



British
High Commission
Kuala Lumpur

**Independent Office for Police Conduct UK Delegation Visit
supported by the British High Commissioner in Kuala
Lumpur**

11 November 2019 – 15 November 2019

Welcoming Remarks by:

Mr David Thomas, Deputy High Commissioner, British High Commission Kuala Lumpur

Thank you for inviting Amanda Rowe and Juliet Farrell from the UK's Independent Office of Police Conduct (IOPC) to present to the Select Committee today, it's an honour and a privilege to be here and we are pleased to share the UK experience on police oversight.

UK and Malaysia has a long and shared history and your criminal justice, legal and parliamentary systems are rooted in ours. There is obviously much that is still similar and this makes the sharing of best practice and co-operation all the more straight-forward.

This last year has seen a number of visits, workshops and policy exchanges on parliamentary and prison reform. The UK stands ready to support Malaysia as it looks to strengthen oversight and accountability. Effective police oversight is clearly an important element of good government.

People expect the highest possible standards from their police service and that's what most officers strive to deliver. (I can say with personal experience as an ex-police officer), most police do a difficult job with the utmost integrity and make difficult decisions in very trying circumstances.

However, when things go wrong or police abuse their position through misconduct or corruption, the public expect scrutiny and accountability which can only come from independent oversight.

It may not be initially welcomed and it is almost always viewed with apprehension but the UK experience is that police colleagues have come to recognise the value and benefit it brings and that it does improve the police complaints system and wider confidence in the police.

Effective police oversight is not about trying to catch the police through some sort of witch-hunt – there may be prosecutions and/or officers may be disciplined but it's as much about learning and looking at police systems and processes when things go wrong to share insights and strengthen the whole policing system.

To sum up in a sentence it's about improving public confidence in policing by ensuring the police are accountable for their actions and lessons are learned.

And it's lessons learned on both sides. The UK model of police oversight has evolved over many years. Malaysia has got to start somewhere. Whatever model ultimately decided on will likely take a number of years to bed down and will be bumpy because it takes time for new processes - and the relationships needed to underpin them - to mature and develop.

I hope we can help with some of that by sharing the UK experience. Amanda and Juliet have spent time reviewing the legislation and yesterday talking to some of the various stakeholders who have views on the bill – civil society, the police, the GIACC and EIAC – it's clear that feelings are running high on what should or shouldn't be in it!

Clearly it's for Malaysia to decide that – not the UK. What we can do is provide an objective assessment of the differences between how the IOPC currently operates and how the bill sets out how the IPCMC will operate. Following an advance question by a member of this Select Committee and to 'cut to the

chase' so to speak, Amanda is going to run objectively run through what the key differences appear to be. They are happy to cautiously offer opinions – some differences will be inevitable because of national, political or cultural considerations but they will call out where differences with UK and wider international best practice are sharpest and where legislators may want to focus.

**IPCMC and IOPC Summary prepared by:
Ms Amanda Gillian Rowe, Regional Director for the North West
Ms Juliet Catherine Farrall, Head of Presenting Unit**

a) Investigations

The IPCMC Bill does not confer powers on the IPCMC to investigate criminal matters. These would be investigated by the Royal Malaysian Police [RMP}. We see some difficulties with this as it does not afford the same level of independence as the IOPC model and is out of step with international best practice, particularly when investigating death or serious injury following police contact. IOPC investigators have the powers of a police constable in independent investigations where they reasonably suspect a criminal offence may have been committed. This means in these circumstances the IOPC would investigate both criminal and disciplinary elements of the case.

Independent investigations are conducted by IOPC investigators. Our system also provides for different modes of investigation, which allow for direction and control over an external investigator appointed by the IOPC who can be a serving police officer.

b) Disciplinary Board

Unlike the proposals in the IPCMC Bill, the IOPC does not retain control over the disciplinary proceedings which follow an investigation. Control over these is retained by police forces. The IOPC has the power to direct a police force to hold a misconduct hearing where the officer has a case to answer for gross misconduct and will be getting the power to present the case against an officer in disciplinary proceedings in 2020. Police disciplinary panels under the current system comprise of an independent Chair who is legally qualified, a lay member of the public and a person serving with the police. These hearings are conducted in public. All parties are entitled to be legally represented and the officer has a right of appeal to the Police Appeals Tribunal.

c) Scope

Apart from the power to conduct criminal investigations, IOPC jurisdiction to investigate is much more tightly defined in the Police Reform Act (PRA) 2002 than in the proposed IPCMC Bill.

