Divisional Court: Refusal to Respond to Request for Further Information

R (on the application of the Independent Police Commission) v Commissioner of the Police for the Metropolis [2009] EWHC 1566 (Admin)

Barrie Sheldon

Keywords Police misconduct; IPCC; Abuse of process; Investigation; Disciplinary procedures

At 12.12 am on 5 May 2003 a 13-year-old boy was arrested by the Metropolitan Police on suspicion of the robbery of a bus driver. A police dog was used to facilitate the arrest, which resulted in the boy being bitten by the dog. The boy was taken to a police station where he was further detained and his mother was contacted to attend the police station as an appropriate adult. She arrived at 3.30 am, but became hysterical and aggressive and had to be escorted from the custody area. The boy was released from custody unconditionally without charge at 6.30 am. Following the arrest the mother made a complaint alleging that the dog handler (the arresting officer) had used excessive force and that the custody officer had failed in his duty of care. Some eight weeks later on 19 July 2003 the boy was rearrested for theft and charged, but the case was discontinued by the Crown Prosecution Service after it was revealed that the victim had convictions for dishonesty.

The complaint was investigated internally by the Directorate of Professional Standards (DPS) and the custody officer was interviewed; however, for reasons not explained, the arresting officer was not interviewed. On 8 September 2004 the investigating officer provided a report recommending that the complaints made by the boy's mother against the arresting officer and the custody officer were unsubstantiated with insufficient evidence to support disciplinary proceedings.

In cases where the chief officer considers that the report does not indicate that a criminal offence may have been committed by a member of the police force for his area, the chief officer is obliged to send a memorandum to the IPCC to either state that disciplinary proceedings will be taken or that disciplinary proceedings will not be taken citing reasons (Police Act 1996, s. 75(5)).

The DPS sent the memorandum to the IPCC on 10 September 2004, but it was not received until 18 October 2004, and it was not until 1 March 2005 that an IPCC case worker provided a response agreeing with the recommendations made by the investigating officer. With the response was a draft letter that the IPCC proposed to send to the complainant four weeks later. The draft letter contained the following text:

Based on the evidence available, the IPCC is not satisfied that there is a realistic prospect that a tribunal would find that the conduct of the officers fell below the required standard. We are therefore minded to conclude that misconduct proceedings cannot be justified. (emphasis supplied)

The DPS believed that the IPCC had completed their investigation and within a few days the officers who were the subject of the complaint were formally informed that the investigation had been concluded and that there would be no disciplinary proceedings.
On 13 May 2005 the case worker further contacted the DPS to confirm that the letter had been sent to the complainant and that the IPCC still considered the investigation to be open. The solicitor representing the complainant contacted the IPCC on 4 July 2005 asking that the complaint should be further investigated. Eleven months later on 11 April 2006 the IPCC sent a letter to the complainant apologising for the delay, and concluding on a provisional basis that the arresting officer’s use of force was excessive and that the complaint against the custody officer was partially substantiated.

An exchange of correspondence then followed between the IPCC and DPS. One of the key pieces of correspondence--and one described as central to the proceedings--was a letter of 1 December 2006 sent by the IPCC to the DPS. The IPCC recognised that some errors had been made and provided an apology, but intended to rectify matters with a view to being fair to all parties and with the object of getting to the truth. The IPCC made it clear that they intended to continue with the investigation and formally requested the police to reissue complaint notices and re-interview the arresting officer and custody officer to answer requests for information made, and to obtain records to evidence a delay in the custody area.

The correspondence continued, ultimately culminating in the DPS contending that the complaints were closed, that the IPCC had no legal power to reopen the investigations and that they could not be reopened without an order of the court. The IPCC contended that the cases should never have been closed, the officers should never have been told a final resolution had been made and that the cases remained open. They repeated their request for further information in respect of the incident and argued that the Metropolitan Police were under a statutory duty to do so. Section 76(7) of the Police Act 1996 states:

A chief officer shall--

(a) advise the Authority of what action he has taken in response to a recommendation or direction under this section, and

(b) supply the Authority with such other information as they may reasonably require for the purposes of discharging their functions under this section.

When no resolution was obtained, the IPCC issued proceedings against the Commissioner of the Metropolitan Police seeking relief against the DPS’s refusal to respond to the requests for further information about the incidents.

Held, no relief would be granted. the court considered the arguments advanced by both parties, but ultimately held that as the events in question occurred over six years ago, it was not reasonable to be asking the officers to remember with any reliability anything not recorded in writing. The IPCC were mainly responsible for the delay, and the impact of the delay was compounded by the not unreasonable belief on the part of the DPS that the matter had been concluded through no fault of their own officers. Because of the passage of time the courts had doubts that the IPCC could reasonably require information from the officers and that any relief granted would be detrimental to good administration as it would be unlikely that any useful information would be obtained.

