

TO	Commission on Justice in Wales
FROM	Independent Office for Police Conduct (IOPC)
REGARDING	Call for Evidence (June 2018)

1. The Independent Office for Police Conduct (IOPC) oversees the police complaints system in England and Wales¹. We have a statutory duty to secure and maintain public confidence in the police complaints system. We investigate the most serious complaints and matters involving the police, as well handling certain appeals from people who are not satisfied with the way the police have dealt with their complaint.
2. As part of our work to secure public confidence we also have broader role in sharing learning to help the police service develop and improve. We issue statutory guidance to the police service on the handling of complaints, carry out research, publish learning from real life cases, and work to improve local handing of complaints through our oversight work. We also regularly seek feedback from the public, service users and stakeholders to help understand their experiences of policing and the police complaints system.
3. Our work gives us an insight into some of the issues, challenges and examples of good practice in the criminal justice sector, in particular in connection with policing. Given our remit over the police complaints system in Wales, any changes to the legal and criminal justice systems in Wales may also impact on our work.

Response to the call for evidence

4. We have provided comments based on the learning from our work as the oversight body for the police complaints system. However, we hope that the information provided may also be helpful when considering other areas of the criminal justice system, including other complaint systems. Much of the evidence we provide applies to both England and Wales. However, where evidence is specific to Wales, this is clearly indicated.

¹ More information about who we are and what we do is presented at Annex A.

Consultation questions

What is working well in the justice system in Wales? What is not working well? Are there examples of innovation and good practice, both in and beyond Wales, which should be adopted and shared?

5. The IOPC undertakes regular public confidence surveys in England and Wales to understand the public's perceptions and awareness of the police complaints system and our own work. This helps provide a picture of what, from the public perspective, is working well in the system and where improvements are needed.
6. The last report published in 2016² found that the public are now slightly more confident about making complaints to the police compared to the findings of the previous survey in 2014. The last 12 years have seen substantial falls in the prevalence of crime in England and Wales, which has coincided with an increase in satisfaction with the police. However, certain key issues remain - notably the lower levels of confidence amongst black and minority ethnic (BME) groups and young people (aged 15-24). These issues are considered below.
7. Our surveys generally show consistency in perceptions between Welsh and English respondents. Data for 2017 (awaiting publication) shows that Welsh respondents are similarly likely to make a complaint about the police if they felt it necessary to do so (69% compared to 72% of English respondents). Respondents in Wales are more aware of the IOPC (under its new name)³ than their English counterparts. When identifying key areas for police learning, respondents in Wales highlighted 'the use of restraint' and 'near miss deaths in police custody' at levels above the national average.
8. Survey participants are asked about the perceived barriers to making a complaint. Over a quarter (28%) reported concerns that making a complaint would take up too much time, and a fifth were worried about police harassment or other consequences⁴. The scenarios in which participants felt they were most likely to make a complaint included physical assault, excessive use of force and racist behaviour from a police officer.
9. Our public perception surveys have shown consistently that young people have a lower rate of confidence in the police complaints system than the general population. Comparatively, they are:
 - less likely to complain about a police officer if they were "really unhappy"
 - less confident that the police deal with complaints against them fairly
 - less likely to believe something would be done to help resolve the complaint
 - less likely to believe they would be taken seriously

² Ipsos MORI (2016) [Public confidence in the police complaints system: 2016 report prepared for the Independent Police Complaints Commission by Ipsos MORI](#)

³ This question was introduced in this year's report to reflect the change of name from IPCC to IOPC.

⁴ Ipsos MORI (2016) [Public confidence in the police complaints system: 2016 report prepared for the Independent Police Complaints Commission by Ipsos MORI](#)

10. Our surveys have also highlighted substantial differences in perceptions (nationally) of BME groups as compared to the White population, including:
- BME participants are more likely to highlight barriers to making a complaint
 - they are less happy with their last contact with the police
 - they are less likely to complain
 - fewer had heard of the IOPC
 - the proportion of those worried about police harassment as a result of making a complaint is almost twice as high (31% compared to 17%)
 - they are less likely to say they felt they would be taken seriously
 - when asked about perceived barriers to making a complaint, one in ten participants said they did not feel their family, friends, neighbours or community would want them to complain. BME participants were significantly more likely⁵ to report this than White participants.
11. These findings are despite the fact that White participants had more contact with the police than BME groups. The fact that BME groups are less likely to have heard of the IPCC (as we were then named) is also troubling in terms of barriers to access for this group. However, there have been improvements in the perceptions of both BME groups and young people since we began undertaking the survey.