- **Complaints**

The PRA provides that a complainant must be a member of the public who claims that the conduct took place in relation to them, who have been adversely affected by the conduct even though it did not take place in relation to him or her, a member of the public who claims to have witnessed the conduct or a person acting on behalf of someone who falls within any of the three categories above. A police officer cannot make a complaint against an officer in the same police force.

- **DSIs**

A death or serious matter must be referred to the IOPC and is defined as:

- any circumstances in which, a person has died or sustained serious injury; and
- at the time of death or serious injury the person was in police custody; or
- at or before the time of death or serious injury the person had contact of any kind – whether direct or indirect – with a person serving with the police; and

- there is an indication that the contact may have caused – whether directly or indirectly – or contributed to the death or serious injury. (underlined differences for ease of reference)

The IOPC model provides for cases to be referred where there has been direct or indirect contact with a police officer, which is wider in scope. However this is limited by the requirement that there is an indication that the contact with the police may have caused or contributed to the death or serious injury.

d) Resources

In the IPCMC Bill the definition of misconduct, complaints and a death or serious injury matter are not defined in the same way and this means that there are likely to be a much larger amount of both complaints and referrals made. Therefore the IPCMC resourcing model needs to consider this.

In 18/19 we received just over 4000 referrals of incidents. The UK police forces recorded approximately 41,000 complaints against the police of which approx 9500 were made directly to the IOPC. The IOPC have a central unit that assess each referral and make a decision on whether it requires an investigation and if so, the mode of investigation. Our casework managers also consider appeals against police investigations of their complaints and in 18/19 we received just over 3000 appeals of which we upheld about 40%.

We completed 717 independent investigations in 18/19 we have approximately 380 investigation staff [including management and support staff] who conduct our core business. Additionally we have approximately 200 staff in our Major Investigations Directorate and on the Hillsborough investigation, which is the largest case in UK legal history.

The IOPC power to determine different modes of investigation allows the IOPC to manage resources focusing on investigating the most serious and sensitive matters independently and giving access to specialist resources and expertise.

e) Management Chain

The IOPC does not have publicly appointed Commissioners. The management structure of the IOPC is however very similar, in that there is one single “line of command”. Can provide details of the management structure.

f) Employing Police members/diversity

The Director General and the Deputy Director General of the IOPC cannot have been a serving member of the police. The IOPC employs former police officers to ensure a diverse work force and in benefit from their operational expertise. Former officers comprise around 25% of our staff, we aim to keep it around that figure to promote public confidence in the independence of the IOPC.

g) Hearings

The IOPC does not conduct public hearings as part of its investigations and does not have the same powers in its investigations into police discipline.

h) Relationship with police.

Any oversight model only works if there's a professional trust and respect on both sides. Of course there will be disagreements but these can be resolved by professional discussion. The IOPC have, over many years, forged strong relationships with police stakeholders. IOPC RDs meet with CC, DCC and PSD staff on a regular basis and there is also regular liaison with operational staff. This allows easy access to all information, evidence and documents required for the purpose of our investigations.

The Independent Office for Police Conduct

Amanda Rowe and Juliet Farrall

Regional Director, NorthWest Head of Presenting Unit

History of the IOPC



1981 – Brixton riots

1993 – The death of Stephen Lawrence

2000 – Liberty (a human rights org) issued a study called 'An independent police complaints commission'

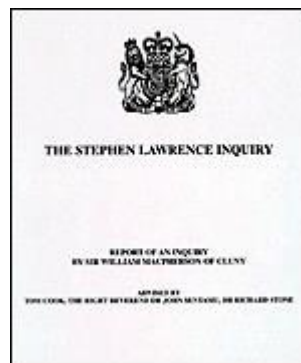
2004 – IPCC becomes operational (replaces PCA)

1985 – Police Complaints Authority (PCA) operational

1999 – The Macpherson report

2002 – Police Reform Act 2002

2018 – Transition to IOPC (governance change)



