 18<sup>th</sup> but they have given us an extra week. So, we have to come out with our suggestions and we will very happy to hear how it works for you in the UK, because obviously it will be very relevant to this bill. So, without further ado, perhaps I will invite Mr. David Thomas to address us and then we can move on to the other speakers. Thank you.*

**Mr. David Thomas [Deputy Head of Mission, British High Commission, Kuala Lumpur]:** *Thank you very much Mr. Chairman. Good afternoon ladies and gentleman. Thank you for inviting Amanda and Juliet from the UK's Independent Office for Police Conduct to present to your select committee today. It is an honor and a privilege to be here and we are pleased to share the UK's experience on police oversight. UK and Malaysia of course, have a long and shared history and your criminal justice, legal and Parliamentary systems are rooted in ours. So, there is obviously much that is still similar and this makes the sharing a best practice and co-operation all the more straight forward. This last year we have seen a number of visits, workshops and policies exchanges on Parliamentary and prison reform and the UK stands ready to support Malaysia as it now look to strengthen its oversight and accountability. An effective police oversight is clearly*

*an important element of good governance. People rightly expect the highest possible standards from their police service and that is what the vast majority of officers strive to deliver.*

*I can say with personal experience, as well as an ex-police officer. The vast majority of police do a very, very difficult job with the utmost integrity and make difficult decisions in very trying circumstances. But when things go wrong or police abused their position for misconduct or corruption, the public expect scrutiny and accountability. In the UK view, that can only come from independent oversight. It may not be initially welcome. It is almost always viewed with apprehension and again the UK experience is that police colleagues have come to recognize the value and benefit it can bring. It does improve the police complaint system and wider confidence in the police overall.*

*Effective police oversight is not about trying to catch the police out or beyond some sort of witch-hunt. There may be prosecutions or officers disciplined, but it is much about learning and looking at the police system and processes when things go wrong to share insights and strengthen the whole policing system. If I could sum it up in a sentence, I would say it is just about improving public confidence in policing by ensuring the police are accountable for their actions and lessons are learnt.*

*Now, lessons are learnt on both sides and the UK model of police oversight has evolved over many years. Obviously, Malaysia has to start somewhere. I can almost guarantee that whatever model you ultimately decide, it will take a few years to bed down. It will be bumpy. These things take time to develop. New processes, the relationship needed to underpin them, need time to mature and develop. I hope we can help with some of that by sharing the UK's experience. Since the inception of the IPC or its predecessor, the IPCC just in custody for example of half. So, sometimes Juliet and Amanda have spent looking at your legislation. We spent yesterday talking to various stakeholders who have got very strong views on the bill as you said, Mr. Chairman. The police, the GIACC, the EIAC, all sorts of society. It is clear that feelings are running very high on what should or should not be in this bill. Clearly it is for you to decide that, not us. But we can do though is provide an objective assessment of the differences between how the IOPC currently operate and how the bill that you have before you, sets out how the IPCMC will operate.*

*Following an advance question actually by a member of the committee, we are going to sort of cut off to the chase as it were and Amanda is going to run through what we think, having look at your draft legislation are the key differences. We think about seven or eight, that appear when we mapped them. Each of those are a valid discussion point and a couple of them are some of the most, I guess, controversial for having listen to diverse stakeholders. So, we cautiously*

*offer opinions as because we want to be objective, but we recognize there will be some differences. Because of national, political, cultural considerations that we felt that we should perhaps called out differences between the UK and why do international best practice in your bill, where those differences are sharpest and where we feel there are things we should point out. These are the things that as legislators, we would ask you to reflect on. So, I will stop there and hand you over to Amanda.*

**Ms. Amanda Gillion Rowe:** *Okay, good afternoon everybody and thank you for inviting us to Malaysia to speak to you today. As David said, there are eight key differences that we see between how we operate in the IOPC in the UK and the proposed bill. So, I will start with the first and probably what we think is most important.*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Ms. Amanda Gillion Rowe:** *Yes. Sorry, is that a bit better? Thank you. So, the proposed IPCMC Bill does not confer powers on the IPCMC to investigate criminal matters. This will be investigated by the Royal Malaysian Police, I understand. We do see some difficulties with this. It does not afford the same level of independence as the IOPC model and it is also out of staff with international best practice particularly when investigation death or serious injury following police contact. All IOPC investigators have the powers of a police constable in independent investigations where they reasonably police suspect a criminal offence may have been committed. This means, in these circumstances that the IOPC will investigate both the criminal and the disciplinary elements of the case and our independent investigations are conducted by IOPC investigators.*

*I will give you a case study perhaps, that will maybe bring us a little bit to life. If we imagine a death in custody and by death in custody, we mean not only deaths in police detention places or police cells. We also mean it could be in a public place where somebody has been detained by the police, it could be in a police vehicle, it could be in a hospital, any place where actually the person is being detained by the police. So therefore, in their custody. If we imagine that actually the death has been in a police cell and perhaps there has been seven or eight officers involved in arresting the person, transporting them in a police vehicle to the police station, dealing with risk assessing. How they are medically, how they present when they come to the custody suite and then, actually physically put them in the cell. It maybe that when that person died, maybe one or only two people were involved. Let say, perhaps in the restraining of the person that was not appropriate and led to their death. That is a criminal investigation into those two officers.*

*But the same set of circumstances, it maybe that some other officers, maybe they haven't followed the policies or procedures that they should have done. Maybe they did not do tracks on*

*time, maybe they did not risk assessed properly. That would be misconduct and therefore, in our model, we are investigating the whole incidents, whether that is criminal or misconduct. So, we would have to investigate all of those officers together. We would not then have our path of the investigation to another body. The reason that is important is that when our investigators have— so, they gather all of the evidence independently.*

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*They produce the investigation report. The investigators themselves analyse the evidence, all of the evidence within the investigation and then the separate decision maker will maybe that line managers. Line managers so more senior level or senior manager, what we would call in UK an operations manager. They maybe the decision maker on the case. Their decisions would include whether to refer that case to our Crown Prosecution Service, whether to refer it to the police for the disciplinary proceedings to take place because there is a case to answer. Also, whether to— well in UK, every each of this death, suspicious death would have an inquest. Therefore, our report and our evidence collected in our investigation would inform the coroner's inquest. So, all of those decisions will be made after our investigation and they all made together. So, we think this is really a key in that both elements or actually investigated together in UK.*

*So as I said earlier, all of investigations are conducted by our investigators. Our system also improvised with different mode of investigation. So, that also allows for us to have directional control over an external investigator and who can be a servant police officer but they are appointed by us in the IOPC.*

*In such cases where we may have directional control of an investigation, we set the term of reference for that investigation and the investigator that report it, report to us. So, that is another mode of the investigation that we can use to manage the amount of referrals that we get. Do you want me to pause to question at the end or as I go through each one?*

**Tuan Pengerusi:** *I think we might as well interrupt you if you do not mind. I think since you— I have a few questions. Just at this juncture. I think firstly with regard to the composition of the IOPC, who are its members and how does it work? How they are appointed and is there a list of a— I am sure there is a maximum amount of members or how does it work?*

**Ms. Amanda Gillion Rowe:** *They are not members. So I will explain and there is a slide on this. If you go pass this one it says how we are settled. Okay. So, that show you how we are settled. [Merujuk kepada slaid] We have a director general. That director general is a royal appointment. Then, we have six non-executive directors and they formed a unitary board and they are appointed public appointment by Home Secretary.*

*We then have a deputy director general of operations. He was an employee of the organization. Then, we have five regional directors which I am one. I am director for Wales. We only cover England and Wales in UK, not Scotland. It's different law system there, okay. You can see Larry's smile and that how it is, we cover England and Wales okay.*

*Then, obviously we also have a deputy director general for strategy and corporate services. So that is how it settled. Under that then in each region, there is a team of an investigators and managers of those investigators.*

**Tuan Pengerusi:** *So, when you say that there is a team of investigators, are they appointed— is it a royal appointment or how?*

**Ms. Amanda Gillion Rowe:** *The investigators are the employees of the organization.*

**Tuan Pengerusi:** *Right. Their— I think you probably take us through their powers and of investigation. I think that is important for us because we, in our bill there also issues in relation to the powers of the investigation, its limit and so on and how it overlaps with the general criminal law. For example, from what you told us earlier, I think the IOPC covers criminal offences as well, isn't it?*

**Ms. Amanda Gillion Rowe:** *Yes.*

**Tuan Pengerusi:** *Unlike this bill. I think this bill there is been— there is some controversy on whether or not it should go into the domain of criminal law. There have been arguments against that because the view is that, that should be left to the cops. But then we come back to the same problem when criminal offences are committed, those offences are investigated by the police themselves. So, you will end up having the same problem, police is investigating themselves which is what we are trying to overcome. So, how does it work for you over there?*

