



# Kent Academic Repository

Walsh, Dermot P. J. (2016) *Police Complaints Procedures in the United Kingdom and Ireland: Why are the reforms not working?* *European Police Science and Research Bulletin* . pp. 48-57. ISSN 2443-7883.

## Downloaded from

<https://kar.kent.ac.uk/56954/> The University of Kent's Academic Repository KAR

## The version of record is available from

## This document version

Author's Accepted Manuscript

## DOI for this version

## Licence for this version

UNSPECIFIED

## Additional information

## Versions of research works

### Versions of Record

If this version is the version of record, it is the same as the published version available on the publisher's web site. Cite as the published version.

### Author Accepted Manuscripts

If this document is identified as the Author Accepted Manuscript it is the version after peer review but before type setting, copy editing or publisher branding. Cite as Surname, Initial. (Year) 'Title of article'. To be published in *Title of Journal* , Volume and issue numbers [peer-reviewed accepted version]. Available at: DOI or URL (Accessed: date).

## Enquiries

If you have questions about this document contact [ResearchSupport@kent.ac.uk](mailto:ResearchSupport@kent.ac.uk). Please include the URL of the record in KAR. If you believe that your, or a third party's rights have been compromised through this document please see our [Take Down policy](https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies) (available from <https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies>).



# POLICE COMPLAINTS PROCEDURES IN THE UNITED KINGDOM AND IRELAND: WHY ARE THE REFORMS NOT WORKING?



**Dermot P.J. Walsh**  
United Kingdom

**Keywords:** Complaints; Accountability; Independence; Ombudsman; Corruption

**Abstract:** An independent element in the investigation of complaints against police officers was first introduced in the United Kingdom in 1964. It first appeared in Ireland in 1986. Over the following years the independent element has been strengthened on several occasions in response to persistent concerns that it was not delivering effective accountability. In this paper I consider why the latest round of reforms is continuing to disappoint. Key factors would appear to be: continued reliance on internal police investigators and technical expertise; lack of rigour in investigations; regulatory capture; police obstructionism; and lack of resources. Further reforms are suggested.

## INTRODUCTION

Organised police forces first appeared in the British and Irish islands in Dublin in 1786 (Walsh, 1998). It was 1964, however, before any concession was made to independent oversight of how complaints against the police were handled on a regular basis (Smith, 2005). Until then such complaints were a matter for the relevant chief of police, subject always to the possibility of a complainant pursuing a civil action through the courts.

Over the past 50 years all four jurisdictions (Republic of Ireland, Northern Ireland, England and Wales, and Scotland) have advanced towards the independent investigation of complaints, albeit in a piecemeal and, to some extent, cyclical manner (Smith, 2005). Typically the reforms in each jurisdiction have been driven by periodic crises of confidence in policing practices and/or the compensatory flip side of government proposals to expand police powers. Despite some significant jurisdictional differences in police structures, the reforms have all converged around a common model which, at least superficially, espouses the independent investigation of complaints. Yet the problem of public confidence in how complaints against the police are handled still persists in at

least three of the four jurisdictions. In the fourth, Scotland, the reforms are too recent to make any definitive judgement on their efficacy.

In this paper I attempt to identify why independent investigation has not succeeded in rendering police officers accountable for corrupt and/or abusive conduct, and to offer some suggestions for the next cycle of reforms. By way of setting the context, I will begin with an outline of the historical landmarks in the development of independent investigation, the essential substance and shape of the current procedures and examples of the ongoing concerns.

## DEVELOPMENT OF THE INDEPENDENT ELEMENT

For much of their existence, British and Irish police forces have jealously guarded their exclusive power to deal with criminal and disciplinary complaints against the conduct of their officers. The first chink into their domain was the very modest provision in the Police Act 1964 which imposed a duty on the independent Inspectorate of Constabulary (HMIC) and the democratically elected Police Authorities to keep themselves



informed of the manner in which Chief Constables in England and Wales and in Scotland handled complaints against their officers from members of the public (1). Similar, although not identical, provision was made for Northern Ireland in 1970 (2). While Chief Constables were subject to a statutory obligation to record and investigate individual complaints, the actual investigation and disposal remained under their control.