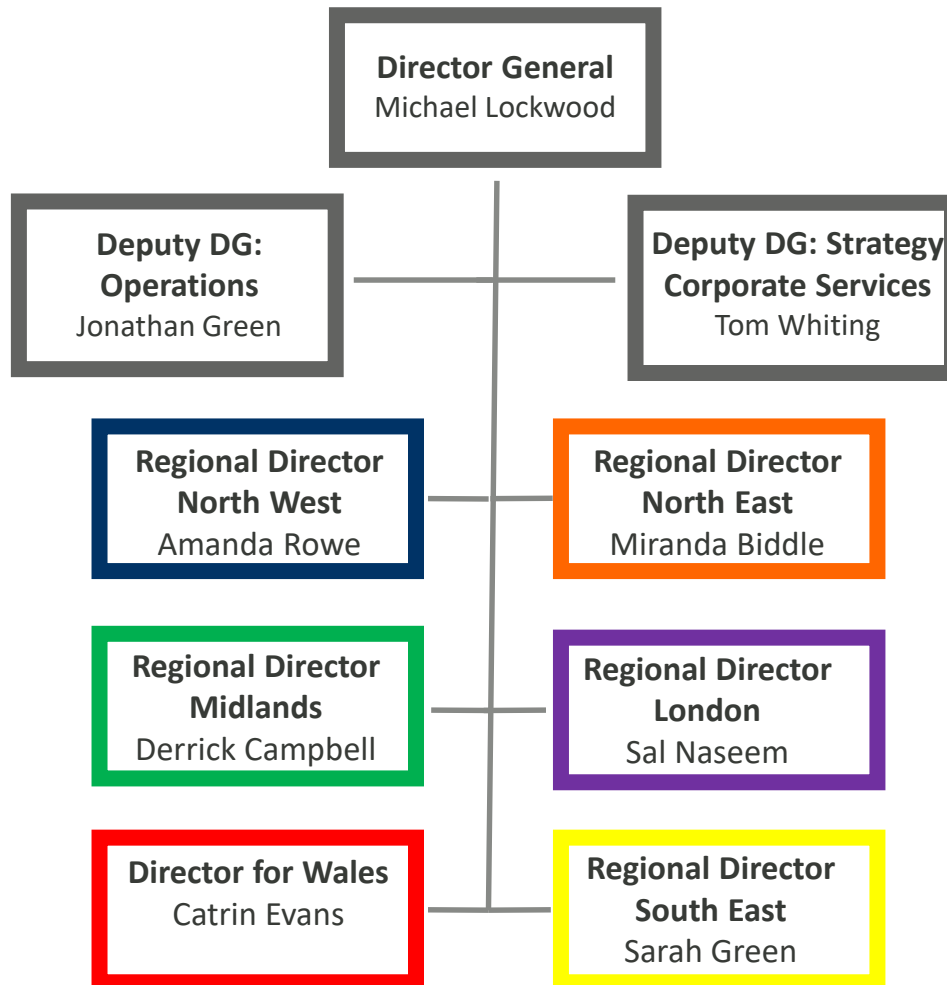
> Who we are

- IPCC existed from 2004 – significant expansion from 2013
- Became the IOPC in January 2018
- Led by Director General
- Securing and maintaining public confidence in the police complaints system
- Jurisdiction over:
 - 43 geographic police forces and a number of other smaller forces
 - British Transport Police
 - National Crime Agency
 - Her Majesty's Revenue and Customs
 - Home Office (former UK Border Agency and Border Force)
 - Police and Crime Commissioners

> How we're set up

- Director General – Michael Lockwood
- Six non-executive directors
- Deputy Director General, Operations
 - Five Regional Directors
 - Director for Wales
- Deputy Director General, Strategy and Corporate Services
 - Director Strategy and Impact
 - Director Corporate Services
 - General Counsel
 - Director People

> Role of Regional Directors and Director for Wales



> Matters we consider

Complaint

An expression of dissatisfaction by a member of the public about the conduct of a person serving with the police.

Conduct matter

Any matter where there is an indication that the police may have behaved in a manner which would justify criminal or disciplinary proceedings.

