

An Independent Review of the Police Disciplinary System in England and Wales

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October 2014

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FOREWORD

By

Major-General (Retd) Chip Chapman CB

There is a danger that another report on police discipline is seen as no more than a Potemkin village. The *status quo* always has an army to protect it.

I was tasked by the Home Secretary to put forward proposals for a reformed police disciplinary system that is clear, public-focussed, transparent and more independent. The terms of the review included giving consideration to both the police and staff systems and how they might be brought more closely together.

Police performance, conduct and misconduct (including what arises from the complaints procedure) have been surveyed and scanned more than most other aspects of policing. This is not just in England and Wales, but in almost all those jurisdictions around the world that follow a similar policing inheritance to the UK, and those that aspire to our level of legitimacy. This report follows in the footsteps of, for example, the Morris Report (2004) and the Taylor Report (2005).

There are consistent themes in all previous reports in all jurisdictions. These include:

- A requirement to harmonise the disciplinary arrangements, as far as possible, with those of other public sector employers.
- Balancing the focus of sanctions between punitive and rehabilitative action.
- A requirement for the lowest level decision-making in disciplinary matters.
- A requirement to formally link managerial and disciplinary systems.
- A requirement to speed up processes with simple systems.
- A requirement to streamline dismissal procedures.
- A requirement to streamline review and appeals procedures.

I have attempted to navigate within these themes.

“The police service is constantly in the news, often glamorised, often vilified”: not my words but of those debating the last Royal Commission in to policing in 1962.¹ The Royal Commission followed a number of high profile scandals that might also resonate in 2014.

A key change from 1962 has been the decentralisation of control and accountability back to the Police and Crime Commissioners (PCC) via the Police Reform and Social Responsibility Act 2011. In business process terms, this is akin to the relationship between the ‘Chairman’ of a Board (the PCC) and the ‘CEO’ (Chief Officer) and defines where leadership and managerial accountability should lie at

¹ Hansard, 9 May 1963.

that level. I have been mindful of this distinction and the need to allow police forces 'to manage their business' as one would expect of a CEO. It is right that authority and responsibility should predominantly lie with the police leadership: what is then done with those two features is even more important. Where there are recommendations that counter this, it is because of the need for transparency, removal of opaqueness or the requirement for increased trust by the public in the internal mechanisms of the police disciplinary system. That is, helping the police to help themselves.

At the heart of the issue throughout this report is not discipline at all: it is the sum of governance, leadership, management, ethos, ethics, training, culture and behaviours. With the time constraints allocated to me, I have not been able to delve in to all of these areas as I might have liked.

The introduction of the 'Police Code of Ethics' and the 'standards of professional behaviour' in July 2014 gave a firm conceptual start point to look at the process afresh. They represent principles of engagement from which all else should flow: for if you have good people and bad processes, bad processes will win nine times out of ten. In an organisation the values at every level are the key². For the police, integrity is, perhaps, the key value – followed closely by trust. They both confer legitimacy. The majority of police officers *are* good people. But they must be better than good – they must be 'exemplary'.³ It is no less than the public would expect in upholding Sir Robert Peel's requirement of the need for the police service to "secure and maintain public respect".

Any large organisation is structured in four parts: it has organisational, procedural, technical, and human elements. In this report I have concentrated on the procedural whilst never forgetting the other three: in particular, the place that organisational ethics and values should have in a modern police force that is public facing and public orientated. Changing processes do not, by themselves, make things better, or necessarily make a difference: a change in ethos and culture are the main drivers of change in any transformational programme.

Police officers and staff are daily placed in situations where they have to exercise judgement, initiative, and discretion; often in fluid situations where what is around the corner is an unknown. The majority are first-class examples of good policing. An officer with whom I conducted a 'ride-along' during this review recalled that as a young and inexperienced probationer his Sergeant's mantra to him was consistent (and reinforcing), "Professionalism, integrity, and treat people as you would like to be treated". Another in an operational situation with me told me of his desire (and the

² In response to the rugby analogy laid out in footnote 34 in furthering public confidence, it was entirely appropriate that a Welsh PSD should tell me that Steve Hanson, the former Welsh and current New Zealand rugby coach said "Better people make better All Blacks". Recruits need to be selected for values, not re-made.

³ 'Exemplary' is the highest recommendation of conduct upon leaving the police service as laid down in the Police Regulations 2003, paragraph 17 (b).

need) to “reclaim discipline” where for him “integrity, respect and discipline” were his three watchwords. They are both wise and fine officers. Those who live the ethic and standards expected of the police genuinely see complaints as a developmental opportunity; and to be able to reflect on their interactions with the public. Those who do not live up to those standards create the vulnerabilities that are detailed in chapter 1.

I have deliberately not referred to any of the most public and high profile misconduct cases that might have eroded trust and respect in the last few years. This ‘omission by choice’ was due to my desire to look at the evidence outside of those most damaging of cases.

At the start of World War 2 an experienced officer of many years service in the Gold Coast (modern day Ghana) was recruited back to the UK with the Canadian Forces. He was remembered for asking two searching questions to potential provost officers:

“Why do you want to be a police officer?” and:

“Do you think you are good enough to make others good?”

They are both good questions with which to commence this review.

Chip Chapman

CHAPTER 1 – ETHICS, TRUST AND CONFIDENCE

THE START POINT: ETHICS, TRUST AND CONFIDENCE IN THE POLICE

- 1.1. The need to maintain the reputation of the police and the trust of the public imposes on the police the need for a code of conduct and standards more demanding than those required in society at large, public confidence is critical, policing is more important than any individual officer. Any code must be nurtured and reinforced throughout a police officer's career if they are to overcome the confrontations that occur in the complex policing environment. Planned operations represent a differing challenge to the dynamics of rapidly unfolding situations that confront police officers on a daily basis. The public expects, and the police deliver, officers who are not passive bystanders in, for example the 'violence triangle' of bystander, aggressor and victim. In physical terms the police are 'interveners'.
- 1.2. Any activity or personal behaviour that is counter to an individual's professionalism or damages the reputation of the police and that places at risk the trust and respect of colleagues and the public must be avoided. So must any behaviour that calls into question the integrity of any officer, but more so those who are placed in positions of managerial responsibility.
- 1.3. In July 2014 the Police Code of Ethics⁴ was launched. The College of Policing⁵ is responsible for setting standards and for identifying, developing and promoting ethics, values and integrity. The Code of Ethics provides "a code of practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales". The standards of professional behaviour contained in the code recognise the requirements for:
 - Honesty and integrity.
 - Authority, respect and courtesy.
 - Equality and diversity.
 - The proportionate use of force.
 - The need to follow lawful orders and instruction.
 - The duties and responsibilities inherent in police work.
 - Confidentiality.
 - Fitness for work.
 - Conduct.

⁴ The Code of Ethics has a statutory basis under Section 39A of the Police Act 1996 (as amended).

⁵ The College of Policing is a company limited by guarantee under the ownership of the Home Secretary rather than a statutory authority.

- Reporting and challenging improper conduct, and to report any action taken for a criminal offence.
- 1.4. It is surprising that there was no formal code of ethics for so long⁶. However, each officer is required to undergo attestation early in their training⁷. This sets the expectation and requirement for the highest level of ethical and professional standards:
- “I...do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law”.*
- 1.5. There have been too many examples where this expectation has not been achieved. Either because of failures in supervisory behaviours, lack of interventions, organisational culture, or in circumstances of small team loyalty or loyalty to the colleague or force outweighing loyalty to either values or the public, there has been a perception of wrongdoing – and also a perception of a lack of accountability when this wrong doing occurs. Loyalty is one of the most common factors in most models of business ethics⁸. It may seem surprising that loyalty is an omission in the police Code of Ethics: surprising, but understandable given the negative connotations which it can engender⁹. Loyalty is a value the police hold. If there is no future alignment between values and culture one may not proceed to a new model of discipline¹⁰.
- 1.6. Trust is a key value for the police – internally and externally. Creating a culture based on values is difficult. The current purpose of the disciplinary system may be wrong in its emphasis. Performance management is the key for improving and intervening and for helping individuals to become better at what they do. Discipline is the adjunct process that safeguards the individual from arbitrary treatment and ensures that those who break the rules or behave in a manner that destroys trust are not tolerated.

⁶ There were previous codes of conduct. Morris argued for a revision in 2004.

⁷ Schedule 4 to the Police Act 1996.

⁸ The most common business ethics include: integrity, loyalty, honesty, responsibility, empathy (understanding another person's view), confidentiality, and respect.

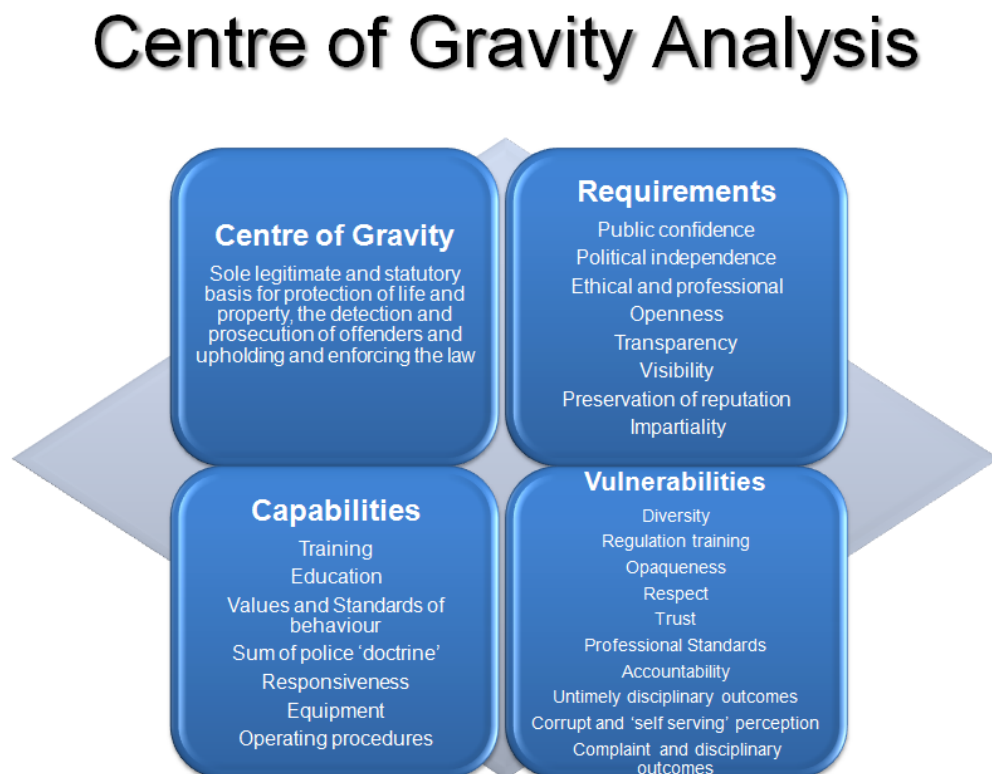
⁹ For example, during the writing of this report one headline read “five police officers accused of gross misconduct after changing their stories over death of suspect after giving different statements to the coroner and the IPCC”.

¹⁰ Some forces *do* have loyalty as a core value. For example, The Singapore Police Force (SPF) core values are: courage, loyalty, integrity and fairness.

CENTRE OF GRAVITY ANALYSIS

- 1.7. The initial requirement is to analyse the vulnerabilities of the police, and seek to remove these as far as one is able. A 'centre of gravity' is the source of an organisation's strength: the police are the sole legitimate organisation for upholding and enforcement of the law. A centre of gravity is built from capabilities and a number of requirements. Any identified vulnerabilities weaken an organisation – both internally and externally. There are organisations and individuals who wish to attack and damage the police as an organisation, they will do so by attacking the vulnerabilities the police have. There is a need to remove these 'vulnerabilities' and move them to 'requirements' or 'capabilities'. The centre of gravity analysis for the police is shown below.

Figure 1: Centre of Gravity Analysis



- 1.8. The vulnerabilities for the police include:
- **Diversity:** Where the reality as well as the perception is that BME officers are treated differently than others when it comes to discipline. The requirement is that all officers be treated in a fair and impartial manner. The police need to be able to deal with difference effectively.
 - **Training in the conduct and performance regulations:** The ethos of the Taylor reforms has never been properly applied. Forces tend to go straight into the use of the conduct regulations rather than tackle performance issues, supervisors will default to conduct as they are then

able to pass the problem to someone else to deal with it. Quality training for leaders, repeated regularly throughout their career, is a key aspect of leadership, but training is lacking in the application of the current regulations. Greater investment and professionalising of PSD officers is necessary.

- **Opaqueness:** The requirement is to have openness to the police disciplinary system and to remove the perception of the police investigating and determining outcomes with no public scrutiny. Opaqueness is the opposite of transparency.
- **Lack of Respect:** The requirement is for a professional approach and even handed and fair manner. For most people, an interaction with a police officer is an event in their lives.
- **Lack of internal and external trust:** The requirement is to reinforce public trust (and hence support), and internal trust. Punishment for the sake of punishment without a proper attempt at restorative action diminishes trust. Seeking to make an organisation better regarded and successful, and more efficient via performance management, is a more successful approach. Leaders and supervisors are then seen as enablers and not as barriers.
- **Failure in Professional Standards:** The requirement is to instil, train and implement them from the beginning to the end of an officer's career. The emphasis should focus on an officer's rehabilitation and welfare where unsatisfactory conduct or performance is not deemed to be a gross breach.
- **Timeliness of Disciplinary outcomes:** The system for disciplinary outcomes lacks timeliness, clarity and consistency. The requirement is for a process that deals with misconduct or poor performance in a timely, clear and consistent manner, where the process is not delayed unnecessarily and both the officer and any interested parties understand fully what is happening at any given time.
- **Seen as corrupt¹¹ and self serving:** This perception has two parts: that the 'police investigate the police', and that the determinations from those investigations are closed and opaque, and not open to scrutiny. When the police do dismiss their own, they do so in closed proceedings from which the outcomes are usually not publicised. Both are potentially seen as undermining the requirement for public confidence. There is a read across to the perception of **accountability**. Whilst the exercise of internal managerial responsibilities for the functioning of discipline is a police matter, more might need to be done to overcome this weakness.

