

European Partners Against Corruption/
European contact-point network against
corruption

POLICE OVERSIGHT PRINCIPLES

These principles and standards are intended to be aspirational rather than legally binding on organisations. They recognise that there are many different approaches across the world and are thus intended to be responsive to the legal and policy frameworks in place in individual countries and organisations. At the same time, they are based upon our common understanding and our recommendation that these principles and standards may ultimately be supported by our legal systems.

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Part 1 - BACKGROUND

1.1 Vision for the principles

1.1.1 The European Police Oversight Principles have been developed to provide a model of effective police oversight that organisations and governments working in Europe can aspire to.

The principles build on good practice from police oversight bodies already working in Europe, judgments from the European Court of Human Rights, and thinking from the Council of Europe Commissioner on Human Rights, and echo the sentiment of the Commissioners' latest opinion published in March 2009 'concerning independent and effective determination of complaints against the police'.

The Working Group is fully aware and would like to stress the fact that these principles are based on the status quo of jurisprudence and cannot cover future developments.

In this opinion, the Commissioner, Thomas Hammarberg notes that: "An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service. Independent and effective determination of complaints enhances public trust and confidence in the police and ensures that there is no impunity for misconduct or ill-treatment. A police complaints system should be understandable, open and accessible, and have positive regard to and understanding of issues of gender, race, ethnicity, religion, belief, sexual orientation, gender identity, disability and age. It should be efficient and properly resourced, and contribute to the development of a caring culture in the delivery of policing services."

Over the last thirty years there has been a significant increase in the powers given to police officers and other law enforcement officials both to combat organized crime, corruption and terrorism. As police powers have increased so too has the expectation that police services will conform to principles of democracy, accountability and respect for human rights; namely, as written in the Preamble to the United Nations Code of Conduct for Law Enforcement Officials - 'every law enforcement agency should be representative of and responsive and accountable to the community as a whole'.

These principles are intended to be applied by bodies performing a police oversight role. The principles are not intended to apply to members of the judiciary, carrying out judicial functions.

These principles are intended to be aspirational rather than legally binding on organisations. The principles recognise that there are many different approaches to police oversight across the world and are intended to be responsive to the legal and policy frameworks in place in individual countries and organisations.

1.1.2 The principles should in turn promote:

- the highest standards in policing;
- respect for the rule of law and human rights in all policing activities;

- greater public confidence in policing;
- proper systems of accountability for police officers and other law enforcement officials;
- effective redress for those who are victims of police misconduct;
- greater openness and understanding of policing by citizens;
- systems to ensure that lessons are learnt from incidents and errors;
- greater respect for the law, policing and as a consequence reductions in criminality and disorder.

1.2 Membership of the working group

At the sixth EPAC Annual Conference in Budapest, Hungary in 2006 a working group was set up to develop minimum standards for public organisations involved in the independent oversight of policing. This work then led to the creation of what are now known as the European Police Oversight Principles.

1.2.1 The working group is chaired by:

- Independent Police Complaints Commission (IPCC), ENGLAND AND WALES

1.2.2 The current membership of the working group includes:

- Federal Bureau for Internal Affairs (BIA), predecessor organization of the Federal Bureau of Anti-Corruption (BAK), AUSTRIA
- Standing Police Monitoring Committee (Comite P), BELGIUM
- Garda Síochána Ombudsman Commission (GSOC), REPUBLIC OF IRELAND
- Norwegian Bureau for the Investigation of Police Affairs, NORWAY
- Inspectorate General of the Internal Administration (IGAI), PORTUGAL
- Police Complaints Commissioner for Scotland (PCCS), SCOTLAND
- Inspectorate of Personnel and Security Services, SPAIN
- National Police Board, Division for Inspections, SWEDEN

1.3 Definitions

1.3.1 Police / Policing

This term includes law enforcement officials. The Commentary to Article 1 of the United Nations' Code of Conduct for Law Enforcement Officials defines this term to include all officers of the law, who exercise police powers, especially the powers of arrest or detention. Note also that "The definition of "law enforcement officials" shall be given the widest possible interpretation", Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN resolution 1989/61, May 24th.

These principles do not intend 'law enforcement officials' to include members of the judiciary carrying out judicial functions.

1.3.2 Police Oversight Body

An organisation with a defined statutory responsibility for oversight of aspects of policing. There is no standard form for any such organisation but it should have the necessary independence to carry out its duties and should aspire to have the characteristics described in the principles.

1.3.3 Policing powers

Powers which could include the power to use force, to search, arrest, detain, maintain public order or initiate criminal proceedings.