The court made clear that the letter dated 1 March 2005 was not a final decision to recommend that there should be no disciplinary proceedings against the two officers and that the relevant question regarding the contents of the letter was not what the DPS understood it to mean but rather what it objectively meant. The letter should have been read in conjunction with the draft letter that stated that the IPCC was minded to conclude that misconduct proceedings could not be justified and this was deemed by the court to be the language of a provisional decision. Later letters sent by the IPCC were clearly expressed in the terms of a provisional decision. To this extent the DPS were wrong to close the case formally.

The error to close the case could have ultimately led to issues of abuse of process being considered. However, they were not relevant at this stage--which merely related to the legal requirement of the chief
officer to comply with an IPCC request—but they could become relevant if the IPCC later recommended or directed disciplinary proceedings should be held. Whilst the IPCC was entitled to obtain information reasonably required for making that decision, the passage of time was relevant to the question of whether the information sought is reasonably required by the IPCC. The passage of time here was a matter of fact and thus had to be taken into account in deciding the likelihood of disciplinary proceedings being successful.

The statutory power of the IPCC to request information under s. 76(7)(b) of the Police Act 1996 is confined to information in the possession of the chief officer and is not to be construed as a power to ask for an investigation to obtain information. A further interview of the two officers would clearly be an investigation; however, it was accepted that the request for records was a valid request for information.

Commentary

Police complaints have always been a contentious issue with concerns being raised about the police investigating the police. Changes to the police complaints system were made during the 1980s following recommendations made by the Phillips Royal Commission on Criminal Procedure 1981 and the report of Lord Scarman in 1982 relating to the Brixton riots. The Police and Criminal Evidence Act 1984 replaced a Police Complaints Board with a Police Complaints Authority on 29 April 1985.

Sir William Macpherson of Cluny raised further concerns about police complaints in his report on the issues surrounding the murder of Stephen Lawrence (available at http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm). He noted there was a need for an independent body:

That the Home Secretary, taking into account the strong expression of public perception in this regard, consider what steps can and should be taken to ensure that serious complaints against police officers are independently investigated. Investigation of police officers by their own or another Police Service is widely regarded as unjust, and does not inspire public confidence. (at Recommendation 58)

The Independent Police Complaints Commission (IPCC) came into being on 1 April 2004 replacing the Police Complaints Authority. The statutory basis for the Commission is set out in Part 2 of the Police Reform Act 2002, providing an independent organisation to investigate police complaints free from any direction or control by the police, interest groups or political parties. The statutory provisions for the handling of police complaints are set out in the Police Act 1996, ss 67-83.

It is the role of the IPCC to make sure that complaints against the police are dealt with effectively and indeed the organisation's statement of values aspires to ensure that those against whom allegations have been made can be sure that the IPCC will be impartial and their activities timely and fair (website at http://www.ipcc.gov.uk).

In their letter of 1 December 2006 the IPCC accepted that they had contributed to the problems that had arisen and admitted that they had not followed proper procedures, had not dealt properly with a number of issues, and had misapplied their powers under the Police Act 1996. Burton J described both the IPCC draft letter to the complainant and the letter to the DPS on 1 March 2005 as being incompetent.
The DPS later challenged the use of Clare to support the decision-making process by suggesting that there was a clear distinction. With Clare no investigation had taken place, whereas in the current case a full investigation had been completed together with a report. Further, the DPS claimed that Clare supported the proposition that a closed case can only be reopened following a court order to quash the original decision.

When delivering his judgment, Burton J referred to the important public interest issue in the investigation of complaints of police misconduct making reference to Clare stating that there was no technicality in the current circumstances. Neither the complainants nor the poorly drafted letter of 1 March 2005 had been responsible for the delay, but the passage of time since the initial complaint was a matter of fact.

This case has highlighted the importance of communication, resources, and timeliness in IPCC-supervised investigations. It is the IPCC role to increase public confidence in the police complaints system and policing in general. It could be questioned whether bringing a legal action against the Metropolitan Police would harm public confidence, but the counter-argument is that the IPCC launched the action so as to ensure that their independent powers of investigation were not compromised.

To conclude, there is evidence to suggest that the IPCC is working towards engendering public confidence with a recent survey suggesting that 65 per cent of those surveyed were very/fairly confident that the IPCC would handle complaints against the police impartially (G. Inglis, Confidence in the police complaints system (IPCC: 2008) 21). However, a recent report by the National Audit Office found that an absence of feedback from complainants and police officers on how the IPCC has handled their case is a weakness (The Independent Police Commission (National Audit Office: 2008) 9) and they recommended that this should be remedied. These statistics will become available in due course, but this case highlights how a complainant or an officer under investigation could lose faith in the complaints system if communication and timeliness issues are not resolved.