¹¹ A report by Jon S T Quah in the Asia Pacific Journal of Public Administration, Vol 28, No 1 (June 2006) 'Preventing Police corruption in Singapore: The Role of Recruitment, Training and Socialisation, defined 8 types of police corruption: 1) of authority; 2) kickbacks; 3) opportunistic theft; 4) bribes; 5) protection for those involved in illegal practices in return for payment; 6) the 'fix' to avoid court action; 7) Direct criminal activity; and 8) Internal pay off – barter or sell prerogatives.

- **Consistency of Complaint and Disciplinary outcomes:** The requirement is to have an understandable benchmark that is applied equitably across all forces. The public simply do not understand the inconsistencies that arise from certain misconduct proceedings. In various areas of police operating procedures there are variable standards and an overall lack of standardisation. A disciplinary system is often judged only by the determinations it delivers.

1.9. There are certain misdemeanours of which there is an expectation that a standardised sanction will apply. These fall into the ‘zero tolerance’ category. I have failed to find more than one reference to the notion of ‘zero tolerance’¹²: a theme that will be explored later in this review. It is also not necessarily problematic that a police hearing might come to a different outcome than envisaged in an IPCC investigation: the evidence requires to be tested – and there is currently no benchmark against which to test. The difference is partly in what is deemed to be the gravity of the complaint, and the conduct for which dismissal should be considered.

1.10. It is also the case that those who hold leadership and managerial responsibilities should have sanctions applied to them that might be more severe than the sanctions applied to those they lead. The “tone from the top” and the need to foster a culture of what is acceptable starts from there¹³. It is unacceptable for those who transgress and who hold rank not to have an expectation of a more severe sanction. This needs to be applied for both internal conduct and performance cases – and for misdemeanours that have outcomes for civil offences. Currently, there is no guidance on punishment for even the most minor of civil convictions.¹⁴

Recommendation 1: A body (ideally the College of Policing) to take on the role of overseeing the police disciplinary system. It should ensure consistency across all police forces, taking responsibility for setting and reviewing standards, and issuing appropriate guidance to forces.

¹² This was in relation to the Police Integrity model where one should “commit to a zero tolerance approach to corruption and a graduated and proportionate approach to investigation and sanctions”. An external organisation looking in to police integrity used an excellent approach – see chapter 3 on discipline where the reference is emphasised.

¹³ A point made, for example, in the Bribery Act 2010. Their 6 principles include: ‘top level commitment (including the need for internal and external communications of *the commitment to zero tolerance to bribery*’, and that ‘communication (including training) are embedded and understood through internal and external training’.

¹⁴ As examples, an accumulation of minor traffic offences resulting in disqualification for driving, or a separate charge for criminal damage.

ZERO TOLERANCE

ZERO TOLERANCE AND EMPLOYMENT LAW IN BUSINESS

An employee of a major bank accessed the bank account of a former partner without their permission. Following a disciplinary hearing (and appeal), the employee was **dismissed** for breaching Data Protection policies.

Comment Dismissal for issues relating to conduct is a fair reason under the Employment Rights Act 1996. The misconduct could be a single act of serious misconduct or a series of lesser acts over a period of time. It is common practice for employers to have a disciplinary policy in the work place which contain examples. In order to justify a dismissal as fair, it must be established that:

- There are grounds based on the 'balance of probability'.
- An investigation was conducted.
- A fair dismissal procedure was followed (dismissal was a reasonable response that a reasonable employer would have taken in the circumstances).

Multiple banks also have *"a zero appetite for circumvention of fraud and financial crime policies"*¹⁵

ZERO TOLERANCE IN THE POLICE?

A constable accessed the Police National Computer (PNC) to gain information on a former partner. They made false vehicle check entries on the PNC relating to the former partner's address. Following a disciplinary hearing, the officer was given a **final written warning**.

Comment: It is the public interest to have officers with the highest ethical standards. This overriding requirement must not be dispensed with because of the interest of an individual police officer.

Recommendation 2: A benchmarking exercise should be undertaken to determine the level of sanctions for both internal misconduct and performance standards, and for sanctions consequent upon civil convictions, to be universally applied across all forces.

1.11. There may be situations where the particular circumstances of a case justify a departure from the expected outcome. Where such cases do

¹⁵ Many banks have programmes to ensure staff abide by their codes of conduct following their own scandals. To quote one "we are spending our time and effort in the development of compliance professionals who can influence behaviour, help people with their moral compass and make the right decisions and exercise judgement with the customer as the focal point for everything" Mike Roemer, Barclays.

occur, and they should be the exception rather than the rule, the police must be clear publicly that special circumstances applied and what these circumstances were.

- 1.12. Public support is crucial to enable consensus policing and a co-operative public. Trust in the police is an aspect of legitimacy, fostered by a perception of police fairness. Research indicates¹⁶ that treating people with respect, making fair decisions and taking time to explain those decisions whilst being friendly and approachable are not only important of themselves, but in reducing crime in the longer term. In 'ethics' terms the research indicated that "widespread cultural change is likely to be required if the police are to capitalise on public co-operation". Trust in the police by the public is a requirement. The latest polling is at Chapter 2.
- 1.13. The foreword to this report opined that this report is not about discipline – rather it is the sum of governance, leadership, management, ethos, ethics, culture and behaviours. The behaviours and ethic commence before personnel are recruited in to the police service.
- 1.14. The College of Policing will soon publish a new Vetting Code of Practice; I have seen and read the draft version of the new code, which was out for consultation at the time of the review. The new code brings many welcome additions, such as ensuring more robust vetting of senior officers and strengthening the system designed to stop officers who are dismissed or leave under a cloud being re-employed by other forces. Overall it should increase both the consistency and strength of vetting across the Home Department police forces. This is an essential part of the recruitment process, but that process is overly mechanistic. Vetting has a role in establishing whether someone does or does not have a criminal record or any recorded past behaviour that might be of concern. It cannot establish whether the values of a potential new police officer are a match with those of the organisation.
- 1.15. Many companies now operate psychometric and ethics based scenario testing in their application processes prior to attendance at an assessment centre. Ethical dilemmas act as a filter with situational judgement tests at the filtering stage of a recruitment process. Multiple forces around the world also take such an approach ranging from integrity based psychological assessments and a strengthening of recruiting systems to include evaluation of all potential candidates for evidence of discriminatory and/or racist behaviour and recognition of biases. The police assessment centres

¹⁶ It's A Fair Cop – Police Legitimacy, Public Cooperation and Crime Reduction – Andy Myhill and Paul Quinton (NPIA paper Sep 11).

do not currently operate such a system. They test via role playing exercises, an interview, written exercises and verbal and numerical reasoning tests. As one focus group described it to illustrate that recruitment should be based on behaviours as well as formal assessment levels: “You don’t go to a pet shop to buy a pit-bull, if you want the behaviour of a poodle”. If there is a misalignment between stated values and the organisational or individual culture operating in practice, the potential for cynicism and employee disengagement arises. Two key questions arise:

- a. *Who are the police attracting to the service?*
- b. *How do you know what the culture is and how is it changing?*

1.16. It is too early given the recent codification of the code of professional standards to have a metric to measure whether the ‘challenging and reporting’ functions to either poor behaviour or conduct are embedded. But it is a metric that can be measured in the future to determine whether that culture is an asset or a liability. Warren Buffett once said that “culture, more than rule books, determines how an organisation behaves”. A culture that enhances an organisation’s internal and external relationships aids in building trust. Behaviour change is crucial to any fundamental cultural change. Real and stated values may not be congruent. Real values drive behaviour in an organisation. Stated values are what an organisation says it stands for, and there is often a disconnect between what is important and what is stated to be important. Leadership is crucial to shaping a culture: until behaviour changes, nothing changes.

1.17. There are companies that are able to assess both the positive and negative personal values of those employed by police forces and the current cultural values of a force and map these against the desired cultural values the force aspires to across a spectrum. Such an assessment can then be repeated later to track whether the actions the police leadership are taking to drive cultural change have been effective, and to identify where improvements need to be made. This could be an important tool to help police leaders implement cultural change.

Recommendation 3: A values-based assessment is undertaken to measure the values of police forces against those in the Code of Ethics, and that further assessments be undertaken to help the police leadership manage cultural change.

1.18. Many of the more public examples evident during the gathering of evidence for this report show a lack of interventions throughout police careers. The supervisory and managerial responsibilities, particularly of the first line managers are crucial. The 70-20-10 rule of learning indicates that only 10%

of learning comes from formal training and reading, 20% comes from interaction with fellow staff, and that the majority (70%) arises from 'on the job training and guidance'. The core 'gearing' in the police service is the rank of Sergeant. They set the tone, standard, and show the way and future for those new to the force. Interventions may be required at all levels to alter behaviours when necessary.

1.19. It is often easier to exhibit physical courage, more so than moral courage. Moral courage is a league apart. The decision to act morally has to be made consciously – a deliberate and calculated act. It is the same with corruption – that requires at least some form of calculation. By and large, despite professed altruism, most humans will, where moral courage is concerned, act out of self interest and rationalise this so as to still think of themselves as being a good person. If these interventions are not enacted to reinforce the standards of professional behaviour required, the stage can be set for future failures. More importantly, ethics lectures and training seem to have little to no effect on people: it is the reminders of morality – at the point that people are making decisions – that have a greater effect on behaviour¹⁷. Thus, embedding the Code of Ethics at the heart of the national decision model is crucial. Officers need to be reminded daily of the values of the police as an organisation.

1.20. The recruitment of Direct Entry Superintendents; bringing in 'laterals', is part of a change process if they are part of future cultural vectors. This will only succeed if those recruited as laterals are both recognised as change managers, and are strong advocates of a values based culture: they should form part of those who help build a future culture – and being clear what culture one is aiming for. There has been some recognition of this:

“The level of business skills and change management training for managers from Sergeants through to Superintendents is insufficient for the challenges that now face the police service¹⁸”

1.21. I concur. Further, the Morris report (2004) highlighted an insufficient focus on human resource management.

BEHAVIOURS AND VALUES

1.22. Current police recruiting is based partially on behaviours, and not on values. It is also a myth that the police are not recruiting: in the year to 31 March 2014 5,589 police officers joined the 43 police forces with an

¹⁷ See, for example, “The (Honest) Truth About Dishonesty: How we Lie to Everyone – Especially Ourselves – Dan Ariely (2012).

¹⁸ Review of Police Leadership and Training, Peter Neyroud QPM (2011).

overwhelming number of applicants. The police deserve the best from that pool of applicants. Many cases studied for this report show that there is often a failure to recognise (from serving personnel) that they have done anything wrong (for example, from inappropriate use of social media to inappropriate business links in several gross misconduct cases studied). This is a values deficit: in order to make a moral decision, an officer needs to realise that a moral situation exists. Much of police regulation is rules based – and this is correct in a disciplined organisation. However, some play games with the rules, or find loop holes or find ways around the rules.

1.23. Rules-based approaches can be useful in snapping an organisation in to action in a short period of time (and this is further taken up in chapter 3, Discipline). Much of the internal system defends behaviour (often bad behaviour) in the disciplinary system rather than espousing values. This is often evident in hearings: the notions that have been entertained to keep people in service during disciplinary procedures would not be acceptable in letting people into the service during recruitment.

1.24. Poor performance and conduct (the converse of which is misconduct) is an individual and institutional failure. Managerial and supervisory standards are a police chain of command issue. In performance terms the police regulations on interviewing, coaching and mentoring are opaque. It leads too often and too frequently to supervisors crossing in to the conduct regulations when performance issues need to be addressed. It may be that the supervisor to individual ratio has been stripped back too far, or that the support from the police chain of command has not been present – and hence the vulnerability of internal trust. Neyroud noted:

*“Leadership interventions can have beneficial impacts on organisational outcomes, behaviour change, and career progression”.*¹⁹

1.25. This is illustrated in the diagram at Figure 2 and shows the correlation between the length of time spent (and level of experience gained) in service and the potential for erosion of standards through officers finding ways of circumnavigating the disciplinary system.

¹⁹ Review of Police Leadership and Training, Vol 2, Appendix 6, page 252.

Figure 2: Triangle of interventions:

Triangle of Interventions



Recommendation 4: The police institute psychometric and ethics scenario testing in the recruitment and the selection process to remove those who may exhibit potential future behaviours inimical to decision making and service as a police officer.

Recommendation 5: Provide training to all officers, PSDs and hearing panel members in the disciplinary system to ensure consistency and increase effectiveness across all forces.

Recommendation 6: All management interventions short of dismissal are focused on transformation, clearly defined, reviewed, taught and reinforced across all police forces.

