

**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 welcomed the extension of the remit of the Independent Police Complaints Commission in the Police and Justice Act 2006 to investigate complaints arising from the use of police-like powers by immigration officers and we welcome the opportunity to respond to proposals for its implementation. We wholeheartedly support the principle that immigration officers exercising police-like powers in the community are subject to the same level of independent scrutiny as the police.

During the passage of the UK Borders Bill there has been continuing debate around the extension of the powers of immigration officers in Scotland to detain at ports for non-immigration offences.¹ This does not detract from the fact that immigration officers in Scotland operate

¹ See for example: (Hansard, HC Deb, 5 February 2007, col. 594); (HC Deb, 27 February 2007, col. 750); (Hansard, HL Deb, 9 October 2007, col. 154)

under the same powers to deal with immigration issues as their counterparts elsewhere in the UK as recently stated by Lord Bassam of Brighton:

“immigration officers in Scotland have full powers to deal with immigration and immigration offenders.”²

We are gravely concerned however that these powers will not be subject to the same degree of scrutiny and accountability as their counterparts in England and Wales. Essentially this means that 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. This is even more concerning considering that 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.”³

Thus, we hold that 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.”***

We are frustrated that no substantial reference is made to Scotland or Northern Ireland. Whilst we are fully aware that the Independent Police Complaints Commission (IPCC) will only have jurisdiction in England and Wales, the consultation paper mentions nothing of how the Home Office will seek to achieve parity in Scotland or Northern Ireland. This is despite the fact that Lord Bassam of Brighton stated in the House of Lords debate on the UK Borders Bill in July that:

“separate parallel arrangements are being developed for Scotland and Northern Ireland.”⁴

This paper entirely omits to refer to what these parallel arrangements will be.

The only reference 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.”⁵

The paper is silent on which 'relevant authorities' this refers to, the proposed nature of such agreements and clarity around jurisdiction.

We would support the statement that *“it cannot be ruled out”* that there will be cross-border complaints as there continues to be substantial transfers between Scotland and England. In her

² Hansard, HL Report 9 October 2007, col.162

³ http://www.bia.homeoffice.gov.uk/6353/aboutus/FRR_11_Oct_2006.pdf

⁴ Hansard, HL Report, 2 July 2007, col GC63

⁵ Consultation paper, p.8

2006 announced inspection of Dungavel House IRC⁶, Anne Owers, HM Chief Inspector of Prisons continued to find many long and multiple journeys around the detention estate:

“In our survey, 57% of detainees against a comparator of 26% had travelled for more than four hours in an escort van. In many cases they had been transferred from IRCs in England, and it was not unusual for detainees to be moved repeatedly (...) We met one young man in reception who broke down as he described how confused he had become since arriving in the UK six weeks previously. He said he fled his troubled country after most of his family were killed, applied for asylum at the airport on arrival, was detained and had been moved seven times in six weeks, including a few days in a prison (apparently because of overcrowding).”⁷

This led her to recommend that: *“Detainees should not be subjected to excessive moves around the detention estate.”⁸*

There also continues to be transfers between Northern Ireland and Scotland or between Northern Ireland, Scotland and England which the statement fails to acknowledge. In the Dungavel House inspection and in her recent announced inspection of detainees under escort to Dungavel House⁹ Anne Owers found that this was the case and raised concerns:

“We were particularly concerned about detainees from Northern Ireland, most of whom had spent nights in police cells there, without any proper facilities, before their lengthy journey to Dungavel House IRC. This included a woman who was five months pregnant and a man who needed to go to hospital during police detention. No police custody records accompanied them, to show any vulnerability or medical problems. We also found that detainees continued to be handcuffed in public places: for example when getting on or off the ferry from Northern Ireland, or in the public area of the immigration hearing centre in Glasgow. A previous recommendation that this practice should be stopped had been accepted, but it nevertheless continued.”¹⁰

The statement that BIA do not anticipate many complaints being made masks the fact that detainees may not be aware of a complaints process or understand it. This was one of the findings in the Detainees under Escort to Dungavel House IRC report: *“Only one out of the 5 detainees knew about complaints procedures.”¹¹* We would also question how this anticipation has been reached due to the paucity of management information available. Fundamentally, the limited number of anticipated complaints should not be used as an excuse not to seek a parallel independent complaints mechanism in Scotland. Moreover the multiple and specific issues arising from cross-border transfers, possibly between three legal jurisdictions, such as length of travel under privately-contracted escort, multiple movements and maintaining legal advice, actually strengthens the argument that a robust and transparent complaints mechanism has to be developed and is widened to ensure that contracted escort staff are included.

To remedy this situation and create a parallel arrangement in Scotland, BIA may seek to establish a protocol with the new Police Complaint's Commissioner for Scotland (PCCS)¹². However this would not lead to full comparability, as the Commissioner in Scotland has an

⁶ Report on an announced inspection of Dungavel House Immigration Removal Centre, 4-8 December 2006, HM Chief Inspector of Prisons: http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/irc-inspections.html/Dungavel.pdf?view=Binary

⁷ Ibid, p. 19

⁸ Ibid, P.17

⁹ Detainees under Escort at Dungavel House IRC, report on an announced escort inspection, 4-8 December 2006, HM Chief Inspector of Prisons: http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/escort-inspections/Dungavel_escort_report1.pdf?view=Binary

¹⁰ Report on an announced inspection of Dungavel House Immigration Removal Centre, 4-8 December 2006, HM Chief Inspector of Prisons, p. 6

¹¹ Detainees under Escort at Dungavel House IRC, report on an announced escort inspection, 4-8 December 2006, HM Chief Inspector of Prisons, Para. 2.8, p.8

¹² Created through the Police, Public Order and Criminal Justice Act (Scotland) 2006

ombudsman-like role, reviewing complaints only once they have been dealt with by a policing agency in Scotland:¹³

*Our role is to review how a police force, police authority or policing agency has handled a complaint - we will not investigate the substance of a complaint. You must have been to the police force, police authority or policing agency first, and given them the opportunity to deal with your complaint. We will not look at complaints that are already being dealt with by courts or other complaints procedures.*¹⁴

Thus, if a protocol were to be established with the PCCS in its current guise, enforcement complaints would still be dealt with through BIA's complaints mechanism and redress to the PCCS would only be available after BIA's decision. The effectiveness of BIA's internal complaints system (for any type of complaint) has been criticised in no small measure by Dr Ann Barker Chair of the Complaints Audit Committee¹⁵. Simply letting the PCCS take complaints from individuals who have been through BIA's internal complaints structure would not be an adequate response.

BIA needs 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.

In conclusion, without any reference to how the Home Office 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 statement in the Regulatory Impact Assessment of the policy is seriously flawed as in Scotland and Northern Ireland 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.¹⁶

¹³ 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.

¹⁴ A Guide to the Role of the Police Complaints Commissioner in Scotland:

<http://www.scotland.gov.uk/Resource/Doc/1101/0050486.pdf>

¹⁵ See evidence to the Home Affairs Select Committee inquiry into Immigration Control:

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/775i.pdf>

¹⁶ Consultation paper, 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 may be 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)

YES

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

Surveillance activities should be added as these constitute an enforcement function.

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

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 (see comments in introductory section). 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 in the introductory section 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.

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)

NO

PLEASE EXPLAIN THE REASONS FOR YOUR RESPONSE BELOW

There should be a right of appeal against the non-recording of a complaint.

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 wholly 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. Information should be available at Asylum Screening Units, reporting centres and in induction

accommodation.

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