Death or serious injury matter

Any circumstances in, or as a result of which, a person has died or sustained serious injury and was either in police custody or had recently come into contact with the police (and an indication that the contact may have caused or contributed to the death or injury)

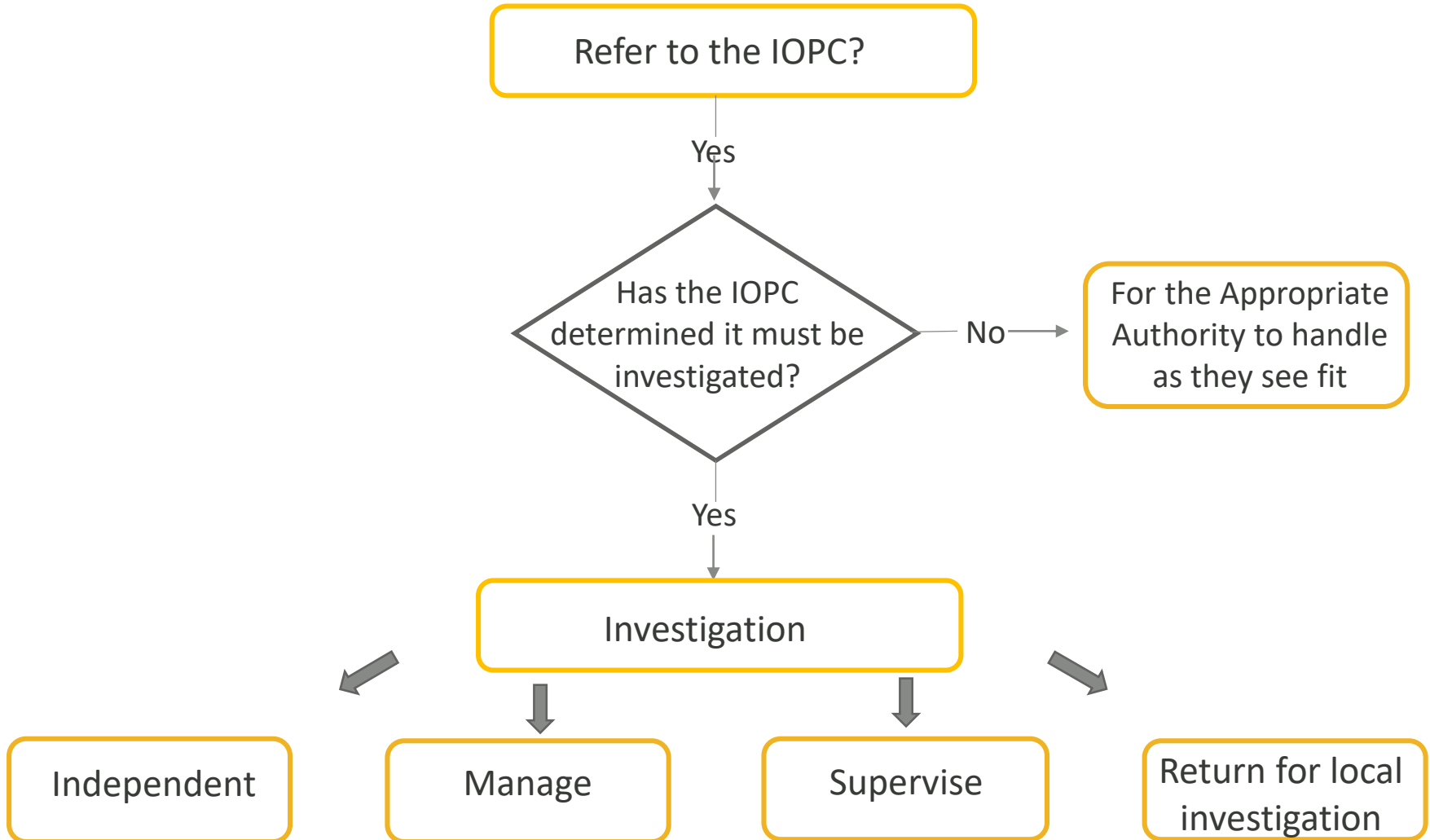
> Mandatory referrals

All death or serious injury (DSI) matters

All complaints and recordable conduct matters that include allegations of conduct which constitutes:

- A serious assault
- Serious sexual offence
- Serious corruption
- Criminal offence or behaviour, which is aggravated by discriminatory behaviour
- A relevant offence (carries potential sentence of seven years or more)

