



Home Office

**Border &
Immigration Agency**

**THE INDEPENDENT POLICE
COMPLAINTS COMMISSION
OVERSIGHT OF BORDER
AND IMMIGRATION AGENCY
INCIDENTS AND COMPLAINTS
ANALYSIS OF RESPONSES**

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CONTEXT

The Border and Immigration Agency (BIA) has changed considerably over the last few years, adapting to meet current migration challenges. Immigration officers and other officials across the Agency exercise powers of entry, arrest, search and detention as well as pursuing prosecutions for immigration offences. To ensure appropriate independent oversight of the BIA's serious incidents and complaints, legislation was passed in 2006 to extend the remit of the Independent Police Complaints Commission to include aspects of the BIA's work. The detail of this change was subject to a consultation exercise focusing on issues such as operability, accountability, fairness and transparency. This report summarises the responses and main findings from this consultation.

APPROACH

The consultation paper was made available online for public consultation on 26 July 2007 (www.bia.homeoffice.gov.uk/aboutus/consultations/closed). It was also emailed direct to 150 organisations with relevant interests to invite them to participate.

A total of thirteen responses had been received when the consultation period ended on 17 October 2007. All responses were from organisations (rather than individuals), nine of which were specifically invited to comment. Not all organisations responded to all the questions, the number responding to each question is shown in the section covering that question.

Responses came from diverse stakeholders, including those representing immigrants and refugees, legal professions, enforcement agencies and BIA staff. Although the IPCC's jurisdiction will only include England and Wales, responses were received from statutory and voluntary sector organisations with remits in Scotland, Northern Ireland, and England and Wales.

QUESTIONNAIRE RESULTS

QUESTION 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?

Table 1 Question 1 Responses

Response	Number of Respondents
Yes	8
Unsure	1
No response, but commented	2
No response, and no comment	2

Table 1 shows that, overall, respondents were supportive of the idea that the IPCC should handle BIA cases in the same way as it handles those from its other jurisdictions. However, most felt that consideration should be given to the unique circumstances of those involved in order for any complaints procedure to be effective. Issues raised included:

- the speed of the process as many complainants subsequently leave the UK.
- the need to be sensitive to vulnerability/disempowerment issues as many complainants will not speak English, may not have access to adequate legal advice, fear ‘authorities’, and/or may have experienced trauma.
- a call for IPCC’s powers to extend to include all private contractors, in particular those responsible for transporting and detaining immigration detainees.

Concerns were raised that some illegal immigrants may use the IPCC complaints process in an attempt to extend a stay in the UK. Further issues were highlighted for clarification such as the seniority of BIA personnel involved in handling and referring the cases; whether the BIA or the IPCC would have a specified time frame for completing any investigation; whether appropriate support would be available for staff subject to or involved in an investigation; and whether there would be national consistency in procedures between the devolved nations.

QUESTION 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?

Table 2 Question 2a Responses

Response	Number of Respondents
Yes	8
Unsure	1
No response, and no comment	4

Table 2 shows that most respondents agree that surveillance activity should be included in the IPCC remit. Many consider surveillance to be an “enforcement function” or “police-like power” therefore they argued that it should be specified as one, and that serious complaints and incidents arising from surveillance activity by BIA officers and officials should be subject to the same degree of independent investigation. However, respondents suggested that caution should be exercised in relation to:

- disclosure rules surrounding interviews carried out in accordance with the requirements of the Police and Criminal Evidence Act 1984 (PACE) perhaps requiring a comprehensive supplementary communication strategy; and
- *“the gravamen of a complaint about RIPA activity may principally engage Article 8 of the European Convention on Human Rights and may not trigger any of the proposed mandatory referral criteria. IPCC functions in this area will have greater value if activity under RIPA is pegged to its own mandatory referral criterion, such as a serious intrusion into privacy”.* (Legal profession organisation).

QUESTION 2B

WOULD YOU LIKE TO SEE ANY OTHER ENFORCEMENT FUNCTION ADDED TO THOSE LISTED IN THE REGULATIONS?