The next and most critical development occurred in the mid-1970s when an independent Police Complaints Board was established for England and Wales (3), followed one year later by a similar development in Northern Ireland (4). This was the first time in the history of policing in Britain and Ireland that provision was made for an independent element in the handling of individual complaints against the police. Staunch police resistance to the basic principle, however, ensured that the balance of power remained firmly in police hands. (Mark, 1979; Cohen, 1985; Humphry, 1979) The role of the independent Board was confined largely to ex post facto review of how an individual investigation was carried out by the police themselves. However, if it was unhappy with a police decision not to proceed with disciplinary charges in a case, it could direct the police chief in question to refer the case to a disciplinary tribunal which included Board members.

Not surprisingly, the Boards had little impact on the outcome of complaints or on the confidence of complainants or the public generally in the new procedure. (Lustgarten, 1986; Humphry, 1979; Cohen, 1985; Bennett, 1979) The Boards rarely directed a Chief Constable to refer cases to a tribunal, and the annual success rate for complaints averaged around five percent. While there will always be a proportion of false, exaggerated or inadmissible complaints, that still leaves a very large number of genuine complaints which did not succeed.

The next cycle of reforms was triggered in the 1980s. The Board in England and Wales was

reformed and renamed the Police Complaints Authority (5). Similar changes were effected in Northern Ireland where the Board was renamed the Independent Commission for Police Complaints (6). The reforms reflected a further tentative step towards independent investigation. As well as conducting ex post facto reviews of how complaints were handled, they could now supervise the police investigation of some complaints, as well as direct the relevant police chief to prefer disciplinary charges in any appropriate case where it disagreed with his decision not to prefer such charges. The Republic of Ireland also entered the field at this point with the establishment of an independent Complaints Board and procedure similar to the remodelled versions in England and Wales and Northern Ireland (7). Indeed, it went further by including provision for the Board to: investigate without the need for a prior complaint; investigate systemic issues triggering complaints; and, most significantly, conduct its own investigations independently of the police in exceptional cases (Walsh, 1998).

Once again, the reforms disappointed. Even the ridiculously low success rates remained a feature in each of the three jurisdictions (Smith, 2005; Dickson, 1990; Committee on the Administration of Justice, 1993; Walsh, 2009). In the Republic of Ireland, the Complaints Board's unprecedented power to conduct wholly independent investigations was used only once in its lifetime which spanned the processing of over 22 000 complaints (Walsh, 2009). The single case involved the extensive use of police violence in dealing with a 'Reclaim the Streets' rally in Dublin on May Day 2002. The events were caught on camera and widely publicised through media broadcasts. The Board's unprecedented move to conduct an independent investigation was heavily prompted by the public outcry. The results, however, were deeply disappointing, as the progress of the investigation was impeded by a lack of cooperation from police officers on the ground during the protest. (GSCB, 2003, and Walsh, 2009).

(1) Police Act 1964, s.50.

(2) Police Act (Northern Ireland) 1970, s.12. There was provision for the establishment of an independent tribunal to determine a complaint in any individual case, but it was only ever used once (Walsh, 1983).

(3) Police Act 1976.

(4) Police (Northern Ireland) Order 1977.

(5) Police and Criminal Evidence Act 1984, Part IX.

(6) Police (Northern Ireland) Order 1987.

(7) Garda Síochána (Complaints) Act 1986.





The latest advances in the direction of independent investigation were born largely out of the need to address the deep alienation from the police of one section of the divided community in Northern Ireland. In a penetrating and persuasive report commissioned by the Northern Ireland government in 1995, Maurice Hayes proposed the establishment of an Office of Police Ombudsman (OPONI) with radical powers of independent investigation (Hayes, 1997). In many substantial aspects the Hayes proposals were ahead of the curve. It was not until 2009 that the European Commissioner for Human Rights produced an opinion on human rights based best practice in the independent and effective determination of complaints against the police (Hammerburg, 2009). Based largely on the evolving jurisprudence of the European Court of Human Rights since the late 1990's, the opinion is heavily reflective of the principles underpinning the Hayes report.