**Ms. Amanda Gillion Rowe:** *In the UK— I will go back to your point about actually investigating— the police investigating themselves. It also about investigating the same set of circumstances and using the same evidence for two separate investigations. In the UK, we are the only agency that are investigating the matter and I will just say it is a sage for the truth of what happened in the incidents. It is not about specifically have to identify misconduct or criminality because there may not be any. They maybe learning, maybe learning for the force, might be learning from individual police officers but obviously a large amount of the cases, there is no criminality or misconduct. So, we are investigating the incidents itself.*

*As I said earlier, our investigators in an independent investigation whether they believe this is a reasonable suspicion does the criminal offense. They have the powers of police constable in the UK. So, all of their power in terms of seizure of material, we interview all witnesses, we interview all suspects on tape either— we call them subjects rather than suspects. Put subjects*

*on tape and that's either use in the misconduct, caution or use in the criminal caution. So, we can investigate any criminal offence involves in police officer in which they have committed in the course of their duty or they are off duty too in some circumstances.*

**Tuan Pengerusi:** *Sorry, what about prosecution then? If it ends up in prosecution, who prosecute? Is it the CPS?*

**Ms. Amanda Gillion Rowe:** *The Crown Prosecution, yes. The Crown Prosecution Service (CPS), they would prosecute our team with assist without prosecution. So, we would— a barrister will present a call but we would prepare all of the material for the core case.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *Chairman. If I can understand you well, you do the investigation.*

**Ms. Amanda Gillion Rowe:** *Yes.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *After you have this cover that there is some criminality in the investigation that you did, then you pass back to the Crown Prosecution Service. How do you do that?*

**Ms. Amanda Gillion Rowe:** *What happens is, in nature of the cases where the spin and a suspicion of criminality, we would gather the evidence and we would then submit a file... [Disampuk] Yes, we submit a file to the Crown Prosecution Service and they would make a decision on whether to charge and then we would charge and then we would proceed to trial.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *If the policemen, the police found to have committed breach of discipline, then the thing is referred back to the police.*

**Ms. Amanda Gillion Rowe:** *Yes.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *For disciplinary...*

**Ms. Amanda Gillion Rowe:** *So, for them to deal with the discipline procedures.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *Okay, you have two situations. If the case with inquest for instance, refer to coroner's court. But what happen— how do you monitor that thing is being carried out?*

**Ms. Amanda Gillion Rowe:** *In terms of the discipline procedures?*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *Yes, after you have passed the file to.*

**Ms. Amanda Gillion Rowe:** *Okay. So, in all cases or just in term of discipline? In each case? So, we still have responsibility for that case right through the whole process. So, therefore in terms of Crown Prosecution, we wait for that decision and we then take it to trial so that the case is still— we still have responsibility for it. In terms of discipline, we are in contact with the— we called it Professional Standards Department. They carry out the disciplinary procedures.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *The monitoring system?*



**Ms. Amanda Gillion Rowe:** *Yes, so we monitor those, we can— Juliet's team from [Tidak jelas] and we will also have the power to present misconduct tyrants and Juliet teams will do that presenting of evidence in some cases. We can be present in those hearings and the hearings are based on the evidence that we have collected and obviously we can attend those. But the actual proceedings are the responsibility of the police. Now, we also then— we have a board and I can talk about in a minute, the next— my next point actually about how that board is made of, that might make it a little bit clearer.*

*In terms of an inquest, we also retain responsibility and for that case, we would appear in that inquest, we might be asked to give evidence by the coroner. Again, it is use on our evidence in order to inform that inquest.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *Okay, let assume that you have already passed all the discipline cases. You passed it to the police organization to take action against certain individual.*

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*Then, if the police organization refuse to take action, what action can you take?*

**Ms. Amanda Gillion Rowe:** *We can direct and so we can— first of all, first stage, we recommend they hold the hearing. If they say they don't want hold the hearing, we can direct them to hold the misconduct hearing. Then the board, the Disciplinary Board's decision on the sanction.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Okay, thank you.*

**Ms. Amanda Gillion Rowe:** *Okay, thank you.*

**Tuan Pengerusi:** *Are your decisions amendable to review by court? I think...*

**Ms. Amanda Gillion Rowe:** *By judicial review. Yes.*

**Tuan Pengerusi:** *Yes. It is open to judicial review. So, I think Ms. Juliet, that would be in your department, isn't it?*

**Ms. Juliet Catherine Farall [Head of Presenting Unit Solicitor, Independent Office for Police Conduct (IOPC)]:** *Yes.*

**Tuan Pengerusi:** *Sorry. You want to finish first? I think it's...*

**Ms. Amanda Gillion Rowe:** *I still got quite a few points but Ms. Juliet can speak on this point.*

**Tuan Pengerusi:** *Yes, sure.*

**Ms. Juliet Catherine Farall:** *Yes. As a public body, any decision that we make would be amendable to judicial review by anybody who was affected by the decision. So either a complainant or a relative or a loved one of the deceased person or the police officer or the police*

force, so we had litigation with all parties in relation to our decisions, in relation to all stages of the proceedings really.

**Tuan Pengerusi:** *All stages, what do you mean all stages?*

**Ms. Juliet Catherine Farall:** *It could be a challenge to an initial decision at the beginning of an investigation, right the way through the conclusion of the report, right the way through to the decision to direct a police force to hold the misconduct hearing. It could be any decision that we make in relation to that investigation.*

**Tuan Pengerusi:** *You said that the CPS will conduct the prosecution? But that is the evidence, the gathering of evidence is done completely by your team, is that right? The police has got nothing to do with it.*

**Ms. Amanda Gillion Rowe:** *Yes.*

**Ms. Juliet Catherine Farall:** *Yes.*

**Tuan Pengerusi:** *I mean what are the procedural rules which apply? Do you have your own procedural rules in term of the collection of evidence for example?*

**Ms. Amanda Gillion Rowe:** *We follow the same standard as police force, so we would collect all evidence and comply with national standard in term of...*

**Tuan Pengerusi:** *So, you subject to I don't know, the evidence act and things like that, so that...*

**Ms. Juliet Catherine Farall:** *The Police and Criminal Evidence Act and the Criminal Procedure are all applied. We have the powers to...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *I think the part that you mentioned earlier was constable's authority to investigate, is it?*

**Ms. Juliet Catherine Farall:** *Powers of constable...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes. Limited by that authority. Yes, for constable to investigate. Yes.*

**Ms. Juliet Catherine Farall:** *It is the powers and privileges. So, we can search, seize all of the same things the police officers could do if we had reasonable suspicion that there may have been criminal offence.*

**Tuan Pengerusi:** *If I am not mistaken, I think the IOPC was recently upgraded isn't it from a previous form? Am I right?*

**Ms. Amanda Gillion Rowe:** *Yes. I am not upgraded. It is transition end of...*

**Ms. Juliet Catherine Farall:** *[Ketawa]*

**Tuan Pengerusi:** *Transition. What was it before?*

**Ms. Amanda Gillion Rowe:** *The IPCC, the Independent Police Complaints Commission.*

**Tuan Pengerusi:** *What was the difference?*

**Ms. Amanda Gillion Rowe:** *The main differences that we had commissioners, we had a commission structure and it's part of the raft of changes really that came in. One of the changes was about actually we don't have a commission structure anymore. We have a single line of accountability as you saw on the— sorry, the slide that was up earlier. That shows that single line of accountability in term of decision making. It simplify that process.*

*In the previous organization, commissioners made decisions on the cases but in a— a key difference to your proposal about a commission, in the IPCC example, they actually made decision on cases but didn't have responsibility for any of the— hmm what do we call I suppose. They didn't have the responsibility for directing the resource in anyway or managing the actual executive. They will completely separate and we found actually that, that didn't work for us. It made decision-making quite complicated. Public didn't understand it and obviously because of all the other changes which included a change in legislation, we then transitioned into the IOPC which has a completely different structure. Although, we are still carrying out the same actions, independent investigations.*

**Tuan Pengerusi:** *Sorry. So, when there are elements of criminality, it goes to court and it is prosecuted. But if there is none, if it is a purely disciplinary case...*

**Ms. Amanda Gillion Rowe:** *Yes.*

**Tuan Pengerusi:** *...It is handled within the IOPC. Is that correct?*

**Ms. Amanda Gillion Rowe:** *We make the decision about whether there is a case to answer for discipline and then the actual discipline proceedings are carried out by the police force, the appropriate authority.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *[Bercakap tanpa menggunakan pembesar suara] ...Carry the disciplinary authority of the police.*

**Tuan Pengerusi:** *I think that is important.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *No. They just do the investigation, collecting evidence and then if crime is involved, then they pass to Crown Prosecution. If discipline is involved, then they pass to the police, discipline authority.*

**Ms. Amanda Gillion Rowe:** *But only after...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *But they have the monitoring system to make sure that the whatever being passed by IOPC, it will be conducted by the police.*

**Ms. Amanda Gillion Rowe:** *But we are only passing over at the point that we've concluded the investigation and we have made the decision about whether there is a case to*

answer for discipline. So, we are not passing over for any investigation in both cases, criminal and misconduct. We've concluded our whole investigation, we've got all the evidence.

**Tuan Pengerusi:** So, once that process is completed, once you investigated and gathered evidence, you hand it over to the police? What was the body called?