- 1.26. In exposing Figure 2 during the review, officers believed that the reality is that there are no early interventions, and that there may be a need for voluntary exit windows for those who may feel trapped in the service by the lure of a far off pension and who might seek an honourable way out other than by (unforced) resignation: those who have ‘fallen out of love’ with policing and who no longer view policing as a vocation or see themselves as “pension prisoners”. Typically this might occur, according to interviewees, at the 8-12 year point – where the bulk of officer numbers occur and where intrinsic motivation (the sheer pleasure of being a police officer and to which time and energy is devoted) has been replaced by extrinsic factors (such as money, security and certainty of employment

conditions). There is no current mechanism that manages this²⁰. Officers, have guaranteed employment until they reach pensionable age.

- 1.27. The Winsor report²¹ noted that there was widespread agreement on the part of the managerial organisations for considerably greater flexibility for police forces to alter their workforce size, structure and composition, with less agreement on the most appropriate means of achieving this. Others rejected this flexibility as potentially undermining the vocational ethos of policing. The idea of voluntary exit windows came from those who were interviewed. It still remains true that it is “impractical and unsustainable to expect forces to manage their workforces and their budgets in the future with the same tools that they have now”.²²

Recommendation 7: Conduct further work around the concept of voluntary exit windows²³ and future manning models.

- 1.28. There has been some confusion about what constitutes a ‘case to answer’ across the performance or conduct continuum. Everyone has to become a compliance professional who can influence behaviours, help people with their moral compass and make the right decisions and exercise judgement with the public as the focus.

- 1.29. Any activity or personal behaviour that diminishes an individual’s professionalism or damages the wider framework of delivering a service to the public, and that places at risk the trust and respect both in and out of the police service must be avoided: so must any behaviour that calls into question the integrity of those in a position of responsibility. There is no overriding ‘police test’ to guide what is required either. There is a clear requirement for such a test. It is a second order question what this might be: as a start point I offer:

“Have the actions or behaviours of an individual or group adversely impacted or are they likely to impact on the efficiency, trust and reputation of the police amongst their colleagues or in the eyes of the public”²⁴.

²⁰ This is not to say that officers do not resign: 6,904 did so in the year to 31 Mar 2014 – a wastage rate of 5.4%.

²¹ Independent Review of Police Officer and Staff Remuneration and Conditions – Final Report, chapter 6, Managing the officer workforce (March 2012).

²² Ibid, para 6.1.80.

²³ I am aware of some of the legal obstacles and arguments.

²⁴ An alternative approach would be to test against any action against a version of the National Policing Model Integrity Code (Jan 2013) which has as its Statement of Mission and Values (SOMV) the following: “Our behaviour, actions and decisions will always be in support of the public interest. We value public trust and confidence in policing as an institution, and to earn this we will be open and transparent”.

Once the test has been passed, then the next logical question for the decision makers should be: “is this a dismissible act”. If the answer is no then efforts should be focused on improvement. If it is yes, then the disciplinary system should respond robustly.

Recommendation 8: A ‘police test’ is defined, to guide intervention for all disciplinary issues, including performance and conduct. The ‘test’ would have applicability for cases that might also arise from complaints.

CHAPTER 2 – BEYOND THE HEADLINES: MYTH, MISPERCEPTION AND REALITY

PUBLIC CONFIDENCE

- 2.1. National polls and national news headlines can cloud the overall picture. For most people, policing is a local activity. It is what occurs in their neighbourhood, and their interactions in that environment (where there have been notable successes in the neighbourhood schemes) that really matter. In that environment, things are brighter than the amalgamation of awful headlines²⁵. The return of 'localism' outlined in the Police Reform and Social Responsibility Act 2011 with the move from the policing landscape of 'big government' to 'big society' from 2012 is a welcome development.²⁶
- 2.2. At the national level, Ipsos MORI polling from 2014 shows no change from 2013. The level of trust in the police has remained constant at 65%. The results are shown at Figures 3 and 4 below. It was suggested in this study that the aspirational benchmark figure of 80% is too high. It is not. The reason is that the public expect the police to be exemplary.²⁷ The 65% rating is as high as it has been since 1983 when the question was first asked, with the low point (58%) occurring in 2005.
- 2.3. It was surprising to hear that many officers, when off-duty, did not believe they had a duty to intervene should they see criminal acts occurring (citing lack of insurance cover or not being paid/not on duty). Nor is there any hint of "police diplomacy" to achieve positive outcomes to dispel hostility, build and maintain trust and achieve mutually beneficial relationships with communities. It is merely assumed that police officers know how to talk to the public. One officer stated his only engagement was "show me your hands" before hand-cuffing a person or interviewing them in a custody suite.

²⁵ A poll reported in the Metro newspaper on 6 Aug 2014 asked children what they wanted to be when they were adults. The results were in descending order: 1. Rich, 2. Famous, 3. A police officer. Given that the first two are not employment related this is an interesting result.

²⁶ Policing in the 21st Century: Reconnecting Police and the People, Home Office White Paper (2010).

²⁷ Intriguingly, the police are sandwiched in the 'trust in professions' chart between clergymen/priests at 66% on the one side, and the ordinary man/woman in the street at 64% on the other side. The public, paradoxically, have more trust in the police than themselves.

Figure 3: Trust in the Police February 2013

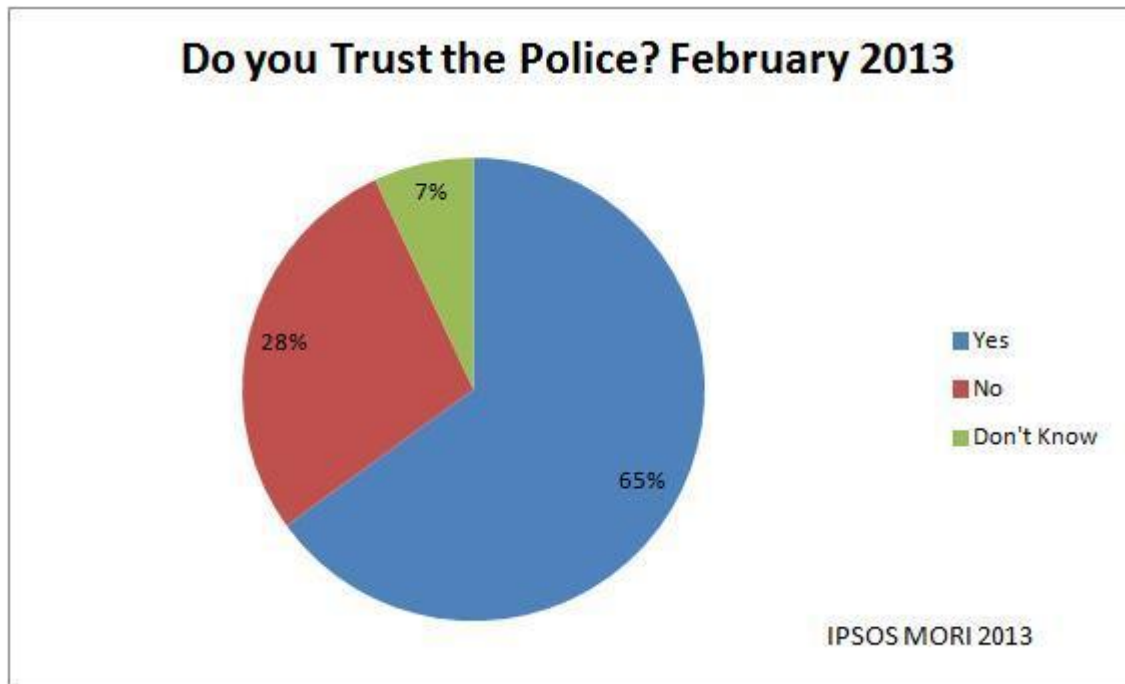
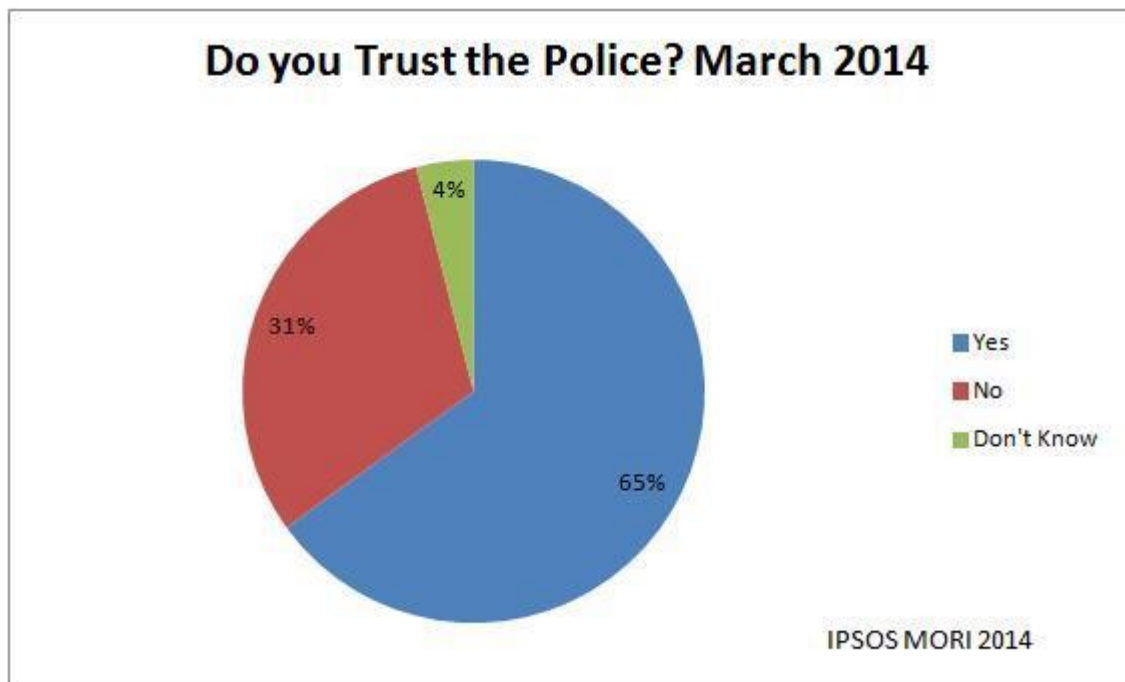


Figure 4: Trust in the Police March 2014



- 2.4. There is, perhaps, more divergence in public confidence in the police complaints system. A random snapshot of three forces over the period 1 April 2013 to 31 Mar 2014 gives the following (the national average is 251 complaints per 1000 employees):

Figure 5: A snapshot of complaints for three forces:

	Number of allegations per one thousand employees	Locally resolved allegations (%)	% of neglect or failure in duty allegations	% of incivility, impoliteness and intolerance allegations
Force A	359	32	34	15
Force B	222	14	34	14
Force C	359	37	38	18

- 2.5. In defence of the police, the figures collected (complaints per thousand officers in a force) portray a negative, whereas another useful but non-collected metric might be complaints per individual interaction with the public: a metric that would place in context the number of complaints out of the multiple millions of interactions that occur on a yearly basis. The alternative approach might show a completely different picture²⁸.
- 2.6. The volume of potential interactions is shown by the most recent crime figures. There were 7.3 million incidents of crime in the year ending March 2014, and 3.7 million incidents of recorded crime against households and resident adults during the same period: a 14% decrease in one year and the lowest estimate since the Crime Survey in England and Wales began in 1981.²⁹ Each of these represented an interaction of some sort.
- 2.7. Confidence levels in the police are generally higher at the local level. The introduction of neighbourhood policing had a 92% approval level³⁰. Visibility and engagement with the community increase trust in the police. The components of trust add up collectively to an increase in police confidence. Overall confidence is a measure that includes:
- **Fairness:** By their presence and behaviours the police are able to show that they are acting fairly and properly.
 - **Empathy and Engagement:** The positive nature of engagement adds to trust building and showing respect. Courtesy, respect for the individual and accountability were at the heart of the Flanagan report³¹. These types of characteristics are shown in research that reinforces that

²⁸ In Queensland, Australia, the figure was one complaint received for every 1,700 interactions with the public. Of those, less than 0.02% were substantiated in a disciplinary hearing. (from Simple, Effective, Transparent, Strong – An Independent review of the Queensland police complaints, discipline and misconduct system (May 2011).

²⁹ Crime in England and Wales, year ending March 2014 (Crime Survey of England and Wales).

³⁰ M Charlton, Public Attitudes on Neighbourhood Policing (2010).

³¹ Sir Ronnie Flanagan, The Review of Policing, Final Report, 2008.

courtesy, understanding and concern have the greatest association with satisfaction.³² Positive police engagements further this aim: damaging and negative engagements (and the incivility that remains a stubborn resistor to a downwards trend in complaints) destroy empathy and confidence. As a traffic officer reported to me on patrol: “leave the member of the public with a positive attitude by your treatment - even if the outcome is a ticket and a fine”.

- **Effectiveness:** Visibility and responsiveness are components of effectiveness – as is communication. ‘Results’ may be less important in neighbourhood policing than the process.