The OPONI was provided for by the Police (Northern Ireland) Act 1998 and was established in 2000. Prompted partly by the ECtHR jurisprudence, England and Wales introduced reforms in the same direction in 2002 with a multi-member Independent Police Complaints Commission (IPCC) <sup>(8)</sup>. A combination of the European Court's jurisprudence and a crisis of public confidence in the police and in the police complaints system, compelled the Republic of Ireland to provide for a similar multi-member Ombudsman Commission in the Garda Síochána Act 2005 (Conway, 2009; Walsh, 2004a; 2004b). It opened for business in 2007. Finally, Scotland came later to the independent investigation of complaints, outside of criminal allegations. To some extent this can be attributed to significant differences in criminal procedure between Scotland and the other jurisdictions. Outside of the role of the independent Procurator Fiscal in criminal matters, provision for an independent review mechanism was first made in Scotland in the Police, Public Order and Criminal Justice (Scotland) Act 2006. The Police Complaints Commissioner for Scotland, established pursuant to that Act, was renamed the Police Investigations and Review Commissioner (PIRC) in 2013, pursuant to the Police and Fire Reform (Scotland) Act 2012. The PIRC has independent powers of investigation in respect of certain serious complaints; similar in some respects to those of the other police complaints bodies.

<sup>(8)</sup> Police Reform Act 2002, Part 2.

## THE LATEST REFORMS

The latest reforms differ in some detail across the four jurisdictions, but they are similar in most of the essential aspects. Broadly they all purport to offer the prospect of complaints being investigated entirely independently of the police. The Ombudsman in Northern Ireland, for example, is appointed by the Prime Minister following an open competition. He or she cannot be a former police officer, and the independence of the office is statutorily guaranteed. Similar arrangements apply to the members of the Commissions in the other jurisdictions, with the notable exception of the Republic of Ireland where the process lacks transparency. The members of the Garda Síochána Ombudsman Commission are appointed by the President on the nomination of the government and with the approval of the House of Parliament. In practice, however, the nominations are chosen secretly by the Minister for Justice, Equality and Defence (the same Minister with responsibility for policing) with no independent interviews or open competition. It is also worth noting that none of the appointments procedures are fully compliant with the best human rights based practice, as set out in the opinion of the European Human Rights Commissioner. This stipulates that the Ombudsman or Commission members should be appointed by, and accountable to, the relevant legislative assembly (Hammerburg, 2009).

Critically, the Ombudsman and Commissions recruit and train their own investigative staff. Equally important and unprecedented is the fact that they can exercise the same powers of arrest, detention, interrogation, entry, search and seizure etc. as police officers. In effect they are the equivalent of police officers whose function is confined to investigating the alleged infractions of conventional police officers. In those cases actually investigated by the independent investigators, the investigation reports are submitted directly to the Ombudsman or Commission which generally can decide whether to: refer the file on to the independent public prosecutor; recommend disciplinary charges to the relevant police chief; trigger a local or informal resolution procedure; or take no further action. The powers of the Scottish PIRC are more limited in these matters than those of the other bodies. It is also worth noting that the Ombudsman and Commissions have the power to initiate





investigations into alleged incidents in certain circumstances, even where no formal complaint has been lodged. Equally, they can be authorised to investigate systemic issues that are generating complaints. On the other hand, their role does not extend beyond investigation and report, even with respect to individual complaints. In those cases where they uphold a complaint, it is a matter for the independent prosecutor to decide whether to prefer criminal charges, and/or for the chief of police to decide whether to prefer disciplinary charges. If criminal charges are preferred, they will be determined through the independent courts in the same manner as any other criminal charge. If disciplinary charges are preferred they are determined through the internal police disciplinary process. The Ombudsman or Commissions have no direct role in these matters or their outcome.

It should be noted that these powers of independent investigation, where applicable, are generally in addition to the role of the Commissions in reviewing, supervising and managing the investigation of complaints which are not handled in this manner.

Superficially, the current arrangements satisfy the ECHR standards, although there may be some doubt over the lack of independence in the final determination of criminal or disciplinary charges arising out of deaths or serious injuries. The opinion of the European Commissioner on Human Rights acknowledges that the established working relationship between the police and the independent public prosecutor may give rise to the appearance of bias in favour of the police in complaints cases. Accordingly, the opinion recommends an arrangement whereby the independent ombudsman/commission can prefer criminal charges (Hammerburg, 2009). Surprisingly, no mention is made in the opinion of the more obvious lack of independence in the decision whether to prefer disciplinary charges (which remains with the police). However, it does state that the independent prosecutor, police and/or ombudsman commission should give reasons for all decisions on criminal or disciplinary matters (Hammerburg, 2009). Each of the four jurisdictions remains particularly weak on this aspect.