1.3.4 Oversight

The expressions “oversee” and “oversight” are used to summarise the proper activities of public organisations subject to these principles.

1.3.5 Misconduct

Used in the Principles to include behaviour which breaches codes of conduct and which may be subject to disciplinary action and or behaviour that breaches the criminal law and may lead to prosecution in a criminal court.

1.4 Further information

The working group secretariat, hosted by the Independent Police Complaints Commission, can be contacted by emailing international.liaison@ipcc.gsi.gov.uk.

Part 2 – OPERATION OF A POLICE OVERSIGHT BODY

2.1 A complaints system / police oversight body

2.1.1 The main aims of a police complaints system are to:

- (i) address the grievances of complainants;
- (ii) identify police misconduct and, where appropriate, provide evidence in support of criminal proceedings, disciplinary proceedings, or other management measures;
- (iv) provide the police with feedback from members of the public who have direct experience of police practice;
- (v) facilitate access to the right to an effective remedy for a breach of a European Convention on Human Rights (ECHR) right as required under Article 13 of the ECHR;
- (vi) prevent police ill-treatment and misconduct;
- (vii) in association with the police and other regulatory bodies, set, monitor and enforce policing standards;
- (viii) learn lessons about police policy and practice. *¹

2.1.2 A police oversight body should have responsibility for the investigation of complaints in which Article 2 or 3² of the ECHR is engaged; or when an issue of criminal culpability arises. In addition, the police should be able to voluntarily refer complaints to the police oversight body.*

2.1.3 A police oversight body should also have the power to independently investigate Article 2 matters where no formal complaint has been made.³

2.1.4 A police oversight body should have the power to call in any matter for investigation where it is considered to be in the public interest to do so

2.1.5 A police complaints system should operate in addition to, and not as an alternative to criminal, public and private legal remedies for police misconduct.*

2.2 Organisational Independence

2.2.1 A police oversight body should have the necessary independence to carry out its duties. At least one should ideally not form part of the executive branch of the government and should report directly to Parliament.

¹ Sections marked with a * mirror in full or in part, the opinion expressed by Council of Europe Commissioner for Human Rights, Thomas Hammarberg, concerning independent and effective determination of complaints against the police (published 12 March 2009).

² The Working Group notes that in this context, not enough jurisprudence can be assumed with regard to Article 3 ECHR.

³ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

- 2.2.2** The police oversight body should be sufficiently separated from the hierarchy of the police that are subject to its remit. (Key principle)
- 2.2.3** The police oversight body should be governed and controlled by persons who are not current serving police officers. (Key principle)
- 2.2.4** Each person in charge of governance and control of police oversight body should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services.*
- 2.2.5** Each person in charge of governance and control of police oversight body should have security of tenure and should be initially appointed for a minimum of 5 years. The tenure should last for a maximum of 12 years.
- 2.2.6** The person in charge of governance and control of police oversight body should not be dismissed for decisions or actions taken on behalf of the body.
- 2.2.7** Police oversight bodies should have the freedom to employ former, current or seconded police officers or other law enforcement officials at their discretion where this does not conflict with their operational independence.
- 2.2.8** A police oversight body should in general have the power and competence to, at its own discretion, address the general public and the media about aspects of its work. (Key principle)

2.3 Funding

- 2.3.1** To perform its functions effectively a police oversight body should be provided with adequate finance and resources⁴, and should be funded by the state. (Key principle)

2.4 Competence and responsibilities

- 2.4.1** A police oversight body should be vested with or created to have the competence to oversee the work of police officers.
- 2.4.2** The competence of the police oversight body might also include inspections on the performance of police forces and law enforcement agencies.
- 2.4.3** If the police oversight body has other functions, such as the supervision of prisons or other places of detention, these principles are not intended to necessarily apply to these other functions.

⁴ Paragraph 3(a) of the UN “Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”.

- 2.4.4** The police oversight body's mandate shall be clearly set out in a constitutional, legislative or other formal text, specifying its composition, its powers and its sphere of competence. (Key principle)
- 2.4.5** The police oversight body shall ensure that police officers and other law enforcement officers subject to investigation themselves are treated fairly, objectively and that their human rights are properly respected.

