



Home Office

Border & Immigration Agency

THE INDEPENDENT POLICE COMPLAINTS COMMISSION OVERSIGHT OF BORDER AND IMMIGRATION AGENCY INCIDENTS AND COMPLAINTS CONSULTATION PAPER

JULY 2007

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Introductory comments

Scottish Refugee Council welcomes the extension of the remit of the Independent Police Complaints Commission to investigate complaints arising from the use of police-like powers by immigration officers. We agree that it is paramount that immigration officers exercising police-like powers in the community are subject to the same level of independent scrutiny as the police. However, we are disappointed that there will be no comparable powers in Scotland. As such the statement in the Initial Equality Impact Assessment of the policy stated on p.26 is incorrect: *"The proposals within the consultation paper will potentially affect anyone who has contact with officers from the Border and Immigration Agency carrying out enforcement activities."*

Scottish Refugee Council is frustrated that no substantial reference is made to Scotland or Northern Ireland. Whilst we are fully aware that IPCC will only have jurisdiction in England and Wales, the paper mentions nothing of how the Border and Immigration Agency will seek to

achieve parity in Scotland or Northern Ireland. This omission, where someone subject to the police-like powers of immigration officers south of the border will have recourse to an independent and direct complaints mechanism but someone subject to those powers north of the border will not, is even more concerning as much of the public concern around the use of enforcement powers of immigration officers has emanated from Scotland. Such concerns were instrumental to the instigation of BIA's Review of Family Removals:

... the detention and removal of failed asylum seeking families from the country is an area of growing public concern, most obviously in Scotland, but also elsewhere throughout the UK.¹

The only reference in the paper to Scotland and Northern Ireland concerns cross-border complaints:

Any cross border complaints will be dealt with under agreements with the relevant authorities in Scotland and Northern Ireland. It is not anticipated that many complaints will involve cross border activity but it cannot be ruled out as, for example, detainees are sometimes transported by Border and Immigration Agency staff between England and Scotland.²

We would like to know which 'relevant authorities' this refers to, the proposed nature of such agreements and clarity around jurisdiction. In addition, even although the paper states that this may only concern a limited number of complainants it is not an excuse not to seek to achieve parallel scrutiny in each of the devolved nations. The statement also highlights two particular needs: the need for better management information which details the regional source and type of complaint and clear information on how complaints can be made (see response to 8B). Fundamentally, however this statement fails to recognise that individuals will be subject to police-like powers wholly in Scotland or in Northern Ireland or during transfer between Northern Ireland and Scotland.

To remedy this situation in Scotland, BIA may seek to establish a protocol with the new Police Complaint's Commissioner for Scotland (PCCS)³. However this would not lead to full comparability, as the Commissioner in Scotland has an ombudsman-like role, reviewing complaints only once they have been dealt with by a policing agency in Scotland.⁴ To be more comparable, BIA will need to discuss with Scottish Ministers an alternative solution possibly including the extension of the PCCS's powers. Whatever the case, such proposals should be open to full and detailed consultation.

Without any reference to how the Border and Immigration Agency aims to ensure that those subject to the increasing use of police-like powers by immigration officers in Scotland or Northern Ireland have recourse to an independent complaints mechanism, then we strongly contend that the Regulatory Impact Assessment of the policy is flawed as in Scotland it does not:

.. reflect an adequate response to a death or serious injury occurring during a Border and Immigration Agency only operation (i.e. without Police assistance). This does not meet the needs of Ministers, the Complaints Audit Committee and other major stakeholders, nor does it offer the same levels of accountability.⁵

¹ http://www.bia.homeoffice.gov.uk/6353/aboutus/FRR_11_Oct_2006.pdf

² P.8

³ Created through the Police, Public Order and Criminal Justice Act (Scotland) 2006

⁴ This includes the eight Scottish police forces (Central Scotland Police, Dumfries and Galloway Constabulary, Fife Constabulary, Grampian Police, Lothian and Borders Police, Northern Constabulary, Strathclyde Police and Tayside Police); the Scottish Police Services Authority; the Scottish Crime and Drug Enforcement Agency; and the eight police authorities, one for each police force, which are responsible for resourcing police forces and investigating complaints against senior police officers.

⁵ P.23

Consultation questions:

Our responses to the questions below relate to the IPCC but they would relate equally to any future authority in Scotland handling complaints in this area.

1. SHOULD THE IPCC HANDLE BORDER AND IMMIGRATION AGENCY CASES IN THE SAME WAY AS IT HANDLES THOSE FROM ITS OTHER JURISDICTIONS (SUCH AS THE POLICE AND HM REVENUE & CUSTOMS) IN ORDER TO ENSURE CONSISTENT AND COMPARABLE PROCEDURES?
(PLEASE SEE PARAGRAPHS 2.4, 2.5, 2.6, 2.8, 2.9, 2.10, 2.12, 2.16, 2.17)

UNSURE

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

We believe that it is more appropriate for the question to be asked: How can the IPCC ensure consistent and comparable standards (rather than procedures) with other jurisdictions?

Whilst consistent and comparable procedures across different jurisdictions are desirable, asylum seekers and refugees in general will have additional needs to those complainants in the other jurisdictions of IPCC's remit. These include increased vulnerability and disempowerment, limited ability in English, and general lack of awareness of complaints mechanisms and UK institutions. Moreover, the speed in which removals may occur presents a difficulty for the IPCC to fully investigate a complaint resulting from enforcement activity. These factors need to be considered to ensure that the complaints mechanism is truly meaningful.

2A. SHOULD SURVEILLANCE ACTIVITY UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) BE ADDED TO THE LIST OF SPECIFIED ENFORCEMENT FUNCTIONS IN THE REGULATIONS (PLEASE SEE PARAGRAPH 2.2)

UNSURE

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

No comment.