- 2.8. Discussion about the training regimes for police forces have emphasised that the broad basis of the curriculums emphasise the hard and technical skills required rather than the complementary soft skills:

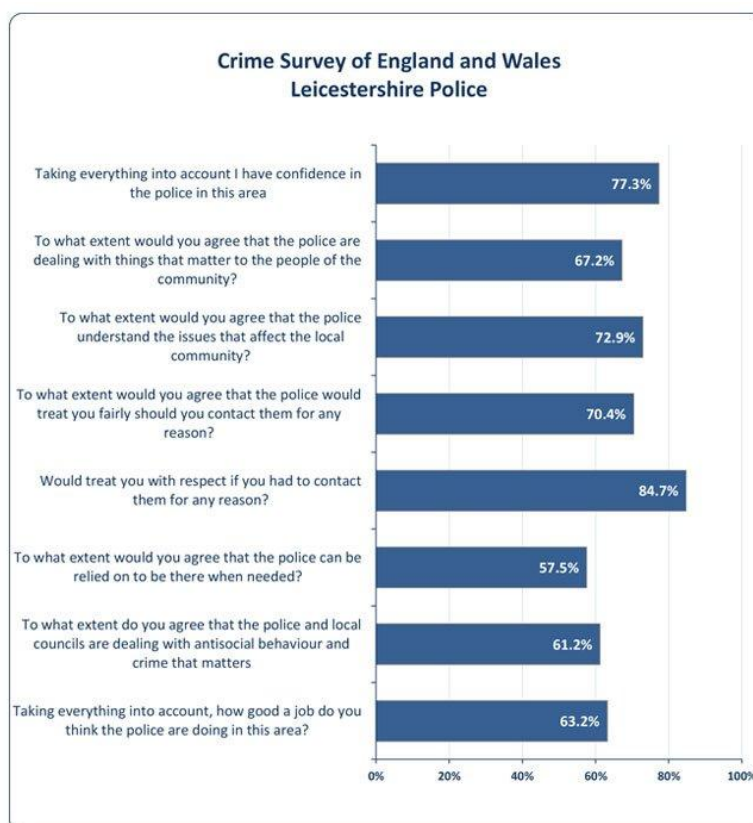
*“While there is no necessary tension between treating people with fairness, dignity and respect and some of the more instrumental aims of policing, it is not hard to envisage that emphasis on the latter – in terms of resource allocation or occupational’ canteen-culture – may often come at the expense of the former”.*³³

- 2.9. In exercising influence, it is often what people feel about the police that is as important as outcomes (hence the incivility, impoliteness, and intolerance levels identified in complaints which hover just under 20% of all complaints is a worrying figure), The behaviours of officers should communicate that the public are respected and treated with an interactive intent that is positive. This leads to increased local confidence. A snapshot of this is shown from May 2014 at Figure 6.

³² Can Police Enhance Public Confidence by improving quality of service? Andy Myhill & Ben Bradford, *Policing and Society*, Vol 22, No 4, Dec 2012 p 397-425.

³³ Ibid, page 419

Figure 6: Crime survey of England & Wales – Leicestershire Police:



2.10. Behavioural science in the ‘people skills’ area is a crucial enabler in achieving public trust and confidence. In all the measures in this review, it is not doing one thing 100% better, but about doing one hundred things 1% better.³⁴ It is these 1% shifts that will build increase confidence in the police.

Recommendation 9: All police training courses are reviewed for their ‘people skills’ content.

RESIGNATIONS AND RETIREMENTS

2.11. A vulnerability identified in the Centre of Gravity analysis was timeliness in the disciplinary process. Resignations and retirements enable timeliness.

2.12. Over the period of the 2008 and 2012 regulatory regime, the police have increasingly shown that it is capable and willing to not only dismiss officers but to get them to resign (the overwhelming majority) or retire (a small minority) during the course of misconduct investigations each year. The point at which such officers either choose to retire or tender their

³⁴ The philosophy of Clive Woodward in winning the 2003 rugby world cup.

resignation differs from at the time or shortly after service of a Regulation 15 Notice or being arrested for a criminal offence, through to when appearing at a misconduct hearing.

- 2.13. These officers do not resign (or retire) to circumvent misconduct proceedings; they often choose to resign (or retire) as they know what any disciplinary finding, outcome or sanction, most particularly any finding which would lead to a high probability of dismissal from the service, is likely to be and take a pragmatic view of the situation. That some 50% of officers faced with a misconduct hearing choose to resign is a testament to the strength of the evidential case against many of them. The misconduct alleged being is so severe that dismissal is almost inevitable, and this is evidence that officers are taking a pragmatic view that their interests – and those of the police force – are better served by choosing to resign and leaving the service voluntarily and getting on with their lives rather than facing the outcome of being dismissed without notice. In financial terms the officer would be better off if they drew the process out as much as possible as they would continue to be paid and accrue pension rights until they were dismissed.
- 2.14. As examples, between 1 January 2010 and 30 June 2012, 12 police officers of a particular force were found guilty in a criminal court of drinking and driving. In the internal cases that followed, 5 officers resigned/retired. The remaining 7 officers were subject to formal action under the Police (Conduct) Regulations and subsequently dismissed without notice. No sanctions were reduced under appeal. In another force area following random drugs testing (which may be 'with cause' and therefore intelligence led) two officers resigned after testing positive for cocaine, whilst another was dismissed without notice after a Gross Misconduct Hearing. The outcome is the same, the officer is out of the force, but: the latter process, in both examples, takes far longer and is significantly more expensive.
- 2.15. The result is that officers who choose to resign shorten the proceedings by so doing, often by weeks or months and in leaving the service sooner than would ordinarily be the case, time expense and resource is saved by forsaking the full disciplinary hearing they are entitled to. Reassurance is thereby provided that the police service is willing and capable of fairly but clinically removing those officers whose conduct had been rightly adjudged to be gross misconduct and who could only expect to be dismissed if they choose to seek to justify or explain their breach of professional standards at a misconduct hearing.
- 2.16. The public interest is served. Officers who deserve to be dismissed are increasingly understanding that there is no hiding place in the service

for them: reflective of a police service willing to set and enforce high standards of professional behaviour and one which fully appreciates the need for public confidence in rooting out those officers who lack integrity, who are corrupt, who commit criminal offences either on or off duty, or who significantly fail to adhere to any of the recognised standards of professional behaviour.

- 2.17. Resignations are a pragmatic solution; they are not a moral solution. The pragmatic may clash with what, in certain cases, might be termed a 'victim deficit'. There are cases where the balance will flip towards the moral rather than the pragmatic, and where public concern and the need to maintain confidence in the most serious cases (engaging Article 2 right of EHCR for a victim and a victim's family) overrides an officer's rights under Articles 8 and 9 to be allowed to resign. It will be a police command judgement whether a victim's rights are met by inquest, criminal and civil proceedings, or whether wider issues arise. In most cases, the pragmatic approach overcomes the perversity that might arise in a gross misconduct case which, without an admission of guilt from the officer, might lack the evidence to dismiss, or that dismissal might be appealed and a PDAT might overturn the finding, thus enabling the officer to continue to serve. There is no appeal right arising from a resignation. For example, in one force there were 178 gross misconduct cases heard from September 2010 onwards; 58 went to appeal and 6 appeals were upheld. This would not have been the case if the officer had chosen to resign.
- 2.18. The Taylor report stated that "police disciplinary regulations need to move away from being lengthy, costly, heavily regulated and punitive". Resignations and retirements fulfil this function. Resignation or retirement results in swifter solutions than the dismissal process. Resignation avoids the payment of salary to officers who might be suspended during the course of potentially lengthy investigations. It is not a 'get out of jail' card for officers: if there is an evidential case to answer, and it is in the public interest, then a resignation does not preclude trial in a criminal court. The range of resignation reasons at Annex C passes the common sense test.
- 2.19. Inhibiting officers' retiring will have unintended consequences. There will be an increase in hearings, and less likelihood of admission of guilt (there is no appeal to a PAT where there has been admission of guilt). Appeals from hearings will also rise with a knock on impact on the (current) need for legally qualified chairs.
- 2.20. A separate issue is that situations have occurred where officers or police staff have been re-employed by another force after a resignation that occurred whilst they were subject to a gross misconduct investigation. This

needs to be addressed. It is a loophole that needs closing. Such officers should also not be able to gain employment in bodies such as the IPCC or HMIC. The list of officers currently held by the College of Policing, which the College refers to as a 'disapproved register' goes some way to addressing this but the language is not understandable to the public. It is because there is no list of registered officers from which to be struck off that such a contortion into opaque language has occurred. If a register of officers and police staff members was placed on a statutory basis, this could then enable any officer who is subject to an investigation that could lead to their dismissal to be struck off as a part of their being able to resign or retire.

Recommendation 10: A register of police officers and staff members is established. Any officer or police staff member that is dismissed is struck off and disbarred from service in any police force, and from working in bodies such as the IPCC and HMIC. Any police officer or staff member who resigns or retires prior to misconduct hearings is similarly struck-off.

- 2.21. I am aware that the previous government did not agree with the recommendation that police officers/staff should be allowed to resign/retire while under suspension. There is also a fine judgement between the balance of confidence in the system, and as it was described (in relation to complaints but applicable more widely) between “the 10% who want a head on a stick and those who just want an apology”³⁵.

DIVERSITY

- 2.22. Research³⁶, based on quantitative and qualitative information from Greater Manchester Police, West Midlands Police and British Transport Police, appeared to confirm that BME officers and staff are more likely to be the subject of internally raised disciplinary and misconduct proceedings, and receive different treatment through such proceedings than do white officers. A key finding of the research was that the police appear to have problems managing difference in their workforce, and that the sorts of issues that managers believe can be settled by an informal conversation with white officers often end up in full-blown disciplinary proceedings against officers from black and minority ethnic backgrounds.
- 2.23. Perceptions of the cause of this problem are divided: referrals to Professional Standards Divisions and formal approaches may be for fear of being accused of racism. Conversely, these practices may themselves

³⁵ A phrase used by the National Policing lead for Complaints and Misconduct

³⁶ Disproportionality in Police Professional Standards (University of Manchester, 2012)

amount to a subtle form of racism. Either way, they are symptomatic of a flawed approach to dealing with difference.

2.24. This has been a further recurring theme in analysis of diversity. Morris³⁷ came to the same conclusion³⁸ stating that “we are concerned that some managers lack the confidence to manage black and minority ethnic officers without being affected by their race. The statistics clearly indicate disproportionality in the way black and minority ethnic officers are treated in relation to the management of their conduct” and that they were treated differently in two aspects:

- Managers were reluctant to exercise managerial authority on minor matters and so took no action, depriving minority ethnic officers of the opportunity to learn and develop in response to constructive criticism and support.
- Managers resorted to formal processes more frequently instead of applying the informal option. The result being that conduct goes uncorrected and reaches the stages where formal action is required³⁹.

2.25. Dealing with diversity also seems to impact on confidence metrics in the complaints system: 41% of ethnic minority complainants feared police harassment if they made complaints against the police. This figure reduces to 18% from the white community.⁴⁰

2.26. Dealing with difference continues to impact on gay and lesbian officers. A survey of 1,300 senior police officers by the Police Superintendents Association of England and Wales (PSAEW) found that four out of ten lesbian or gay superintendents and chief superintendents have experienced discrimination in the policing workplace. Homophobia still existed at a “subtle underlying level” within the force according to respondents⁴¹.

PENSION LOSS

2.27. There is frequent and often reported public dissatisfaction that an officer is allowed to keep his or her pension after dismissal or by retiring (or that they will receive their pension by retiring ahead of a pending hearing). There is also dissatisfaction in PSDs, with some believing that the idea of pension forfeiture should be an option open to disciplinary panels for two reasons:

³⁷ The Report of the Morris Inquiry – The Case for Change (2004).

³⁸ Ibid, para 1.23.

³⁹ Ibid, para 5.64-5.66.

⁴⁰ IPCC Police Confidence Survey 2014. The figures appear to defy reduction. In 2011-12 they were 40% and 17%.

⁴¹ Conducted prior to the September 2014 PSAEW conference.

first, that it would lower cost and bureaucracy by not needing to go through a separate process, and second, that the rarity of pension forfeitures is not an effective deterrent. This links pension and misconduct issues. They are separate matters.

- 2.28. Any person, public servant or otherwise who has properly contributed to a pension scheme is entitled to the appropriate benefits that have accrued. A pension can only be forfeited if someone is found guilty of certain prescribed criminal offences; this is a common test across the public sector. In the case of *Harrington vs the Metropolitan Police Authority*, the High Court found that the pension forfeiture process engaged Article 6(1) and Article 1 of the First Protocol to the European Human Rights Convention as contained in the Human Rights Act 1998. In that particular case the court found that it would be a disproportionate breach of those rights to forfeit the officer's pension even though he had been convicted of a criminal offence. On this basis it is difficult to see how pension forfeiture for misconduct would be compatible with the current human rights legislation in the UK.
- 2.29. The resignation or retirement of a police officer during the course of misconduct proceedings does not affect the ability of a force to seek forfeiture of an officer's pension. The Regulations governing pensions are provided by the Police Pensions Regulations 1987 which allow a Local Policing Body to seek the forfeiture of an officers' pension where they have been convicted of a criminal offence in connection with their service in circumstances certified by the Secretary of State to have been injurious to the interests of the state or liable to lead to a serious loss of confidence in the public service.⁴² There are many cases where pensions have been forfeited for criminal offences, but not for gross misconduct alone given that this is below the criminal threshold. The public perception that officers who resign or retire whilst subject to an investigation are able to keep their pension by doing so, any more than an officer who is dismissed, is a myth.
- 2.30. To include pension forfeiture in misconduct, as opposed to criminal cases, would be to make an exception for police officers that does not apply to anyone else in public or private sector employment. The case for this is not clear, nor does it fit in to the category of 'natural justice'.

COMPLAINTS / VEXATIOUS COMPLAINTS

- 2.31. There are complaints that are vexatious, malicious, false and unavoidable; this may include occasions where offenders or their associates may use the complaints system to attempt to undermine police investigations against

⁴² Part K5, Police Pensions Regulations 1987.

them. There is legislation that covers this in terms of the requirement or not to record complaints and to seek authority not to deal with them⁴³ but the legislation is cumbersome, and allows a complainer to continually open new avenues of complaint that have to be dealt with. This is relevant to the disciplinary system since time spent dealing with vexatious complaints takes away from time professional standards departments are able to apply to investigations into conduct matters or active anti-corruption efforts.