2.5 Investigative powers

- 2.5.1** The police oversight body's investigators must be provided with the full range of police powers to enable them to conduct fair, independent and effective investigations, in particular the power to obtain all the information necessary to conduct an effective investigation.⁵ (Key principle)
- 2.5.2** The police oversight body shall have adequate powers to carry out its functions and where necessary should have the powers to investigate, to require an investigation or to supervise or monitor the investigation of:
- (i) serious incidents resulting from the actions of police officers;
 - (ii) the use of lethal force by police officers or law enforcement officials and deaths in custody;
 - (iii) allegations that police officers or law enforcement officials have used torture or cruel, inhuman or degrading treatment or punishment; or
 - (iv) allegations or complaints about the misconduct of police officers or law enforcement officials.
- (Key principles)

2.6 Raising awareness about the police oversight body's work

- 2.6.1** Police oversight bodies and the police should proactively ensure that members of the general public are made aware of the role and functioning of the oversight body, and their right to make a complaint. (Key principle)

2.7 Stakeholder engagement

- 2.7.1** Police oversight bodies should be representative of a diverse population and make arrangements to consult with all key stakeholders. These include complainants and their representatives, police services and representative staff associations, central and local government departments with policing responsibilities, prosecutors, community organisations and NGOs with an interest in policing.*

2.8 Customer satisfaction

⁵ Paragraph 3(a) of the UN "Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

- 2.8.1** The police oversight body should undertake regular surveys of complainant satisfaction and the individuals subject to complaints or investigations to help the body address any deficiencies in policy and practice and to help improve the experiences of those coming into contact with them.

2.9 Working with other agencies locally, nationally or internationally

- 2.9.1** Working with oversight bodies locally, nationally, or internationally is a good way of enabling oversight bodies to capture lessons learned from other organisations undertaking similar roles which can be used to drive improvement in their own organisations.

Part 3 – THE COMPLAINTS SYSTEM

3.1 Making a complaint

3.1.1 There are five principal types of complaint about the conduct of a police officer concerning allegations of:

- (i) misconduct from which issues of criminal culpability arise;
- (ii) violation of a fundamental human right or freedom;
- (iii) misconduct from which issues of disciplinary culpability arise
- (iv) poor or inadequate work performance; and
- (v) unsatisfactory service delivery or performance. This might be the result of a policy or practice rather than misconduct on the part of an individual officer.

3.1.2 A person that falls into any of the categories below should be allowed to make a complaint direct to the police force in question or to the police oversight body:

- (i) Any member of the public who alleges that police misconduct was directed at them.
- (ii) Any member of the public who alleges that they have been adversely affected by police misconduct, even if it was not directed at them.
- (iii) Any member of the public who claims that they witnessed misconduct by the police.
- (iv) A person acting on behalf of someone who falls within any of the three categories above, for example, a member of an organisation who has been given written permission.

3.1.3 The police oversight body should also develop mechanisms to enable police officers to report wrongdoing involving colleagues or other officers which they may witness.

3.1.4 The police oversight body should also develop a mechanism to allow for a complaint not to be investigated where it is repetitious or vexatious. The police oversight body should retain oversight of the police or law enforcement agency's application of this mechanism.

3.2 Access to the complaints system

3.2.1 A police oversight body should ensure that it takes all reasonable steps to make the general public aware of its role⁶. Promotional material should be made available at places where potential complainants are likely to gather or seek information.

⁶ See also the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN resolution 1989/61, May 24th, paragraph B3.

- 3.2.2** Information for the public should be used to explain how the police oversight body works; how members of the public can complain; and to explain the outcomes they can expect. All publications must be easy to obtain, and written in plain language.
- 3.2.3** Whilst accessibility to the complaints system will vary depending on the size, location and remit of the police oversight body, complainants must be given as many ways of making their complaints as is practically possible within the confines of the law. A police oversight body at all times should have access to records of complaints held by police.
- 3.2.4** Access to the police complaints system, either by the complainant or his or her nominated representative, may be by a number of methods, including*:
- (i) in person at police premises, either on the occasion that gave rise to the complaint or subsequently;
 - (ii) by telephone call to the police or the police oversight body;
 - (iii) by facsimile to the police or the police oversight body;
 - (iv) by letter to the police or the police oversight body; or
 - (v) electronically, by email or the World Wide Web, to the police or the police oversight body.
- 3.2.5** Complainants should be able to nominate a legal representative, or third party of their choice to act on their behalf in all aspects of their complaint.
- 3.2.6** The police oversight body should provide the complainant with any additional support that they may require to make their complaint or be involved in the complaints process (including for example the use of a foreign language interpreter or advocate if this is required).
- 3.2.7** Complainants should be given a clear explanation of the criteria for accepting complaints and a step-by-step guide detailing how they will be addressed, and the standard of service and outcomes they might receive. (Key principle)

3.3 Communication with the complainant

- 3.3.1** Police oversight bodies should develop standard methods of responding to complainants, which will be appropriate in most situations and encourage consistency. The complainant should be consulted and kept informed of developments throughout the handling of his or her complaint.⁷
- 3.3.2** The complainant should be informed of the resolution of his or her complaint. (Key principle)
- 3.3.3** Oversight bodies should regularly check how easy complainants find it to access their services, for example, by issuing customer satisfaction surveys and by consulting focus groups.