## ONGOING CONCERNS

In the historical context of police complaints procedures in Britain and Ireland, the latest reforms appear quite radical. In practice, however, they have continued to disappoint. The rate of successful complaints remains pitifully and unrealistically low. In the Republic of Ireland, less than 3% of complaints result in a recommendation for some form of criminal or disciplinary action. In Northern Ireland, the figure is 5%. In England and Wales, the figure is 12%, while in Scotland it is 13%. It should be noted that these figures only represent recommendations. The actual number of complaints that result in some form of criminal or disciplinary sanction is much lower. Not surprisingly, therefore, the capacity of the independent procedures to deliver confidence in the investigation of complaints has been the subject of recent and sustained criticism in at least three of the four jurisdictions. In some instances the criticisms are led by the independent bodies themselves.

In 2012, for example, the Home Affairs Committee (HAC) of the United Kingdom Parliament conducted hearings into the operation of the independent Commission in response to sustained expressions of public concern. In a highly critical report published in 2013, it concluded that the Commission 'is not yet capable of delivering the kind of powerful, objective scrutiny that is needed to inspire [public] confidence' that police powers will not be abused (HAC 2013, para. 4). Earlier, in 2008, over 100 lawyers with expertise in police complaints resigned from the IPCC's advisory body citing a range of criticisms of the IPCC, including bias in favour of the police (Davies, 2008). In the 10 years up to the death of Ian Tomlinson, an innocent newspaper vendor who died of a heart attack after being struck by a police officer at the scene of the 'G20 Summit protest' in London in 2009, there had been 400 deaths following police contact. The IPCC is obliged to investigate such cases (Economist, 2009). Nevertheless, not one of them has ever resulted in the conviction of a police officer for murder or manslaughter; including in the Ian Tomlinson case itself where the inquest jury returned a verdict of unlawful killing.

In the Republic of Ireland in 2013, frustration within the independent Ombudsman Commission, over its failure to investigate certain complaints expeditiously, boiled over in the form of a public row between it and senior



police management. The Commission took the unprecedented step of submitting a special report to the Minister arising out of its public interest investigation of Garda compliance with informant handling procedures (GSOC, 2013a). In it the Commission referred repeatedly to its dependence on Garda information and to the difficulties it has in accessing vital information for the effective discharge of its functions. It stated explicitly that 'this reflected a serious weakness in the independent investigation of complaints' (GSOC, 2013a, para. 10.3) and called into question 'the effectiveness of the Ombudsman Commission's oversight investigative function' (GSOC, 2013a, para. 10.4). The Commission returned to the same subject two months later, expressing similar concerns arising out of its investigation of the Garda's use of force in policing a student process (GSOC, 2013b).

Even the Police Ombudsman in Northern Ireland, generally considered to be the most advanced of the independent systems, has also been rocked by concerns from diverse quarters over its alleged lack of independence in practice. Its own chief executive resigned in 2011 citing frustration over its diminishing operational independence from the police. Ultimately this led to an inspection of the operational independence of the Ombudsman's Office from the police force by the Criminal Justice Inspection Northern Ireland, and the early retirement of the Ombudsman (CJINI, 2011). His successor was the Chief Inspector of the Criminal Justice Inspectorate at the time the inspection was carried out. The report found a lack of confidence within the Ombudsman's office and among key stakeholders over the flawed nature of the investigation process used in a number of major cases (CJINI, 2011).

## STRUCTURAL WEAKNESSES

### LACK OF INDEPENDENT PERSONNEL

A primary weakness affecting all of the procedures is that they are not as independent of the police as they purport to be. This is reflected at several levels. They all rely heavily on the recruitment of former and seconded police officers, often from the same police forces that they are investigating. In his research on the IPCC, OPONI and GSOC, Savage found that between one quarter and one third of investigators came from the force under investigation or another force (Savage, 2013a).