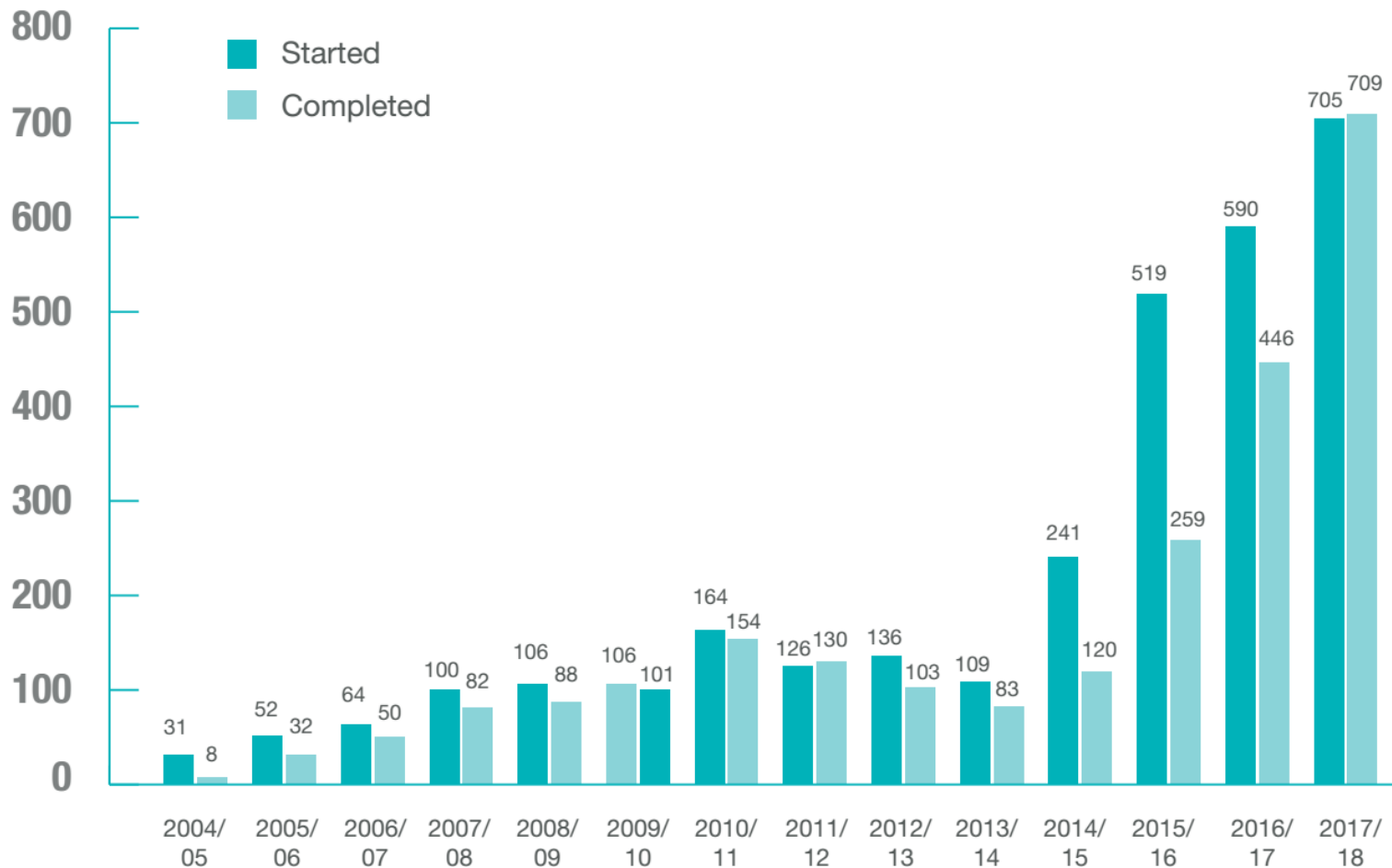
> What happens following a referral to the IOPC?



> Our investigations

- The types of matters we investigate are wide-ranging. They include incidents and allegations that impact on public confidence.
- When we carry out an investigation, we use our own investigators who gather evidence to establish the circumstances of what happened, Sometimes we find:
 - the matter should be referred to the CPS for consideration of criminal charges;
 - there is a case to answer for misconduct or gross misconduct or unsatisfactory performance.
 - there is learning for the individual or the force arising from the incident.

