



House of Commons
Home Affairs Committee

Powers to investigate the Hillsborough disaster: interim Report on the Independent Police Complaints Commission

Tenth Report of Session 2012–13



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*Volume I: Report, together with formal
minutes, and written evidence*

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Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

Current membership

Rt Hon Keith Vaz MP (*Labour, Leicester East*) (Chair)
Nicola Blackwood MP (*Conservative, Oxford West and Abingdon*)
James Clappison MP (*Conservative, Hertsmere*)
Michael Ellis MP (*Conservative, Northampton North*)
Lorraine Fullbrook MP (*Conservative, South Ribble*)
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Steve McCabe MP (*Labour, Birmingham Selly Oak*)
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Mark Reckless MP (*Conservative, Rochester and Strood*)
Karl Turner MP (*Labour, Kingston Upon Hull East*)
Mr David Winnick MP (*Labour, Walsall North*)

The following Member was also a member of the committee during the parliament.

Rt Hon Alun Michael MP (*Labour & Co-operative, Cardiff South and Penarth*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom.

Committee staff

The current staff of the Committee are Tom Healey (Clerk), Richard Benwell (Second Clerk), Ruth Davis (Committee Specialist), Eleanor Scarnell (Inquiry Manager), Andy Boyd (Senior Committee Assistant), Michelle Garratty (Committee Assistant, Iwona Hankin (Committee Support Officer) and Alex Paterson (Select Committee Media Officer).

Contacts

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Introduction

1. The Hillsborough disaster is a tragedy that has lived on in the collective memory of this country for over twenty years, largely thanks to the determination of the bereaved families. On 12 September 2012, the Hillsborough Independent Panel suggested that the disaster was worsened, and justice denied, by incompetence, misconduct and criminality among the police forces involved. It is vital that the truth should now be uncovered. Evidence to this Committee has shown that a number of agencies will have to work together closely and quickly to deliver justice. Much of the investigative burden will fall on the Independent Police Complaints Commission (IPCC). **New powers are required for the Commission to examine events that took place before it was created. We support the Government's intention to grant those powers with all haste, in the form of the Police (Complaints and Conduct) Bill.**

2. As the Government notes, the subject matter of the Bill is directly germane to our inquiry into the IPCC.¹ We have been taking evidence on the Independent Police Complaints Commission and on Hillsborough for some time and will be reporting our recommendations on the IPCC in the near future. This short, interim report sets out our views on the Bill, with the intention of informing both Houses in their expedited consideration of the proposals.

The fast-track legislation

3. On 22 November, the Home Secretary introduced legislation—the Police (Complaints and Conduct) Bill—to allow the Independent Police Complaints Commission (IPCC) to investigate the Hillsborough Disaster, announcing that its Parliamentary passage would be expedited. This legislation would provide the IPCC with two new powers:

- To compel individuals serving with a police force, or certain other policing bodies, to attend an interview in relation to any investigation managed or undertaken by the IPCC in the capacity of a witness.
- To investigate matters which were previously investigated by the Police Complaints Authority (the IPCC's predecessor body). This power would only be exercised where the IPCC was satisfied that exceptional circumstances justify its use.

4. It is right that the Independent Police Complaints Commission should have a major role in the investigation of the Hillsborough disaster, to ensure that the forces involved are not responsible for investigating themselves. Our evidence on the Hillsborough disaster and the Commission highlighted gaps in the Commission's powers to investigate old cases and to call officers to interview. We therefore welcome the Bill.

5. The use of fast-track legislation is entirely proportionate in this case. We do note, however, that Clause 1(2) creates a new power for the Secretary of State to make provisions for officers to be required to attend an interview by secondary legislation,

¹ Police (Complaints and Conduct) Bill, Explanatory Notes, section 21

subject to negative procedure. It is right to deal with these detailed provisions by Regulations.