**Mr. David Thomas:** It's equivalent to Integrity Department.

**Tuan Pengerusi:** JIPS, all right. So, you hand it over to a body, an integrity body. Are they bound to conduct a hearing?

**Ms. Amanda Gillion Rowe:** Yes. We can direct them to hold the hearing if they don't agree.

**Tuan Pengerusi:** All right.

**Ms. Amanda Gillion Rowe:** Ms. Juliet probably talked about it in a little bit more detailed. But yes, we would turn it over. We call the appropriate authority, but it is the police force and it's the Professional Standards Department that deal with those misconduct hearing...

**Dr. Su Keong Siong:** Can I ask Ms. Amanda? When you hand over to the police force, do the police force conducts the merits of the complaints again or they take your investigation and they only decide what sort of measures or punishment should be metered out or...

**Ms. Amanda Gillion Rowe:** Yes.

**Dr. Su Keong Siong:** How do you go...

**Ms. Juliet Catherine Farall:** At the hearing, when it has been referred to the police force, they will have a hearing on the facts. So, they will decide whether it is proven or not proven. So, it is a bit like a trial. Everyone is legally presented and there's a panel who made that decision and then they will decide on sanctions. So, they will decide on punishment whether there should be any.

**Dr. Su Keong Siong:** More or less like when you refer this to the police force for further action, the case already I mean, has been decided. You don't start all over again, is it?

**Ms. Juliet Catherine Farall:** It hasn't been decided. Yes, it is a case to answer...

**Dr. Su Keong Siong:** Only the sanction is not metered out and what is appropriate sentence based on the facts of the case.

**Ms. Juliet Catherine Farall:** They will still decide whether it's proven. We don't find the ultimately that something did happen, we will say that the officer has a case to answer for unlawful use of force, whatever it might be. They will hear all the evidence live, they will have a trial and they will decide on outcome. So, they will find it proven that this officer assaulted the complainant or it is not proven, there is insufficient evidence. And then, they will decide on sanction.

**Dr. Su Keong Siong:** *So, isn't that a repetitive of what you have done earlier to have another hearing that to prove...*

**Ms. Juliet Catherine Farall:** *Well, they are taking a stage further. So, we don't decide whether it is proven. It is like a trial. So, the police will investigate and gather the evidence and say it is likely that this person would be convicted of a crime. But obviously then go to a trial and the juries are the ultimate decision-makers to whether or not it is proven. So, it is similar to that. We just investigate, we are not the final decision-maker.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *The police officer's charge in the tribunal, are they entitled to the representation by the lawyer?*

**Ms. Juliet Catherine Farall:** Yes.

**Ms. Amanda Gillion Rowe:** Yes.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes, they do. Of course, this is as simple as ordinary court cases. Police do the investigation, bring the matter to court and that police has got the tribunal, discipline tribunal. This people will have to give evidence because they are the investigating officers. So, that is how it is conducted.*

**Tuan Pengerusi:** *They will— you'll take statements and things like that, isn't it?*

**Ms. Amanda Gillion Rowe:** *Complete, if you imagine a police investigation, it is exactly the same. We take the statements, we interview, we collect CCTV, all of the evidence— it is exactly the same, yeah.*

**Ms. Juliet Catherine Farall:** *So, I supposed one important point— sorry. One important about going back to the police for that stage is that the panel who decide are not all police officers. So there is an independent chair of that panel who is a lawyer and there is one police officer and there is one member of the public. So, it is not completely internal. There is still an independent layer to that final outcome.*

**Tuan Pengerusi:** *There is a panel of three?*

**Ms. Juliet Catherine Farall:** *Three, yes.*

**Ms. Amanda Gillion Rowe:** Yes.

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**Tuan Pengerusi:** *Is the police officer on that panel, is he a serving police officer or he is retired?*

**Ms. Juliet Catherine Farall:** *Serving.*

**Tuan Pengerusi:** *Serving? Okay. Please, carry on.*

**Dr. Su Keong Siong:** *I have a question. The whole process, do the police officer entitled to legal representation?*

**Ms. Juliet Catherine Farall:** Yes.

**Ms. Amanda Gillion Rowe:** *Okay, so I'll move on to another key difference. So, we have that actually just touched down on this. This is about the disciplinary precedent. So, we more or less covered this point. Unlike the proposals in the IPCMC Bill, we don't retain control over this disciplinary precedent. We just explained how the panel is made up, for also just to explain that also we have the power to direct the police force. So, let's say we have found a case to answer, we send that to the police force and they don't agree. We can then direct them to hold a hearing.*

*As I said earlier, in February we have new legislation comes in and that will mean we can also present at this hearing as well. So, as we explained about how the panelist made up, three members legally qualified to chair, allay member the public and person serving with the police. And also this hearing is conducted in public. So, that is another difference and all parties are entitled to be legally represented. And also, the officer has the right to appeal to the Police Appeals Tribunal. So, following any hearing, the officer can appeal. Okay.*

*So, moving on to the next key difference which is really about the scope. So, apart from the power to conduct a criminal investigation which we have already talk about, IOPC jurisdiction to investigate is much more tightly defined in our law than the propose bill and there is probably—I'll explain why. In terms of complaints onto the Police Reform Act, it provides that a complainant must be a member of the public who claims of the conduct took place in Malaysia to them or have been at firstly affected by the conduct, even though it didn't take place in relation to them. Or a member of public who claims to witness the conduct or somebody acting on their behalf and a police officer cannot make a complaint against the officer in the same police force. So, they can't be a complainant. They can't—we do obviously have whistle blowing where officers can obviously tell us about allegations within the police. So, we can initiate an investigation from that whistle blowing but they can't be a complainant. They can also—it's a question that came up this morning. They can also speak to that within the police force internally and aggrievances they might have themselves that will be dealt with internally. But they can't be a complainant under our act.*

*The second difference— oh, sorry.*

**Tuan Pengerusi:** *They can't be a complainant, what do you mean by that?*

**Ms. Amanda Gillion Rowe:** *A police officer can't be a complainant under our act. So, as I said then, because if they under the same chief constable, they can't make complaint against the officer ft the same police force. There is a duty on them to report any wrongdoing. So, if they see one of their colleagues and actually, they not acting in line with a procedure, then there is a*

*duty on them to report back anyway but they are not a complainant for us. They can whistle blow, they can report it or if it's an internal matter, they can report internally.*

**Ms. Juliet Catherine Farall:** *The technical significance of that is only that a complainant after find in all legislations has various rights. We would— we have a duty for example to keep them updated and we would submit a final report about whether or not their complaint was upheld. So, it is not with that matter would not be investigated or would cease to exist. It just that very specific definition of being a complainant is ruled out for serving police officer in relation to another officer in the same force. So, they— I think the intention behind that is to prevent them using the system to resolve internal dispute by making complaints about each other to us.*

**Ms. Amanda Gillion Rowe:** *Ya, okay. Now, in terms of the death or serious injury matter, this must be referred to the IOPC and the definition how are we ought it slightly different to the definition in the propose bill. So, it defines on the Police Reform Act, any circumstances in which a person has died or sustained the serious injury and that the time of that death or serious injury, the person who in police custody— and I've explained about what that mean. Or the act or before the time of death or serious injury, the person had contact of any kind, and that is where the direct or indirect, and that with the person safe with the police.*

*The most important part of our definition is the last part because this actually help really define what we will deal with. And that is, that there is an indication that contact with the police officer may have cause and that is directly or indirectly, or contributed to the death or serious injury. That is the key difference in terms of that how we defined it. So there have to be a cause or link or something that the officer did that contributed to that death or serious injury.*

**Tuan Pengerusi:** *Is there any recent cases of death in custody which has been referred to you?*

**Ms. Amanda Gillion Rowe:** *All death in custody are referred to us.*

**Tuan Pengerusi:** *Any recent bonds?*

**Ms. Amanda Gillion Rowe:** *Yes. I mean there is...*

**Tuan Pengerusi:** *But they eventually being charged in court, won't they?*

**Ms. Amanda Gillion Rowe:** *Not necessarily because the officers might not of done anything wrong necessarily just because it's being a death in custody. They may not be any criminality or misconduct for officers because the person might have died of natural causes. The important thing is that every death in custody falls under the mandatory criteria. It must be...*

**Tuan Pengerusi:** *So, it must be investigated?*

**Ms. Amanda Gillion Rowe:** *It must be referred to us and the independent investigation would then take place. So, there are a lot of circumstances. Let's say somebody is arrested and*

*while he is been arrested, they might have a heart attack and die. That wouldn't necessarily been investigated by us because the person died on although they were in the custody of police. There is no indication of any criminality or misconduct that the police did anything wrong. So, that is the way really of us— because lots of people unfortunately do die in the custody of police officers. But it's a way of obviously you'll say more if there is an indication that there's a cause or link or contributory factor.*

**Mr. David Thomas:** *Okay, one here. I think, as well as under your current bill I think, it is designated that it looks at all deaths. So, it might therefore in an every met end up dealing with huge amounts which are non-criminal, which should absorb time and resource.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *How rampant this death in custody in Britain?*

