



**IPCC decisions on matters relating to the policing of events at
Orgreave coking plant in 1984**

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Introduction

1. The events at the Orgreave coking plant during May and June 1984 not only marked a critical point in the 1984-5 miners' strike, but also in relationships with, and trust in, the police. As our review makes clear, evidence provided by and on behalf of police at the scene to support charges of riot and unlawful assembly collapsed under cross-examination at court, where key police witnesses were forced to acknowledge that parts of their records either did not fit with video evidence, and/or had been dictated to them.
2. The Orgreave events are, however, part of a wider, more political picture. The National Union of Mineworkers (NUM), and their supporters and lawyers, have always argued, in the context of the miners' strike as a whole, that those events were designed, and indeed orchestrated, so as to inflict a symbolic public defeat on the miners.
3. These wider questions are beyond the remit of the IPCC. They could only be answered if there is a public inquiry or an exercise like the Hillsborough Independent Panel (HIP), which spent nearly three years examining documents relating to the disaster. Nothing in this report precludes such an exercise; indeed the lengthy work done in finding and reading documentation would provide a starting point for it. We have taken time to reach the decisions that are ours to make, and to examine all relevant and existent documentation, because we recognise the seriousness of the allegations and their continuing effect on public confidence in the affected communities.
4. This decision therefore relates solely to whether it is necessary to conduct investigations into individual police officers' conduct at Orgreave. There is little doubt about the seriousness of the allegations: not just whether individual officers perjured themselves, but whether there was a controlling intelligence at senior level, or a systemic integrity issue within the force, that led to evidence being doctored or even fabricated. Representatives of the Orgreave Truth and Justice Campaign (OTJC) have made it clear that they are not primarily concerned with the actions of very junior officers instructed to behave in a certain way, but with those in senior positions who issued the instruction.
5. To seek to determine whether there is sufficient evidence for a referral to the Director of Public Prosecutions of any such systemic failing or conspiracy would involve interviewing hundreds of witnesses, many of whom were relatively junior at the time, in order to determine whether there may have

been a concerted attempt to deceive the public and the courts, and, if so, who may have been principally responsible for that.

6. An IPCC independent investigation into events at Orgreave would be extremely challenging. There is no equivalent of the HIP, pre-examining existing documentation; the Orgreave events involved literally hundreds of police from forces all over the country, most of whom now have no records of who was there. The fact that it has taken us two years to gather and read the existing documentation – which is by no means complete – indicates the scale of the challenge that would be posed by such an independent investigation, alongside the rapidly increasing number of ongoing serious incidents and deaths that we have already undertaken to investigate.

Matters to be considered

7. On 22 October 2012, the BBC broadcast an “Inside Out” documentary and The Guardian newspaper published an article concerning arrests at the Orgreave coking plant during the miners’ strike in 1984.
8. The BBC programme reported allegations that the police used excessive force against miners picketing Orgreave, that officers’ statements were manipulated, and officers gave false evidence in court to justify both this use of force and support charges of unlawful assembly and riot against miners.

[REDACTED]

9. On the same date as the BBC broadcast, the IPCC received a complaint from Mr E alleging: “*criminal conspiracy amongst SYP officers to ensure criminal charges against striking miners following the Orgreave picketing in 1984*”.
10. This complaint was brought to the attention of SYP, who were of the view that Mr E did not meet the definition of a complainant under the Police Reform Act 2002 (PRA).
11. Notwithstanding this, given public concerns, Temporary Assistant Chief Constable Simon Torr (TACC Torr) conducted a review of the material held by SYP relating to the policing of events at Orgreave.

