

Our reference: COM 2003 002112

19 May 2006

Mrs Gillian MacKenzie

**Code A**

Dear Mrs MacKenzie

Further to our meeting on 13 March 2006 at the Corus Hotel, Lancaster Gate in London, and the discussions we had there, I am now in a position to finalise your complaint. - I know that this has taken some time, but I have noted the content of your letter and papers received 28 March 2006 together with previous submissions and have taken them into account in completing your complaint. I have also taken into account the comments, representations and additional information provided by everyone involved in the complaints relating to the Gosport War Memorial Hospital investigation in coming to the final decision.

You received a provisional decision letter dated 28 June 2005, in respect of the outcome of your complaint and you were given the opportunity to make comments or to provide further evidence where appropriate. During our meeting you expressed your views, which were noted in shorthand. As you will recall from our meeting, I explained that your complaint was dealt with under the Police Act 1996 which meant that the PCA (Police Complaints Authority) and latterly the IPCC had limited powers to deal with such complaints and had no powers to investigate, i.e. only had the powers to agree or disagree with the discipline recommendations made by the force on a misconduct review case.

With the advent of the IPCC on 1 April 2004, new legislation came into force (Police Reform Act 2002), which afforded us wider and more comprehensive powers than the PCA. Unfortunately, the new legislation is very clear and does not allow us to invoke powers where the complaint relates to an incident covered under the old legislation. New complaints, i.e. those complaints that were never identified prior to 1 April 2004, may be dealt with, but they would only be dealt with under the old legislation. Any "new" complaints relating to complaints after 1 April 2004 may be subject to the new legislation providing they fulfil the legislative criteria. I think that it is important to distinguish at this stage the difference, as you may wish to make new complaints and you should understand what powers the IPCC would have to deal with them.

As we discussed, you had expectations of a higher discipline outcome for the officer. I must inform you that I am hereby confirming the provisional decision, outlined in the letter to you dated 28 June 2005.

I know that this is not the outcome that you were hoping for, but I can assure you that a full and comprehensive review of all the documents and information relating to your complaint has been conducted and that the outcome as detailed in our previous letter is appropriate in terms of the powers available to us, that is to determine whether there is a realistic prospect of showing that the officer's behaviour has fallen below the standards set out in the Police Code of Conduct. This has to be proved on a balance of probabilities, which means that the tribunal must decide that it is more likely than not that an allegation is true. In this case, we do not believe a panel would find that the officer's conduct fell below the required standards and therefore a higher discipline outcome would not be forthcoming.

You raised the issue of the officer's retirement and promotion. I would reiterate that the IPCC, and formerly the PCA, would not have had any influence over the an officer's retirement whilst having an outstanding complaint. Even if a criminal charge were outstanding against the officer, he/she may still have been able to leave the force and would then be subject to the findings of a criminal court. Retirement is a matter for the force and the officer.

I know that you raised some issues in respect of a lack of communication with you by Hampshire Constabulary regarding their new investigation and there may well be other matters about the new investigation that concern you. In respect of the papers you sent to me dated 27 March 2006, you make complaints about failures of the current investigation by Superintendent Williams which mirror the previous investigations. I will now be considering the most appropriate course of action to deal with your further complaints and will correspond with you separately concerning these matters. In terms of any new complaints, I reiterate my offer, should you wish, to arrange for one of our investigators to meet with you and take a statement, whereupon we can determine the most appropriate action.

In terms of any new complaints, I reiterate my offer, should you wish, to arrange for one of our investigators to meet with you and take a statement, whereupon we can determine the most appropriate action.

At our meeting I promised you a copy of the meeting notes along with the decision on your complaint. The notes that will be provided are detailed and I want to ensure that they properly reflect the complexity of the issues you raised with me. I will be sending you the notes next week, but in the meantime wanted you to have my decision without any further delay.

~~In respect of the papers you sent to me dated 27 March 2006, you make complaints about failures of the current investigation by Superintendent Williams which mirror the previous investigations. I will now be considering the most appropriate course of action to deal with your "new" complaints and will correspond with you separately with my decision in due course.~~

If you have any other questions or concerns please do not hesitate to contact Code A

**Code A**

Yours sincerely

# Code A

**REBECCA MARSH**  
**Commissioner**  
**Independent Police Complaints Commission (IPCC)**

---