

## CONSULTATION RESPONSE

<b>TO</b>	<b>Home Office</b>
<b>FROM</b>	<b>Independent Office for Police Conduct (IOPC)</b>
<b>DATE</b>	<b>13 August 2018</b>
<b>REGARDING</b>	<b>Home Office consultation on the law, guidance and training governing police pursuits</b>

### Our interest in this matter

1. 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, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint. We also have a broader role in sharing learning to help the police service develop and improve. For further information about our role, see Annex A.
2. Where it appears that the police may have caused or contributed to a death or serious injury, the police force must by law refer the incident to the IOPC. This includes deaths or serious injuries arising from police-related road traffic incidents, such as a police pursuit or a police vehicle responding to an emergency call.
3. The majority of police-related road traffic incidents are investigated by the police, rather than the IOPC. However, we investigate the most serious cases. When we investigate an incident, we are responsible for deciding whether any criminal offence may have been committed by a police officer or member of police staff and whether it is appropriate to refer the matter to the Crown Prosecution Service (CPS). Where we refer a matter to the CPS, the CPS is then responsible for deciding whether any criminal proceedings should be brought. We also decide whether any officer or member of police staff has a case to answer for misconduct and should face disciplinary proceedings, and whether any learning recommendations should be made to a police force or other organisation.

4. We have an interest in this consultation given our role in investigating the most serious police-related road traffic incidents and ensuring appropriate scrutiny and accountability within policing. Our experience of investigating these types of incidents, and our work with stakeholders, has also given us considerable insight into the traumatic impact that they have on injured parties, their families and the police officers involved.

## **Response to consultation**

5. We broadly welcome the proposals in the consultation document. We support the intent that police officers who are appropriately trained and skilled should be able to pursue suspects where it is safe to do so, and where authorised, and respond to an emergency without fear that they will face unfair consequences.
6. We note the concerns that have been raised by some policing stakeholders about the impact that investigations can have on officers and that they risk being prosecuted for doing their job. Our statistics do not show that a high or disproportionate number of officers were prosecuted following an IPCC/IOPC<sup>1</sup> investigation. Of the 97 independent investigations into road traffic incidents completed between 1 April 2012 and 30 September 2017, two officers were prosecuted for pursuit related incidents. A marginally higher number of officers (five) were prosecuted following investigations into emergency response driving. The latter resulted in four convictions. There were no convictions for any pursuit related incident.
7. However, as we have noted earlier, the majority of police-related road traffic incidents are investigated by the police, rather than the IOPC. We are not aware of any national data that shows how many officers overall have been prosecuted following investigations. Nor are we aware of any quantitative or qualitative analysis of the national picture that has shown if and, if so, how many officers may have been prosecuted inappropriately or in circumstances that would be affected by the proposed change to legislation.
8. We appreciate why the government is considering amending legislation to ensure that officers are being judged by an appropriate measure and to avoid any risk of officers being treated unfairly. However, it is difficult to understand the full context for the proposed legislative change, and therefore how big a problem the current legislation is, without knowing the outcomes of the investigations into road traffic incidents that are conducted by the police service.

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<sup>1</sup> The IOPC, formerly the IPCC (Independent Police Complaints Commission), came into existence in January 2018.

9. Deaths or serious injuries following police-related road traffic incidents are thankfully rare. However, police pursuits and emergency response drives carry risk not only for the police and the driver of any pursued vehicle, but for passengers, bystanders and other road users. Any change to legislation must not have the unintended consequence of reducing public safety or undermine the ability to hold the police to account effectively.
10. Our statistics<sup>2</sup> show that in 2017/18 there were 29 deaths following police-related road traffic incidents. Of these, 17 were pursuit related, eight were emergency response related and four happened during other police traffic activity. Thirteen people who died during a pursuit or emergency response related incident were a pedestrian or in an unrelated vehicle. In addition, two police officers<sup>3</sup> died in these incidents; one while responding to an emergency and the other while undertaking a training exercise. While there was a decrease in the number and proportion of deaths following pursuit related incidents, there was an increase in the number of emergency response related incidents resulting in a death. The number of deaths following emergency response related incidents was the highest recorded since 2004/05.

### Consultation questions

**Q1: To what extent do you agree or disagree that the emergency services' exemptions from certain aspects of road traffic law (including any restrictions to the exemptions) should be reviewed and, where necessary, amended so that they are set out in similar terms?**

#### *Strongly agree*

11. We agree that the exemptions should be reviewed and, where necessary, amended so that there is a consistent and logical approach that takes account of current road design, marking and signage.