First referral by SYP

12. Following this review, on 14 November 2012, SYP made a voluntary referral to the IPCC regarding allegations of potential criminal offences as follows:
- a) *Perverting the Course of Justice by manipulating the evidence to substitute more serious charges and conspiracy to commit this offence.*
 - b) *Perverting the Course of Justice by instructing officers to complete statements that were not true and conspiracy to commit this offence.*
 - c) *Perverting the Course of Justice by making a statement given in evidence which was not true and conspiracy to commit this offence.*
 - d) *Perjury in Court and conspiracy to commit this offence.*
 - e) *Assault.*
 - f) *Perjury by claiming to be the arresting officer when this was not true.*
 - g) *Misconduct in a Public Office (MIPO).*
13. The referral identified some officers potentially involved in relation to (a) and (b) and (g) but did not identify any officers for (c) to (f).
14. For the purposes of this decision g) has been broken down to g) (i), the allegation that pickets were deliberately encouraged to attend at Orgreave and ushered into the field as a strategy by the police or government so that the NUM could be defeated in a decisive battle; and g) (ii), MIPO relating to matters already identified above. In subsequent correspondence, SYP confirmed that the referral was a recordable conduct referral rather than a complaint referral and that, in their view, although it had been referred voluntarily, the nature of the allegations was such that it met the criteria for a mandatory referral to the IPCC.¹

Second referral by SYP

15. On 20 November 2012, Mr A made a complaint that he was arrested at the rear of Orgreave coking plant, South Yorkshire on 18 June 1984 at 7.40am by two Greater Manchester Police (GMP) officers. He stated that, when he received copies of the police statements, the circumstances of his arrest were incorrect and the arresting officer had been changed to a SYP officer. He complained that this was part of a conspiracy between SYP and GMP.
16. On 27 November 2012, SYP made a second voluntary referral to the IPCC in relation to the complaint made by Mr A.

¹ See annex one for definitions of complaint, complainant, conduct and recordable conduct matters

17. Mr A made a complaint in similar terms to GMP on 20 November 2012.

Application for dispensation by GMP

18. On receipt of the complaint by Mr A on 7 December 2012, GMP made an application to the IPCC under the PRA to dispense with their duty to deal with it, on the grounds that it had been made more than 12 months after the latest incident giving rise to the complaint, and that there had been no good reason for the delay, or injustice may have been caused by the delay.

Other matters brought to the attention of the IPCC

19. The IPCC has also been made aware of several other matters, which could potentially be the subject of complaints or recordable conduct matters in relation to the policing of Orgreave:

E-mails from Mr C

20. On 17 November 2012, Mr C wrote to the IPCC stating that he had been at Orgreave when the events occurred, and witnessed these first-hand. He suggested that an investigation or inquiry should seek evidence from miners, ambulance crews, nurses from Rotherham hospital, police officers and supporting military personnel, and should obtain data from the BBC and “Independent Bodies” in support of an investigation of SYP and other police forces.

21. On 19 November 2012, Mr C sent a further email to the IPCC stating:

“I feel that this very serious incident was brushed under the carpet for 28 years. I together with hundreds of Miners witnessed gross violence and falsehoods perpetrated by the state.

I feel that the National Union of Mineworkers complained at all levels about this violence, the complaints went unheeded.

The Mining Communities and I should be able to assist with this inquiry from the point of view of Decency.

I was tarnished by scurrilous lies and deceit and I feel that I would like to be involved. For the best part of twelve months my community was stopped from leaving our village, and yet the Police Service staged a furious onslaught [sic] at Orgreave.”

Allegations by Mr D

22. On 19 November 2013, Mr D in 1984, wrote to the IPCC and asked that two matters be “taken into consideration”:

- He claimed to have been told by his counsel that there was a “*D Conspiracy file at SYP headquarters*”;
- Concerning his own arrest at Orgreave on 30 May 1984 for obstructing the highway, Mr D claimed he had been told by his counsel that a police officer admitted to him that the arrest had been pre-planned.

Allegations by Mr B

23. In November 2013, another of the miners arrested at Orgreave, Mr B, contacted the IPCC and stated that: *“although much to the credit of British judicial system I was later acquitted, it has always been a matter of some concern that the officers on the day were allowed to fabricate evidence without being brought to task at a later date... ”*.