> Independent Investigations

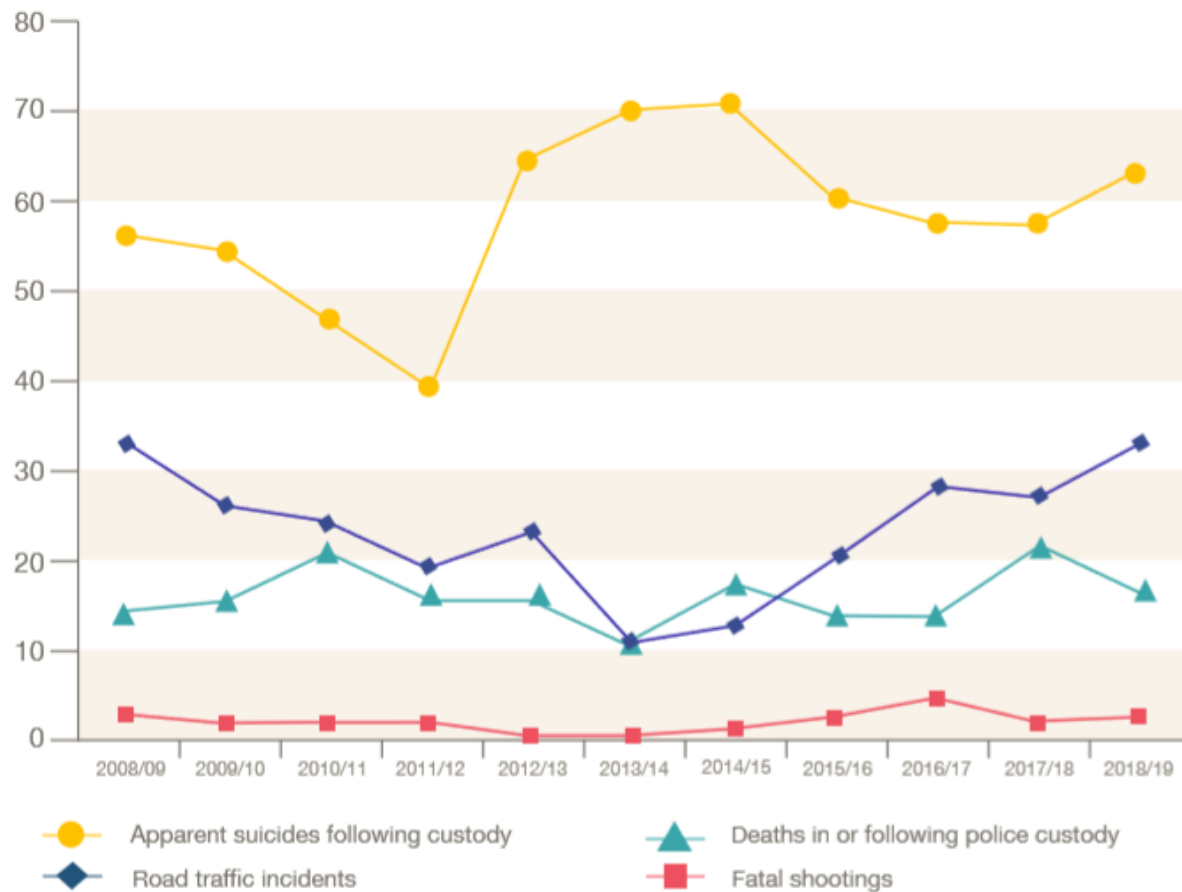


Context and overview: ‘serious and sensitive’ cases

- Feb 2013: announcement made that the IOPC would be given more funding to increase capacity, in order that it could investigate all ‘serious and sensitive’ cases. ‘Serious and sensitive’ not defined.
- Previously the IOPC only investigated a small number of cases (approx. 100 per year). These were generally deaths and catastrophic injuries (as well as serious allegations of sexual abuse, corruption, fraud, etc.).
- The IOPC completed just over 700 investigations last year.
- What are the new cases? Essentially, the ‘next tiers’ of seriousness. The bar has dropped down from catastrophic/life changing injuries to ‘serious’ (ABH).