**Ms. Amanda Gillion Rowe:** *In the year and the last final year, so April 2018 until April 2019 was 16 deaths in custody, in England and Wales.*

**Datuk Seri Wan Junaidi bin Tuanku Jaafar:** *North Scotland.*

**Ms. Amanda Gillion Rowe:** *North Scotland. [Ketawa] Now, and as updated referred to you later. Since 2004, death in custody is halve in the UK. So, yes. And obviously, in terms of some of death in custody we've made recommendations that actually change the way that detaining is dealt with. Therefore, we would say that's a contributory fact at.*

*Okay. So, to move on to— I think the next things to consider which is actually link to how we define complaints, misconduct and then death or serious injury, it's resources. So, in the proposed bill, the definition of misconduct, complaints or death and serious injury, they are not defined in the same way as in UK. This means there is likely to be a much larger amount of both complaints and referrals made. So therefore, the IPCMC resource a model— that would obviously be a consideration. So, to give you some idea, there are mandatory criteria for referral. So in the UK model— we actually got a slide on that actually. It says the mandatory referral if we can bring that up. This is it.*

*Okay, go back at slide. [Merujuk kepada slaid] Okay, so mandatory referrals are all deaths or serious injury matters under our definition. Okay. All complaints are recordable conduct matters. A recordable conduct matter just means that it's already an indication that an officer may have committed criminal or misconduct defense. And these are conducts to which constitute either serious assault, serious sexual offense, serious corruption.*

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*Criminal offence which is aggravated by discriminatory behavior or a relevant offence. In the UK, a relevant offence is one that carries a potential sentence of seven years or more. So, all*



of those must be referred to the IOPC. In the last year, April 2018 to April 2019, we've received just over 4,000 referrals of incidents. In terms of complaints, overall the UK police forces, nationally between them and there is 43, they recorded approximately 41,000 complaints against the police. Of those, approximately 9,000 of them were made directly the IOPC. So, there a number of ways in the UK that a complaint can be made. It can be made by going into a police station and making the complaint in person. It can be made directly to ourselves either online or by telephone or by writing to us or obviously email. We have a customer contact centre that deal with this. So, that is how complaints come in and then the force most record them. So, about 9,500 directly to us in that year.

We then have a central assessment unit and they assess each of those 4,000 referrals and they make a decision about whether or not there should be an investigation. If so, what that mode of investigation should be. So, that includes obviously an independent investigation. I have talked earlier about investigations where we have direction and control, but it is carried out by a police investigator that we appoint. We set the terms of reference for those investigations and that is the way of managing the amount of obviously referrals are made. So, that is a full-time job for an assessment unit.

Then, our case where managers, which is another section within the IOPC. Police will carry out investigations into complaints themselves and complaint usually that not so serious, maybe a lower level, maybe allegations of unserviceability, etcetera. Now, the complainant in those cases has a right of appeal against the police investigation of their complaint. So, they can appeal to us and say, they are not happy with how that investigation was conducted. So, same time period, we received just over 3,000 appeals against a police investigation of a complaint. We upheld about 40 percent of those appeals. Giving you some context in terms of independent investigations, same time period, we complete 717 independent investigations.

Now, in terms of resources. We have approximately 380 investigation staffs that includes managers and investigation support staffs, that just doing our core business and that is the types of incidents that we have just talked about. [Merujuk kepada slaid] Additionally, we also have probably under 200 additional staffs and they work for our director of major investigations. Which at the moment is mainly concern with investigating non-recent child sexual abuse allegations and Hillsborough investigation team, which you might have heard of. For us in the UK, Hillsborough is the biggest case in UK legal history. We are conducting an independent investigation into the circumstances. So, we have a separate team that solely working on that investigation. So, the resource model is quite different.

*As we said earlier, we have the power to determine different mode of investigation and that allows us to manage our resources effectively. So, we want to focus on investigating the most serious and sensitive matters independently. Obviously, we can't use a police investigator that is appointed by us and that might be because we need some specialist. Resource or specialist skills that actually we don't have, but the police force would do that on our behalf. So, I will give you an example. We have an anti-corruption unit within the IOPC and they liaise with anti-corruption units in each of the police forces. We don't have the infrastructure to carry out covert and anti-corruption investigations using covert police techniques. So, if that was to happen, we have the power to do so, but we would have to use another agency or police force. So, let's say there had to be a surveillance, then we don't have that facility. We would use another police force or agency to do that on our behalf under our supervision.*

*Okay, I just pause in case there are any questions before I move on to the next.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *It makes me curious, Mr. Chairman. What is the total number of staffs for your...*

**Ms. Amanda Gillion Rowe:** *For the whole organization, about 1,000 and there is about 120,000 police officers in the UK. So quite similar numbers to your own.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *This is all from the public fund, paying salary?*

**Ms. Amanda Gillion Rowe:** *Ya.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Thank you.*

**Dr. Su Keong Siong:** *I have one question. Do you have a timeframe set for— to complete the investigation in UK?*

**Ms. Amanda Gillion Rowe:** *Our target is to complete 80 percent of investigations within 12 months. Some investigations and I just touched on a couple of them. Hillsborough and non-recent child sexual abuse, they will take longer than 12 months. So, that is why it is set at 80 percent. Last year, we just reached that target 79 percent. So, yes we...*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara]*

**Ms. Amanda Gillion Rowe:** *Within 12 months. Okay, shall I move on to the next one? Okay. So, the next thing we want to touch on really was— and we have talked about this. It is just about the management chain. So, we don't have publicly appointed commissioners. With the management structure is very similar to your proposed one, in that there is one single line of command and obviously we can— we just talked about the details of that management structure.*

*Okay, next point which is something we noticed in the bill was that in terms of employing an ex-police officers. I think the proposal in the bill is that, that doesn't happen. In the IOPC, the*

*director general and the deputy director general, who we just talked about before, they cannot have been a serving member of the police. The IOPC does employ former police officers and to ensure a diverse workforce. We think it is really beneficial actually to use their expertise. Those officers may have been in— you know, they may have made those decisions that we are investigating before. They may understand the structure, they have very similar expertise that we need for our investigators as in they have investigated multiple criminal offences themselves. Therefore, we think they are really capable— there has to be a balance.*

*So, we employed about 25 percent of ex-police officers within the whole organization and that is balanced then where we have a very diverse workforce in terms of our investigators. Therefore, they come from a range of backgrounds and that is both cultural and employment backgrounds. We have a Trainee Investigator Programme, where we actually bring in people who don't have an investigator experience. We train them and we have a seven weeks training course for our investigators. Whether they have previously work as a police officer or not, because it is although they might have the skills, it is a different type investigation. So, we really do value that. Obviously, as I said it is a balance, because we keep it to about 25 percent, because we want to maintain public confidence in our organization. That may be affected if actually we were completely staffed by ex-police officers.*

*In the UK, police officers— I say only, but they worked 30 years before they can claim their pension. So, when they have done 30 years, if they started quite young, they are still relatively young. So, a lot of people who apply for roles within the IOPC who are ex-police officers have retired from the police service. Now, we do put structures in place— another layer of independence. So we would say, ideally any ex-police officer, they would not deal with a matter within the police force that they have retired from for three years. So, they could investigate all the police forces, but not the one that they came from. Now, obviously there are always exceptions to that rule, but we looked at that very carefully when we appoint our investigators to each case.*

■1650

**Tuan Pengerusi:** *So, you have police involvement or ex-police officers involve?*

**Ms. Amanda Gillion Rowe:** *That's appoint by our CF.*

**Tuan Pengerusi:** *So that's not cause any controversy in terms of— had not been complaints about that being of allegation or buyers and so on creeping up cause we find such complaints here our concerns at least.*

**Ms. Amanda Gillion Rowe:** *Sometime there have being complaints and you know but we try and obviously avoid that one by having the rule around, not actually investigation officers within their own police force for three years after they left. But ya it has been raised as complaints*

and we are very open and transparent in terms of you know, how many ex-police officers we employed, they become employees of the IOPC. Then on command they come to us as employees. And quite often when an ex-police officers maybe is an investigator on the matter, then they will be asked by the complainant what did they do before, what's are their employment background and we are very open and transparent about that.

Usually we find that we can build confidence with the complainant by just being very open and transparent and tell them it's actually yes but doesn't mean that we are bias and you will demonstrate by the way that we conduct the investigation that is independent. The other important thing to remember is, even though that investigator is conducting investigation, they are not the decision maker. So, they don't make decision on the case, they analyze the evidence and there is a role level of supervision at every point. So, they report to a supervisor and that supervisor will report to an operations manager and then the decision on whether to refer it to the CPS or to the police for misconduct is actually one that taken by a senior manager or myself in some cases, the most complex cases. So that also what it's like independent do.

Okay. Just couple more things.

**Tuan Pengerusi:** Please, take your time.

**Ms. Amanda Gillion Rowe:** Okay. [Ketawa] We talk about hearings and I think the proposed amendments to your bill that we've seen, that suggest the public hearings should be held as part of the investigation.