Mental Health

12. In the context of the police complaints system, mental health is a key focus for the IOPC. It is a pervasive issue in both our work and that of police forces. There are a number of areas in which we believe improvements could be made to policing practice when dealing with people with mental health issues, as set out below.
13. **Place of safety:** we do not believe that police cells are an appropriate or safe place in which people with mental health concerns should be placed. The high incidence of mental health concerns among people who die during or following police contact has long been and remains to be a serious concern. We support the urgent phasing out of police stations as a designated place of safety⁶. Whilst there has been a significant reduction in the use of police cells for people held under section 136 of the Mental Health Act (MHA), this practice should be ended entirely.
14. **Use of force:** our 2016 use of force report⁷ highlighted the need for police training in recognising and communicating with people with mental ill health, as well as the urgent need for investment in appropriate preventative mental health services and support for people suffering mental ill health. In our research sample, people with mental health concerns were more likely to have a firearm or Taser used on them, and to be placed into restraint equipment. We

⁵ Nine percentage points higher than white participants.

⁶ IPCC (2017) '*IPCC response to the independent review of deaths and serious incidents in police custody by Dame Elish Angiolini*'

⁷ IPCC (2016) '[Police use of force: evidence from complaints, investigations and public perception](#)'

recommended that there should be consistent recording, monitoring and analysis of all police use of force, to allow action to be taken if patterns of concern emerge. This is extremely important in ensuring accountability at individual, local and national level.

15. **Training:** police officers require ongoing mental health training, and we continue to make recommendations to this effect to forces across England and Wales. We have recommended that forces provide training to officers on issues such as the Mental Capacity Act, recognising vulnerability, the role of an appropriate adult, section 18 of the Mental Health Act, use of force on children and adults with mental health issues, restraint and the role of the safety officer during restraint.
16. **Police vehicles as substitutes for ambulances:** police vehicles should not generally be viewed as a substitute for ambulances with trained medical staff when transporting mentally ill or otherwise vulnerable people, as is set out in the Authorised Professional Practice (APP) on mental health, and recognised in the Welsh Government's *Together for Mental Health* delivery plan 2016-19. We encourage forces and PCCs to agree protocols with local ambulance services, where possible.
17. **NHS commissioning of healthcare in police custody:** we agree with the Angiolini⁸ and Bradley⁹ reports that plans for NHS commissioning of healthcare in police custody should be reinstated. There is also evidence that people who have been arrested spend too long in police cells after an approved mental health professional (AMHP) has decided that they should be admitted to hospital. Those who are unwell should be treated by in a healthcare setting, not in a police cell. They should also be transported by ambulance services in most circumstances.

Collaboration and learning

18. We have been encouraged by the positive examples of collaboration between Welsh forces and their willingness to engage. The IOPC has a productive working relationship with the four police forces in Wales. The IOPC Director for Wales holds regular meetings with key policing stakeholders, including chief officers, forces, Police Federation representatives, the Crown Prosecution Service (CPS) and Police and Crime Commissioners (PCCs).
19. The IOPC Wales Stakeholder Forum, which is chaired by the Director for Wales, brings together a wide range of policing, criminal justice, public service bodies and other stakeholders to share experiences and learning. At its most recent meeting the forum focused on sharing learning from a domestic abuse homicide, using a case study to encourage discussion and identify where improvements could be made.

⁸ Angiolini (2017) [Report of the Independent review of Deaths and Serious Incidents in Police Custody](#)

⁹ Bradley (2009) [The Bradley Report](#)

20. The IOPC engages regularly with HMICFRS and the College of Policing to share learning and work collaboratively to improve policing practice, and we assist HMICFRS and HMIP in advance of their police custody inspections.
21. Earlier this year the IOPC Director for Wales shared examples of identity-based violence with delegates at the EHRC annual conference.
22. We are also aware of positive examples of collaboration between forces in Wales. One such example is a project we undertook on 'near misses' in custody in Wales. The aim was to understand the differences in rates of referral to the IPCC of near misses between the four forces and identify underlying causes. The forces supported us in delivering a project, providing evidence of current policies, practices and training, and best practice was shared. The All Wales Custody Forum subsequently disseminated one of the force's proformas to encourage consistency across all forces. This work has resulted in an increase in the number of referrals from forces in Wales.
23. The upcoming reforms to the police complaints and disciplinary systems aim to strengthen the focus on learning to improve policing practice. The IOPC is also working with other policing stakeholders to support the development of a learning culture in policing. Our Director General, Michael Lockwood, is part of the 'Learning Leaders Senior Oversight Group,' a group facilitated by the National Police Chiefs' Council, providing strategic advice and constructive challenge to this development work.
24. Complaints are extremely valuable in the context of learning; providing direct feedback from the public on the service provided by the police. They can help flag up when something first starts to go wrong, and enable forces to deal with issues at an early stage and improve policing practice.
25. One of the ways in which we help share good practice is through the Learning the Lessons magazine. This is a publication that highlights learning from real cases, to help the police improve their policies and practice. 24 cases involving Welsh forces have featured since we began producing the magazine in 2007. We have received positive feedback from forces about the learning it shares.