2B. WOULD YOU LIKE TO SEE ANY OTHER ENFORCEMENT FUNCTION ADDED TO THOSE LISTED IN THE REGULATIONS? (PLEASE SEE PARAGRAPH 2.1 AND 2.2)

YES

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

We firmly believe that the remit of the IPCC should be extended to private contractors who undertake enforcement duties on behalf of the Border and Immigration Agency, such as escort service staff. Staff working alongside BIA staff and carrying out similar duties with asylum seekers should not be exempt from the complaints mechanism by dint of their working contract.

It is vital that any gaps in jurisdiction between the Prison and Probation Ombudsman and IPCC are resolved as well as the cross-border issues mentioned above to ensure a robust complaints mechanism.

3A. THE REGULATIONS WILL SPECIFY THAT CERTAIN CATEGORIES OF INCIDENTS MUST BE REFERRED TO IPCC (PLEASE SEE PARAGRAPH 2.7). ARE THERE ANY OTHER CATEGORIES WHICH SHOULD BE INCLUDED?

YES

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW AND GIVE DETAILS OF WHICH CATEGORIES YOU FEEL SHOULD BE ADDED.

We welcome the fact that there will be mandatory referrals to the IPCC.

Apart from the category of 'death', the other categories in the list of mandatory referrals raise varying degrees of subjectivity. It is unclear however from the consultation document precisely who will make the assessment whether an incident passes the threshold of severity required for a referral. We suggest that a more clearly-defined framework is devised.

We suggest that incidents of self-harm should be included as an incident which should be referred to the IPCC.

4. SHOULD THE IPCC HAVE THE POWER TO DIRECT THE POLICE TO INVESTIGATE CERTAIN BORDER AND IMMIGRATION AGENCY CASES? (PLEASE SEE PARAGRAPH 2.10 AND 2.11)

YES

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

We assume this means when there are serious criminal allegations. In cases where the alleged criminal activity takes place in Scotland we would assume this means 'ask' the police rather than 'direct' them.

5. THERE WILL BE A WORKING CONVENTION THAT STATES THAT NO COMMISSIONER WITHIN THE IPCC WHO HAS ANY CONNECTION WITH THE BORDER AND IMMIGRATION AGENCY OR THE JUDICIAL PROCESS THAT UNDERPINS IT, WILL DEAL WITH ANY BORDER AND IMMIGRATION AGENCY REFERRALS. SHOULD THIS BE INCLUDED IN THE REGULATIONS? (PLEASE SEE PARAGRAPH 2.13)

UNSURE

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

Whilst we support the principle of the position, it is imperative that it does not impose any delays on the investigation of cases.

6. DO YOU AGREE WITH THE RIGHTS OF APPEAL? (PLEASE SEE PARAGRAPH 2.18)

YES

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

No comment.

7. IS THE PROTOCOL REGARDING THE REMOVAL OF COMPLAINANTS A SUITABLE WAY OF ADDRESSING THE ISSUES REFERRED TO IN PARAGRAPH 2.20?

NO

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

If there is no regulatory footing for the IPCC to delay a removal then this, in essence, means that BIA can refuse any request from the IPCC. We firmly hold that where the IPCC recognises the need to interview a complainant or key witness then removal should be avoided to ensure a thorough investigation is completed.

8A. DO YOU THINK THE REMIT OF THE IPCC IN RELATION TO THE EXERCISE OF ENFORCEMENT FUNCTIONS BY IMMIGRATION OFFICERS AND OFFICIALS IS CLEARLY EXPLAINED / WILL BE CLEARLY UNDERSTOOD?

NO

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

We believe that the following will continue to cause confusion if not clearly resolved:

- An adequate explanation is needed about how complaints arising during cross-border transfers will be managed;
- Plans for how complaints arising from the use of police-like powers by immigration officers in Scotland and/or Northern Ireland need to be developed;
- The ability to lodge complaints about private contractors should be incorporated within IPCC's remit;
- The jurisdictional responsibilities of the Prison and Probation Ombudsman and Parliamentary Ombudsman need to be clarified; and
- BIA and the IPCC need to properly assess why the rate of complaints has been so low, and then take affirmative action to remove obstacles to accessing the procedure.
- The monitoring of the number of complaints (this should be carried out regionally) and reporting how these are dealt with and resolved must be improved.

8B. HOW IS THIS BEST COMMUNICATED TO YOUR OWN STAKEHOLDERS TO ENSURE THE REMIT IS CLEAR?

PLEASE RATE THE FOLLOWING OPTIONS BY HOW EFFECTIVE THEY WOULD BE IN COMMUNICATING THIS INFORMATION.

POSTAL LEAFLET	A LOT
EMAIL LEAFLET	A LITTLE
WORKSHOPS	A LOT
PRESENTATIONS	A LOT

8C. ARE THERE ANY OTHER OPTIONS THAT YOU FEEL WOULD BE EFFECTIVE IN COMMUNICATING THIS INFORMATION?

PLEASE GIVE DETAILS BELOW AND RATE EFFECTIVENESS

Communicating the procedure is central to its success. Clear concise information has to be translated into appropriate languages and written for the target audience. We suggest that IPCC

and BIA work with refugee groups and test any printed information for comprehension.

A LOT

More detailed information should be produced for legal representatives and support organisations to appropriately advise clients. This should not just include information about the IPCC complaints procedure, but should also include updated detail about complaints procedures across BIA's business (such as the Prison and Probation Ombudsman). It should also acknowledge differences in the devolved nations.

A LOT

DO YOU WISH YOUR RESPONSE AND NAME TO BE KEPT CONFIDENTIAL?

NO