⁷ Edwards v UK (Application no. 46477/99), 14 March 2002.

3.4 Proportionality in handling

- 3.4.1** All complaints provide police services with opportunities to learn lessons which serve as important indicators of police performance and accountability to the community.*
- 3.4.2** Throughout the complaint-handling process, there should be enough flexibility to allow each complainant to feel that they are being treated as an individual and that the complaint will be dealt with on its own merits.
- 3.4.3** It represents a better outcome for a complainant and the organisation overseen if issues that arise can be resolved as quickly as possible. Where it is not appropriate for the complaint or matter to be referred back to the organisation for local resolution, the methods used by the oversight body to examine or investigate a complaint should be suited to the nature of the issue arising.
- 3.4.4** Where a relatively uncomplicated misunderstanding or breakdown in communication between a police officer and member of the public gives rise to a complaint it may not be necessary for the police or police oversight body to undertake a lengthy and expensive investigation. Moreover, investigation is unlikely to meet the complainant's expectation that their uncomplicated complaint will be quickly resolved in a simple and straightforward manner. The oversight body should make provision for such complaints to be resolved through mediation or a less formal mechanism.*
- 3.4.5** Examples of how a complaint may be satisfactorily resolved in a timely fashion with the agreement of the complainant include:
- (i) by letter to the complainant by a senior police officer providing an account for the action complained of and, if appropriate, an apology;
 - (ii) by meeting between the complainant, with nominated representative present, and a senior police officer;
 - (iii) by offer of an ex gratia payment; or
 - (iv) by arrangement of a meeting between the complainant and the officer complained against, with representatives present if requested, convened by a senior police officer or an independent mediator.
- 3.4.6** A complainant should have the right to challenge the way in which his or her complaint was handled or resolved through a right of appeal to the police oversight body. (Key principle)

Part 4 – EFFECTIVE INVESTIGATION

4.1 Adequacy of the investigation

4.1.1 For the investigation into death⁸ or possible ill-treatment to be effective, it is considered important that the persons responsible for carrying it out would be independent from those implicated in the events. It is important to ensure that the officials concerned are not from the same service as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent from the agency implicated.⁹ * (Key principle)

4.1.2 Requirements of a thorough and comprehensive police complaints investigation include*:

- (i) undertaking a prompt investigation¹⁰ to avoid loss of crucial evidence which could undermine the process¹¹ and pose a threat to public confidence.
- (ii) taking a full and accurate statement from the complainant covering all of the circumstances of their complaint¹²;
- (iii) making reasonable efforts to trace witnesses, including members of the public¹³ and police officers¹⁴, for the purpose of obtaining full and accurate statements¹⁵;
- (iv) where issues of criminal culpability may arise, interviewing police officers accused or suspected of wrongdoing as a suspect entitled to due process safeguards¹⁶, and not allowing them to confer with colleagues before providing an account;
- (v) making reasonable efforts to secure, gather and analyse all of the forensic¹⁷ and medical evidence¹⁸;
- (vi) pursuing lines of inquiry on grounds of reasonable suspicion and not disregarding evidence in support of a complaint¹⁹ or uncritically accepting evidence, particularly police testimonies²⁰, against a complaint²¹;
- (vii) investigating complaints of police discrimination or police misconduct on grounds of race²², ethnicity, religion, belief, gender, gender identity, sexual orientation, disability, age or any other

⁸ Ramsahai v The Netherlands, Grand Chamber, 15th May 2007.

⁹ See paragraph 41 of the Preface of "The CPT Standards" CPT/Inf/E (2002) Rev. 2006).

¹⁰ Ognyanova v Bulgaria (Application no. 46317/99), Judgement 23 February 2006.

¹¹ Aydin v Turkey (Application no. 57/1996/676/866), Judgement 25 September 1997.

¹² Cobzaru v Romania (Application no. 46317/99), Judgement 26 July 2007.

¹³ Ognyanova v Bulgaria (Application no. 46317/99), Judgement 23 February 2006.