What are the economic, social, geographical, technological, constitutional and other barriers to improvement and how could these be overcome?

26. According to our 2016 public confidence survey¹⁰, digital modes of complaining, such as email and online forms, are becoming more attractive to the public. Forces may therefore wish to consider how they can diversify the ways in which an individual is able to make a complaint, which will in turn promote access to the complaints system.
27. When asked to whom they would complain, just over two fifths of participants said they were most likely to complain to the police force concerned, 15% said that they would contact the (then) IPCC, and 12% said that they would

¹⁰ IPCC/Ipsos MORI (2016) [Public confidence in the police complaints system: 2016 report prepared for the Independent Police Complaints Commission by Ipsos MORI](#)

approach Citizens Advice or a Law Centre. This suggests there are benefits to forces exploring how they can work together with such organisations to facilitate access to the criminal justice and complaints systems.

28. Some of the cases we have dealt with have highlighted technical challenges where police forces have not been sufficiently 'joined up'. This can cause a number of issues, particularly where cross-border policing is required. For example, technical issues may be experienced during a cross-border pursuit, meaning that the vehicles involved are unable to communicate with their respective control rooms, or with one another. Technical issues can also arise where forces have separate procurement processes that lead to incompatible solutions.

What problems face the people who work within the justice system in Wales (including policing, prosecution, courts, prisons and probation) and the people who are affected by it?

29. In the context of our work we have highlighted the following key issues:
- The complaints system is complex, bureaucratic and overly focused on blame and individual conduct rather than resolution and systemic issues.
 - Public levels of dissatisfaction with the way their complaint is handled.
 - Perceived lack of independence by the public where police are investigating a complaint made against them.
 - The system does not always meet complainant's expectations.
30. We are hopeful that reforms to the police complaints and disciplinary systems which will come into effect in 2019, will help to address these issues. In particular, we hope that the reforms will succeed in making the system more accessible and focused on learning and improvement.

Bereaved families

31. This is an area in which a number of challenges have been identified. When someone dies in custody or following contact with the police, the impact on their family, friends and community can be profound, and investigations must account for the impact on all affected. To better understand the experiences of bereaved families, we held a 'listening day' in March 2017 which was designed and facilitated by INQUEST.
32. Families should have access to appropriate support and information and, where relevant, signposted to appropriate sources, including specialist legal advice. We support the Angiolini recommendation that legal aid should be automatically available to bereaved families to ensure 'equality of arms'.

Other issues

33. The timeliness of the complaints system, including our own investigations, is an issue that we are working actively to address. There are many factors which impact upon the timeliness of an investigation, for example, the volume and complexity of evidence, ease of gathering evidence and obtaining accounts

from witnesses, and obtaining expert evidence. We have improved the timeliness of our investigations and we are continuing to trial new approaches.

34. In terms of the cases we see, it is possible to identify a number of recurring issues, including around resourcing, training, adequacy of supervision, identifying and dealing appropriately with those with mental health issues and cross-agency working. We share learning from these cases with forces to help them improve and prevent similar incidents happening again, through both our Learning the Lessons magazine and making learning recommendations to forces (locally and nationally) during or following an investigation.

Does the justice system in Wales currently provide access to all who require its services, including advice? How would you improve access to justice in Wales?