The UK parliament's Home Affairs Committee identified this as one of the three main causes of distrust in the complaints system (HAC, 2013, para. 13). It strongly urged the IPCC to increase the level of its non-police investigative resources (HAC, 2013, ch.5). The IPCC is currently implementing a recruitment training programme to do that.

There is no doubt that former police officers bring valuable skills and experience not otherwise readily available to the complaints bodies on their establishment. Equally, however, they will bring baggage of a tendency to see events and issues through the eyes of the officer under investigation, rather than those of the complainant. Even were that not to be the case, they suffer from the inevitable risk of appearing to the complainant and the public of being biased in favour of the police. That is sufficient in itself to render reliance on former police officers as counter-productive. Reliance on former police officers is also contrary to best human rights practice (Hammerburg, 2009). It is disappointing, therefore, that the Commissions have not managed to do more to increase the proportion of their investigative staff who have no police or police related background.

### CONTINUING RELIANCE ON POLICE INVESTIGATION

The lack of independence is even more marked in the operation of the complaints process. Incredibly, a very large number of complaints continue to be investigated by serving police officers in the same force as the officers who are the subject of complaint. With the exception of OPONI, the legislation establishing the Commissions leaves large categories of complaints to be investigated by the police themselves, at least in the first instance. Moreover, even where the Commissions are competent to investigate complaints directly, they (apart from OPONI) frequently rely on the police to conduct the investigations. In the Republic of Ireland, the GSOC referred back to the police for investigation more than twice as many complaints as it investigated itself. Under its legislation GSOC must investigate all complaints concerning death or serious injury and complaints that, if proved, would constitute criminal offence. Any other complaint can be left to be investigated by the police, subject always to the possibility of the GSOC taking it over. Due to resource constraints,







however, the GSOC are actually advocating amending legislation to enable it, refers the offence cases back to the Garda for investigation (GSOC, 2012, para.3.6). Interestingly, the Garda is stoutly resisting that proposal.

Similarly, in England and Wales the IPCC directly investigates less than 1 % of complaints (HAC, 2010). The remainder is referred back to the police for investigation, with options for the IPCC to supervise or manage the investigation and of the complainant to complain to the IPCC about the manner of the police investigation. That, however, cannot be described as an independent complaints system in any meaningful sense. The HAC was deeply critical of this operation. It was strongly of the view that:

‘Most cases should be investigated independently by the Commission, instead of referred back to the original force on a complaints roundabout. “Supervised investigations” do not offer rigorous oversight of a police investigation, nor do they necessarily give the public a convincing assurance that the investigation will be conducted objectively. This kind of “oversight-lite” is no better than a placebo.’ (HAC 2013, para.23)

Significantly, a relatively high number of complaints against the police investigation are upheld by the Commission (HAC, 2013, para.60).

## RELIANCE ON POLICE RESOURCES

Even where complaints are investigated directly by the independent Commissions, it does not follow that the investigations are independent of the police. The reality on the grounds is that the independent investigators are often heavily dependent on police or police related expertise in the conduct of their investigations (Savage, 2013a; HAC, 2013). This is especially true in cases involving fatalities or serious injury to the person; the very cases in which the European Court of Human Rights has emphasised the importance of the investigation being conducted independently of the police (Hammerburg, 2009). The problem starts at the point where the incident is alleged to have occurred. The fact is that the Commissions do not have the personnel or the resources spread across the country to ensure that they get to the scene as quickly as police investigators. Almost invariably, therefore, they must rely on the police colleagues of the officers being investigated to secure the

scene and preserve evidence. If the investigation requires the application of specialised skills such as traffic accident reconstruction, ballistics and even fingerprint analysis, the Commissions will almost invariably have to rely on the police to provide them as they will not normally have them in house. Similarly, for forensic and DNA analyses they normally have to rely on agencies that work closely with the police force in question. Even at a more basic level, as will be seen later in the context of regulatory capture, the independent investigators are usually dependant on the cooperation of the police for the supply of documentary, video, electronic, and/or oral evidence central to the investigation.