> Deaths during or following police contact

Incidents by type of death and financial year, 2008/09 to 2018/19



Death in custody investigations

- 16 people died in police custody in England and Wales in 2018/19
- The category ‘deaths in or following police custody’ includes deaths that happen in a public place, in custody units, in police vehicles, while a person is being arrested or taken into detention. It also includes those who die during mental health detentions at police custody units, private or medical premises.

Article 2 ECHR requirements

Any investigation where Art 2 is engaged must:

- be on the state's own initiative;
- be independent;
- be capable of leading to a determination of responsibility and the punishment of those responsible;
- be prompt;
- allow for sufficient public scrutiny to ensure accountability
- allow the next of kin to participate to the extent required to safeguard their legitimate interests
- be capable of determining whether the killing was justified under Article 2, if agents of the state were responsible.

The process of an IOPC independent investigation



Initial action taken by the IOPC

- IOPC staff go to the scene and provide instructions to the local police about evidence gathering, securing the scene, and securing evidence from officers and staff involved
- IOPC staff start gathering evidence
- consider any indications of criminal / conduct matters
- identify any immediate learning

Liaison with:

- family
- Crown Prosecution Service (CPS)
- Coroner
- media
- community

Investigation by IOPC including

- assessing questions from the family or complainant
- agreeing terms of reference
- collecting and analysing evidence, including witness statements, CCTV and other technical data, policies, forensic evidence, and independent expert evidence
- interviewing witnesses/suspects, including police (under the Police and Criminal Evidence Act 1984 if applicable)
- consideration of use of legal powers if necessary
- continuing liaison with family, CPS, Coroner, media and community

Investigation report produced

Decision taken whether to refer to CPS who then decide whether to prosecute

Police receive report and take disciplinary action (where applicable)

Report and evidence freed into Coroner's inquest (where applicable)

Family / complainant receive report

Learning from the case identified and shared with police force

Investigation report or summary published (usually after inquest, prosecution and/or disciplinary action completed)

> Critical incidents

- Any incident whereby the effectiveness of the police or the IOPC response is likely to have a significant impact on the confidence of the victim, their family and/or the community
- Critical Incident Management Team
- Community engagement
 - Community and stakeholder engagement assessment
 - Community and stakeholder engagement plan

> Terrorist Incidents

- Westminster Bridge and Borough Market attacks
- Article 2 European Convention on Human Rights – right to life
- Challenges
 - ongoing dynamic incidents
 - parallel counter terrorism investigations
 - public understanding of the investigation

> Appeals












- Dealt with by IOPC or the relevant police force
- IOPC – approx. 3,000 in 2018/19
- We upheld around 40% of valid appeals made after a police investigation into a complaint
- Changes to appeals – reasonable and proportionate handling

> Thematic work

- Abuse of authority for sexual or financial gain
- Discrimination
- Mental health issues
- Road traffic incidents
- Domestic abuse
- Near misses in custody



> Making a difference: Our work and impact at a glance

 <p>9,565 complaints made via us</p>	<p>467</p>  <p>appeals upheld about police not recording a person's complaint¹</p>	<p>30</p> <p>learning recommendations to improve policing practice</p> 	<p>IOPC Youth Panel</p>  <p>established to gather insight and enable young people to inform and influence</p>	<p>4/5</p> <p>of our investigations concluded within 12 months</p> 
<p>4,097</p> <p>referrals from police forces</p> 	<p>497</p> <p>appeals upheld about how police locally investigated a person's complaint</p> 	<p>98%</p> <p>said our Learning the Lessons magazine issue on mental health provided them with useful knowledge</p>	<p>16m</p> <p>people reached through coverage of a new domestic violence campaign</p> 	<p>82%</p> <p>of our legacy cases closed²</p> 
<p>717</p> <p>independent investigations completed</p> <p>687</p> <p>new independent investigations started</p>	<p>Subject Matter Networks</p> <p>established to focus on key areas of concern to the public and police</p>		<p>Service standards</p>  <p>created and published for our service users</p>	<p>¹ The first stage of complaint handling is for the relevant police force to decide whether to record the complaint. When a complaint is recorded, it must be dealt with according to certain rules and guidance. If the force does not record the complaint, the complainant can appeal against this decision.</p> <p>² Legacy cases refers to investigations started by our predecessor body (the Independent Police Complaints Commission) and completed after we became the IOPC.</p>

> Public confidence in police accountability

- The introduction of legally qualified chairs (LQCs) in 2016 further strengthened public confidence by injecting greater transparency and independence into the police disciplinary system.
- The aim - sound and legally reasoned judgements, fair and consistent decisions, and greater objectivity.
- The role of LQCs and the decision-making of the panel is fundamental to secure the confidence of complainants and the wider public in relation to some of the most serious allegations against the police, and is further helped by holding hearings in public.