Clause 2: old cases

6. The IPCC has already received referrals from the South Yorkshire Police, West Midlands Police and West Yorkshire Police Authority in relation to Hillsborough—the names of 1,444 former and serving South Yorkshire officers have been passed on as part of its investigation, plus around 1,000 from other forces, and more are yet to come.² At the moment, however, the Commission cannot investigate cases that predate its creation in 2004. The Commission recognised that it does “not have investigative powers over all of the parties referred to in the report”, but expressed its intention to “go forward in the spirit of the [Hillsborough] Panel’s work, to seek to ensure that there is a coordinated approach that can encompass all the issues, agencies and individuals involved, and which liaises closely with the families”.³

7. Clause 2 of the Bill would solve this problem by allowing the Commission, in exceptional circumstances, to investigate a matter which was previously the subject of an investigation by the Police Complaints Authority.⁴

8. The House should be aware, however, that the removal of this hurdle does not guarantee that justice will be done quickly. Lord Falconer and the Hillsborough families expressed their concern that action on this matter could be delayed further if “the IPCC does an investigation, they then refer it to the DPP, who then does another investigation, and it is just more and more of the same”.⁵ It is vital that once this barrier to the Commission’s participation is removed, it does not proceed in its work in isolation. Most of all, it should not start from the beginning again by reinvestigating all aspects of the case. As Jenny Hicks told us, “the main part of co-ordinating it all together is to prevent it being long and drawn out because what we don’t need is another year”.⁶

9. Considerable investigation of this matter has already taken place and the Commission must build on that work, rather than starting again at the beginning. Furthermore, other agencies such as the Crown Prosecution Service and coroners courts will also be undertaking an investigative role and it is vital that an appropriate division of labour is decided quickly to avoid needless duplication of effort and unnecessary delay. We recommend that a single, lead investigator should be identified, with a remit to ensure effective working relationships between the IPCC, CPS and other agencies involved in the investigation.

² Letter from Assistant Chief Constable Andy Holt to Rt Hon Keith Vaz MP, 22 October 2012; HC 494-iv [JANE FURNISS], Q298

³ IPCC, *Decision in response to the report of the Hillsborough Independent Panel*, October 2012

⁴ Article 4 of the *Independent Police Complaints Commission (Transitional Provisions) Order 2004* prevented complaints or other matters from being recorded by forces if they had previously been the subject of an investigation by the Police Complaints Authority.

⁵ HC 622-i, Q 92 [Lord Falconer]

⁶ HC 622-i, Q 99 [Jenny Hicks]

10. The Commission should work with the Crown Prosecution Service to identify new lines of inquiry that need to be pursued in order to bring any criminal charges or disciplinary proceedings that may be necessary. The Home Secretary should take a coordinating role and publish a plan for action, including a realistic timetable for the completion of these investigations, in consultation with the families and the investigating agencies, particularly the Director of Public Prosecutions.

Clause 1: interviews of persons serving with police etc.

11. Our inquiry has shown that the Commission’s inability to call other officers to interview in serious cases is corrosive of public confidence and contrary to the principles of effective investigation.⁷ It can also cause major delays in the Commission’s work. The aftermath of the death of Mark Duggan, when 31 officers refused to be interviewed, is demonstrative of the effect this can have on public opinion. Often officers are interviewed many months after a serious incident—such as a death in custody—if they are interviewed at all. In this time, there is the possibility of crucial evidence being missed, for human memories to falter, and unacceptable scope for officers to agree on a version of events.

12. At present, only officers who are under investigation can be required to attend an interview. Where there is no suspicion of criminal activity and officers refuse to attend an interview, IPCC investigators can only seek the information they need through the submission of written questions to officers via their solicitors or other representatives.⁸

13. Clause 1 would introduce the power to require serving officers, special constables and police staff to attend an interview as a witness. The sanction for non-attendance would be misconduct or gross misconduct proceedings by authority of chief officers under the Police (Conduct) Regulations 2012.

14. At the moment, a police officer could be required to attend an IPCC interview if misconduct is alleged—even for relatively minor matters such as speeding offences—but not if he or she is involved in or witnesses a death or serious injury. It is crucial for public confidence, and for quick and effective investigations, that officers can be compelled to give evidence as witnesses where necessary. We support the principle of Clause 1 and emphasise that it reflects a much wider source of dissatisfaction with the IPCC than the Hillsborough case alone.

