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Liberty response to the Home Office consultation on Transitional Arrangements and Civil Claims under the new Police Complaints System

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Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Paper 1 – Transitional Arrangements

The paper puts forward three possible options. Before a brief consideration of our views on these we would make a few general observations:

- The transitional arrangements must be clear to the complainant as well as the other interested parties.
- There must be consistency across forces nationwide.
- There must be consistency across all types of complaints.
- There should be one cut off date for all complainants.
- The recent transitional arrangements put into place regarding standards of proof appeared to take place relatively smoothly

Suggested options

- 1) We do not believe that option 1 will work, as there will be two different standards and approaches taken to complaints. Any perceived benefit would be negated by the confusion that this will cause complainants. What the new system needs to ensure is transparency. Without this and the desire to provide complainants with an effective service the IPCC will be unlikely to succeed. Option 1 is also likely to cause confusion within the police force recording process.
- 2) We agree with the concern stated that if option 2 is preferred complainants are likely to hold back on complaints. There is no evidence yet available to complainants or their advisors to suggest the new system is any better than the

old system. However the fact that the new system contains the word 'independent' is likely to be an incentive for complainants to wait. Despite this we feel it is still preferable to option 1.

- 3) Option 3 is perhaps the most preferable since this offers the IPCC the greatest degree of flexibility. There must however be transparent criteria applied when deciding which cases might be transferred to the IPCC. Clear rules as to the cut off point for the transfer of cases should be considered, for example at any stage up to but excluding the disciplinary/criminal interview of police officers

Paper 2 – Civil Claims

General

- We do not believe the new system will work until the attitude of those investigating and overseeing complaints changes. There must be a change of focus so that there is a real desire to substantiate deserving claims.
- Without transparency and honesty in the decision making process complainants and those that advise them will never have any confidence in the process. Without transparency there will be suspicion about the process even if the complaint is investigated thoroughly.
- Clear and unjustifiable errors are routinely being made by the PCA. When challenged under the threat of Judicial Review proceedings they tend to be corrected. However, practitioners tell us that whenever an explanation is requested by the complainant the PCA refuses to explain. This leaves the complainant with a feeling that there has been a botched attempt to cover up. Without the lawyers involvement such errors would not be corrected.

- It is claimed in the paper (paragraph 38) that the new system is improved. There is no evidence to support this yet. It certainly has the potential but whether that potential is realized will depend upon the organization.
- At paragraph 16 it is accepted that the complaints system has no direct impact on civil claims process yet at paragraph 38 they seek to curb through other mechanisms the ability of the individual to bring a civil claim. The two produce very different remedies. Furthermore, a failure to succeed in the complaints process is no indicator as to what happens during the course of the civil proceedings. Many solicitors report a significantly greater success rate in civil proceedings.
- The attempt to remove solicitors from the complaints process through refusal of funding on the basis that there is some inappropriate pecuniary advantage being obtained is affront to the integrity of solicitors practicing in this area of law. Only the most serious complaints or those most likely to succeed complaints are accepted. Rates of pay for complaint work are poor. The complainant needs to be advised as to those issues about which they may legitimately complain. All too frequently statements not drafted by legal advisors do not fully set out the facts or the flavor of the incident and most importantly do not identify all of the issues that should form the substance of the complaint. Instead they will often cover those peripheral issues or those least likely to be substantiated. Without representation the complainant is frequently ignorant of the complaints process, the issues he can complain about or quite what has gone wrong although it is evident to complainants that something has. They are dependant upon a lawyer for guidance.
- Complaints and civil proceedings provide two separate remedies. The complainant has no control over the complaints process and is usually not privy to the evidence. In civil proceedings the complainant is aware of the evidence and can so respond to or test false accusations with greater degree of vigor than is the case by complaints investigators.

- The complainant may wish to have legal advice in the complaints process to protect his position to the civil proceedings. We would invite Home Office representatives to attend trials to ascertain how the police forces litigate. The strategies and issues that commonly arise for the Claimant relate to issues arising from complaints process (to which the complainant has been an outsider). There is also an inherent inequality of arms between police forces and the complainant.
- Paragraph 37 suggests that solicitors profit from the complaints process at the expense of those who provide legal aid? We wonder what the basis for this 'fear' is? How do they benefit? The suggestion seems to be that the solicitor should work for nothing or that they should be kept away from the complaints process altogether.

Additional Points

The changes in rules should be phased in over 12month period giving all users sufficient time to adjust to the new regime.

Each police force should state clearly at outset where they are at in the process of change and when the new regime in place. Such information should be publicly available.

The key to a successful IPCC will be transparency through the investigation and decision making process and the will to substantiate complaints.

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