It would almost be perverse to describe investigations conducted in such circumstances as independent of the police. This is tacitly acknowledged by the report of the HAC inquiry which explicitly linked the IPCC’s capacity to take control of a potential crime scene with the quality of its investigations:

‘When the IPCC does investigate it often comes too late and takes too long. The trail is left to go cold. IPCC should be able to take immediate control of a potential crime scene during the crucial “golden hours” and early days of an investigation into deaths and serious injury involving police officers.’ (HAC, 2013, para.24)

It went on to assert that the IPCC’s involvement in death and serious injury cases was far too remote as it lacked access to independent specialists who could analyse a possible crime scene. This, in turn, meant that important cases were under investigated (HAC, 2013, para.33). Similarly, GSOC has explicitly and publicly linked its capacity to deliver its investigative function with access to the Garda PULSE and computerised information bases. (GSOC, 2013a, para.10.4) The PULSE system incorporates a central information database to which operational gardai input data on crime incidents etc. in the course of their duties. Garda have direct electronic access to it, and it is a vital resource in any investigation into a complaint or criminal matter. The Commission, however, has no independent access. It must depend on Garda cooperation to extract information from PULSE on a case by case basis. In a special report to the Minister in 2013, it tersely recommended, inter alia, that it should be given independent access immediately (GSOC, 2013a, rec.21)





## LACK OF RIGOUR IN INVESTIGATIONS

Independent investigation does not always mean a rigorous investigation. In respect of serious criminal allegations, for example, it would appear that the police officer or officers concerned are not subjected to the same robust arrest, detention and interrogation methods that would apply typically to civilian counterparts. Instead the standard practice appears to be to take a statement from the officer, usually by appointment. One of the three causes of distrust in the complaints system identified by the HAC was that the police often do not interview officers after cases involving death and serious injury, although they would routinely do so for ordinary members of the public (HAC, 2013, para.13). In its interim report on the Hillsborough disaster, it found that police officers are rarely interviewed under caution in circumstances in which an ordinary member of the public would be (HAC, 2012). In its 2013 report, it stated:

‘The issue of interviewing officers in cases involving death and serious injury is indicative of a culture of treating officers differently from members of the public. Where officers are not interviewed promptly under caution, this can lead to weaker evidence and loss of confidence in the process of investigating serious matters such as deaths in custody.’ (HAC, 2013, para.85)

It went on to recommend, inter alia, that officers should be ‘routinely interviewed under caution in the most serious cases, exactly as a member of the public would be.’ (HAC, 2013, para.85)

Savage’s research on the procedures in three of the jurisdictions also found evidence that the influence of former police investigators was undermining the rigour and independence of the procedure. They had a propensity to close investigations too quickly and to take a narrow criminal investigation approach, rather than a broader contextual approach which is open to the issues raised (Savage, 2013b). They were not inclined to challenge police narratives. One telling example cited in the research is where a former police officer investigator was happy to accept CCTV evidence provided by the police, while a fellow investigator from a non-police background wanted to check local businesses independently to see if there was video evidence that the police had not discovered or that they were concealing (Savage, 2013b). His fears may have been well founded as the GSOC has felt

compelled recently to criticise the Garda publicly for impeding its investigations by suppressing relevant evidence and denying the existence of statements given by gardai who had taken part in the policing of a student protest that had generated numerous complaints (GSOC, 2013b). In its inquiry into IPCC investigations, the HAC also heard extensive criticisms of, inter alia: a failure by investigators to locate evidence; a propensity to accept police explanations for missing evidence; failure to analyse competing accounts, even with inconsistencies between officers’ accounts or a compelling account from a complainant; a lack of investigative rigour; and delay (HAC, 2013, para.11).

## REGULATORY CAPTURE

Regulatory capture is an established and common phenomenon in the relationship between a regulatory agency and the body or bodies being regulated (Ayre & Braithwaite, 1991). It can arise on at least two levels. Typically, it emerges and develops over time as the agency and body become more familiar with each other’s methods and practices. As agency personnel engage exclusively with the work of the persons they are regulating, there is a tendency to acquire the perspectives and even the language of those persons. This is especially so where the persons being regulated are experienced and hardened professionals in a specialist field and the regulators are ‘outsiders’ who have not acquired that direct experience. In this environment, the persons being regulated are in a strong position not just to evade the efforts of the regulators to control them or call them to account, but also to steer those efforts in ways and directions that will serve their interests, usually at the expense of the regulatory objectives. At another level, the regulated body might ‘capture’ the regulator at the outset by shaping its form, function and powers and/or by negotiating how it will perform its function.