**Q2: To what extent do you agree or disagree that a police officer should be accountable for the standard of driving of a suspected criminal who is attempting to avoid arrest by driving in a dangerous manner?**

#### *Neither agree nor disagree*

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<sup>2</sup> IOPC, [Deaths during or following police contact: Statistics for England and Wales 2017/18](#)

<sup>3</sup> Fatalities of police officers are not included in the IOPC's annual death statistics, but we are highlighting these deaths for the purposes of the review.

12. Whilst we recognise that police pursuits are often necessary, and that pursued drivers bear responsibility for their own actions, police officers should always take into account the danger that a pursuit may cause to the public. We believe that there must be a degree of accountability for police drivers. Officers should not avoid accountability if they enter into an unauthorised pursuit or pursue a vehicle in circumstances where it is unnecessary or disproportionate.
13. Police pursuits and emergency response drives carry risk not only for the police and the driver of any pursued vehicle, but for passengers, bystanders and other road users. A blanket provision that police officers should not be accountable could encourage officers to continue pursuits however dangerous they become. Given the risks associated with pursuit driving, and the very serious ramifications when something goes wrong, it is important that officers can be held accountable where appropriate. Without accountability, public confidence in policing could be significantly adversely affected.

**Q3: To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be held to the driving standard of a 'careful and competent' motorist (i.e. a member of the public), despite the various exemptions to road traffic law?**

***Strongly disagree***

14. We believe that the expert training and experience of police drivers undertaking pursuits or responding to emergencies should be taken into account. In our view, it is inappropriate for police drivers who are involved in authorised pursuits or emergency response driving, and who are trained and have the necessary experience to do so, to be held to the driving standard of a 'careful and competent' *motorist*.

**Q4: To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be compared to the driving standard of a 'careful and competent' police driver of a similar level of training and skill?**

***Agree***

15. We strongly agree with the sentiment of this proposal. However, in our view, police drivers undertaking an authorised pursuit or responding to an emergency should be held to the driving standard of a 'careful and competent' *police driver trained to the relevant appropriate standard*. A separate standard for police drivers will allow investigators and the CPS to take account of a police driver's higher level of training and skill. It will also reinforce the importance of police

drivers receiving high quality training to respond safely to incidents that may involve a pursuit or emergency response.

**Q5: To what extent do you agree or disagree that a police officer in pursuit or responding to an emergency should be required to drive in such a way that is both necessary and proportionate to the circumstances?**

***Strongly agree***

16. We strongly agree that a police officer in pursuit or responding to an emergency should be required to drive in such a way that is both necessary and proportionate to the circumstances. Consideration will need to be given to the extent to which an officer might be considered accountable for a pursued driver's actions if the officer engages in a pursuit that is not necessary and proportionate.

**Q6: To what purposes do you consider that the reforms proposed in this document should apply?**

*Police pursuits/ Police pursuits and response/ No changes necessary*

***Police pursuits and emergency response***

17. We believe that the reforms proposed in the consultation should apply to both police pursuits and emergency response driving. In our view, the adoption of different standards would be illogical as similar issues can arise in both types of driving. To have different standards and exemptions for the different types of driving could also result in investigation, disciplinary or criminal outcomes that appear (not only to officers but also injured parties, families and members of the public) inconsistent and/or unfair.

## **Annex A The IOPC and its remit**

- i. 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.
- ii. As part of our work to secure public confidence we also have a 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 handling of complaints through our oversight work.
- iii. The IOPC, formerly the IPCC (Independent Police Complaints Commission), came into existence in January 2018. The IPCC came into existence in April 2004. Over time, our 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); and
  - officers carrying out certain functions at the Gangmasters and Labour Abuse Authority (GLAA).
- iv. 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.

- v. Following an independent investigation, the IOPC will determine whether:
  - the matter should be referred to the CPS for consideration of criminal charges;
  - any individual has a case to answer for poor performance, misconduct or gross misconduct and should be subject to unsatisfactory performance procedures or misconduct proceedings; and
  - any organisational learning recommendations should be made, for example, in relation to local or national policies or procedures.
- vi. In deciding whether a matter should be referred to the CPS, the IOPC is required to assess whether there is an indication that a criminal offence may have been committed and the circumstances are such that it is appropriate for the matter to be considered by the Director of Public Prosecutions. The CPS is then responsible for deciding whether any prosecution should be brought.
- vii. In deciding whether an individual should be subject to unsatisfactory performance procedures, the IOPC is required to consider whether there is sufficient evidence that any individual failed to perform their role to a satisfactory level. The relevant police force is then responsible for carrying out any unsatisfactory performance procedures, with a view to improving the individual's performance.
- viii. In deciding whether an individual should face misconduct proceedings, the IOPC is required to assess whether there is sufficient evidence that the individual may have breached the relevant standards of professional behaviour. The relevant police force is then responsible for arranging any misconduct proceedings. Where the individual has a case to answer for gross misconduct and attends a misconduct hearing, those proceedings will be chaired by an independent legally qualified chair.