**Tuan Pengerusi:** Sorry, what is that?

**Ms. Amanda Gillion Rowe:** We've seen some proposed amendments to the IPCMC Bill, I think it was by civil society I think and that suggest that public hearing should be held as part of the investigation. So, all evidence should be heard as part of the investigation.

**Tuan Pengerusi:** When you say public hearing, yours has done publicly, isn't it?

**Ms. Amanda Gillion Rowe:** That's at the end...

**Tuan Pengerusi:** At the end...

**Ms. Amanda Gillion Rowe:** So this is as part of the investigation.

**Tuan Pengerusi:** By the panel of three.

**Ms. Amanda Gillion Rowe:** I understand. No, sorry. Our hearing are held in public, then our are actually the police disciplinary hearings.

**Tuan Pengerusi:** How do you that? How is it done in public? Is it televise or...

**Ms. Amanda Gillion Rowe:** Not televise but it's open to the public.

**Tuan Pengerusi:** Alright.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *I think it's just like court hearing. Public, just court hearing. Everybody free to come and see.*

**Ms. Amanda Gillion Rowe:** *It is, ya. Very good comment.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Alright, thank you.*

**Ms. Amanda Gillion Rowe:** *Ya, and so we have looked at some proposed amendments and obviously it's that this public hearings are not held— there is no hearing held at the end, as we understand it. The proposed list that the hearing not part of the investigation, that's not a feature of UK investigation process. Maybe drawbacks to that proposal it depends on how public hearings are handled, so how much evidence is put in to the public demand because the risk is prejudicing any future discipline proceedings. So obviously if that evidence is rehearse publicly before the final decision is made, then this potential for that is prejudice. So, we just highlight that. We don't conduct public hearings as part of the investigation process. We don't have the same powers obviously as we said in terms of discipline. That just something else to highlight.*

*The last thing is actually about the relationship with the IOPC and the police and the equivalent in Malaysia. So, any oversight model only works if there's professional trust and respect on both sides. Of course, there will be disagreements, we are not always agree and that's okay because we need to resolve that by professional discussion. At the end of that, we might still disagree.*

*Over the years, since we've been be in the IPCC since 2004— over those years we forged strong relationship with police stakeholders. So I would meet with the chief constable and deputy chief constable of all of the forces under my responsibility as we the regional director. I will also meet with the Professional Standards Department staff on regular basis and also regularly liaise with my team and those Professional Standards Department. This means that we can easily gain access to all of the material that we need for our investigations. So, any information, any evidences, any documents that required for our investigation and for the purposes of investigating the matter.*

*So, there is also a provision within the police reformat that officers must retain, not destroy and hand over any documents that we request.*

**Tuan Pengerusi:** *So they compel to— there's a provision which compels them to do so is it?*

**Ms. Amanda Gillion Rowe:** *There is a provision. I mean and we don't have to use it because we build such strong relationships, they know that exist and therefore their mutual and collaboration and that will be provided to us.*

**Tuan Pengerusi:** *What about the investigating— I don't know if you're going to be address in this Juliet. But on the investigation process itself, are they compel to you answer-question, you can remain silence, things like that.*

**Ms. Juliet Catherine Farall:** *No, no. So that power that Amanda has just described applies to the police forces. So, we would say to the force if there's been an incident. They are on their duty to preserve evidence, keep it not destroy as Amanda described. If we say to that force, we won't over CCTV from the custody's, we want a record. That's a duty on that force to provide us with that information. But when the individual officer who is subject to investigation, we don't have a power to force him to hand things over in the way that is proposed in this bill.*

**Ms. Amanda Gillion Rowe:** *In terms of the question that you ask about do have the right remain silence, yes. So, we can't compel police witnesses, so we can compel somebody to communicant at our premises in order to provide the statement but we can't make them provide us statement and we obviously can interview subject of our investigation and obviously they don't have to speak. They have the right to remain silence under UK law.*

**Ms. Juliet Catherine Farall:** *So we have had some difficulties and criticism that's undermine public confidence with police witnesses that we can't compel them to give us an account. In the way that you couldn't compel any witness in UK, you can't force someone to talk to you. That has really undermined public confidence in the police because if you are on duty and you witness an extremely serious incident where potentially someone has died and then you just refused to speak to the oversight body to assist them in investigation, that doesn't look very good. So, in the new regime which we're hoping is going to come into force in February next year, witness, police officers who are witnesses will have a duty of cooperation specifically put into that duties. So, if they don't cooperate with us, that will be misconduct potentially.*

*So, it's a very close to force them to speak to us but only if they are witnesses, not a subject. A subject can never be compelled and will not be in the new— well.*

**Ms. Amanda Gillion Rowe:** *Just one thing to add to that. If officers and they don't tell us what happen, they don't give us an account, we will comment on that, in our investigation reports and we publish the whole investigation report or summary of that report. So, will we comment on that publicly to say we're disappointed.*

**Tuan Pengerusi:** *Can you make an adverse inference against them?*

**Ms. Amanda Gillion Rowe:** *Yes, on the UK law yes. An adverse inference can be drawn if someone does not provide an accounted the time and later goes on to provide an account, yes.*

**Ms. Juliet Catherine Farall:** *That is both in criminal proceedings and in misconduct proceedings. So, the panel control an inference against an officer who is refuse to give an account and then try to relying something later, the hearing.*

■1700

**Dr. Su Keong Siong:** *In UK you have your Police and Criminal Evidence Act that governs the powers of the police officers. So IOPC do you have power to investigate offences under the act or...*

**Ms. Amanda Gillion Rowe:** *We are subject to the act too, so we must comply with the act.*

**Dr. Su Keong Siong:** *So any complaint regarding which of that any... [Bercakap tanpa menggunakan pembesar suara]*

**Ms. Amanda Gillion Rowe:** *Ya.*

**Ms. Juliet Catherine Farall:** *Sorry, only if it's criminal. So, only if they reasonably suspect that there has been a criminal offence, not in all investigations.*

**Dr. Su Keong Siong:** *Not misconduct.*

**Ms. Juliet Catherine Farall:** *Not misconduct.*

**Ms. Amanda Gillion Rowe:** *For us the Police and Criminal Evidence Act it doesn't apply to misconduct cases. If we are investigating an allegation of criminality, so it's a criminal investigation, we must comply with that act. So, all of the things that are in there around, detention. If we were detaining an officer for example, then we must follow PACE.*

**Tuan Pengerusi:** *So if it's non-criminal...*

**Ms. Amanda Gillion Rowe:** *Ya.*

**Tuan Pengerusi:** *...You are not subject to PACE?*

**Ms. Amanda Gillion Rowe:** *We are not subject to PACE because it doesn't apply to non-criminal.*

**Tuan Pengerusi:** *But what if you know somewhere down the investigation elements of criminality come about...*

**Ms. Amanda Gillion Rowe:** *Then it would become a criminal investigation. So at the outset of each investigation, we have to make a decision about whether there's an indication of criminality or misconduct. But that decision is under review throughout the life of the investigation. So, it is review regularly. So, every time we get some more evidence, we would look at that again and say is there now an indication, so we can change anytime. Then if elements of criminality became apparent, then that would change into a criminal investigation.*

**Dr. Su Keong Siong:** *Can I just ask? How do you determine the elements of criminality? For example, okay police officers stop someone, asking him to bring out identification and the person refused. So, obviously police probably use some force against the person. So, he will have complaints that police brutality and all this. I mean how do you decide whether there is such incident that it really involves police brutality and all this. You have to investigate, right?*

**Ms. Amanda Gillion Rowe:** *Yes. So, obviously police officers can use force. That force has to be reasonable and proportionate, and therefore we would look at the circumstances how they are trained, what the guidance says, what the law says. So we would be looking at was that use of force proportionate, lawful, reasonable and the circumstances, that would be under consideration as part of our investigation and then we would make a decision on that. Now, it may be in some cases actually that use of force was perfectly legitimate and it would be straightforward.*

**Dr. Su Keong Siong:** *So, a lot would depend on the nature of the complaints?*

**Ms. Amanda Gillion Rowe:** *Absolutely.*

**Dr. Su Keong Siong:** *I mean in that sense like, he can simply alleged police brutality but in fact there is none. I mean it was just a reasonable force used.*

**Ms. Amanda Gillion Rowe:** *Of course.*

**Dr. Su Keong Siong:** *So, you filter that out on...*

**Ms. Amanda Gillion Rowe:** *We would obviously have to look for evidence, if an allegation is made, that's it. We would look for evidence to either support or undermine that allegation. In terms of use of force to give you an example of where you know it would obviously be legitimate. In the UK as you have seen, we have had some terrorist incidents. So therefore alleged terrorist were shot by the police during those terrorism incidents. We've investigated that element. Police counterterrorism unit have investigated the alleged terrorism and therefore our finding is that it was legitimate that use of force. Shooting those people was legitimate, reasonable, proportionate and lawful. Ya, that's an example.*