Table 3 Question 2b Responses

Response	Number of Respondents
Yes	6
No	3
Unsure	2
No response, and no comment	2

One respondent proposed that electronic tagging be added to the list of enforcement functions. Other respondents did not suggest additional enforcement functions to be added, rather, they stated that the IPCC remit should be extended to all of those acting on behalf of the BIA to carry out detention and removal processes, including privately contracted staff.

Other respondents saw no reason why basic police powers should be granted to an independent body set up to handle complaints and there was no need to carry out enforcement as stated in the Act.

One respondent also argued that the IPCC should have oversight of cases arising from the non-exercise of the powers where the failure to use the power was inappropriate.

QUESTION 3

THE REGULATIONS WILL SPECIFY THAT CERTAIN CATEGORIES OF INCIDENTS MUST BE REFERRED TO THE IPCC. ARE THERE ANY OTHER CATEGORIES WHICH SHOULD BE INCLUDED?

Table 4 Question 3 Responses

Response	Number of Respondents
Yes	6
No	4
Unsure	1
No response, and no comment	2

Six respondents indicated that other categories should be included. Most proposed the inclusion of “self-harm” incidents. Respondents stated that incidents of self harm are rising year by year and inclusion would ensure *“that the categorisation of such incidents is properly verified and that any treatment of the person that led to the self-harming behaviour is identified.”* (Legal profession organisation).

Despite overall support for mandatory referrals, many organisations had concerns regarding the ambiguity around the decision-making in such a process, namely, how an incident would be classed as “serious” and who would be responsible for this decision. Further, some respondents felt that repeated occurrences of the same type of complaint against the same team within the BIA should be referred to the IPCC even if the type of complaint is not covered by the mandatory referral criteria.

QUESTION 4

SHOULD THE IPCC HAVE THE POWER TO DIRECT THE POLICE TO INVESTIGATE CERTAIN BORDER AND IMMIGRATION AGENCY CASES?

Table 5 Question 4 Responses

Response	Number of Respondents
Yes	9
No	1
Unsure	1
No response, and no comment	2

Table 5 shows that the majority of the organisations were in support of the IPCC having the power to direct the Police to investigate certain BIA cases. Reasons for support included:

- it would enable flexible working methods.
- it would be appropriate in certain situations and cases (particularly when there are serious criminal allegations or incidents such as trafficking or corruption).
- it is imperative that allegations of criminal offences are formally reported to the police and formally recorded so that they can be handled properly.

One respondent was not in support as they felt *“this could be construed as a conflict of interest.”* (Refugee welfare organisation).

Finally, one respondent was unsure and suggested that as the Police and the BIA work closely together, *“there may be questions as to whether such an investigation would be objective and independent.”* (Refugee welfare organisation).

QUESTION 5

THERE WILL BE A WORKING CONVENTION THAT STATES THAT NO COMMISSIONER WITHIN THE IPCC WHO HAS ANY CONNECTION WITH 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?

Table 6 Question 5 Responses

Response	Number of Respondents
Yes	4
No	2
Unsure	2
No response, but commented	1
No response, and no comment	4

Respondents had mixed views about this question. Those that answered ‘yes’ commented:

“The process can only be effective if conflicts of interest are avoided in a proactive way” and “it may be appropriate to address this issue as a schedule to the regulations.” (Enforcement organisation).

Both organisations that answered ‘No’ were supportive of a working convention rather than regulatory requirements. They stated that this would be “appropriate” and “satisfactory”. However they differed over whether there should be regulatory exclusions.

Two areas that caused concern for some respondents were that regulation may lead to the potential for delays and that there needs to be clarity regarding who would and would not be included in the restrictions.

QUESTION 6

DO YOU AGREE WITH THE RIGHTS OF APPEAL?

Table 7 Question 6 Responses

Response	Number of Respondents
Yes	4
No	4
Unsure	2
No response, and no comment	3

Respondents in support of the proposed rights of appeal felt that the proposals are rational and coherent. They agreed that there should be an independent appeal mechanism built into the process.

Respondents described various reasons why they did not agree with the rights of appeal. The main issues raised were the need for a right of appeal in relation to the non-recording of a complaint by a BIA officer or official.