Allegations by Former Officer 1

24. On 13 December 2014, former Officer 1 emailed the IPCC. He stated that his statement had cleared the miners of the additional offences with which they had been charged. He was asked if he was able to provide any further information about this but has not added significantly to the information contained in his original statement and the email.

25. Former Officer 1’s email does not make an explicit complaint, although he says that his statement had cleared the pickets of the additional offences. His statement is dated 26 June 1985 and the prosecution advised the court that no further evidence would be offered on 17 July 1985. It is not known when his statement was given to prosecution counsel and if it was ever served on the defence. The statement included evidence that it was contrary to guidance to use mounted officers and shield units of officers with truncheons on pickets who were not offering violence at the time. It may have been thought by the prosecution that this undermined the lawfulness of the decision to use mounted officers to clear the area in the “three stage movement to the bridge” (see below) but this is speculative.

Decisions of the IPCC

26. It is now the responsibility of the IPCC to decide how to deal with the referrals, the application for dispensation, and matters raised directly with the IPCC. In making these decisions I have considered the outcome of a review undertaken by the IPCC, a report which is attached at annex one, and the remit of the IPCC under the PRA. I have also reviewed information about the events of Orgreave publicly available in print and broadcast media, and considered the views of the OTJC, the NUM, , the Trades Union Congress (TUC) and the Associated Society of Engineers and Firemen (ASLEF), all of whom have indicated that they believe there should be a public inquiry into the

events at Orgreave, and potentially the miners' strike as a whole. Any decision regarding an inquiry would not be for the IPCC to make, and I therefore restrict my comments to the matters within our remit in this decision. In the event that an inquiry is undertaken at a future date that results in significant findings, the IPCC may need to reconsider the decisions now made.

The IPCC's review

27. The IPCC has undertaken a review to consider:

- a) Whether the matters referred or brought to our attention are complaints as defined under the PRA and IPCC Statutory Guidance applicable at the time. This requires consideration of the nature of the complainant and the complaint.
- b) Regardless of whether a matter is a PRA complaint or not, whether any of the matters are conduct matters.
- c) The scope of the matters referred, likely investigative steps and evidence available, and whether any new evidence has been identified that was not available at the time of the events.
- d) The extent to which matters now raised have been investigated before.

28. In order to conduct this exercise, the IPCC has obtained source material and information dating back to the events in question, 30 years ago. Given the passage of time, some material is apparently no longer available, having been lost or destroyed. However, many thousands of pages of documents, film and photographic material have been considered, obtained from a number of sources including the Sheffield Archives.

29. Considering referrals made so long after the incidents in question poses particular challenges in terms of identifying whether the IPCC has jurisdiction, which versions of the police complaints regime should apply, and what disciplinary standards and criminal legislation applied at the time of the incidents. This has taken some time to consider and the results of our analysis are set out in annex one.

The remit of the IPCC and requirements of the Police Reform Act 2002

30. The IPCC has statutory responsibility for public confidence in the system for handling complaints and conduct matters about the police, as defined in the PRA.

31. In accordance with this statutory responsibility, the IPCC must make a number of decisions in relation to the matters referred to us or brought to our attention:

a) *Is it necessary to investigate, and if so what mode of investigation should apply?*

32. Under paragraph 5 of Schedule 3 of the PRA, where a complaint is referred to the IPCC by a local policing body or chief officer, the IPCC must determine whether or not it is necessary for the complaint to be investigated. Under paragraph 14 of the PRA, the same duty applies in the case of every recordable conduct matter referred to it.

33. There is no statutory guidance regarding necessity to investigate decisions that are necessarily context and fact specific. However, as a first step, the IPCC must consider whether the matter referred is a complaint or conduct matter within the definitions in the PRA and, if it is not, then it is an invalid referral.