- 2.32. The percentage of locally resolved cases is a trend that needs to rise. In less serious cases those making a complaint seek an early apology and acknowledgement of poor performance that can help to resolve the complaint swiftly. Many forces now focus on service recovery and learning the lessons particularly on incivility cases. Those who are routinely subject to complaints can be rehabilitated and be served with improvement plans. This is intervention management in action. It is entirely right that any local resolution complaint should remain on an officer's/staff member's file throughout their career to assist in future monitoring.
- 2.33. In less serious cases, most people making a complaint are seeking: timely acknowledgement, empathy and for the complaint to be taken seriously, for a feed-back loop following a fair investigation, for lessons to be learnt, and a timely outcome that delivers reassurance and recovered confidence. This may include an apology.
- 2.34. It has always been the case that operational officers are more vulnerable than most other occupations to attracting fictitious or tactical complaints from certain members of the public. Persistent criminals and persistent anti-social behaviour offenders will use the public complaints process to deter officers from tackling crime or anti-social behaviour, and therefore divert attention away from them. As the police mainly operate as an enforcement body, they occasionally have to do things that those people do not like. For that reason, the police deserve extra protection in this type of operationally generated complaint. This reinforces the need to have a disciplinary system that has serving police officers represented who will be able to understand the complexity of the issues, and the motivations behind certain categories of complaint.
- 2.35. A recent pattern, historically rare, is complaints against Chief Officers (two of them are currently suspended and six are under investigation for gross misconduct). It is unlikely that they are worse than they used to be, merely that they are more vulnerable to complaints, and to the processes of inexperienced CEOs of PCCs Offices. This argues for:

⁴³ Schedule 3 to the Police Reform Act 2002.

- A robust assessment prior to investigation.
- A thorough understanding that suspension is not a neutral act. It should be the last resort and not the first given that the vast majority of complaints against Chief Officers are not substantiated.
- That investigations relating to Chief Officers must be independently conducted by the IPCC and not another external HDPF to ensure transparency.

Recommendation 11 Investigations for chief officers should be carried out by an independent body such as IPCC.

Recommendation 12: The provision in PRA 2002 Schedule 3 should be amended to include a provision to tackle vexatious complainers.

2.36. In this consultation there was universal welcoming of the concept of body worn cameras (any objections were procedural rather than principled, such as on issues such as data storage, protocols and so on). There is evidence that it may contribute to altering behaviours: of both the public and of a police officer in any given situation. It can support both victims and witness evidence and encourages early guilty pleas improving criminal justice outcomes. A randomised control study in Rialto, California where body cameras were introduced in February 2012 produced results indicating that complaints fell by 88% in a year. Frivolous or bogus complaints were withdrawn on production of the recorded encounter.

2.37. Matthew Ellis, the Staffordshire PCC describes a drunk who used gravel to scratch his own face and subsequently threatened to blame the police. He desisted in the complaint when told he was recorded on camera. Investigating that complaint might have taken 50-100 hours and cost £3,000. Accountability has been shown to outweigh privacy concerns⁴⁴.

2.38. A similar situation used to pertain with police control centres. Complaints about police control centres dropped dramatically with the introduction of taped calls. They were previously, a driver of complaints.

SELF SERVING

2.39. The headlines often make uncomfortable reading. There is no getting away from the damage they create in the perception of the public. The public expect the police to act with integrity. HMIC reports⁴⁵ on ascertaining the public perception of corruption (or integrity as the antithesis of corruption)

⁴⁴ The Economist, 23 August 2014, in an article entitled "Kojak Moments" .

⁴⁵ Without Fear or Favour (HMIC, December 2011) and HMIC follow up report (December 2012)

showed that 81% of the respondents who believed the police to be corrupt (36% believed that corruption was fairly or very common in the police) were influenced by stories they had seen in the media. Some police officers are corrupt; they are dealt with under the criminal justice system. The new offence of police corruption, which at the time of writing was on its way through Parliament as part of the Criminal Justice and Courts Bill, will underline this and ensure it is the case. Recent IPCC reports on police corruption⁴⁶ have not highlighted that the police are corrupt. The three following examples are a random selection from the headlines over the period of this study to illustrate the damage in perception:

Success, failure or both?

Headline: *Disgraced Detective sacked after she was convicted of harassing her policeman ex-lover and his wife after their 6-month affair ended*

Success

- The police conducted the investigation that led to the conviction for harassment in a civil court.
- The officer was dismissed for gross misconduct without notice following an internal disciplinary hearing subsequent to the criminal outcome.

Failure

- The officer broke the police code of ethics in the relationship.
- The officer failed in her conduct after harassing the wife.
- The officer failed in her integrity (part of the harassment was a claim that the PC was the father of a child: he was not).
- This was an overall failure in: personal, professional, and social ethics.

Public Perception

- **Negative – damaging to police reputation**

Success, failure or both?

Headline: *Top police officers' career in tatters after he is jailed for lying on his CV to win a string of promotions that made him £70,000 richer.*

Success

- The officer was found guilty in a criminal court after a police investigation.
- The officer will be dismissed.

Failure

- The regime for checking the claims in the CV was not in place.
- The officer failed every ethical test of integrity.

Public perception

- **Negative – damaging to police reputation**

⁴⁶ Part 1 report published in August 2011; Part 2 report published in May 2012

Success, failure or both?

Headline: *I'm a copper – I will do what I like: Detective attacked holidaymaker in a pub and yelled at mother of autistic girl ‘**** your disabled child’ after 7 hour drink binge.*

Success

- The officer was arrested at the licensed premises by the police.
- The officer was found guilty in a criminal court after a police investigation.
- The officer will likely be dismissed for gross misconduct.

Failure

- Complete failure in personal, professional and social ethics

Public Perception

- **Negative – damaging to police reputation**

2.40. All the examples show police impartiality and effectiveness when investigating those who have broken the criminal law – a positive. But they also illustrate a fundamental disregard for organisational values – a damaging negative that links back to the requirements of chapter 1. As an aside, the police comments after both cases (the ‘line to take’) is professional but does not match the robustness that the public might expect⁴⁷.

2.41. The complaints system can also deliver accountability. Police officers have been charged, convicted, dismissed or have resigned in numerous instances – some following IPCC investigations, many more following investigations conducted by the police’s own Professional Standards Departments (PSDs). Despite the frequent criticism of the system of the “police investigating police”, the record of many PSDs, made up of serving officers, shows that they are capable of conducting the investigation to the point of outcome. The Metropolitan Police dismissed 58 police officers in 2013, only 8 of which followed investigations in which the IPCC was involved.

2.42. These successes are overlooked: they do not make headlines. There is a legacy of distrust. Trust (a component of confidence, along with integrity) is

⁴⁷ The two comments were: “The public quite rightly have high expectations of police officers...and (our force) is committed to meeting those expectations by demanding high standards of professionalism, honesty and integrity. It is vital that we maintain the public’s trust and confidence and ensure that officers and staff....realise the importance of maintaining standards and working with honesty and integrity. And: “We are aware of the decision of the court in relation to this officer.(The) police expects the very highest standards of its officers and staff, both on and off duty”. The comments may be hamstrung by the right of the guilty to appeal their sentence but they are bland.

a key value for the police – internally and externally⁴⁸. Journalistic oversight is, by itself, a healthy value in a democracy.

- 2.43. In internal cases of misconduct, it is (like many other professions) the perception of a ‘conflict of interests’ in a dual role as investigator and judge that can be concerning. The argument that runs through this strand is that the police are insular and mistrustful of outsiders and that their power to investigate (and determine sanctions) must be taken away. The alternative view, is that unless the police are given their own input on accountability, they will never hold themselves accountable, and inward self protective habits (such as blaming the IPCC for poor investigations) - will prevail. Although an organisation should be allowed to conduct its own investigations and disciplinary outcomes, this is not an inalienable right, but must be based on fair and transparent investigations - and credible outcomes. It was because of the need for these features for the medical and many other professions that various tribunal services were established. Tribunals are entirely separate and independent from the investigation process. This will be further examined in chapter 4.

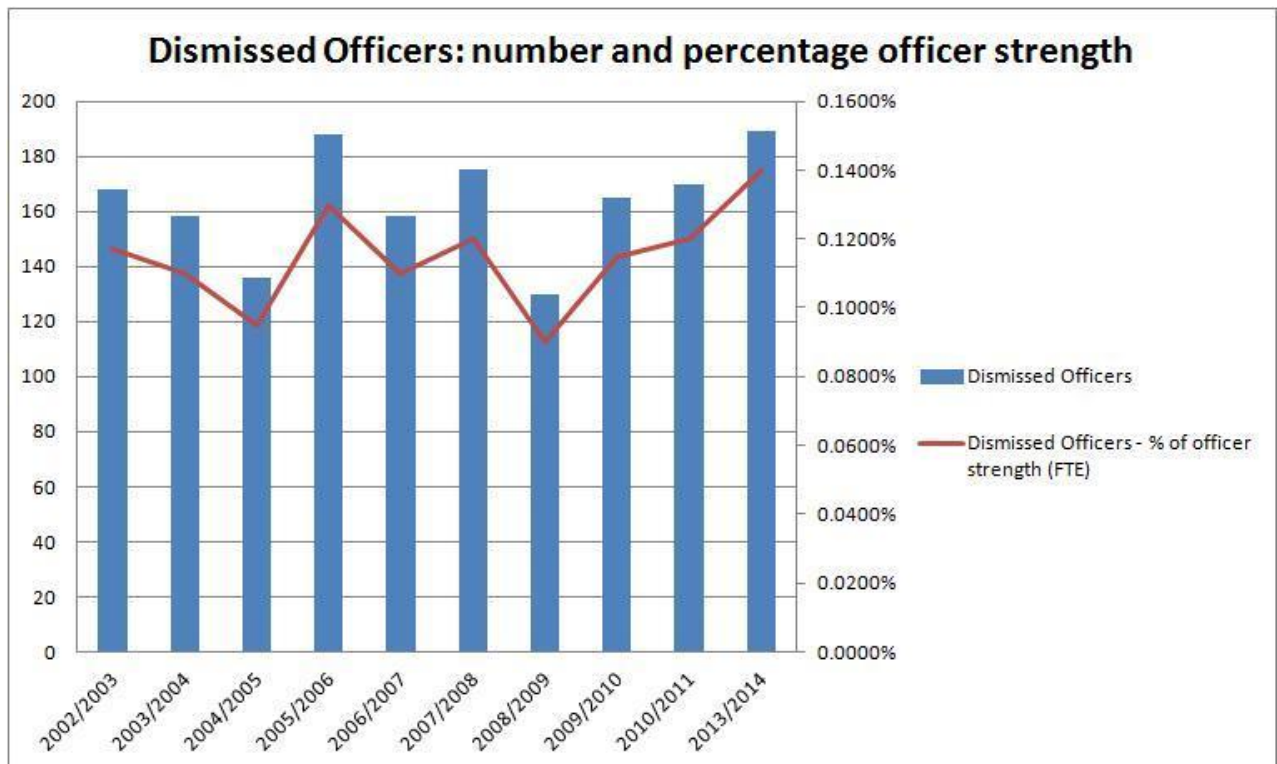
DISMISSAL

- 2.44. Although all dismissals represent a failure in professional standards, the overall numbers do not indicate a police service that is ill-disciplined. The percentage figures for dismissed officers ranges from a low of 0.09% in 2008/09 to a high of 0.14% in 2013/2014, figure 7 shows the data for dismissed officers from 2002-2014 as a percentage of the workforce, figure 8 shows the number of police officers by length of service in England and Wales as at 31 March 2014⁴⁹.

⁴⁸ This argument is made in “Towards greater public confidence – a personal view of the current police complaints system in England and Wales” – Deborah Glass (March 2014).

⁴⁹ Home Office Annual Data Returns 502 and 582. Figures are unverified and should be treated as provisional. Figures are FTE, to the nearest whole number. Dismissal includes staff required to resign, compulsory redundancy and termination of contract. Length of service spans time working across any police force rather than the current force.

Figure 7: Total dismissals 2013 - 2014⁵⁰



⁵⁰ I did not have access to 2011/2012 and 2012/2013 data at the time of writing the report and it is not included in the chart.

Figure 8: Police workforce as of 31 March 2014

Number of police officers by length of service, England and Wales, as at 31 March 2014 (headcount)

	Police Officers
Less than 6 months	2,638
6 months to less than 1 year	2,112
1 year to less than 2 years	1,864
2 years to less than 3 years	2,073
3 years to less than 4 years	1,657
4 years to less than 5 years	4,895
5 years to less than 10 years	30,500
10 years to less than 15 years	32,850
15 years to less than 20 years	18,760
20 years to less than 25 years	16,841
25 years to less than 26 years	3,676
26 years to less than 27 years	3,526
27 years to less than 28 years	3,140
28 years to less than 29 years	2,521
29 years to less than 30 years	2,190
30 years to less than 31 years	420
31 years to less than 32 years	242
32 years to less than 33 years	167
33 years to less than 34 years	145
34 years to less than 35 years	103
35 years or over	194

Source: Home Office (ADR 582)

2.45. Within these low figures, the consistent theme is evidence of the ability of the police service to dismiss those unable or unwilling to meet the expected standards. Serving police officers are genuinely disgusted with those who transgress, and are clear at all levels of their intent to rid themselves of those who lack professionalism and integrity. Some 88% of all cases are those identified from within the police service, with the remaining 12% arising from public complaints. Since 1 December 2013 the College of Policing have been provided details of those officers who have been dismissed from the service or who either resigned or retired while subject to a gross misconduct investigation where it had been determined there was a case to answer. A further snapshot from the GMP for the period 1 September 2012-31 August 2013 shows that 34 officers or staff were dismissed or resigned is at Figure 9.