*I don't have any other point but you might have more questions. [Ketawa]*

**Tuan Pengerusi:** *We will. We want you to start to that or do you have any...*

**Ms. Juliet Catherine Farall:** *I don't have anything to add. That's basically the points that we've discussed among ourselves.*

**Tuan Pengerusi:** *Okay. Now, I think you have seen our bill and the amendments which have been also tabled in Parliament. I think one of the issues here which I think differs quite significantly from yours. Your system is the fact that your role is merely to investigate, not to prosecute. Is that correct?*



**Ms. Juliet Catherine Farall:** *It is. We are going to be given the power to prosecute. That's my— I am the Head of the Presenting Unit. That's the team that will be presenting cases at the disciplinary hearings against the police.*

**Tuan Pengerusi:** *Sorry, sorry. But I don't mean prosecute, I mean to discipline.*

**Ms. Juliet Catherine Farall:** *Deciding on the discipline. That is right.*

**Tuan Pengerusi:** *Sorry, I don't mean prosecute. So, is that correct?*

**Ms. Juliet Catherine Farall:** *That is correct, yes.*

**Tuan Pengerusi:** *In our system, in our bill, I think one of the concerns is that they have the power to discipline as well. So, they basically investigate, judge and sentence— all in one go. So...*

**Ms. Juliet Catherine Farall:** *Yes. I've seen that there is provision for to put a police officer on the panel.*

**Tuan Pengerusi:** *Where, here?*

**Ms. Juliet Catherine Farall:** *Yes.*

**Tuan Pengerusi:** *No.*

**Ms. Juliet Catherine Farall:** *Maybe it is one of the amend...*

**Tuan Pengerusi:** *Oh, yes in the amendment, I think.*

**Ms. Juliet Catherine Farall:** *Yes. Suggested amendment.*

**Tuan Pengerusi:** *But I think the issue now is the separation of powers, if you want to call it that loosely. I don't mean it technically, that doesn't seem to be that separation here where— and in this bill the— I think it is a minimal judicial review but the problem is as raised by a few of the stakeholders, is that the police have very little involvement in the entire process. But I think in your case, the police do have quite significant involvement, don't they?*

**Ms. Amanda Gillion Rowe:** *Yes.*

**Ms. Juliet Catherine Farall:** *Yes, they do and they are also entitled to make representations to the panel about the sanction that you possibly receive. So, the panel will hear from the force before they decide what to do. In terms of whether they would like to have the officer back, so they will take into account all their operational needs. Whether this officer as if previous good character, how they regard him as their employer and whether what's been found proven against him would affect their ability to use him, are they essentially going to have to keep someone that they can't use.*

*So, for example if there has been a finding of dishonesty against the officer, sometimes the panel might be more likely to be lenient on them, whereas the chief constable would say I can't use a dishonest officer, I am asking you to dismiss him because I can't put him in a chain of*

*evidence, I am just going to be paying someone the salary who I can't use to investigate. On the other hand, they'll say he's been exemplary, here it to leave our large files worth of references. We would ask you to not dismiss this officer on this occasion. So, they are engaged with the process as well.*

**Tuan Pengerusi:** *You are a Solicitor, are you? So, you need to be obviously— in your role is to— Head of Presenting Unit. So, you present the— is that...*

**Ms. Juliet Catherine Farall:** *We will be in February. Hopefully, if the law comes into force next year.*

**Tuan Pengerusi:** *All right, okay.*

**Ms. Juliet Catherine Farall:** *So, currently at the moment I am working with the UK Home Office on drafting that legislation and guidance in relation to that power. At the moment I am the general lawyer for the organization.*

**Tuan Pengerusi:** *All right.*

**Ms. Juliet Catherine Farall:** *But we will be— because there has been some public concern about the independence of the police prosecuting the case against police officers at misconduct hearings where they don't agree with us. That is a case to answer. So, where we've directed basically we said we insist that you hold this hearing and then they presented. That has undermined public confidence and so we are being given that role in those cases.*

**Tuan Pengerusi:** *So, at the moment you are limited to directing them?*

**Ms. Juliet Catherine Farall:** *Ya.*

**Tuan Pengerusi:** *That is a public hearing, isn't it?*

**Ms. Juliet Catherine Farall:** *Yes.*

**Tuan Pengerusi:** *I think in our— that is not something that we have here.*

**Ms. Juliet Catherine Farall:** *No, it's quite a recent— well, it's 2012 development for us. They used to be in private. There was a big call for that in terms of again openness and transparency and public confidence in those proceedings and that had a significant impact on providing public confidence. Allowing the public in or at least let them know that they can have access if they want. Findings are also published and that is more popular. People tend to— they can tell that there's an internet traffic. How many people are looking at the outcomes and a lot people are looking it out. Not a lot of people actually take time out of their day to attend a hearing. But the fact that is possible has a made huge difference.*

**Dr. Su Keong Siong:** *Can I ask?*

**Tuan Pengerusi:** *Sure.*

**Dr. Su Keong Siong:** *Can I ask since inception of IOPC, has it been subject to any challenge in court on this constitutional issue? For example, the composition because bear in mind we have our written Federal Constitution which govern the Police Force Commission, you know. In other words, our hands are tied, we have to follow that. Have you been subject to any challenge in court on this issue of constitutionality?*

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**Ms. Juliet Catherine Farall:** *Oh, no.*

**Dr. Su Keong Siong:** *Position wise or anything.*

**Ms. Juliet Catherine Farall:** *In terms of the composition of the panel on various role, there is set out in statute. So, there has been no challenge to that, that's supreme. So, daily challenges we get of the decision that we make within this... [Disampuk] Exactly.*

**Mr. David Thomas:** *Just to add. I [Tidak jelas] a lead peer about my census that the supporters are very— who want to see a strong disciplinary function. A partly doing that because of this absence of the availability to lead criminal investigations. So, there's sort of clinging to the powers that the new body will have and trying to ensure that this punishment if you want at the end.*

*Whereas if the IPCMC was to operate in the similar way to other, oversight body and have responsibility for the total investigation of those criminal and disciplinary. Then obviously that would produce arguably a more independent investigation, the criminal side and the consequences there on of which might perhaps take up the heed of the need for that discipline in the end being so independent. Because you know, you kind of setting it up from the beginning in the most appropriate way rather than tackling it at the end because you feel frustrated. This is an observation though.*

**Tuan Pengerusi:** *Just in general terms. This only applies to police, isn't it? Do you have other agencies or bodies which look into the discipline of other agency?*

**Ms. Amanda Gillion Rowe:** *Yes. No, it does not just apply to police. So there's actually a slide on this, you know. I'll bring it open. It might be helpful which talks about our jurisdiction. Go back, it's quite at the beginning I tell you. Before that one, hang on. I will tell you what slide number is, hold on.*

*It actually talks about who have jurisdiction. I think it is who we are— slide 3, yup, okay. So, we have jurisdiction over the 43 geographic police forces and the number of the small forces. When we say small forces, they maybe port police, nuclear center police and we also have jurisdiction over the British Transport Police, police transport system, the National Crime Agency, and the Serious Organised Crime Agency. So similar to FBI I suppose in America. Her Majesty's*

*Revenues and Customs only when they're carrying out the policing tight role. So, if they are arresting, detaining etc. and not in terms of tax. [Ketawa]*

*The Home Affairs which was in the UK, border agency, border force again only when they are carrying out the policing type function, and also police and crime commissioners. I do not know if you aware of those. In the UK, police and crime commissioners, each police force has a police and crime commissioner and that person holds the forces to account in terms of their spending, how they direct their resources, they elected by the public. We can investigate police and crime commissioners but only where they've committed a criminal offence.*

**Tuan Pengerusi:** *So, these six bodies or six agencies?*

**Ms. Amanda Gillion Rowe:** *We have jurisdiction over them.*

**Tuan Pengerusi:** *What about others like immigration, other enforcement agencies. Do they come under this or are there other bodies which investigate them?*

**Ms. Amanda Gillion Rowe:** *There were other body that investigate immigration and in terms of the law enforcement agencies, I don't think there is any others I can think of.*

**Tuan Pengerusi:** *Because currently, our system is such that we have a body which covers all 21 agencies such as customs, immigration, the MACC, the corruption body and the police but now with the IPCMC, it only concerns the police. So in other words, it doesn't— and that is why I ask do you cover other bodies as well.*

**Ms. Amanda Gillion Rowe:** *Yes. We obviously have jurisdiction over all of those listed on that slide and also in terms of corruption, we will deal with that corruption that is not sent to another body. So, we have our own anti-corruption unit and those so we can use force anti-corruption unit to assist us and the National Crime Agency.*

**Tuan Pengerusi:** *So— Sorry, go ahead.*

**Dr. Su Keong Siong:** *In terms of issue allegation corruption, so how do you complement with your ACA in the sense you also investigate or you see it— how do you complement?*

**Ms. Amanda Gillion Rowe:** *No, we would conduct the investigation. We might ask the National Crime Agency to assist us with that investigation and because obviously they will have special resources that we don't have. So, we may use them or another police force— not the force that's being investigated and to use those special resources. Or there will be an option to obviously use the police investigator. So, in the new legislation which we hope this come in February and we will have what we call directed investigation and that means like I talked about before, we would have direction and control of that investigation but it would be conducted by a police officer that is appointed by us. We set the terms of reference, we would intrusively supervise that investigation, look at the decision that they make in that investigation and obviously we can*

direct that they change those decision if we do not agree with them. We will look at the policy decision, all the evidences. So, it's quite an intrusive power. So, we would retain responsibility for that investigation.

