

Home Office Accountability Review and Public Office (Accountability) Bill 2005

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Overview

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- Presumption of anonymity for AFOs (Clause 152 of the Policing and Crime Bill 2025)
 - The “Rapid Independent Review”
 - Applicable test for self defence in police misconduct [*W80* Cout of Appeal & SC]
 - Standard of proof in unlawful killing cases [*Maughan SC*]
 - Public Office (Accountability) Bill 2025

The position pre 2020

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- An inquest could not return an unlawful killing conclusion unless satisfied to the **criminal** standard;
 - The jury in that inquest would apply the **criminal** test for unlawful killing
 - Police officers in misconduct cases would be cleared of breaching the SoPB of “Use of Force” unless the AA could prove (on balance of probabilities) that this was not based on an honest (if mistaken) belief [the **criminal** self defence test]

The Position in 2025

- In effect the civil test applies (honest mistakes can be a breach)
R (W80) v IOPC & Ors [2023] UKSC 24
- Juries will apply the **civil** standard of proof (more likely than not) when considering all of their conclusions including unlawful killing and suicide

R (Maughan) v HM Senior Coroner for Oxfordshire [2020] UKSC 46

- ***R (B50) v HM Coroner for the East Riding of Yorkshire and Kingston-Upon-Hull [2023] EWHC 81 (Admin)***

Confusion of tests

- CPS will apply the **criminal** test for self defence and reasonable prospect test for whether to prosecute
- Criminal courts will apply the **criminal** test for self defence and **criminal** standard of proof
- Inquests will apply the **criminal** test for self defence and the **civil** standard of proof
- Police misconduct hearings will apply the **civil** test for self defence and the **civil** standard of proof
- In a **civil** claim re use of force by police the **criminal** test for self defence will often be applied

The Naming of NX121

- AFO NX121 shot Chris Kaba on 05 September 2022
- A year later he was charged with murder and granted anonymity by the Magistrate's Court
- Following a hearing in 2023 the Reorder of London ruled he could be named and his name (but not image) was released in March 2024
- Decision to name the officer drew widespread criticism (of the law not the ruling)
- Period of reflection by AFOs caused significant shortages in firearms cover
- Then SSHD announced the “Accountability Review” in 2023

Workstreams

- A presumption of anonymity for firearms officers who are charged with offences relating to, firing their weapon in the line of duty and who are subject to criminal trial following a shooting, up until the point of conviction
- Three measures to improve the timeliness and fairness of investigations and the rights of victims by speeding up processes between the Independent Office of Police Conduct (IOPC) and Crown Prosecution Service (CPS)
- Rapid independent assessment of whether there is a case for considering changes on two issues highlighted during the Accountability Review
- Wider (long-term) review to address systemic barriers to timeliness in the misconduct system to improve public and police confidence
- Update of guidance relating to investigations of police driving incidents and other incidents in the line of duty
- College of Policing to create a lessons learned database for deaths or serious injuries arising from police contact/ police pursuits
- Introduction of legislative measures to improve public confidence in policing conduct standards
- DPP review of guidance and processes in relation to charging police officers for offences committed in the course of their duties.

Policing and Crime Bill 2025

THREE RAYMOND BUILDINGS

BARRISTERS

Crime and Policing Bill




Government Bill

Originated in the House of Commons, Session 2024-25

Details News Stages Publications

Future dates (especially those more than a week in advance) may be provisional.

Session 2024-25 (9)

| | | |
|---|----------------------------------|---------|
| 2 | 2nd reading | > |
| | Date to be announced | Lords |
| 1 | 1st reading | > |
| | 19 June 2025 | Lords |
| R | Report stage | > |
| | From 17 June 2025 | Commons |
|  | Programme motion | > |
| | 17 June 2025 | Commons |
|  | Ways and Means resolution | > |
| | 30 April 2025 | Commons |
| C | Committee stage | > |
| | From 27 March 2025 | Commons |
|  | Programme motion | > |
| | 10 March 2025 | Commons |
| 2 | 2nd reading | > |
| | 10 March 2025 | Commons |
| 1 | 1st reading | > |
| | 25 February 2025 | Commons |

Policing and Crime Bill 2025

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The “Rapid Independent Review”

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- Sir Adrian Fulford and Tim Godwin OBE QPM appointed by HMG to review:
 - (1) the applicable test in self defence
 - (2) the standard of proof for unlawful killing
 - Review published October 2025

Self defence in police misconduct

- Did W80 judgment solve a problem that did not exist?

Armani da Silva v UK 5878/08 [2016] ECHR 314

247. In this regard, it is particularly significant that the Court has never found that a person purporting to act in self-defence honestly believed that the use of force was necessary but proceeded to find a violation of Article 2 on the ground that the belief was not perceived, for good reasons, to be valid at the time. Rather, in cases of alleged self-defence it has only found a violation of Article 2 where it refused to accept that a belief was honest

- Low number of use of force cases reach hearings each year
- increase in number of investigations
- Firearms officers have borne the brunt of the new law

S329 Criminal Justice Act 2003

- If a person brings a claim in civil law;
- The claimant was convicted of an imprisonable offence on the same occasion;
- The claim requires permission;
- Force must be “**grossly** disproportionate” or permission will be refused;
- Defence to show that D **believed** force appropriate;
- S329 (8) (b) references to a defendant’s belief are to his honest belief, whether or not the belief was also reasonable;

Adorian v Commissioner of Police of the Metropolis [2009] 1 WLR 1859

the section gives immunity from civil suits, not confined to those involving personal injury, to constables who make arrests [or use force] on entirely unreasonable grounds, so long as they are not acting in bad faith, and accords them impunity for using all but grossly disproportionate force in so doing.

Rapid Review Report

Change to Police (Conduct) Regulations 2020

*Police officers only use force ~~to the extent~~ **when they honestly believe that it is this to be** necessary. The force used should be necessary proportionate and reasonable ~~in all the circumstances.~~*

the Home Secretary has accepted the recommendation and has announced that she will lay changes to the Police (Conduct) Regulations 2020.

Rapid Review Report (Reform to standard of proof in unlawful killing)

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- a finding of unlawful killing is of sufficient gravity to justify distinguishing it from other causes of death in terms of the level of proof that is required. We are wholly persuaded that it merits being placed in a special category

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- it would remain open to a jury to include in a narrative conclusion (to the civil standard) that the officer's belief was not honestly held as such a conclusion would not comprise all of the elements of unlawful killing: §36.
 - Further consultation required before primary legislation

Public Office (Accountability) Bill

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- Currently before Parliament (2nd reading in HoC)
 - Duty of Candour
 - Seriously improper acts in public office
 - Breach of duty to prevent serious risk of death / serious injury
 - Misleading the public

Offence of Misleading the Public

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Elements of the offence

- a public authority or office holder;
- acts with intent to mislead the public or is reckless in this regard;
- acts seriously improperly namely:
- a reasonable person would consider the act seriously improper;
- the act involved dishonesty that was flagrant or repeated (whether by means of falsehood, concealment, obfuscation or otherwise) in matters of serious public concern;
- caused or contributed to harm to a person (or had potential to)
- involved conduct that departed substantially from what would be expected of a public official
- Without reasonable excuse.