Figure 9: Snapshot of cases against officer and staff from the GMP:

Outcomes of Cases against GMP officers/staff September 2012-August 2013		
	Officers	Staff
Misconduct Meetings	9	13
Misconduct Hearings	7	11
Dismissed/Resigned	19	15
Cases progressed to court	18	8
Serving prison sentences	2	0

2.46. A further snapshot of misconduct figures from a major force area is at Annex C.

ESCAPE JUSTICE

2.47. The resignation or retirement of a police officer during the course of misconduct proceedings does not affect criminal prosecutions. A good number of officers are subject to gross misconduct proceedings as a result of involvement in criminal offences whilst off-duty, whilst others relate to criminality arising from policing duties, ranging from offences involving dishonesty or attempting to pervert the course of justice or similar neglects of duty or in the course of duties as a police officer, which are so serious to involve indictment for misconduct in a public office, others relate to offences committed on duty or in the course of duties as a police officer, including serious offences such as sexual assault or harassment. Equally, some officers face criminal proceedings arising from causing death or serious injury in the course of their duties, ranging from offences such as unlawful act manslaughter through to serious driving offences (such as drink-driving whilst off duty). In all such cases, the clear emphasis is on dealing with criminality in its own right as criminal proceedings. These take precedence over misconduct proceedings. Any conviction for a criminal offence will almost certainly lead to dismissal from the service for a breach of standards of professional behaviour. Where officers facing criminal charges have proceedings discontinued, or are acquitted, gross misconduct proceedings are invariably pursued.

2.48. In serious cases, where evidential standards are met, any CPS determination that prosecution is in the public interest solely due to the fact that the accused is a serving officer is unlikely to be re-considered in the light of the officer subsequently resigning or retiring from office. In less serious cases, the fact that the accused is a serving officer and the ability of

the police service to deal with any serious misconduct through the proper application of its own regulatory disciplinary system might well be a factor in weighing the public interest. In either case, whether an officer choose to resign or retire should not and does not – nor should it- seem to have any bearing on the independence of the CPS to bring criminal prosecutions.

- 2.49. The police tend to be better at investigating criminal cases than they are at internal disciplinary investigations. Rather than a lack of willingness to tackle disciplinary issues, this is more likely a consequence, at least in part, of a lack of investigative capability in PSDs and, crucially, a lack of training in the disciplinary system and the associated regulatory framework.

WORSE THAN OTHER PROFESSIONS

- 2.50. They are not. Even the profession with the highest approval rating (trust in Doctors was 89% in 2013) reveals a growing number of complaints. Since 2007 there has been an overall 104% increase in complaints and a 24% increase between 2011-2012⁵¹. Rather like the culture one aspires to in the police (with the tenth standard of professional behaviour being to challenge and report improper conduct), there is both an increase in self reporting, and an increased public expectation. And like the police, it does not mean the standard of service or investigation has diminished. A further parallel is the desire to create a culture in which errors and complaints are viewed as opportunities for learning, and where poor practice is identified and tackled before escalation to the GMC: the ‘interventions’ mentioned in chapter 1. The General Pharmaceutical Council (GPhC) experienced a 24% rise in complaints in the year to 2014 (in line with other health professionals’ regulators) with an expectation of further rises next year.
- 2.51. Complaints are an expectation in all areas of life. The Consumer Council for Water reported 123,200 complaints in the year to March 2014 (itself an 18% reduction from the previous year). Most were related to billing and charges.
- 2.52. The College of Policing ‘Disapproved Register’ became effective form 1 Dec 2013. Since then, police forces have been providing details of all officers who have been dismissed from the service or who either resigned or retired while subject to a gross misconduct investigation where it had been determined there was a case to answer. The Register currently relates to all Home Office forces in England and Wales, British Transport Police and the Ministry of Defence Police. The College of Policing is not an official regulator. It cannot therefore use the language of being “struck off”

⁵¹ The State of Medical Education and Practice in the UK 2013, GMC (Oct 2013).

as there is no register of police officers from which to be struck off – another issue of ‘opaqueness’ in language that constantly occurs. The issue of regulation is a separate issue that will be dealt with later in this report.

Figure 10: Numbers taken from the ‘disapproved register’ 1/12/13 – 1/8/14:

Total Number of officers dismissed	96
Total number of officers resigning while subject to gross misconduct investigation	97
Total number of officers retiring while subject to gross misconduct investigation	15
Total	208

Figure 11: Numbers on mode of investigations 1/12/13 – 1/8/14:

Cases independently investigated by the IPCC	7
Cases supervised by the IPCC (investigated by a Police Force)	27
Cases investigated by a Police Force	169
Not stated	5

Figure 12: Numbers of dismissals, resignations and retirements 1/12/13 – 1/8/14:

Rank	Dismissed	Resigned	Retired	Total
Constable	75	89	9	173
Sergeant	14	6	3	23
Inspector	6	0	2	9
Chief Inspector	1	2	0	3
Superintendent or above	0	0	0	0

Figure 13: Categories of Misconduct 1/12/13 – 1/8/14:

Category	Dismissed	Resigned	Retired	Total
Domestic Abuse	5	9	1	15
Data misuse	13	17	2	32
Assault on Duty	4	2	2	8
Relationship with vulnerable person	5	15	1	21
Fraud related	9	8	0	17
Child sex offences	3	0	0	3
Sexual conduct towards colleagues	3	2	1	6
Racist, homophobic behaviour	5	2	0	7
Drink drive	5	3	0	8
Drugs related	4	4	0	8

Theft	10	4	2	16
Giving false evidence	11	6	0	17
Failure to perform duty	6	5	4	15
Other	13	20	2	35
Total (63% related to 'on duty' conduct:131 cases)	96	97	15	208

2.53. The figures represent a snapshot of the police determination to uphold standards and to deal effectively with those who transgress. In cases of resignation, the effects of a dismissal are still maintained: getting those who transgress out of a force with speed where their integrity falls below the standards expected by the public.

Recommendation 13: Data on dismissal, resignation and retirement cases linked to disciplinary action are published yearly to ensure transparency and accountability.

CHAPTER 3 - DISCIPLINE

DISCIPLINE (PERFORMANCE AND CONDUCT)

- 3.1. Policing is a diverse occupation. It requires a disciplined approach so that public confidence and reassurance is maintained. Discipline should not be for its own sake: it is more about how one can achieve discipline to maintain and increase the personal capability and performance level of individuals. The intent should be to produce a better officer. It may be possible to correct a failing immediately, and if so this correction should be enacted. This is the lowest level management intervention.
- 3.2. In the conduct regulations, 'misconduct' means a breach of the standards of professional behaviour. The standards of professional behaviour encompass performance issues and misconduct issues. There is no requirement for two separate systems, one for performance and another for conduct.⁵² The key question is how formal or informal, corrective or coercive, the response to an infraction might be.
- 3.3. Many forces adopt differing approaches. Examples include 'Force A' having a 'Performance and Conduct' policy (for police staff), whilst 'Force B' has a 'Disciplinary Procedure' that is to be used solely for matters that relate to an employee's conduct and applies to formal discipline action. If the matter (for that force) relates to capability and/or performance, then the disciplinary procedures are not to be used. 'Force C' has a Police (Attendance and Performance) procedure, whilst 'Force D' has a Disciplinary Procedure and Disciplinary rules' that includes gross incompetence as an example of gross misconduct, and "a first and final warning" that comes after a 'final warning'. A standardisation of the system with consistency, clarity and credibility (for the public) were three recurrent pleas from interviewees⁵³.
- 3.4. ACAS recognises that "disciplinary situations include misconduct and/or performance⁵⁴". Legal firms that give examples of misconduct that might lead to disciplinary action being taken include, but are not limited to: failure to take a reasonable management instruction, poor work performance, and breach of policies and practices. There is no statutory requirement for two separate

⁵² For example, under 'conduct' an officer is required to start work on time and be punctual at work, maintain a high standard of appearance, and maintain the highest standards of behaviour. To fail these tests would therefore be misconduct. But they are ameliorative things that might more readily sit under performance. Bringing the two together removes the anomalous position.

⁵³ These are examples from police staff where employment law pertains, but shows the differing approaches.

⁵⁴ ACAS Code of Practice Disciplinary and Grievance Procedures April 2009.

procedures. The NPIA used one policy for police staff called 'Performance and Conduct' policy.⁵⁵ The ACAS Code of Practice is based on the following principles:

- The primary aim of any disciplinary system is to encourage and support in improving performance.
- Informal resolution should occur in the first instance where practically possible.
- Managers should aim to resolve matters as speedily as possible.
- A constable/employee will be informed of the allegation against them and be given an opportunity to state their case before determinations are made.
- A constable/employee may be accompanied at formal meetings.
- They may not be dismissed for a first offence unless it is a listed measure (defined under gross misconduct or gross incompetence).
- Any awarded sanction must follow an investigation.
- A written explanation will follow any determination so that future improvement can be achieved.
- Appeals are embedded in each formal stage if required.
- All cases will be dealt with thoroughly, promptly and consistently.

3.5. The approach to performance and conduct in the police has been based on an adversarial system. This leads to significant delays and police officers left in limbo. There needs to be a better calibration (outside the Criminal Justice system for criminal cases⁵⁶) between prevention, intervention and restoration requiring supervisory skill and leadership. Where restoration has failed or the nature of an incident (gross misconduct or gross incompetence) is proven, then action and benchmarked outcomes will need to be applied.

THE CURRENT SYSTEM

Police (Conduct) Regulations 2012

3.6. The Police (Conduct) Regulations 2012 set out the framework of misconduct proceedings and apply to all police officers up to and including chief officers and to special constables. These regulations replaced the Police (Conduct) Regulations 2008 and apply where an allegation comes to

⁵⁵ NPIA Performance and Conduct Policy dated 18 June 2012.

⁵⁶ The role of the Crown Prosecution Service (CPS) relates only to criminal matters. The character and purpose of disciplinary proceedings is "entirely different" to criminal proceedings. It is "to protect the public" and "to maintain the high standards and good reputation of an honourable profession" (Redgrave V Met Commissioner (2003)). It is also this ruling that establishes that it is not double jeopardy to take action as an employer following a criminal case.

the attention of an appropriate authority⁵⁷ which indicates that the conduct of a police officer may amount to misconduct or gross misconduct (as defined in regulation 3). This includes an allegation contained within a complaint or conduct matter referred to the IPCC in accordance with the Police Reform Act 2002 (except that Part 3 of the conduct regulations (Investigations) does not apply in such cases, as Schedule 3 to the 2002 Act deals with the investigation of such cases).

- 3.7. Part 4 of the 2012 regulations deals specifically with misconduct proceedings, including matters which are assessed as a case to answer for a breach of standards of professional behaviour which amount to misconduct, where management action can be taken against an officer or the officer can be referred to a misconduct meeting (where the most serious sanction that may be applied is a final written warning), and those matters which are assessed as gross misconduct (a breach of standards of professional behaviour so serious that, if admitted or proven, dismissal from the police service would be justified. An officer facing matters assessed as gross misconduct will appear before a misconduct hearing where dismissal from the service without notice is an outcome available to the panel.
- 3.8. Part 5 of Police (Conduct) Regulations 2012 deals specifically with the procedures for special case hearings where there is sufficient written or documentary evidence to establish gross misconduct on the balance of probabilities and it is in the public interest for the officer concerned to cease to be a police officer without delay.
- 3.9. The 2012 regulations have brought national consistency in dealing with breaches of standards of professional behaviour and a much more professional and accountable approach to discipline, following recognised good practice laid down by the ACAS code of practice on disciplinary and grievance procedures.

Police (Performance Regulations) 2012

- 3.10. The Police (Performance) Regulations 2012 deal with unsatisfactory performance or attendance on the part of police officers. The 2012 regulations replaced the Police (Performance) Regulations 2008, they do not apply to officers above the rank of Chief Superintendent or to officers who have yet to complete their period of probation.
- 3.11. Aside from the general provisions, the regulations are split into three parts that deal with the three different stages of the unsatisfactory performance

⁵⁷ The Appropriate Authority is: the Local Policing Body where the officer concerned is the chief officer or acting chief officer and the chief officer of the force concerned in all other cases.

framework. Police officers are not granted access to legal representation except where they proceed directly to the third stage of the procedures for gross incompetence.

- 3.12. A first stage meeting is conducted by an officer's line manager. The line manager of the officer will set out to the officer the reasons their performance, or attendance, has not been satisfactory, and inform the officer concerned of the improvement that is required. The officer will be issued a written improvement notice, if sufficient improvement is not maintained within any part of a specified time period, which must not be longer than 12 months, the officer may be required to attend a second stage meeting. A written improvement notice is valid for 12 months. Following a first stage meeting the officer is able to appeal against either the finding that the performance or attendance of the officer was unsatisfactory, the respect in which it was unsatisfactory, the improvement required, or the time period set out for improvement. The grounds for appeal are on the basis of unreasonableness, new evidence that would have materially effected the finding, or a breach of procedure. First stage appeal meetings are conducted by the second line manager. On hearing the appeal the second line manager may confirm or reverse the finding, and may confirm or vary the terms of the written improvement notice.
- 3.13. If the line manager is not satisfied that sufficient improvement in performance or attendance has been maintained over the time period specified in the written improvement notice the officer concerned shall be required to attend a second stage meeting. A second stage meeting is conducted by the second line manager. If the second line manager is not satisfied that the performance or attendance of the officer was satisfactory over the specified period he will set out the reasons for this and the improvement required in a final written improvement notice, which will specify that if sufficient improvement is not made within a period not longer than 12 months the officer may be required to attend a third stage meeting. A final written improvement notice is also valid for 12 months. The second stage meeting must be about unsatisfactory performance or attendance which is similar or connected to that referred to in the original written improvement notice. The officer can appeal following the second stage meeting on the grounds that it was not similar or connected, as well as on all the same grounds for appeal that were available following the first stage meeting. The appeal meeting will be conducted by a senior manager. The senior manager may decide that the officer should not have been required to attend a second stage meeting or may confirm or reverse the finding of the second stage meeting and confirm or vary the terms of the final written improvement notice.