One organisation answered ‘no’ and explained that they did not agree with the rights of appeal in its current state. While they agreed with general issues such as the right to appeal against the outcome of a local or supervised investigation being included in the regulations, and that complainants should not have the right of appeal against the local resolution of complaints, they argued that complainants should have the right to appeal directly to the IPCC in relation to the non-recording of a complaint.

Two organisations were unsure because, although they felt the appeal process is reasonable, in practice they felt it might not be workable and there must be more avenues to appeal a decision. Another respondent reflected the concerns of matters referred by BIA investigation stating that *“there must be clear guidelines regarding how a complainant can appeal to the BIA’s internal complaints and investigations team and how this appeal will be considered.”* (Refugee welfare organisation).

QUESTION 7

IS THE PROTOCOL REGARDING THE REMOVAL OF COMPLAINANTS A SUITABLE WAY OF ADDRESSING THE ISSUES REFERRED TO IN PARAGRAPH 2.20 [OF THE CONSULTATION DOCUMENT]?

Table 8 Question 7 Responses

Response	Number of Respondents
Yes	2
No	7
Unsure	3
No response, and no comment	1

Generally, respondents did not consider the protocol a suitable way to address the issues. The consensus of opinion was that the IPCC should have the power to instruct the BIA to delay the removal of a complainant or witness as a statutory right. Reasons given included:

- that the IPCC role could be undermined if the BIA were able to refuse to delay a removal.
- case-by-case assessments have *“too often led to unchallengeable decision making”*. (Detainee welfare organisation).
- investigations may be severely hampered without a statutory right to delay removal.

“It would be a matter of grave concern were people to be spirited away from the jurisdiction before there was a chance for the IPCC to investigate their complaints or take the testimony of witnesses”. (Legal profession organisation).

Those who were unsure felt that inclusion may exacerbate the length of investigations and, would lead to a higher workload for some.

Two organisations felt that a protocol would be an appropriate way to address these issues. Notably the IPCC stated *“The Commission believes it will be appropriate to enter into an agreement with BLA rather than to include a provision within the regulations. The Commission notes that those adversely affected by conduct will be able to complain to the IPCC irrespective of their country of residence.”*

QUESTION 8A

DO YOU THINK THE REMIT OF THE IPCC IN RELATION TO THE EXERCISE OF ENFORCEMENT FUNCTIONS BY BORDER AND IMMIGRATION AGENCY OFFICERS AND OFFICIALS IS CLEARLY EXPLAINED / WILL BE CLEARLY UNDERSTOOD?

Table 9 Question 8a Responses

Response	Number of Respondents
Yes	1
No	7
Unsure	3
No response, but commented	1
No response, and no comment	1

Overall, respondents felt the remit was not clearly explained and/or would not be clearly understood. One reason for this was use of the word “serious”; respondents felt any complaint of assault should be referred to the IPCC. The lack of clarity regarding the inclusion of private contractors and detention centres, cross-border continuity, and the difficulty in assessing whether a case falls within the criteria, were also areas of concern.

Some suggestions to improve clarity included:

- the IPCC should assess why the rate of complaints against the BIA has been low, and take positive action to remove any obstacles to the complaints procedures.
- all material should be translated so that it is easily accessible to immigrants.
- the provision of further detail in the legislation or in an accompanying set of guidance notes as to what Parliament’s intention is in legislating in this area.
- further clarification of jurisdictional responsibilities of the Prison and Probation Ombudsman and Parliamentary and Health Service Ombudsman.

QUESTION 8B

HOW IS THE REMIT OF THE IPCC IN RELATION TO THE EXERCISE OF ENFORCEMENT FUNCTIONS BY BIA OFFICERS AND OFFICIALS 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.

Table 10 Expected Effectiveness of Communication Methods

	A lot	A little	Not at all	Unsure	No response	No response but commented
Postal leaflet	5^a	1	1	0	5	1
Email leaflet	2	4	1	0	5	1
Workshops	6	0	1	0	5	1
Presentations	5	1	1	0	5	1

^a Expected Effectiveness of Communication Methods

Organisations indicated that workshops, presentations and postal leaflets would be the most effective tool in communicating information (see Table 10). An email leaflet was considered to be slightly less effective in communicating this information.

A few legal profession organisations felt that a clear and comprehensive IPCC website would be sufficient for them to advise their clients appropriately.