Arguably, the police complaints systems in Britain and Ireland have always been the subject of regulatory capture at both levels from their inception and right through the successive waves of reforms. Even today, with the fully ‘independent’ models there is evidence that their efficacy continues to be undermined by regulatory capture at both levels. This is reflected in a tendency for investigators to be unnecessarily deferential to the police. Savage







found that investigators tended to be 'over-cautious' in their dealing with the police in order to avoid giving offence (Savage, 2013a). So, for example, they were reluctant to seize officers' notebooks. Similarly, in criminal cases, police suspects are rarely arrested, detained and interrogated under caution in custody. The first arrest by the GSOC did not occur until December 2012, more than five years after it commenced operations. Typically, an investigator will simply take a statement by appointment from the officer or officers and check it against the complainant's statement and other independent evidence. Inconsistencies are not normally pursued through robust questioning. Documentary or material evidence supplied by the police is usually accepted at face value, even to the extent that investigators do not check independently if that is the sum total of evidence available. Savage also found evidence of 'independent' investigators 'going native', as reflected in their tendency to adopt police terminology and mindsets (Savage, 2013b).

The regulatory capture is institutionalised through the contents of Protocols agreed between the independent Commissions and the police. Typically, they will regulate matters such as how and the extent to which Commission investigators can get access to police records, information, intelligence and stations. They will also address arrangements for interviewing police officers. In theory they are aimed at facilitating smooth cooperation between the police and the Commissions in investigations. In practice, they tend to blunt the independent powers of the Commissions and cede excessive control over investigations to the police (Savage, 2013a); sometimes to the detriment of effective investigation.

Instead of enhancing the smoothness and efficacy of investigations, the Protocols agreed between the Commissions and the police can actually prove counterproductive. The GSOC, for example, has voiced concerns about the capacity of the Protocols to blunt the independence of its oversight role. In a 2013 report on an investigation into the police handling of an informant, it complained candidly that '.. under the present Protocols, [it] is wholly reliant upon assurances from the [police] that the evidence and information they have supplied represents the totality of such information held. This leaves scope to question the completeness and independence of oversight.' (GSOC, 2013a para. 10.2).

## POLICE OBSTRUCTIONISM

Police obstructionism is also proving an enduring obstacle to the capacity of the independent Commissions to deliver effective investigations. Once again there is a link with the Protocols. In 2013, for example, the GSOC took the highly unusual step of going public in its criticisms of police delay in supplying relevant information concerning their policing of a student protest that had generated multiple complaints (GSOC, 2013b). Instead of exercising its own powers to seize the information directly, the Commission complied with the Protocols and requested its production from the police. The Protocols specify a time limit of 30 days for compliance. In the event it took 224 days and numerous requests before the police supplied any documents, and 634 days for the Commission to get a copy of the parallel police investigation file on the protest.

In some situations the police actually supply false or misleading information. In the student protest investigation, for example, the police claimed falsely that there were no statements from officers who used batons on the day (GSOC, 2013b). Similarly, police management attempted to conceal the availability of video evidence taken by police officers (GSOC, 2013b).

## SHORTAGE OF RESOURCES

Underlying some of these problems is a shortage of resources available to the independent Commissions. The UK parliamentary committee, for example, pointed out that the resources available to the independent Commission for investigations are dwarfed by the comparable resources available to the police (HAC, 2013, para.33). Inevitably, this leaves the Commissions excessively dependant on the police to advance their investigations, and even to carry out the investigations. The Commission itself told the inquiry that it does not currently have sufficient resources to enable it to meet its statutory responsibility or the public's growing expectations of its role (HAC, 2013, para.30).



## REFORMS

When these features of the 'independent' procedures are viewed in the light of the outcome of complaints, it is apparent that the latest reforms are not working. Indeed it might even be questioned whether truly independent investigation of complaints against the police is a realistic prospect. Before settling for such a negative conclusion, however, it might be worth considering another cycle of reforms aimed at closing the gap between the appearance and the substance of independent investigation. At least for the more serious, non-service type complaints, the Commissions must be given the powers and resources to conduct investigations as independently of the police as is practicably possible. At the very least, that will require: the recruitment and training of more independent investigators; the phasing out of former police

officers; the employment and training of personnel with the necessary range of specialist skills; powers to investigate all complaints independently; the renegotiation of the protocols; and the adoption of an institutional policy favouring direct use of coercive powers when police cooperation is not immediately forthcoming.