**Tuan Pengerusi:** *What is the legislation against the statute which— is there, is it call the IOPC act or something?*

**Ms. Juliet Catherine Farall:** *It's the Police Reform Act 2002 and that was the act which brought the IPCC our predecessor into being and was that amended into 2017 by the Policing and Crime Act and that created the IOPC and gave us new powers.*

**Tuan Pengerusi:** *Police— sorry, what was the...?*

**Ms. Juliet Catherine Farall:** *The Policing and Crime Act 2017. We also have regulations. So, I have seen in your bill provides regulation to be passed which set out a lot of these procedures that we are talking about particular relation to investigations, the steps that required and misconduct hearings.*

**Ms. Amanda Gillion Rowe:** *We also have statutory guidance that is huge to forces which takes them through the procedure that they must use.*

**Tuan Pengerusi:** *Right, okay. Any other question from our officers?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *I am very clear because I have a police background, so I understand very well what you talked about. Thank you.*

**Tuan Pengerusi:** *Anything else you would like to raise from the AG Chambers?*

**Encik Peh Suan Yong [Timbalan Penggubal Undang-undang Parlimen I, Jabatan Peguam Negara]:** *Thank you Chairman. I am just— who is the head of this IOPC? There is a head, isn't it? Appointed by the...*

**Ms. Amanda Gillion Rowe:** *Ya, the Director General.*

**Encik Peh Suan Yong:** *The Director General was appointed by whom? Who appointed?*

**Ms. Amanda Gillion Rowe:** *It's a royal appointment.*

**Encik Peh Suan Yong:** *It's a royal appointment. Who can remove him? How is he removed?*

**Ms. Amanda Gillion Rowe:** *I do not know actually. Good question. [Ketawa]*

**Ms. Juliet Catherine Farall:** *I imagined it will be also a royal removal. [Ketawa] There are various statute requirement placed on the Director General within the act. And I suspect if I were to follow history which I am doing now and it breached, that would be referred back to the Home Affairs and then they would be removed that way. So, there is an extend that list of the requirements and duties on the Director General specifically in the Police Reform Act.*

**Encik Peh Suan Yong:** Yang Berhormat, you mention it's a royal appointment. Does the Queen appoint him or does the Queen based on the advice of the Prime Minister?

**Ms. Amanda Gillion Rowe:** Ya, she would approved the appointment.

**Encik Peh Suan Yong:** I see. So, can the Prime Minister also advice the Queen to remove him?

**Ms. Juliet Catherine Farall:** Yes, I think it is logical it will follow that way. Yes. It probably wouldn't be the Prime Minister, I think it would be the Home Secretary because they have general oversight policing and all regulators.

**Tuan Pengerusi:** Is that subject to Parliament? Do they bring it or tabled it in Parliament?

**Ms. Juliet Catherine Farall:** I do not think it would take the appointment is tabled in Parliament. No. I think there is open and transparent recruitment process, so they apply for all like anybody else. And then it goes to panel at the home office who make the decision of final. Probably an approval of a recruitment— panel's decision and then it will get royal approval.

**Tuan Pengerusi:** Right.

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**Encik Peh Suan Yong:** You mentioned that the IOPC can direct the police to take disciplinary action.

**Ms. Juliet Catherine Farall:** Yes.

**Encik Peh Suan Yong:** What if they refuse? Is there penal sanction or...

**Ms. Juliet Catherine Farall:** They can't refuse and we actually have this question before. It is their statutory duty. So, we never have a force, as far as I am aware, refused to comply with direction. They do it, they do it reluctantly in many cases, but they do, do it. If they were to refused, that would be a public law claim that we can bring for breach of statute duty. But in truth, it is extremely unlikely that will happen because it will be so undermining to public confidence and they would be in breach of their statute duty. They just would not refuse.

**Ms. Amanda Gillion Rowe:** Yes. As I touched on earlier, because we have forged those strong relationships with the force, with the force chief constables, with the deputy chief constables, with all of the Professional Standards Department. That is also part of that. Of course, they may not agree and we may differ, but they will comply. Yes.

**Ms. Juliet Catherine Farall:** I think that is a key difference in our regime compared to the proposal in the bill here. There is not a lot of dialogue between the IPCMC and the police force about whether or not proceedings should go ahead. So, we will seek the police forces view. If we disagree, we can ultimately direct them to do anyway. But we will have that dialogue before it happens.

**Datuk Almalena Sharmila binti Dato' Dr. Johan [Penasihat Undang-undang, Pejabat Penasihat Undang-undang JPM]:** *Yes, I understand you had the system of commissioners before this and you moved away from that. Were there problems with the structure of having commissioners looking into the misconduct and criminal matters?*

**Ms. Amanda Gillion Rowe:** *There was not problems with them looking into the matters. What the problems when it is slightly different to the proposed model in your bill. The executive, the people who are carrying out the investigations themselves and the commission was separate. So therefore, the commissioner was ultimately responsible for making decisions on the case. But actually couldn't directs the resources to carry out those cases. They didn't have any management of the people who were carrying out those investigations.*

*Actually, that led to some difficulties in terms of— at that point, there was different legislation in place and at that point the investigator would give an opinion as to whether or not there was a case to answer. Different now, but at that point, the investigator would say, "I have conducted my investigation, my opinion is there is a case to answer." Then, it would go to the commissioner and if the commissioner and the investigator then disagreed, that was really difficult. It was also difficult for the public to understand the structure in the way that it works, especially with the main issues with that particular structure. But our understanding is that your commission structure is different and actually the commissioner would have responsibility for directing the resources etc.*

**Ms. Juliet Catherine Farall:** *To add to that, the public appointee element of the commissioner was what distinguished them in the previous organization. From staff who are investigators. We still have an element of that, because the public concern is that there was not sufficient independence. Somehow staff could become entrenched and this public appointee were slightly more independently minded. Whether that is fair on the force staff, but I can see that the similarity is still there in both organizations or the proposed organization in your case. That element of a public appointee is I assume intended to preserve a sense of public confidence and the independence.*

**Ms. Amanda Gillion Rowe:** *That is why in terms of our new structure, we still want to continue with that public confidence and the independence which is extremely important to us. By that the director general, a deputy director general cannot of being police officers, in the same way that commissioners could not of being police officers. Of the regional directors, none of the regional directors currently have been served in police officers.*

**Tuan Su Keong Siong:** *Can I just ask? When you direct the police force to investigate the complaints after your investigation, do you still have any monitoring power over that*

*investigation or you leave it entirely to the police force to investigate, because it's quite important to...*

**Ms. Juliet Catherine Farall:** *Did you mean at the disciplinary hearing or if we ask— yes. So, just at the moment we do not have control and we are entitled to attend and we are entitled to make representations. So, there will be a lawyer appointed by the police force to prosecute, to present the case. We would not involve ourselves in that part of it. But if the officer were to raise legal arguments about something to do with our investigations, for example if they said, it was unfair because of how long it had taken. Therefore, it should be dismissed before hearing the evidence, we would make submissions on that. So, we would seek, if appropriate, to persuade the panel that either— there was not any undue delay or to explain any delay. We can make those kinds of submissions. But we do not intrude on the actual prosecution of the officer. We could challenge outcomes if we— we do not have a right of appeal, but if a panel's decision was irrational or in some way challengeable by judicial review, we could do that. We have never done that.*

*Fairly enough, some police forces have and police forces in at least two cases that I know have judicial successfully challenged an independent panel's decision on sanction. There were both cases, I think where one was the sexual offence and the other one was the dishonesty case. So, the panel had not dismissed the officer and the police force were unhappy about that and they successfully jump to that decision. That is quite interesting that it is not us that has done it, but in fact, it is the police.*

**Tuan Pengerusi:** *Resulting in his dismissal?*

**Ms. Juliet Catherine Farall:** *Resulting in his dismissal, yes.*

**Ms. Amanda Gillion Rowe:** *Yes, yes. Just one of the things I think to add to that is that the police force who were carrying out the disciplinary proceedings, they must tell us when those proceedings are. We are involved in preparing for those hearings and provide an evidence. We would meet regularly with the people who are going to conduct those hearings and they must tell us when those hearings are taking place.*

**Ms. Juliet Catherine Farall:** *Yes. So, we will be there. The investigator will be there to assist, but also the lawyer could make presentations on certain things.*

**Tuan Pengerusi:** *So, the review that— you just said, one was successfully challenged. So, it goes to court, obviously.*

**Ms. Juliet Catherine Farall:** *Yes, it goes to the High Court and they decide with it. It is a very high threshold of challenge, that judicial review. So, it is whether...*