- 3.14. If sufficient improvement is not maintained during the period specified in the final written improvement notice the officer concerned shall be required to attend a third stage meeting. The performance or attendance considered at the third stage meeting must be similar or connected to that at the second stage meeting. Where the officer's performance is considered to constitute gross incompetence then the officer may be referred directly to a third stage meeting. A third stage meeting is conducted by a panel, chaired by either a senior officer or senior human resources professional, with two additional members of the rank of superintendent or a police staff equivalent. At least one of the panel members must be a human resources professional and one of the members a police officer. If the panel finds that during the period specified in the final written improvement notice the performance or attendance of the officer concerned was not satisfactory, they may:
- Dismiss the officer subject to a minimum notice period of 28 days.
 - Reduce the officer in rank.
 - Redeploy the officer to alternative duties (which may be accompanied by reduction in rank).
 - Extend the final written improvement notice where there are exceptional circumstances.
- 3.15. Where the panel finds that an officers performance constituted gross incompetence, they may:
- Dismiss the officer without notice.
 - Reduce the officer in rank.
 - Redeploy the officer to alternative duties (which may be accompanied by reduction in rank).
 - Issue a final written improvement notice (a written improvement notice may also be issued following a gross incompetence hearing where the finding is of unsatisfactory performance).
- 3.16. The officer concerned may appeal to a police appeals tribunal against the finding or outcome imposed where they are dismissed or reduced in rank for unsatisfactory performance having proceeded through the process from stage one to three. Appeals against other outcomes will be held internally. Where the officer has proceeded directly to a third stage hearing for gross incompetence the officer is able to appeal to the police appeals tribunal against any finding or outcome imposed. The procedures for such appeals are dealt with separately under the Police Appeals Tribunal Rules 2012.

CONCERNS – ‘THE BIG THREE’

3.17. Each attendee at an interview group was given the opportunity to state their ‘big three’ concerns in order to guide future work and seek to close the gaps identified. The following section highlights the recurring points:

- **Clarity:** Is the complaints system for service recovery (after learning the lessons of ‘service failures’) or for punishment. Frequent responses alluded to Professional Standards Departments having complaints files that are bigger than murder files, with a disproportionate amount of time given to them. This particularly applied to vexatious complaints. In a ‘people’ business recovery and intervention where that is possible, and where the allegation does not meet a dismissal criteria were favoured. Investment in people should lead to management in achieving better performance and changed behaviours through guidance and supervision.
- **Transparency, Accountability and Credibility:** Responses favoured holding misconduct hearings and appeals in public with safeguarding protocols: there is not resistance, but a concern for the necessity for reassurances. The only caveat on public hearings is whether this should, or could, be applied to police staff members as well as officers. The current system is seen as opaque. Opaqueness in language used in the regulations was a contributing factor to a lack of overall transparency. The competency of panels (through lack of experience and knowledge of the regulations) in an often adversarial context was perceived as a further weakness. The professionalising of and need to take hearings away from the local level was a theme from smaller forces: “the smaller the force, the bigger the problem” in enacting sanctions against someone who might be known to the panel. It was also seen as important that the police leadership retained accountability for the maintenance of discipline.
- **Employee Status:** This concern is both over the complexity of current regulations, and that separate systems apply within the ‘police family’. There was a desire that police/staff tracks be harmonised. If officers are to be prevented from resigning or retiring this will add a further distinction between police officers and police staff.
- **Simplify the Complexity:** The regulations were seen as unduly complex, overly bureaucratic and burdensome. Most frequently this manifested in utilisation of the conduct rather than performance route due to its perceived difficulty.
- **Consistency:** Responders desired a standardisation of outcome and consistent decision making. Benchmarking is welcomed. Sanctions should be consistent and predictable: proportionate to damage to reputation as well as the infringement. A precedent library (similar to

case law) would be a useful addition to aid those who sit on panels infrequently to help in the application of this consistent decision making, and expectations of the public.

- **Standardisation:** With increasing collaboration across force boundaries and services, there was common desire for standardisation and common operating procedures. At the macro level, this is a point tellingly made in the HMIC Review “Mistakes Were Made” (March 2013) in to the failures to connect the various allegations in the Jimmy Saville case: “when guidance on the Management of Police Information (MOPI) is followed, the system works as intended. However, our review has highlighted concerns. We are not sufficiently assured that implementation has matched expectations due to the discretion afforded the individual Chief Officers in following MOPI, nor are we sufficiently confident that the guidance is being given full effect in all forces”.
- **Local Resolutions:** A desire to be enabled to do this potentially with the PCC involved in service recovery and public engagement.
- **Recruitment based on values:** Loyalty should be to the values of the service, not to the force or other individuals within the force. A cultural problem of a lack of admission that an individual had done anything wrong or made a mistake was an identified characteristic.
- **Sanctions:** The gap between dismissal and a final written warning was too great. The length of time an individual is placed on a final written warning is too short. The limited time on a warning and expiry of a warning meaning that it cannot be considered at a later date if a further behavioural or other trait reoccurs is a weakness: cases of sexual misconduct make this even more important. The position where antecedence for commendations can be brought in to hearings/appeals from many years back but the same does not apply to misconduct cases was deemed as anomalous: a final warning should be quotable until the day someone retired. Reduction in rank needed to be reintroduced.
- **Diversity:** BME officers were likely to go straight to misconduct procedures rather than be dealt with under performance. Dealing with difference was still an area that required greater confidence.
- **The Professional Standards/Human Resources ‘Join’:** The management of individuals and predictive abilities was identified as a weakness. Too many diverse computer systems that often do not join rules and potential alerts on behaviour or outcomes for the future is an inhibitor. Many forces are working toward the realisation of something akin to a People Intelligence Board Performance Assessment unit function in attempting to join the seam: it is still a developing capability

for most forces⁵⁸. There is no national training standard for PSDs. Even more surprisingly, there are not always trained investigators fulfilling PSD roles. As always, there is a tension between the need to ‘police’ internally for performance and misconduct issues with the need to externally investigate criminal cases involving the public (and the police where they have committed a criminal offence). Criminal cases involving the public are not investigated by the PSD.

- **Timeliness:** Delay is almost institutionalised in the system by the adversarial approach, and alignment (when necessary) of solicitors, barristers and representatives. It is compounded by the regulations, and often by the availability of senior officers to conduct a panel. There was immense frustration that techniques and tools were used in an attempt to keep people in the force seemed to be applying a different standard to behaviours that would not be acceptable in recruiting into the force, where the notion of values based assessment is seemingly disregarded, and where behaviours are being defended at the expense of values⁵⁹. As it was put to me, “everyone appeals, it is in their vested interest to do so as they continue to be paid”. There is a further perception that the communication during a case is poor. An officer or police staff members’ life is often placed on hold due to the lengthy nature of the process with the strains this imposes. Feedback loops were missing in this area.
- **The Lack of Culture of Challenging Performance Infractions at every level:** Whilst this is now embedded in the code of ethics, the reality remains to be seen. A regulatory system that has developed as legalistic, adversarial, and punitive may not encourage the very thing it is designed to do unless the balance and culture of learning from mistakes is truly taken on board. Palliative actions to improve performance that follow from formal processes need to be more robust. The OSPRE⁶⁰ for Sergeants and Inspectors was seen as transactional with a lack of training in people skills. Management interventions and leadership training needs to be better: it was at its weakest at the most important rank of Sergeant.
- **The Reinstitution of Fines:** Some responders wished to see the return of fines within the disciplinary regulations for its tangible impact in a way that is often not seen to be the case with other sanctions short of dismissal.

⁵⁸ There are overseas forces that proactively assess and address performance trends and indicators that may relate to bias, prejudice, aggression or language. Such forces also include evaluation of all potential recruits for evidence of discriminatory and/or other behaviours in order to screen for such biases.

⁵⁹ I attended a hearing. Values were completely disregarded by the appellant. The appellant simply could not see that he had done anything wrong. The person was dismissed.

⁶⁰ The Objective Structured Performance Related Examination (OSPRE) has been in use since 1991. Part 1 is knowledge of law. Part 2 is an assessment of management potential but conducted on the job.

- 3.18. Most of these concerns are recognisable from the themes outlined in the foreword. They were further articulated⁶¹ in 2010 where solutions included the need “to rationalise doctrine, policy and guidance to remove duplicated an over-engineered requirements” and “removing, rationalising and streamlining systems and processes”. The 2012 regulations followed that do not seemed to have resolved the problems. Something, somewhere, resists change.

Recommendation 14: To guide future training of staff working in those roles; a training needs analysis is conducted to identify the competencies required in:

Leadership and management (to the core gearing level of the police at Sergeant and Inspector level, and for the DE scheme); and

PSDs to investigate disciplinary cases effectively.

Recommendation 15: Future IT upgrades should integrate databases on complaints, discipline, HR and alerts necessary to manage personnel holistically.

THE OFFICE OF CONSTABLE⁶²

- 3.19. Anomalous situations arise where there might be two attendees at an event – a police officer, and a PCSO, and an incident occurs. Should any form of disciplinary intervention be necessary, there are differing procedural systems to deal with each of the two. There is no one common approach.
- 3.20. This arises from the differences between employees (PCSOs and other members of police staff) and police officers and special constables. Constables are officers under the Crown. An officer has restrictions placed upon his non-working hours where there are “no restrictions other than those designed to secure the proper exercise of the functions of a constable⁶³”. Further restrictions are placed on business interests incompatible with membership of a police force (which is itself a challenge with the familial links in certain cultures within the BME environment), and it is illegal for police officers to strike. An officer is not acting under a delegated authority but an original authority.

⁶¹ Reducing Bureaucracy in Policing : Jan Berry (Oct 2010) following the Dec 2009 report that proposed long term cultural change.

⁶² The Office of Constable – The Bedrock of modern day British Policing – Jan Berry (2008).

⁶³ The Police Regulations 2003.

3.21. Harmonisation of a common approach is resisted in that an officer is dealt with under Regulations and police staff are dealt with under an ACAS compliant disciplinary system in accordance with employment law. This review has encountered the definitional elements of a constable multiple times in what the office of a constable is: no one has been able to articulate clearly how that makes them so different in attempting to achieve harmony. A senior officer's view was:

"We need a process to deal with the unique parts of being a constable, but that of itself is not a valid argument not to change."

3.22. The office of constable has been surrounded in mystique. The Taylor report described:

3.23. "The uniqueness of policing, the extraordinary powers of police officers and their role in society requires that, in the public interest, the disciplinary arrangements of police officers are most appropriately determined by Parliament after extensive consultation. Policing is an area that is too important to be left to the uncertainty of changes to and the case precedent decisions of mainstream employment law".

3.24. This does not preclude an approach which seeks to get away from the legalistic approach. This was a conclusion of the Morris Report who did not accept the defence of the regulatory framework. Not much seems to have changed: like Morris, multiple responders in our evidence gathering told us that it simply is easier to use conduct regulations rather than performance regulations – and most do. This cannot be right.

3.25. I do not propose any notion of the abolition of the office of constable, but merely point out that the lack of standardisation in approach, and harmonisation in disciplinary matters, arises between the police 'family' from this anomaly and the impediments that have arisen because of it. Whilst the key characteristics that the police maintain their independence and impartiality of their powers in the execution of their duty remains, whether this is, of itself, an inhibitor towards the future is more opaque. Independence is the autonomy to decide how to respond to law and order situations and how to allocate resources. This was re-emphasised in the Home Office Draft Protocol for PCCs prior to the 2011 Act: "The will of Parliament and government is that the office of Constable will not be open to political interference".

3.26. Similar issues apply to the notion of a future regulatory body. The Neyroud report which led to the establishment of the College of Policing opined that it 'should be supported by a charter, which would be responsible for the key

national standards, both individual and organisational, qualifications framework, leadership and training approaches for the service"⁶⁴. Some have argued that a chartered officer approach in the future would further damage the warrant holding independence.

- 3.27. Harmonisation of disciplinary systems (if that is a long term goal) can only be achieved by a final resolution of the issue of the uniqueness of the office of constable. Although the police are not normally considered employees or workers, there are already exceptions.⁶⁵

Recommendation 16: Further work is commissioned that clearly defines why the office of constable is unique and why its interpretation resists change to either:

Set the future context for harmonisation, or

Finally determine whether harmonisation of the police family in employment terms is not an achievable or necessary goal.

ATTENDANCE AND SICKNESS ABSENCE MANAGEMENT

- 3.28. In September 2014 a new capability exit route will occur in cases where an officer on adjusted duties cannot continue in their existing role, and another suitable role cannot be found for them. After 12 months of adjusted duty a management review will be undertaken which may include ill-health retirement. Sickness absence management (SAM) for those injured or with medical conditions is not a performance issue, nor should it be. Attendance is when it is related to: absence on the same day of the week, on the same shift pattern, following a notified shift change, during a rejected period of leave, on the first and/or last day of a shift or following a dispute/conflict resolution.