Ultimately, it will never be possible, or even desirable, to divorce the police entirely from the investigation of complaints against themselves. So, for example, there is a need for close cooperation between the Commissions and the police in the handling of service type complaints in a swift and non-bureaucratic manner that strikes a reasonable balance between the interests of police, public and complainants. It is unlikely, however, that that will be possible without public confidence in the manner in which the more serious complaints are handled.



## REFERENCES

- Ayres, I., & Braithwaite, J. (1991). Tripartism: Regulatory capture and empowerment. *Law and Social Inquiry*, 16(3), 435–496.
- Cohen, B. (1985). Police complaints procedure: Why and for whom? In J. Baxter, & L. Koffmann (Eds.), *Police: the constitution and the community* (pp. 246-267). Abingdon: Professional Books.
- Conway, V. (2009). A sheep in wolf's clothing? Evaluating the impact of the Garda Síochána Ombudsman Commission. *Irish Jurist*, 43, 109-130.
- Criminal Justice Inspection Northern Ireland (2011). *An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland*. Belfast: CJINI.
- Davies, N. (2008, February 24). Crisis at police watchdog as lawyers resign. *The Guardian*
- Garda Síochána Ombudsman Commission (2012). *Five Year Report*. Dublin.
- Garda Síochána Ombudsman Commission (2013a). *Special report by the Garda Ombudsman to the Minister for Justice, Equality and Defence: Issued pursuant to section 80(5) of the Garda Síochána Act 2005*. Dublin: [www.gardaombudsman.ie](http://www.gardaombudsman.ie).
- Garda Síochána Ombudsman Commission (2013b). *Report in accordance with section 103 of the Garda Síochána Act, 2005 ('the Act') relating to the policing of the Union of Students in Ireland Protest March on 3 November 2010*. Dublin: [www.gardaombudsman.ie](http://www.gardaombudsman.ie).
- Hammerburg, T. (2009). *Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police*. Strasbourg: Council of Europe.
- Hayes, M. (1997). *A police ombudsman for Northern Ireland?* Belfast: Northern Ireland Office.
- House of Commons Home Affairs Committee (2012). *Powers to investigate the Hillsborough disaster: Interim Report on the Independent Police Complaints Commission*. London: Stationery Office, HC 793.
- House of Commons Home Affairs Committee (2013). *Independent Police Complaints Commission*. London: Stationery Office, HC 494.
- Humphry, D. (1979). The complaints system. In P. Hain, D. Humphry, & B. Rose-Smith (Eds.), *Policing the police*, Vol.1 (pp. 43-63). London: John Calder.
- Lustgarten, L. (1986). *The governance of the police*. London: Sweet & Maxwell.
- Mark, Sir R. (1979). *In the office of constable*. London: Fontana.
- Poppins, M. (2009, April 16). The camera is mightier than the sword. *The Economist*
- Savage, S. (2013a). Thinking independence: Calling the police to account through the independent investigation of police complaints, *British Journal of Criminology*, 53, 94-112.
- Savage, S. (2013b). Seeking 'civilianness': Police complaints and the civilian control model of oversight. *British Journal of Criminology*, 53, 886-904.
- Smith, G. (2005). A most enduring problem: Police complaints reform in England and Wales *Journal of Social Policy*, 35(1), 121-141.
- Walsh, D.P.J. (1998). *The Irish police: a legal and constitutional perspective*. Dublin: Round Hall Sweet & Maxwell.
- Walsh, D.P.J. (2004a). The proposed Garda complaints procedure: a critique. *Irish Criminal Law Journal*, 14(4), 2-26.
- Walsh, D.P.J. (2004b). The proposed Garda Síochána Ombudsman Commission' *Irish Criminal Law Journal*, 14(1), 2-12.
- Walsh, D.P.J. (2009). Twenty years of police complaints in Ireland: a critical assessment of the review board model. *Legal Studies*, 29, 306-337.