35. Public services should be accountable to the people who use them. An easily accessible police complaints system helps to ensure that accountability and secure public confidence. As noted above, complaints provide valuable feedback about the service provided by the police and are an important source of learning to help forces improve service delivery.
36. It follows that all organisations with responsibility for handling police complaints should ensure that members of the public can quickly and easily access information about how to make a complaint. This should include what they can and cannot expect from the complaints system. It should be clear, accurate and easy to understand.
37. Forces and local policing bodies should actively promote the police complaints system to the communities they serve, especially to those who may feel less confident about accessing it. Information should be publicised in a range of ways, including on the home page of their website, and be available when and where it may be needed, for example, online or via social media, or public areas of police premises, such as custody areas and front desks. Collaborative working between organisations should be encouraged to help promote the complaints system and disseminate information.
38. Some individuals may have specific needs or vulnerabilities, or their circumstances may impact upon their confidence or ability to make and progress a complaint. It may be necessary to make adjustments to usual procedures to enable some individuals to access and engage with the process. The assistance of a relative, carer or other representative may also be required. All reasonable steps should be taken to remove barriers that might prevent engagement, and the service should be tailored to individual needs. In some circumstances, it may be appropriate to signpost complainants or facilitate access to other support services.
39. It is particularly important that individuals alleging discrimination are provided full access to the system, since we know that this is an area in which the police can encounter challenges. In July 2017, we published a review of the way that three large police forces dealt with allegations of discrimination. Whilst we found that forces were communicating better with complainants and there were noticeable improvements in handling internally generated complaints, there

were concerns about the way complaints from the public were dealt with, particularly around the quality of investigations and reports, and the lack of complaints being upheld. There was further evidence of a failure to assess properly the seriousness of allegations, not asking probing questions and not seeking comparator evidence where relevant.

40. Our work on handling appeals (nationally), suggests these concerns apply across all police forces. We are more likely to uphold appeals about discrimination investigations by local forces than appeals about other matters – 47% of discrimination investigations we found to be flawed, compared to 40% of appeals in general.

What impact has devolution had on the justice system in Wales? What impact do you believe devolution will have in the future?

41. As noted earlier, the IOPC remit extends to England and Wales. Although policing in Wales is not a devolved matter, we recognise that the environment within which it is carried out and the partner agencies involved are different from those in England. We are conscious of the need to consider devolved matters when implementing and revising policies and guidance across England and Wales. IOPC investigators and caseworkers are aware of devolved legislation in Wales and take this legislation into consideration where relevant.¹¹

Could local authority services in relation to justice and the local provision of legal advice be better organised and co-ordinated with policing, prosecution, courts, prisons and probation?

42. We engage with all the local authorities in Wales. The Director for Wales is currently engaging with the regional safeguarding and health boards in Wales, to raise awareness of us and our work, share learning and encourage more effective collaboration where required.

Are there changes that should be made to the capabilities and effectiveness of the ways in which the police, probation and prisons approach their tasks? What should be done to increase community safety, wellbeing and social cohesion and reduce crime? What can be learnt from other countries where rates of crime and imprisonment are lower?

43. As noted in our response to question one, we believe that the police complaints system (as it is currently), is too focused on blame and individual conduct, rather than resolution, learning and addressing systemic issues. This focus may inadvertently lead to public perceptions that ‘success’ is only achieved if the matter results in sanctions. Identifying learning that can prevent future incidents occurring should not be viewed as a ‘lesser’ outcome. On the other hand, it may

¹¹ For example, the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and the Future Generations (Wales) Act 2105.

also impact on the perception of some police stakeholders, and could inhibit full and early cooperation with our investigations for fear of individual blame.

44. There is consensus about the need to refocus the police complaints and disciplinary systems towards individual and corporate learning, whilst ensuring police accountability for their behaviour and actions when exercising their powers. The police complaints system must support a culture of learning and continuous improvement, and its value as a mechanism by which the police can be held to account should be promoted.
45. However, there is no single decision point or matter of process that can be changed to refocus the system. It will likely be realised by the cumulative effect of a number of incremental changes, combined with a shared understanding and commitment from all parties involved in the system.
46. In addition to this 'culture shift,' we would also reiterate the need to address issues relating to mental health and policing. The latest published statistics on deaths in or following police custody in England and Wales¹² show that mental health continues to present unique challenges for policing. For example, almost three-quarters of those who apparently died by suicide after release from custody (40) had mental health concerns. Concerns identified included: depression, schizophrenia, post-traumatic stress disorder, previous thoughts or incidents of suicide attempts, and self-harm.
47. Our 2017 report, examining how a different approach to policing people with mental health needs could have prevented the death of James Herbert in custody, identified a number of opportunities for improvement:
 - When responding to an incident involving someone with mental health problems, police officers should prioritise the welfare and safety of all involved, including the patient.
 - Police officers should be trained effectively in verbal de-escalation as the default response to any incident involving someone with mental health problems, and trained to use containment rather than restraint when dealing with anyone who has, or appears to have, mental health problems.
 - Forces should ensure that they have in place robust, effective and relevant local protocols that support police officers in the discharge of their duties. This should be backed by effective working relationships with other agencies, and clear processes for the recording and sharing of information about individuals who are known to, or are suspected to, have mental health problems.