34. Where the IPCC decides that an investigation is necessary, under paragraph 15(3) of schedule 3 the Act, the IPCC is required to have regard to the seriousness of the case and the public interest when determining the mode of investigation and therefore the degree of oversight of the investigation to be exercised by the IPCC.

35. Whilst paragraph 15(3) is mandatory when determining the mode of investigation, it is also helpful to consider the seriousness of the case and the public interest, as well as any case specific factors when determining necessity to investigate. I have set out the factors I have taken into account in deciding whether it is necessary to investigate the matters referred to the IPCC in the first and second referrals by SYP below.

b) *Should previous complaints and/or conduct matters be re-opened?*

36. The review has identified that some of the matters now referred to the IPCC may have been previously investigated, at least in part, by forces under the oversight of the IPCC's predecessor, the Police Complaints Authority (PCA). This appears to be the case particularly for allegations of assault, some of which were investigated at the time of the events.

37. The IPCC took over from the PCA on 1 April 2004. The IPCC (Transitional Provisions) Order 2004 sets out a number of transitional arrangements, which included provisions preventing complaints or conduct matters from being recorded by forces if they had previously been subject of an investigation supervised by the PCA or were otherwise dealt with under the previous legislation. This, in turn, had the effect of preventing the IPCC from investigating those matters.

38. In order to allow the IPCC to re-open matters relating to the Hillsborough disaster that had been previously been investigated under the oversight of the PCA, the PRA was amended by the Police (Complaints and Conduct) Act 2012. A new section 28A was inserted into the PRA which gives the IPCC a discretionary power that if “exceptional circumstances” exist to direct that a matter be dealt with under the PRA regardless of the Transitional Order.
39. When debating the introduction of the power in Parliament, Damian Green MP (Minister for Policing and Criminal Justice) stated that the power needed to be “*tightly drawn*” and intended to set a “*high enough bar to prevent all PCA cases from being subject to another investigation.*”
40. Introducing the bill in the House of Lords, Lord Taylor confirmed that exceptional circumstances was a “*high threshold*” which “*must be tightly drawn if we are to avoid the prospect of reopening every old PCA investigation and turning the IPCC into a cold-case review body.*” He went on to say: “*We see this power being used only in truly exceptional cases.*”
41. The IPCC has developed guidance on the application of s28A. This provides that, before reaching a determination that “exceptional circumstances” exist, I must have regard to the following factors (and any others that I consider relevant):
- Overwhelming public interest
 - Unusual gravity of the subject matter
42. If I am satisfied that exceptional circumstances exist, I would then need to consider whether to make a direction under section 28(A). The IPCC guidance provides that, in deciding whether to exercise this discretion, I must have regard to the following factors (and any others I consider relevant) including diversity implications of the decision:
- Resource considerations
 - Purpose/outcome
43. To date, the IPCC has only exercised its discretion under the new power to direct a force to record and refer a matter previously investigated once, in relation to the Hillsborough disaster.

c) *Should an application for dispensation in relation to a complaint received by GMP be granted?*

44. As the complaint by Mr A was brought to the attention of GMP before changes to the PRA were implemented on 22 November 2012, the force was able to apply for dispensation. This process is not available for complaints brought to the attention of the appropriate authority after that date.

45. Under regulation 6 of The Police (Complaints and Misconduct) Regulations 2004 where an appropriate authority considers, before an investigation has started, that no further action should be taken in relation to a complaint, it must obtain agreement from the IPCC for a dispensation. The grounds for applying for dispensation relate broadly to whether it is practicable to continue work on the complaint or if any injustice would arise from dealing with it. They include the ground relied upon by GMP which is that a complaint is out of time. A complaint is considered to be “out of time” if more than 12 months have elapsed between the relevant incident (or the latest incident) giving rise to the complaint and the making of the complaint, and either no good reason for the delay has been shown or injustice would be likely to be caused by the delay. Recordable conduct matters cannot be considered for dispensation.