15. However, it is important to note that the proposed power does not require an officer to actually give evidence at the interview. As Chief Constable David Crompton of South Yorkshire Police told us, “I cannot force somebody to say something if they are unwilling to do so”.⁹ In effect, it requires the person who is summoned for interview only to be present in the same room as somebody who is putting questions to them.

16. Crucially, because these interviews would not be conducted under caution, it is unlikely that an officer’s decision not to answer questions could constitute admissible evidence in court, nor would it be possible to draw an adverse inference from a decision to offer no

⁷ IPCC 10 [Newham Monitoring Project], section 22

⁸ IPCC 06 [IPCC]

⁹ HC 622-i

comment, if a case were subsequently made against them.¹⁰ This is at odds with the Minister's statement that "clearly the evidence once given [to the IPCC] is there, so it would be admissible".¹¹

17. Commissioner Bernard Hogan-Howe and Chief Constable Mike Cunningham also believed that the powers proposed in the bill would not put in place a mechanism for gathering all the evidence that will be required in the Hillsborough investigation. Mr Cunningham told us that

In terms of the first clause, I have been discussing with the Home Office whether it resolves the issue because, as I mentioned before, I am not sure the first clause, which requires the attendance of officers for interview, resolves the problem that is trying to be solved.¹²

Both officers pointed out that the bill would not apply to former officers. While the IPCC is able to interview retired officers if a criminal offence is suspected, this bill would not provide an avenue for obliging retired officers to attend an interview as witnesses.¹³

18. We welcome the consultations made with chief officers by the Government for this fast-track legislation even though the concerns our witnesses raised have not all been accepted.

19. As only an interview under caution provides officers with the appropriate safeguards in circumstances where there may be criminal or misconduct proceedings, as well as ensuring that any evidence obtained in that interview is admissible in court, police and prosecutors seeking to bring prosecutions will therefore need to make separate arrangements for interviews to be conducted under caution.

20. The Home Office pointed out that the new legal duty would ensure that the IPCC was not reliant on third parties, such as chief officers, to exercise discretion in relation to whether or not an individual attends an interview. However, it may well fall to chief officers to establish a culture of cooperation.

21. Our witnesses suggested that the real failing in the day-to-day work of the Commission was to apply the threshold for interviewing officers under caution too loosely. As it stands, if there is reasonable suspicion of criminal activity, the officers concerned are treated as suspects, compulsive powers exist and interviews are held under caution. This is subject to the test that there is "an indication that a criminal offence may have been committed".¹⁴ A transcript can then be relied upon in court, whether or not an officer actually answers the questions posed.

¹⁰ IPCC 25 [Police Action Lawyers Group]

¹¹ Q 427 [uncorrected transcript]

¹² Q 381 [uncorrected transcript]

¹³ The 1987 Police Pension Scheme allowed officers to retire after 30 years' service, or at age 50 after 25 years' service, so the likelihood is that many of the officers who were serving in 1989 will now have retired. See *Police Pension Scheme: Reform Design Framework* (HM Treasury, September 2012)

¹⁴ Police Reform Act, schedule 3, paragraph 21A

22. Where a member of the public is involved in a serious matter, such as a death, it is standard police procedure for witnesses to be interviewed under caution. However, the IPCC believed that for officers the threshold would not be met in every circumstance “since police officers are lawfully entitled to use lethal force when this is absolutely necessary or in self-defence”.

23. Our witnesses believed that this led to crucial gaps in evidence in serious cases involving police officers. As Campaign4Justice put it “officers should [be] interviewed under criminal caution, just like any other member of the public would [be] [...] But not police officers who seem to operate on a different tier of the criminal justice system”.¹⁵ It believed that the threshold of “an indication that a criminal offence may have been committed” was a necessary safeguard for the rights of officers involved in serious incidents, but that it should be applied more rigorously by the Commission.¹⁶

24. Because the powers created under Clause 1 of the bill would not lead to an interview under caution, there is a danger that this problem could even be exacerbated. Officers’ accounts may still prove to be inadmissible in court if a case were subsequently made against them and, if this power is feted as a remedy to the problem, the IPCC may proceed to interview officers under caution in even fewer cases.¹⁷

25. The IPCC is the appropriate body to take the lead in the investigation into the Hillsborough disaster and should be empowered to do so with all haste. The use of fast-track legislation is fully justified in this case: the Hillsborough families have already waited 23 years for a proper investigation.