> IOPC Public Perceptions Tracker



Summary of key findings for 2018/19:

- Most of the public say that they would be likely to complain if unhappy about the conduct of a police officer, with little demographic variation.
- Confidence in the IOPC's impartiality remains high, but far more respondents are fairly confident rather than very confident. The minority who are not confident in the IOPC's impartiality overwhelmingly think it is biased in favour of the police.
- In general, the public do not have firm expectations about the complaints process.
- BME respondents are less likely than the public overall to have confidence in the IOPC's impartiality and in the police's handling of complaints.
- Significant proportions of BME respondents, LGBT respondents, and those with a mental condition say they worry that they might be treated differently if they were to complain.
- When asked to think about the ideal outcome of a complaint, the public place a high degree of importance on learning and change within the police forces concerned.

> Oversight

- Support and hold police forces accountable in their use of the complaints system
- Force liaison leads
- Regular 'Focus' bulletins
- Thematic work



> Understanding our stakeholders

- Service user feedback
- Public perceptions tracker
- Youth panel
- Mental health research

> What do people want to happen when they make a complaint

Our research shows consistently that members of the public who make a complaint about the police want those involved, and the wider police service to learn from it.

Q. If you made a complaint about the police, how important or unimportant would it be to you for each of the following to happen as a result?



*April 2019 data from our public perceptions tracker.

> How we use learning from our work



> Working with others to improve the police complaints system

The IOPC cannot effect change in policing on its own.

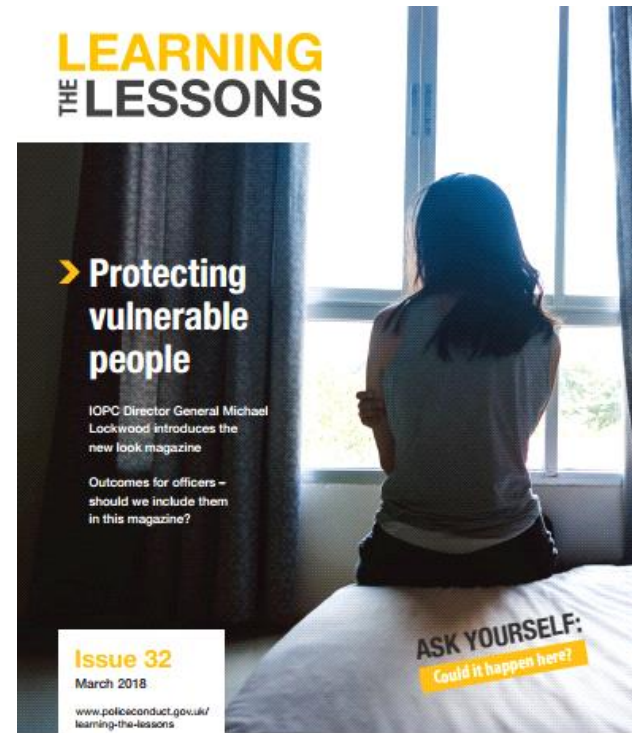


We work with government and other organisations that play a role in the criminal justice system to identify where individually and collectively we can make a real change.

We also work with, listen to and share information with a wide range of people, including complainants, families, police officers and staff, and community and voluntary groups.

> Learning

- Learning vs blame culture
- Bigger picture
- Learning recommendations
- Learning the lessons publication



Improving policing policy and practice

> Organisational learning recommendations

- Seizing mobile phones in domestic abuse cases
- Positioning of body worn video cameras for armed police
- Providing information about support when carrying out voluntary interviews
- Review of availability of trained search advisors

> Part of a bigger picture



> Legislative changes

- Ability to initiate our own investigations
- Recommending remedies
- Re-opening investigations
- Super-complaints
- Case to answer
- Hearings