46. Dispensation applications cannot be made in relation to complaints which must be referred to the IPCC and which have not been referred back². Further guidance is set out in the IPCC’s Statutory Guidance 2010, which was in force at the time of the application, and I have taken this into account in making my decision regarding the application.

d) *Should matters raised with the IPCC not already recorded by forces now be recorded and referred to the IPCC*

47. The IPCC has also been contacted directly by individuals regarding allegations of conduct matters and potential complaints that have not yet been brought to the attention of the forces concerned. The IPCC may request or direct that these matters are recorded by the appropriate authority. It also may request or direct that once recorded, any complaint or recordable matter be referred to it by the appropriate authority. There is no guidance on the exercise of this discretion save for that relating to the definitions of “Complaint” and “Recordable Conduct Matter” set out in the IPCC’s Statutory Guidance 2013, which I have taken into account in making my decision regarding the matters brought to the IPCC’s attention.

² Paragraphs 6 and 7 of Schedule 3 PRA

Decisions

First referral by SYP

Is it necessary to investigate the matters referred?

48. As identified in annex one, there is a lack of clarity as to whether the referral relates to a complaint, or a recordable conduct matter. In practical terms, however, this does not matter since the decision to be made in respect of either is whether the allegations should be investigated. I have considered each allegation below.

a) Perverting the Course of Justice by manipulating the evidence to substitute more serious charges and conspiracy to commit this offence and (g) Misconduct in a Public Office

49. As set out in annex one, the allegations in (a) relate to decisions to charge individuals with riot and unlawful assembly. Our review found that, although there is material to show that non-evidential considerations may have played a part in charging decisions, there is no direct evidence that the IPCC is aware of, through the review or otherwise, of an agreement with the County Prosecutor, Prosecution Counsel or others to manipulate the evidence to substitute more serious charges.

50. Some or all of the matters alleged might equally amount to offences of MIPO (allegation g)(i)). However, this heading has been interpreted to mean that pickets were deliberately encouraged to attend at Orgreave and ushered into the field as a deliberate strategy by the police or government so that the NUM could be defeated in a decisive battle (g) (ii)). There is no direct evidence in the material considered to support this allegation. Limited circumstantial evidence has been put forward, however it is not capable of providing a strong inference.

51. On the evidence thus far considered therefore, there does not appear to be sufficient evidence or material for there to be an indication of any conduct matter against any individual officers in relation to either (a) or (g ii) at this stage. I have therefore determined that an investigation into these matters is not necessary.

52. Should further evidence come to light, it is open to SYP to make a further referral to the IPCC for consideration.

53. Our analysis in annex one suggests that there are indications of conduct matters in respect of matters b) to f) and g)(i) below:

- b) *Perverting the Course of Justice by instructing officers to complete statements that were not true and conspiracy to commit this offence.*
- c) *Perverting the Course of Justice by making a statement given in evidence which was not true and conspiracy to commit this offence.*
- d) *Perjury in Court and conspiracy to commit this offence.*
- e) *Assault.*
- f) *Perjury by claiming to be the arresting officer when this was not true.*
- g) (i) *MIPO relating to matters already identified above.*

54. It therefore falls to me to consider whether it is necessary to investigate the allegations.

Seriousness of the allegations

55. Allegations against the police of perverting the course of justice and perjury are extremely serious, and the additional element of conspiracy to commit these offences alleged by Mr E potentially compounds this. [REDACTED]

[REDACTED]

[REDACTED] There is no direct evidence that senior officers involved in Orgreave conspired to encourage or instruct officers to commit perjury. It is however of particular concern that our review found evidence that the senior officers became aware, after the event, of instances of perjury by SYP officers but did not wish it to be disclosed. [REDACTED]

[REDACTED]

[REDACTED] The unwillingness to disclose evidence of wrongdoing by officers does raise doubts about the ethical standards of officers in the highest ranks at SYP at that time. [REDACTED]

[REDACTED]

56. Through the efforts of the pickets' legal representatives and due legal process, none of the individuals arrested at Orgreave were convicted of the offences, so it cannot be argued that there was a miscarriage of justice that resulted in unsafe convictions. Whilst liability was not admitted, South Yorkshire Police Authority settled civil proceedings brought by 39 of those charged at Orgreave for unlawful arrest and malicious prosecution at a total cost of £425,000 in damages and £100,000 costs.