26. The prospect that any professional might refuse to answer basic questions about their conduct or actions and how they have lived up to recognised professional standards—especially in cases that may involve criminality—is totally unacceptable. We note that refusal to attend an interview may result in misconduct or gross misconduct proceedings, but that there is no sanction for refusal to answer questions. We expect that chief constables will indicate to their forces that such uncooperative behaviour would be considered to be at odds with the spirit of professional duty.

27. The IPCC should commit to a more rigorous interpretation of the threshold set out in the Police Reform Act so that it becomes the norm that officers are interviewed under caution in the most serious cases—in exactly the same way that members of the public would be. If, after six months, the Commission could not demonstrate a change in practice to the Government then it should consider a legislative remedy, by reforming the threshold established in the Police Reform Act 2002.

28. Given the passage of time since the Hillsborough Disaster, it is likely than many of the officers who were directly involved will by now have retired from the force. The Bill does not provide for former officers to be required to attend an interview and there is the risk that the lack of power to require former officers to attend may hamper the investigation. The Government should monitor this situation closely.

¹⁵ IPCC 07 [Campaign4Justice]

¹⁶ IPCC 08 [Police Federation of England and Wales]

¹⁷ IPCC 07 [Campaign4Justice], section 5

29. We recommend that the House support this bill in its expedited consideration, subject to assurances from the Government that the weaknesses we have highlighted will be addressed, both for the pursuit of justice for the Hillsborough families and for the future effectiveness of the IPCC.

Conclusions and recommendations

Introduction

1. New powers are required for the Commission to examine events that took place before it was created. We support the Government's intention to grant those powers with all haste, in the form of the Police (Complaints and Conduct) Bill. (Paragraph 1)

The fast-track legislation

2. It is right that the Independent Police Complaints Commission should have a major role in the investigation of the Hillsborough disaster, to ensure that the forces involved are not responsible for investigating themselves. Our evidence on the Hillsborough disaster and the Commission highlighted gaps in the Commission's powers to investigate old cases and to call officers to interview. We therefore welcome the Bill. (Paragraph 4)
3. The use of fast-track legislation is entirely proportionate in this case. We do note, however, that Clause 1(2) creates a new power for the Secretary of State to make provisions for officers to be required to attend an interview by secondary legislation, subject to negative procedure. It is right to deal with these detailed provisions by Regulations. (Paragraph 5)

Clause 2: old cases

4. Considerable investigation of this matter has already taken place and the Commission must build on that work, rather than starting again at the beginning. Furthermore, other agencies such as the Crown Prosecution Service and coroners courts will also be undertaking an investigative role and it is vital that an appropriate division of labour is decided quickly to avoid needless duplication of effort and unnecessary delay. We recommend that a single, lead investigator should be identified, with a remit to ensure effective working relationships between the IPCC, CPS and other agencies involved in the investigation. (Paragraph 9)
5. The Commission should work with the Crown Prosecution Service to identify new lines of inquiry that need to be pursued in order to bring any criminal charges or disciplinary proceedings that may be necessary. The Home Secretary should take a coordinating role and publish a plan for action, including a realistic timetable for the completion of these investigations, in consultation with the families and the investigating agencies, particularly the Director of Public Prosecutions. (Paragraph 10)

Clause 1: interviews of persons serving with police etc:

6. At the moment, a police officer could be required to attend an IPCC interview if misconduct is alleged—even for relatively minor matters such as speeding offences—but not if he or she is involved in or witnesses a death or serious injury. It is crucial for public confidence, and for quick and effective investigations, that officers can be

compelled to give evidence as witnesses where necessary. We support the principle of Clause 1 and emphasise that it reflects a much wider source of dissatisfaction with the IPCC than the Hillsborough case alone. (Paragraph 14)