**Tuan Pengerusi:** *Is it for process or did they look at the evidence and so on as well?*



**Ms. Juliet Catherine Farall:** *It is not a review on the merits. It was basically that they haven't had. So, we have detailed guidance. There is quite a lot of guidance that supplements this world of police disciplines. We have Home Office Guidance in relation to investigations and disciplinary proceedings. We have our own statutory guidance that we issued. We also have a college of policing which is kind of the ethical/educational body for police forces. They issue guidance on standards for police officers. They have recently issued sanction guidances for independent judges to refer to in deciding and how to sanction an officer. So, they would take them through seriousness and the culpability and they were way of these things and it has guidance in that. For example, that operational dishonesty was almost always justified dismissal, things like that. So, that panel hadn't had a sufficient regard to that guidance. Yes, they had not. So, they quashed the decision and sent it back to the panel.*

**SAC Dato' Mohd Azman bin Ahmad Sapri [Ketua Urus setia KPN (Perundangan), Polis Diraja Malaysia (PDRM)]:** *The complaint can be made through the police station, online and IOPC, is it? It was referred to the central reference unit to assess the complaint. How you deal with the anonymous complaint? Do you have experienced it?*

**Ms. Amanda Gillion Rowe:** *Sorry, what was the question? The assessment unit deal with the referrals?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Yes. Then, how do you deal with it? Do you have any experience dealing with anonymous complaints?*

**Tuan Pengerusi:** *Anonymous.*

**Ms. Amanda Gillion Rowe:** *Anonymous complaints. No— well, the only way I can think of where anonymous complaints could be made is where— there would be no complainant in the case, that would be quite strange. We haven't ever have this. Where somebody could either whistle blower anonymously. I can't think of any circumstances where that's happen.*

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*Of course, we do sometimes receive anonymous letters and obviously we would access the content of that letter and then look into it in more detail. But usually in our cases, there is an unidentifiable complainant and we haven't had any circumstances where we had anonymous complaint that we've been able to deal with that I am aware of.*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *In IPCC Hong Kong, they have a two types of complaint. The complaint with full details because it's a reportable complaint, whereas the other is notifiable complaint, just for notification only because there is no details for the complainant.*

**Ms. Amanda Gillion Rowe:** *We don't have that model.*

**Ms. Juliet Catherine Farall:** *We have what we called conduct matters and Amanda has previously described where there is an indication that the officers may have commit an offence or misconduct. So, I suppose as Amanda told actually, if we receive anonymous allegation, we would look into it to see whether there was such indication, and it would be then, it wouldn't a complaint, it would be a conduct matters. If there was no indication, we would not taking any further because it couldn't be a complaint.*

**Ms. Amanda Gillion Rowe:** *I think that is the important piece of it. That doesn't have to be a complaint in order for an investigation to take place. In fact, very often there isn't a complaint, particularly in term of the more serious and offences. So, let say fatal, non-fatal shooting, deaths in custody. That is going to happen anywhere. There would be an independent investigation because we must comply with the European Court of Human Rights, Article 2 of the Human Rights Act that says if someone has died to the hand of state, that actually there must be an independent investigation.*

*So therefore, that is going to take place whatever happen that doesn't has to be a complaint to initiate that. However, that can be something that suppose death in serious injury matter under complaint because actually the family of the person who died make a complaint about the same matter, or they can make complaint about potentially let say, how long get to tell them that their love one that died and therefore that could be subsume into our term of reference. So with the family did make a complaint and there was already an ongoing investigation, we will consider is it the same set of circumstances, do we need to review or term of reference or those that complaint need to be included in the terms of reference. That is how we were deal with that.*

**Tuan Mohamad Onn bin Abd. Aziz [Setiausaha, Suruhanjaya Integriti Agensi Penguatkuasaan (SIAP)]:** *In Hong Kong also, they have this alternative mechanism solution, the one it was reportable complaint and the another one is notifiable complaint. So, for notifiable complaint, the police will apologize after that. So, do you have a similar mechanism in UK?*

**Ms. Amanda Gillion Rowe:** *Yes. So in the UK, let say that somebody makes a fairly low level complaint, let say it is about the service that they got from the police when they reported the burglary at their home. Let say that they felt that the police didn't attend quickly enough. When they did attend, they weren't very good with the job. Let just say that is the allegation. Obviously in those cases, the police have something that called the local resolution process and that may mean that matter is dealt with by them, speaking to the person concern, making an apology maybe, if that was appropriate. But actually resolving that matter at the lowest possible level before then needed escalation for that to be in investigation. The police so used in local resolution more and more.*

*Actually, it is something that also the IOPC need to think about in terms is a version that local resolution that we may use. Let say we going to start looking at the nemesis in custody. So actually, that hasn't been a death or serious injury, but it could've happened. So maybe that we use a difference process which maybe bring the people together. That just something that we thinking about. Yes, you are right. Local resolution would be the way that is dealt with by the police, for that low-level complaint.*

**Dato' Rohaizi bin Bahari [Timbalan Ketua Pengarah (Dasar dan Pembangunan), Bahagian Hal Ehwal Undang-undang (BHEUU)]:** *Yang Berhormat, I have two related questions regarding the jurisdiction. Whether IOPC is an agency under the Ministry of Home Affairs and then to whom the director general is answered to?*

**Ms. Amanda Gillion Rowe:** *We are answerable to Parliament and the Home Secretary. We are funded by the Home Affairs. We are non-department of government body. So like we also known as an **arms land body**, so our funding comes from Home Affairs. But we are not influenced by government.*

**Dato' Rohaizi bin Bahari:** *Okay. So the second thing is regard to jurisdiction. So from the agency, it seem since all the **NGs** are actually under the Home Affairs agency?*

**Ms. Amanda Gillion Rowe:** *Yes.*

**Dato' Rohaizi bin Bahari:** *Do you have any jurisdiction related to agencies outside the Home Affairs?*

**Ms. Juliet Catherine Farall:** *Yes, we do. We have what we called non-home affairs policing body. So, it's all the team and the whole of this is that they have a policing function and that is what we are investigating. So, for example in relation to customs, we would only investigate their action if there is any sort of quasi-policing function. So, we also have jurisdiction over non-home affairs police forces. So, we have for example the Ministry of Defense police, so they got submarine for example and we have the Civil Nuclear Constabulary, who got nuclear plants. A variety of forces like that we have jurisdiction over as well. But the key thing in this is always on the basis that we not investigating anything other than the policing function, detaining people, arresting people using force, that sort of things.*

**Tuan Pengerusi:** *Anything else?*

**Encik Peh Suan Yong:** *Sorry. Yang Berhormat, if I may. I understand that a police who is the subject of an investigation, he is not compel to answer any question, he is not compel to produce any documents. What about police who is not the subject of investigation? Can he be compelled to produce for example, the lock-up log book or to compel him to produce the CCTV?*

**Ms. Juliet Catherine Farall:** *So, what we would do is we will actually go to the force for that. We wouldn't leave it out to the officer to decide whether they could give it to someone, or give it to us. We would ask the force, they would actually usually give it to us. If there is any difficulty or delay in relation to that, we do have a power to compel them to produce that.*

*As I said before, we are hoping if the law comes into force in February next year as planned, there will be a new duty on police, individual police officers to cooperate with the investigation. So, if an officer who is a witness, not subject, didn't cooperate, that would be misconduct.*

**Encik Peh Suan Yong:** *So there will be no penal sanction, but only misconduct?*

**Ms. Juliet Catherine Farall:** *Yes.*

**Tuan Pengerusi:** *Anything else? Anybody would like to— Yang Berhormat, anything? No?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *I feel compel to say that I am quite clear with the whole thing, the whole process. The only question left is only the monitoring system that you have in place. Once you pass the cases to either to Crown for prosecution of a criminal cases and discipline to the police authority for the disciplinary action. The monitoring, how long the time to take, whether the police can report or must report to you about the result of their tribunal, all things like that.*

**Ms. Amanda Gillion Rowe:** *They must report to us the result and they have to do that. Sometimes there are delays in holding hearings and police forces of delayed. Sometime that has an impact on the case and maybe the cases take quite a length of time, firstly to be investigated if it is very complex and then delay in terms of the police force bringing that to hearing. Obviously that can impact on the case book. In terms of the outcome, they must tell us the outcome and in terms of your other point about the Crown Prosecution Service, it is still our case. It is doesn't stop being our case. We only refer it to the CPS for charging decision. They would come back to us and say yes we should prosecute or no we shouldn't, there is no further action.*

**Tuan Pengerusi:** *Thank you very much for the very useful and insightful account of your system. We are very happy to have you here. Thank you for coming all the way. I hope you— I meant it when I said have a good food. [Ketawa] Perhaps we can take a group photo before we...*

*[Sesi bergambar bersama Ahli-ahli Jawatankuasa dan wakil daripada British High Commission Kuala Lumpur serta Independent Office for Police Conduct (IOPC)]*

**[Mesyuarat ditangguhkan pada pukul 5.40 petang]**