57. Allegations of assault, whilst also serious, will vary depending on the extent of injury suffered. On the evidence of Officer 3 set out in annex one, the incident on 18 June resulted in 50 pickets and police officers being hurt and 90 arrests. The evidence from hospital records was that more pickets than police officers required treatment. Some of the injuries to pickets were serious, including head injuries, but none appear to have required lengthy hospitalisation. Relatively minor injuries would be classified as common assault (and therefore time barred from prosecution), whilst more significant injuries could be classified as more serious assaults (which would not be time barred).

The public interest

58. One of the difficulties of reviewing this matter is placing the events in their historical context 30 years ago; a time when the Government of the day was locked into a long and bitter industrial dispute with the NUM. The scale of the challenge of policing public protests and pickets over such a long period was significant. At the final confrontation at Orgreave on 18 June it was estimated that 6000 police officers from the majority of UK forces were deployed, equipped with long shields and short shields, together with 42 police horses. The officer in charge on that day, Officer 3 described his objective as being to ensure that the lorries were able to enter and leave the Orgreave coking plant and to uphold the rule of law. The pickets had attended in equal or greater numbers to the 6000 or so police officers. Their wish was to prevent the lorries from entering the plant and leaving laden with coke. The resulting violent confrontation and dispersal of the miners without achieving their aim was one of the defining moments of the miners' strike.

59. In considering whether potential offences were committed by the police and whether there were possible conduct issues, we have to go back to the criminal law as it was and police professional standards as they were in 1984. The police complaints regime of the time was far less developed than it is today. The IPCC's predecessor, the PCA, had only limited powers to supervise certain cases and could not conduct independent investigations. The key issue to consider is whether it would be in the public interest to now investigate matters that occurred 30 years ago, applying the complaints regime as it now stands, using current resources, which would necessarily mean prioritising this over other matters that have occurred more recently and that reflect contemporary concerns about modern day policing. Linked to this is whether it would be in the public interest to investigate new complaints made so many years after the events when, under the current regime, the usual time limit for bringing a complaint is 12 months and the majority of the facts were known at the time. The only significant new evidence obtained by

our review relates to how the force responded to the civil proceedings taken against it, and in particular the apparent desire to settle claims to avoid disclosing evidence that officers may have committed perjury. The fact that the claims were settled and damages paid (with no admission of liability) was of course known at the time.

60. Given the numbers of officers and pickets involved, the scope and cost of an investigation into the matters identified in the first referral would be substantial.

61. An investigation of all the allegations would at the very least involve:

- Recovering photographic, film and video material from individuals and media organisations and seeking to prove it evidentially.
- Tracing and taking statements from so many of the 140 or so persons arrested as are still alive and contactable.
- Tracing and interviewing under caution hundreds of police officers who were involved in arrests and/or gave witness statements.
- Tracing and interviewing under caution police officers involved in using force against pickets. The IPCC's enquiries with police forces have established that there are no longer (if there ever were) accessible lists of the names of officers at Orgreave and the exercise of identifying and tracing them would be substantial in itself.
- Tracing and interviewing witnesses, pickets, police officers not involved in arrests or the use of force, ambulance staff, journalists and persons living nearby. In total there would be in the order of 10,000 potential witnesses.
- Recovering material from county archives outside South Yorkshire, which maybe the repositories of Orgreave material for their local forces.

62. The IPCC has made concerted efforts to locate, recover and review documents, but the material that it has been able to obtain, on its own, cannot give a complete picture of what happened at Orgreave. This contrasts with the position in relation to the Hillsborough disaster where the HIP collected and analysed an immense amount of material.