¹² IPCC (2017) [Deaths during or following police contact: Statistics for England and Wales 2016/17](#)

What are the capabilities in the justice system in Wales for responding to Brexit?

48. We cannot respond to this question in the specific context of the justice in system in Wales.¹³

What steps do you think need to be taken to facilitate positive change in the justice system in Wales?

49. To summarise the points we have made throughout our response, we believe the following overarching factors have the potential to facilitate positive change in policing and the police complaints system:

- Effective use of complaints data to improve service delivery
- Improving accessibility to the police complaints system
- Ensuring and promoting fairness
- Fostering a culture of learning and improvement

50. Please also refer to the principles set out in question three.

To what extent do current university curriculum and vocational and professional development courses reflect the law in Wales and the need to deal with the digital revolution and how should they be further developed?

51. The IOPC Learning and Development team is actively supporting members of staff who undertake university graduate and postgraduate programmes. All staff are supported to develop skills and knowledge in digital working as a part of the IOPC transformational Programme.

52. The IOPC has a number of career opportunities for staff throughout England and Wales. For example, the national finance team is based in Cardiff which demonstrates that the organisation is aware of the needs to promote career opportunities across Wales.

What is the current provision for the Welsh language within the justice system and legal education in Wales? How should Welsh language provision within the justice system and legal education in Wales be improved?

53. The IOPC has a separate distinct operational team for Cymru/Wales. We recognise that Wales has its own language, culture, devolved legislation and national identity. The operational team is based in Cardiff and provides a service across Wales.

54. We also recognise that there is more we can do to further embed the Welsh language standards as business as usual and this work is ongoing. The Director for Wales has met with Meri Huws the Welsh Language Commissioner

¹³ In the wider context, the most directly relevant area to our work is around intelligence-sharing arrangements. We have noted concerns expressed by senior police officers about our future membership of Europol, and that others have expressed concerns about the implications of Brexit on international arrest warrant provisions.

to confirm our commitment to embed the Welsh Language Standards in the IOPC, and we have developed a number of documents and tools to help the IOPC meet the Standards. These include:

- Guidance for IOPC staff;
- FAQs;
- A hand-out for new starters;
- Guidance on arranging Welsh translation;
- An internal Welsh language policy, and
- A Welsh language recruitment portal.

55. Welsh language training was provided for staff at beginner and advanced levels in 2016-17. This was funded via the Wales Union Learning Fund (WULF) which was provided by the PCS Union. The training was facilitated by Cardiff University. We have had recent contact with the union who have made another bid for funding for 2018-19.
56. In addition, the Director for Wales has met with Helen Prosser, the Strategic Director of the National Centre for Learning Welsh. The organisation has registered to secure access to Welsh at work training materials and resources to further the use of Welsh at work.

IOPC

July 2018

Annex A – The IOPC and its remit

57. The IOPC, formerly the IPCC (Independent Police Complaints Commission), came into existence in January 2018. The IPCC came into existence in April 2004.
58. The IOPC oversees the police complaints system in England and Wales and has a statutory duty to secure and maintain public confidence in it. We are independent, and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police across England and Wales, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.
59. Over time our original remit covering police forces across England and Wales has been extended to include:
 - Police and Crime Commissioners and their deputies
 - the London Mayor's Office for Policing and Crime and his deputy
 - certain specialist police forces (including the British Transport Police and the Ministry of Defence Police)
 - Her Majesty's Revenue and Customs (HMRC)
 - staff who carry out certain border and immigration functions who now work within the UK Border Force and the Home Office
 - the National Crime Agency (NCA)
 - officers carrying out certain functions at the Gangmasters and Labour Abuse Authority (GLAA)
60. The majority of complaints against the police are dealt with by the relevant police force (or agency) without IOPC involvement. However, certain types of complaints and incidents must be referred by the police to the IOPC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and a criminal offence or behaviour liable to lead to misconduct proceedings which in either case is aggravated by discrimination on specified grounds. We then decide whether an investigation is necessary, and, if so, what level of involvement we should have in that investigation. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police.
61. The IOPC will refer a matter to the CPS if the investigation report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related and the IOPC believes it is appropriate for the matters dealt with in the report to be considered by the CPS. The CPS will then decide whether there is enough evidence for a realistic prospect of conviction and whether it is in the public interest to prosecute the defendant.