¹⁴ Velikova v Bulgaria (Application no. 41488/98), Judgement 18 May 2000.

¹⁵ Assenov v Bulgaria (90/1997/874/1086), Judgement 28 October 1998.

¹⁶ Ramsahai v the Netherlands (Application no. 52391/99), Judgement 15 May 2007.

¹⁷ Ramsahai v the Netherlands (Application no. 52391/99), Judgement 15 May 2007.

¹⁸ Aksoy v Turkey (100/1995/606/694), Judgement 18 December 1996.

¹⁹ Aydin v Turkey (57/1996/676/866), Judgement 25 September 1997.

²⁰ Kaya v Turkey (158/1996/777/978), Judgement 19 February 1998.

²¹ Cobzaru v Romania (Application no. 48254/99), Judgement 26 July 2007.

²² Nachova v Bulgaria (Application nos. 43577/98 and 43579/98), Judgement 6 July 2005.

grounds; and in recognition of the difficulties involved in proving discrimination investigators have an additional duty to thoroughly examine all of the facts to uncover any possible discriminatory motives²³.

- 4.1.3** In the five principles of effective complaints investigation, drawn from European Convention on Human Rights case law: “the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible.”
- 4.1.4** The police oversight body must ensure that a complainant, member of the public adversely affected or the relative of someone who has died following contact with police officers or law enforcement officials is involved in the process to the extent necessary to safeguard his or her legitimate interests²⁴. (Key principle)
- 4.1.5** Adherence to the rule of law requires that a complaints investigation into the conduct of an officer must be carried out in accordance with the same procedures, including safeguards for the officer complained against, that apply for a member of the public suspected of wrongdoing.*

4.2 Discipline

- 4.2.1** Where appropriate the police oversight body should have the power to refer or to recommend referral of allegations of misconduct by police officers or law enforcement officials to the body or bodies with the competence to take disciplinary action or to take those steps itself. (Key principle)

4.3 Prosecution

- 4.3.1** Where appropriate the police oversight body should have the power to refer or to recommend referral of allegations of misconduct by police officers or law enforcement officials to the body with the competence to prosecute criminal offences or the power to carry out that prosecution itself. (Key principle)

4.4 Recommendations

- 4.4.1** The police oversight body should have the power to submit to the government, parliament and/or other competent body, opinions, recommendations, proposals and reports on matters within its competence and to make recommendations designed to improve policing or other law enforcement activities and to try to ensure that any wider lessons are learnt

²³ Nachova v Bulgaria (Application nos. 43577/98 and 43579/98), Judgement 6 July 2005.

²⁴ See paragraph 36 of Chapter IX, Combating Impunity, of “The CPT Standards” CPT/Inf/E (2002) Rev. 2006. See also the ECHR case of Jordon v UK, paragraph 109 and Edwards v UK (2002) 35 EHRR 487 at paragraph 84.

from investigations of alleged misconduct by police officers and law enforcement officials. (Key principle)

- 4.4.2** The police oversight body should have the power to make recommendations designed to improve the processes, procedures and laws for the investigation of alleged misconduct by police officers and law enforcement officials. (Key principle)
- 4.4.3** Where the police oversight body makes recommendations, a mechanism should be in place to ensure that these recommendations are implemented effectively. (Key principle)
- 4.4.4** Whenever recommendations are made to an organisation, the organisation's response should be recorded and the implementation of any recommendations monitored.

4.5 Openness

- 4.5.1** A final letter or report should provide a summary of the facts taken into account, describe the result of the investigation or review undertaken, and where appropriate the reasons for the decisions that have been reached. This material should be sent to the complainant at the completion of the investigation and should also detail what the complainant can do if they are unsatisfied with the outcome. This may also assist them in the private prosecution of their case, thus providing them with an alternative avenue for redress.²⁵ (Key principle)
- 4.5.2** The police oversight body should have the power to publicise the results of any inquiry or investigation undertaken, where appropriate to do so, together with details of any recommendations made and progress on implementing them. Where this material is published it should be easily accessible to the public. (Key principle)
- 4.5.3** Where information cannot be made public, for example where there is an impact on national security, where anonymity needs to be preserved, or where publication works against the public interest, the oversight body needs to be able to justify non-publication in order to maintain public confidence.²⁶

²⁵ See also UN Committee Against Torture case of *Dzemajl v Yugoslavia* CAT 161/00.

²⁶ See paragraph 35 and 36 of Chapter IX, Combating Impunity, of "The CPT Standards" CPT/Inf/E (2002) Rev. 2006.

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