QUESTION 8C

ARE THERE ANY OTHER OPTIONS THAT YOU FEEL WOULD BE EFFECTIVE IN COMMUNICATING THIS INFORMATION? PLEASE GIVE DETAILS BELOW AND RATE EFFECTIVENESS.

Respondents made the following additional suggestions for the effective communication of information; each was rated by respondents as “a lot” effective.

- IPCC and BIA representatives should work with refugee community forums and organisations to arrange workshops and presentations that also covered the complaints process for cases falling outside the mandatory criteria.
- All information must be translated and written for the target audience.
- Full and accurate information should be supplied to the legal profession and support agencies so they can provide suitable and accurate advice to clients.
- Establish an Advisory Group of Stakeholders to track how procedures are working in practice and inform members of progress and issues as they arise.
- BIA senior management should develop a comprehensive communications strategy to ensure all employees are aware of the regulations and supported in the event of a complaint, including a 24-hour helpline for employees.

Confidential advice lines, operating in different languages, were also suggested to assist those that would otherwise struggle with written materials. The respondent did not rate the expected effectiveness of this however.

Finally, in presenting information to stakeholders, respondents stated the importance of differentiating between the arrangements in England and Wales, Northern Ireland and Scotland.

MAIN ISSUES

In principle, most respondents were very supportive of the extension of the IPCC's oversight to include the Border and Immigration Agency:

"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." (Refugee welfare organisation).

MEASURES TO ENSURE EFFECTIVENESS

A number of measures were identified by respondents which they consider important in maximising the effectiveness of the Regulations.

RESOURCES DIRECTED AT ENSURING POTENTIAL COMPLAINANTS UNDERSTAND THE IPCC'S REMIT

Some respondents emphasised the need for materials to be directed towards people with no legal representation. They suggest various locations for information, such as within the detention estate; in the Asylum Screening Unit; in all BIA offices; in all reporting centres; in all accommodation provided by the Home Office; and working with the Prisons Ombudsman to ensure that people are fully informed.

MATERIALS PROVIDED IN VARIOUS LANGUAGES

Respondents highlighted that complainants are unlikely to be fluent in English; therefore, to communicate their rights effectively, all material must be translated.

FULLY INFORM LEGAL PROFESSIONS AND SUPPORT AGENCIES

A number of respondents discussed the need for the legal professions and support agencies to be fully informed so that they can provide accurate and appropriate advice to immigrants and asylum seekers. This information would need to take account of any differences across the UK.

ADVISORY GROUP OF STAKEHOLDERS

Respondents proposed that an Advisory Group of Stakeholders (which should include refugee community organisations) should be set up. This could provide support and feedback to the IPCC on

implementation to ensure that the procedures are meaningful and effective.

OTHER ISSUES TO BE ADDRESSED OR CLARIFIED

A number of concerns, and areas to be addressed or clarified were prevalent throughout the consultation responses.

JURISDICTION EXTENDED TO COVER ALL CONTRACTED STAFF

Most organisations felt it would be appropriate to extend the oversight of the IPCC to include all private contractors connected to immigration enforcement.

SPEED OF PROCEDURES AND STATUTORY RIGHT TO DELAY REMOVAL

Most respondents highlighted the difficulties imposed due to the speed with which many complainants or witnesses are removed from the UK, potentially impeding any thorough or meaningful investigation. Some respondents felt that the proposed regulations do not go far enough to address the issue of complainant removal, and stated that the IPCC must have a statutory right to delay any such removal.

SENSITIVITY TO VULNERABILITY

Linked with the language barriers highlighted above, many respondents discussed cultural differences, vulnerability, and disempowerment of immigrants and asylum seekers and stated the need for sensitivity to be paramount in any dealing with complainants, particularly with families, or where the complainant claims to have been a victim of torture overseas, etc.

CROSS-BORDER CONCERNS

Many organisations had serious concerns over the lack of consideration given to achieving parity between the arrangements outlined for England and Wales, and those in Scotland and Northern Ireland. In particular, they commented on the cross-border activity of the BIA and that individuals are regularly transported between places of detention in Northern Ireland, Scotland and England; however, there is no detail regarding effective arrangements to account for this.