63. In terms of potential criminal prosecutions, as already noted, the criminal offence of common assault is time barred and it will not be possible to bring prosecutions based on this. Subject to sufficient evidence being obtained it would theoretically be possible to bring prosecutions for other offences not time barred, however it is also noted that some of the alleged assaults and

allegations of perjury were referred to the Director of Prosecutions at the time of the events, who decided that no charges should be brought.

64. Although the defendants were acquitted (or no evidence offered), it does not necessarily follow that there is evidence upon which a jury could be sure that the officers fabricated the evidence or were part of a conspiracy. Obtaining evidence to meet the Crown Prosecution Service's "realistic prospect of conviction" charging standard in the absence of direct evidence or admissions (which seem unlikely) 30 years after the event would inevitably be difficult.
65. Even where there is sufficient evidence for there to be a reasonable prospect of success on an evidential basis, there is the additional hurdle that the defendants in any future trial would inevitably argue that their prosecution should be stayed on the grounds of an abuse of process because of the potential injustice caused by the long delay.
66. The vast majority of officers who were involved will no longer be serving with the police, and whilst it would be open to an investigation to conduct interviews under criminal caution where there is an indication that a criminal offence may have been committed by them, officers could not be compelled to attend for interview in a disciplinary investigation where they are no longer serving.
67. Whilst for some, the impact of the events may be such that they will be able to vividly recall what they saw; the significant passage of time may limit others' ability to recall exactly what happened with accuracy.
68. In respect of potential disciplinary outcomes, whilst an investigation could state whether there was a case to answer for misconduct or gross misconduct it would only be possible to bring disciplinary proceedings against officers still serving with the police, a cohort which is likely to be vanishingly few after this period of time, and similar arguments about abuse of process because of delay may also be brought.
69. I have also considered whether any investigation now conducted could generate learning that could assist the police in improving practice. In my view, whilst of historical interest, any learning identified would have only limited application given the changes to police practice, standards and tactics in public order policing that have already occurred over the last 30 years.
70. In the circumstances, on the evidence thus far available, I have determined that, whilst the allegations are serious, it would not be in the public interest and so is unnecessary to now investigate the remaining matters raised in the first referral.

71. I accept that these arguments can be raised wherever the IPCC is requested to investigate historical allegations, but every case must be assessed on its own facts as to the weight that will be attached to them.

Should previous complaints and/or conduct matters be re-opened?

72. As I have determined above that none of the matters referred need to be investigated, I do not need to consider whether it would be necessary to exercise the discretion under section 28A of the PRA to permit the investigation of matters previously considered by the PCA and caught under the Transitional Order.

Second referral by SYP and application for dispensation by GMP

Is it necessary to investigate the matters referred?

Should an application for dispensation in relation to a complaint received by GMP be granted?

73. The second referral by SYP and the application for dispensation by GMP both relate to a complaint by Mr A that he was arrested at the rear of Orgreave coking plant, South Yorkshire on 18 June 1984 by two GMP officers, but then when he received copies of the police statements, the circumstances of his arrest were incorrect and the arresting officer had been changed to a SYP officer. He complained that this was part of a conspiracy between SYP and GMP.

74. The IPCC has located a record of Mr A's arrest and the statements upon which the prosecution relied for Mr A's committal to the Crown Court for trial. The record of his arrest shows that the arresting officer was Officer 37 from GMP. The statement in the committal bundle describing Mr A's arrest is from the same officer. There is a statement concerning him from an SYP officer, Officer 31 but his only role was to charge him at Rotherham police station. This would appear to contradict Mr A's assertion.

75. GMP have not referred the matter but have instead applied for a dispensation from the PRA on the grounds that the complaint is out of time. A complaint is considered to be "out of time" if more than 12 months have elapsed between the relevant incident (or the latest incident) giving rise to the complaint and the making of the complaint and either no good reason for the delay has been shown or injustice would be likely to be caused by the delay.