7. We welcome the consultations made with chief officers by the Government for this fast-track legislation even though the concerns our witnesses raised have not all been accepted. (Paragraph 18)
8. As only an interview under caution provides officers with the appropriate safeguards in circumstances where there may be criminal or misconduct proceedings, as well as ensuring that any evidence obtained in that interview is admissible in court, police and prosecutors seeking to bring prosecutions will therefore need to make separate arrangements for interviews to be conducted under caution. (Paragraph 19)
9. The IPCC is the appropriate body to take the lead in the investigation into the Hillsborough disaster and should be empowered to do so with all haste. The use of fast-track legislation is fully justified in this case: the Hillsborough families have already waited 23 years for a proper investigation. (Paragraph 25)
10. The prospect that any professional might refuse to answer basic questions about their conduct or actions and how they have lived up to recognised professional standards—especially in cases that may involve criminality—is totally unacceptable. We note that refusal to attend an interview may result in misconduct or gross misconduct proceedings, but that there is no sanction for refusal to answer questions. We expect that chief constables will indicate to their forces that such uncooperative behaviour would be considered to be at odds with the spirit of professional duty. (Paragraph 26)
11. The IPCC should commit to a more rigorous interpretation of the threshold set out in the Police Reform Act so that it becomes the norm that officers are interviewed under caution in the most serious cases—in exactly the same way that members of the public would be. If, after six months, the Commission could not demonstrate a change in practice to the Government then it should consider a legislative remedy, by reforming the threshold established in the Police Reform Act 2002. (Paragraph 27)
12. Given the passage of time since the Hillsborough Disaster, it is likely that many of the officers who were directly involved will by now have retired from the force. The Bill does not provide for former officers to be required to attend an interview and there is the risk that the lack of power to require former officers to attend may hamper the investigation. The Government should monitor this situation closely. (Paragraph 28)
13. We recommend that the House support this bill in its expedited consideration, subject to assurances from the Government that the weaknesses we have highlighted will be addressed, both for the pursuit of justice for the Hillsborough families and for the future effectiveness of the IPCC. (Paragraph 29)

Appendix 1: Correspondence with the Home Secretary

Letter from the Chair of the Committee to the Home Secretary, 24 October 2012

Hillsborough Independent Panel Report

At its meeting yesterday afternoon, the Committee asked me to write to you, following our evidence session last week with Chief Constable David Crompton, Lord Falconer and the Hillsborough families and the debate in the House on Monday.

As I said in the House, I am very pleased that you were able to meet the families last week to listen to their concerns directly, as they requested in our evidence session. The Committee would like to make a number of points about the way forward and has agreed that, because of the pressing need to avoid any further delay, we should raise them by correspondence, rather than by making a Report to the House.

1. Independent Lead Investigator

The Committee believes that a single, independent investigator should be established to co-ordinate investigations on behalf of the Crown Prosecution Service, the Independent Police Complaints Commissioner and any other public authorities which might have cause to carry out further investigations based on the findings of the Independent Panel. This will, in our view, provide the most efficient, effective and timely basis for further investigation, avoiding unnecessary duplication of effort by multiple agencies, without any further delay. The families suggested to us that the Director of Public Prosecutions might perform such a role, but we can also see the merit in appointing somebody who is wholly independent of all the agencies concerned. This could possibly be done by HM Inspectorate of Constabulary.

2. Power to require individuals to attend an interview

We have already received evidence in the course of our inquiry into the Independent Police Complaints Commission to suggest that its work is sometimes impeded by the lack of any power to compel serving and ex police officers who might have witnessed misconduct or an offence to attend an interview. You suggested to the House that you were considering introducing such a power (HC Deb, 22 October 2012, col. 721). The Committee would welcome this move and stands ready to assist in any way it can with fast-track legislation. It may be that the powers required in this specific context will need to go beyond police officers, to include representatives of the other agencies involved such as the National Health Service and Sheffield City Council.

3. Resources

You and the Prime Minister have already acknowledged the terrible injustice that has been done to the families, who have had to wait 23 years for a full account of what happened to their loved ones. It would be unconscionable if any further delay were to be caused as a result of lack of resources. While the Committee acknowledges the central position of deficit-reduction measures in the Government's overall programme, it is absolutely vital that sufficient resources be made available to any investigation to bring

this matter to a conclusion as quickly as is consistent with the demands of a rigorous investigation and the interests of justice. You should hold an early meeting with the Chair of the IPCC, Dame Anne Owers, and Stephen Rimmer, your lead official, to discuss this.