76. When asked to provide reasons for his delay in submitting his complaint, Mr A explained, in a letter dated 10 January 2013, that he was advised that he should wait until after his court case before submitting a complaint. When the

case against him was dropped, 14 months later, he was told that it was too late to make a complaint and it was not until some time later that he discovered that he should have complained straight away. He argues that it would be *“a further injustice not to investigate my complaint because I was young, naïve, and following a year on strike did not have any money to seek legal advice. It would make no sense to exclude my complaint while carrying out an investigation into other incidents that occurred at the time. As far as an investigation causing a miscarriage of justice because memories may have faded, this was such a unique and important event that all participants will carry a memory of it to the grave. My arrest was witnessed by several dozen police and several hundred miners.”*

77. Dispensation applications cannot be made in relation to complaints which must be referred to the IPCC and which have not been referred back³. Allegations of Perverting the Course of Justice would satisfy the criteria for mandatory referral to the IPCC⁴. I will therefore advise GMP that the dispensation application is invalid and that they should make a formal referral. However on the present information, my view is that it is not necessary to investigate the complaint referred by SYP and the same considerations would apply, in the absence of new information, to a fresh referral by GMP.

Other matters

Should matters raised with the IPCC not already recorded by forces now be recorded and referred to the IPCC?

78. As set out in annex one, on the evidence available, the matters raised by Mr C, Mr D and Mr B do not amount to recordable conduct, nor do they provide sufficient basis to meet the requirements of being complaints under the PRA, save in so far as they relate to matters already referred by SYP and already considered above. On this basis, my determination is that the forces concerned should not be requested or directed to record the matters as complaints or conduct matters and no further action is therefore required.

³ Paragraphs 6 and 7 of Schedule 3 PRA

⁴ Paragraphs 5 and Paragraph 4(1)(b) of Schedule 3 PRA, (2)(2)(a)(iii) of the P(C&M)Regs 2004 and the 2010 Statutory Guidance para 211

Summary of decisions

79. As set out above there is some confusion or ambiguity about the degree to which legal formalities regarding the recording of complaints and conduct matters have been complied with. Also, some matters have been brought to the IPCC's attention, for instance by Mr D, which have not been recorded or referred by any appropriate authority. The IPCC has the power, where recordable conduct matters come to its attention, whether as the subject matter of an invalid complaint, as a result of a complaint made before 1 April 2004 or otherwise to direct the appropriate authority to record a conduct matter. My decisions in relation to the matters referred to the IPCC or brought to its attention are:

- Insofar as the complaints are correctly recorded, then my decision, in accordance with paragraph 5(1) of Schedule 3 PRA, is that it is not necessary to investigate them.
- Insofar as they have been correctly recorded as conduct matters, then it is my decision, in accordance with paragraph 14 (1) of Schedule 3 PRA, that it is not necessary to investigate them.
- The application for dispensation is invalid and Mr A's complaint should be recorded and referred by GMP. However, on the evidence currently available if it is referred to the IPCC I would determine that it is not necessary to investigate the complaint.
- Insofar as they are matters which have come to my attention, but which are not presently correctly recorded as complaints or conduct matters then, having regard to paragraph 11(5) of Schedule 3 and s28A (4) PRA, I do not direct that they are recorded as conduct matters and, on the information presently available, would determine, in accordance with paragraphs 5(1) and 14(1), that it is not necessary to investigate them if they were correctly recorded and referred either as complaints or conduct matters.

80. Given the passage of time, this has not been an easy matter to consider, and I anticipate that it will come as a disappointment to many of the individuals involved and their supporters. Should further evidence emerge, through an inquiry or otherwise, of any impropriety by any officer, retired or otherwise, then it may be necessary to review the decisions now made.

Sarah Green
Deputy Chair
IPCC
May 2015