4. Serious misconduct by retired police officers

The Chief Constable of South Yorkshire has told the Committee that he has passed the names of 1,444 police officers and staff to the IPCC. Of these, 304 individuals are still serving with South Yorkshire Police. This means that the vast majority of those who were involved in the policing operation on the day have now left the force; given the passage of time it is likely that the majority will have retired and some will have died. The Committee is concerned that there may be officers whose behaviour at the time amounted to gross misconduct, but which will not now pass the threshold for a criminal prosecution. In our view, there could be a need to provide for some disciplinary sanction to be applied to such people, having proper regard to the need to avoid disproportionate, retrospective measures.

The Committee would welcome a reply to these points by Thursday 8 November.

I am copying this letter to Rt Hon Lord Falconer of Thoroughton QC, the Hillsborough Families Support Group and the Hillsborough Justice Campaign, and publishing it on the Committee's website.

Rt Hon Keith Vaz MP
Committee Chairman
October 2012

Letter from the Home Secretary to the Chair of the Committee, 8 November 2012

Hillsborough Independent Panel Report

Thank you for your letter of 24th October in relation to the next steps in following up the Hillsborough Independent Panel's report.

I appreciate the point that you make in relation to a single, independent lead investigator and I share your view that the structure we establish to pursue these investigations must avoid unnecessary duplication of effort by multiple agencies or delay. My department is working closely with the Independent Police Complaints Commission (IPCC), the Director of Public Prosecutions (OPP) and others to ensure that investigation is swift, thorough and unified. However, there is no straightforward mechanism by which a single individual can be appointed to co-ordinate all investigations in the way that you suggest. Neither the OPP nor Her Majesty's Inspectorate of Constabulary (HMIC) have powers to direct investigations by the IPCC or the police. We are working to avoid the risks that you highlight, but this cannot be done in the way that you suggest.

On powers and resources, I have been clear that I will ensure that the IPCC has both the resource and the powers that it requires to undertake the investigations necessary. We are exploring whether legislation is required in relation to any powers; I welcome your support for this. I have already discussed powers and resources with Dame Anne Owers and the IPCC is in the process of quantifying what is necessary to investigate the matters referred to them by the various forces involved.

Finally, I understand your point in relation to sanctions for ex-police officers who are found to have committed gross misconduct. My department is already considering what options might be open to us in this regard and I would welcome hearing your suggestions on this.

I am copying my reply to the recipients of your original letter.

Rt Hon Theresa May MP
Home Secretary
November 2012

Formal Minutes

Tuesday 4 December 2012

Members present:

Keith Vaz, in the Chair

James Clappison
Michael Ellis
Julian Huppert
Steve McCabe

Bridget Phillipson
Mark Reckless
Mr David Winnick

Draft Report (*Powers to investigate the Hillsborough disaster: interim Report on the Independent Police Complaints Commission*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 29 read and agreed to.

Two papers were appended to the Report as Appendix 1.

Resolved, That the Report be the Tenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 11 December at 2.00 pm]

List of Reports from the Committee during the current Parliament

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Ninth Report	Drugs: Breaking the Cycle	HC184

Session 2010–12

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Eleventh Report	Student Visas – follow up	HC 1445
Twelfth Report	Home Office – Work of the Permanent Secretary	HC 928
Thirteenth Report	Unauthorised tapping into or hacking of mobile communications	HC 907
Fourteenth Report	New Landscape of Policing	HC 939
Fifteenth Report	The work of the UK Border Agency (April–July 2011)	HC 1497
Sixteenth Report	Policing large scale disorder	HC 1456
Seventeenth Report	UK Border Controls	HC 1647
Eighteenth Report	Rules governing enforced removals from the UK	HC 563
Nineteenth Report	Roots of violent radicalisation	HC 1446
Twentieth Report	Extradition	HC 644
Twenty-first Report	Work of the UK Border Agency (August–Dec 2011)	HC 1722