- 3.29. It is striking how differently the Bradford formula has been utilised in the police forces (and some have now abandoned it altogether in favour of

⁶⁴ Neyroud Report (2010), p11.

⁶⁵ Such as: Section 43KA of the Employment Rights Act 1996 (ERA) enables police officers to bring a claim under section 47B and section 103A of the ERA if they suffer a detriment or are "dismissed" for making a protected disclosure. Section 49A of the ERA enables police officers to bring a claim under section 44 if they are subjected to a detriment because they are carrying out their duties as a health and safety representative. Regulation 41(1) of the Working Time Regulations 1998 provide that the holding of the office of constable shall be treated as employment, under a worker's contract by the relevant officer so the working time regulations apply to police officers, and Section 42(1) of the Equality Act 2010 provides that holding the office of constable be treated as employment so police officers can bring claims for discrimination under the Equality Act 2010. Chief Officers are on fixed contracts – an employment term.

differing trigger points). It is a further area where standardisation is a requirement.

Recommendation 17: A common set of fair attendance triggers must be defined and applied consistently across all police forces.

HEARINGS

3.30. In cases of gross incompetence⁶⁶ or gross misconduct⁶⁷, a panel is required for a hearing. For gross incompetence matters this consists of a panel chair and two other members consisting of:

- A senior officer or senior human resources (HR) professional (chair).
- A police officer (of at least superintendent rank) or HR professional.
- A police officer (of at least superintendent rank) or a police staff member.

3.31. The meeting is held in private with legal representation available. Currently, only misconduct hearings where the IPCC has independently investigated and consider that because of the gravity of the case or other exceptional circumstances it would be in the public interest to do so, can a case be heard in public.

3.32. In cases of gross misconduct, a panel also consists of three members:

- A senior officer or senior HR professional (chair).
- A police officer (of at least the rank of superintendent) or HR professional.
- A lay member selected by the appropriate authority from a list of candidates maintained by a local policing body from a list of candidates maintained by a local policing body.

3.33. A hearing mechanism that is fair, proportionate and transparent for both the police and public is required in both cases: one that removes the notion that the police discipline themselves in an opaque way. Hearings will only retain the confidence of the public in so far as they are seen to demonstrate qualities of independence and impartiality. As the Leggatt Report⁶⁸ stated (on tribunals but equally applicable to hearings): “(they) will only retain user confidence in so far as they are seen to demonstrate similar qualities of independence and impartiality to the courts. The issue is one of perceived, rather than actual independence”.

⁶⁶ A serious inability or serious failure of a police officer to perform the duties of his rank or the role he is currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified.

⁶⁷ A breach of the standards of professional behaviour so serious that dismissal would be justified.

⁶⁸ The Leggatt Report, “Tribunals for Users: One System, One Service” (August 2001).

- 3.34. In cases of gross misconduct this occurs with the third member⁶⁹. The role of the lay member is not to be an expert on police matters, but to add value as to whether the penalty is appropriate.
- 3.35. Timeliness of hearings is sometimes diminished by the ability of officers to object to panel members. This objection is more prevalent in smaller police forces where knowledge and relationships between panel members and the officer in a misconduct or incompetence matter can show linked association. I do not propose removing this right.
- 3.36. A further impediment in the current system is the availability of an ACPO rank officer to chair hearings. This is particularly so in gaining the availability of a senior officer in smaller forces. The requirement for an officer of ACPO rank is due to nothing other than the current regulations. As in most work forces, the bulk of disciplinary cases are for those who are constables, there is no reason that a senior officer should fulfil this remit: they are often uncomfortable in this role and may not have as full an understanding of the regulations as lower level practitioners.
- 3.37. Future options for hearings involve consideration of both composition and the level at which they should be heard⁷⁰ and are explored in chapter 5.
- 3.38. Dismissal is a serious undertaking. It is career ending. For this reason I have resisted further looking at a merely a legal chair or a 2-person panel. Three is appropriate – as is the legal representation that should be allowed to be accessed given the consequences. Lawyers enhance the efficiency and quality of outcomes at hearings and thus, in future, their public reputation. Removal of lawyers from the process could engage Article 6 of the ECHR. Every other profession permits representation by a lawyer at hearings that threaten their professional status. There is no reason why policing should be any different.

APPEALS

The Current Position

- 3.39. A PDAT is convened as and when required. Under paragraphs 1 and 2 of Schedule 6 to the Police Act 1996 they consist of 3 people. The appeal panel currently has:

⁶⁹ A submission to this review made the point that that the third member of the gross misconduct board “adds rigour from the perspective of ‘what would a reasonable man on the circle line think’.

⁷⁰ The example show only gross misconduct case composition.

- A legally qualified chair.
 - A serving senior officer of ACPO rank.
 - A retired police officer who was a member of an appropriate police association.
- 3.40. Officers have the right of appeal against outcomes and findings arising from either performance or conduct regulations. Appeals are not normally intended to cover ground that which was previously discussed during any disciplinary process. Indeed, since 2008 no re-hearing but, since 2012 the appeal panel may remit a case back to a hearing for further re-consideration.
- 3.41. The grounds of appeal are:
- That the finding or disciplinary actions imposed was unreasonable.
 - that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action; or
 - that there was a breach of the procedures which could have materially affected the finding or decision on disciplinary action.
- 3.42. The outcomes that arise are one of four: to uphold the decision and sanction; to overrule the decision and sanction, to confirm the decision but award a lesser sanction, or to remit the case back to be heard by a hearing panel again.
- 3.43. The hallmark of tribunal decisions is that they are often made jointly by a panel of people who poll legal and other expert knowledge; the notion of ‘experts by experience’. But it is not the case that tribunals are, or have to be, composed of three members. There are multiple tribunals that have one or two dependent on how decision making is conducted: decision making does not have to be conducted jointly. Nevertheless, it is reasonable and proportional to have police expertise on a tribunal.
- 3.44. It is also not the case that there is a requirement to have two police representatives (either serving or retired). Given the need for increased transparency it is entirely possible to consider that the third member of an appeal panel should be a lay member: the Leggatt principles outlined in relation to hearings apply. The utilisation of police expertise on an appeal is entirely reasonable and proportionate. The need for two may be disproportionate.

COMPLAINTS AND WHISTLE BLOWERS

3.45. Although the complaints regime was not formally a part of this review, the results of investigations in to complaints does touch the conduct/misconduct of officers. The results of complaints feed in to, and are part of the disciplinary system: where appropriate it should also be part of the learning processes and improvement required of officers. A number of observations are therefore made on the Police (Complaints and Misconduct) regulations 2012. They are:

- That the current Police (Complaints and Misconduct) Regulations does need to be a stand alone document.
- That it is, in reality, a Police (Complaints and Referrals) document.
- That after an investigation it feeds in to the existing performance and conduct regulations.
- That the Police Reform Act 2002 helps to seal the confusion: Part 2 is entitled 'The Handling of Conduct Matters'. It is not: it is the 'Handling of Recordable Matters'.

3.46. The Code of Ethics prompts the challenging and reporting of inappropriate behaviour at all levels: it will protect whistleblowers, according to the law, and states that the police service will not tolerate discrimination or victimisation or any disadvantageous treatment against anyone who makes a valid report of unprofessional behaviour or wrongdoing. How this will work in practice (whistle blowing can be unrestricted, confidential or anonymous) will have to be seen. A number of PSDs believed that it was "career suicide" to do so in an unrestricted manner about officers higher in the police command chain. Ensuring that whistleblowers are protected is vital. Any discrimination or victimisation against them should fall in to a benchmarked zero tolerance category.

3.47. Finally, for the purposes of this review, disciplinary proceedings for police staff means⁷¹:

- a. any proceedings or management process during which the conduct (as opposed to the performance) of such a person is considered in order to determine whether a sanction or punitive measure is to be imposed against him in relation to that conduct; and
- b. for the purposes of section 22 of, and paragraphs 22,23, 25 and 27 of Schedule 3 to the 2002 Act only, any proceedings or management process during which the performance of such a person is considered in order to determine whether it is unsatisfactory and whether, as a result, any action is to be taken in relation to it.

That is, discipline embraces both conduct and performance.

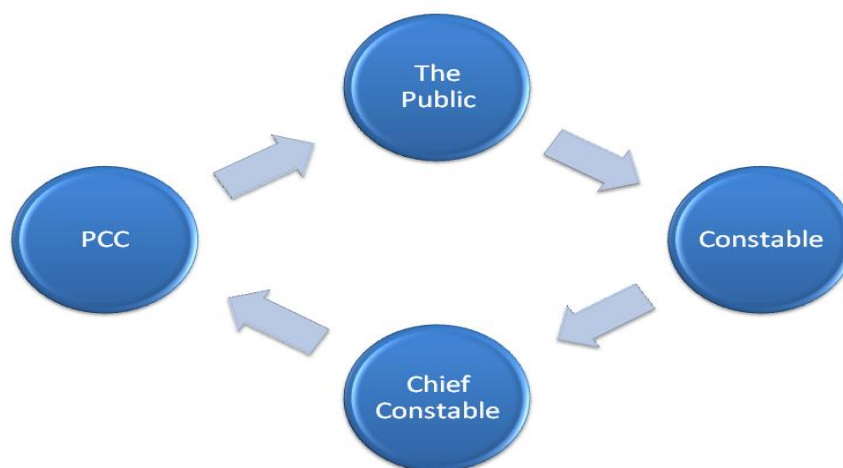
⁷¹ Section 36

CHAPTER 4 - ACCOUNTABILITY

DEMOCRATIC ACCOUNTABILITY

- 4.1. The Police Reform and Social Responsibility Act (PRSRA 2011) restored democratic accountability from central government back to the Home Department Police Forces. The election of Police and Crime Commissioners (PCCs) from May 2012 (and following a 4-year election cycle) allows a police force (through the office of the Chief Officer who represents the force in the forum), to be held to account. The PCC is accountable to the public through the electoral cycle⁷², and the constable is accountable to the Chief Officer.
- 4.2. There is now a virtuous loop that runs both ways around a democratic accountability circle. The previous tripartite relationship offering the checks and balances failed to take the public in to account. The introduction of the PCCs strengthens the link between the police and civil society, and between local police officers and their neighbourhoods. The accountability loop is explained at Figure 14.

Figure 14 – the police accountability loop:



- 4.3. The accountability loop runs as follows. The public engage with the constable through community engagement and neighbourhood forums, as

⁷² The National Audit Office report of January 2014 found that there were few checks and balances on PCCs between elections. Greater checks and balances between elections may be needed, but this is out with the terms of this report.

well as through day to day interactions. The Chief Constable holds his force to account through the managerial and leadership provided by his chain of command. The Chief Constable is held to account by the PCC for the running of his force. Finally, the PCC is held to account through the community engagement outreach forums run by the PCC for the public. The loop also runs counter-clockwise. The public ultimately hold the PCC to account through the electoral cycle.

4.4. Accountability is a system of internal and external checks and balances to ensure that the police carry out their duties properly and are held to account if they fail to do so. A summary⁷³ includes the following requirements:

- Practical instructions that reflect both the spirit and the letter of the law.
- Opportunities for the public to voice their concerns.
- Adequate supervision.
- Proper reporting procedures.
- A culture that promotes transparency and evaluation.
- Monitoring by both police leadership and external bodies
- A complaints procedure for both the police and external bodies.
- Reliable statistics on integrity and public confidence.
- Fair and effective policies and procedures on how to deal with misconduct including both disciplinary and criminal codes, investigative capacity, procedures for punishment and appeals procedures.

4.5. Community engagement is defined as the creation of opportunities for consultation and/or involvement with members of the public in order to build trust and confidence.

OPERATIONAL INDEPENDENCE

4.6. A Chief Officer has “Direction and Control” for operational policing matters and for general policing standards. It is for the Chief Officer of a force to decide how to respond to law and order incidents. The basis for police independence has been articulated to effect by Lord Denning is his 1968 judgement⁷⁴:

“No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that. Nor can any police authority⁷⁵ tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and the law alone”.

⁷³ UN Handbook on Police accountability (July 2011)

⁷⁴ R v Metropolitan Police Commissioner ex parte Blackburn

⁷⁵ The PCCs replaced the police authority.

- 4.7. Whilst this is the case, internal and external accountability mechanisms are necessary to maintain checks and balances.
- 4.8. **External Accountability:** Advocates of this approach conclude that police forces are insular, self referential and closed to outsiders. Further, that some of the character traits that manifest from the closed nature are: pride (which can have positive as well as negative qualities), a reluctance to apologise and a difficulty in admission that they might be wrong, and that this means that investigation and self-policing for internal complaints and misconduct should be taken away completely and given to a separate commission, review body or panel. External accountability may inspire public confidence but risks lacking investigative skills or capacity and is less likely to succeed in unravelling systematic misconduct without the support of police leadership.
- 4.9. **Internal Accountability:** Advocates of this approach argue (like the CEO/Chairman of the Board analogy in the foreword) that it is for the police to determine their disciplinary outcomes, and that that responsibility belongs, at least doctrinally (in line with any other large organisation) with the police. Failure to enable this abrogates the need for internally accountability where the police may:
- Blame any failings on the civilian overseer.
 - Not take the leadership and management actions required to actively deal with lessons that arise from conduct and performance outcomes.
 - Not take the management and leadership actions to deal with behaviours and apply the lessons that arise from complaints and complaint trends.
 - Further insulate cultural habits and not adequately manage training, standards, values and behaviours.
- 4.10. Internal accountability is only as effective as the commitment of the chain of command. There can be a reluctance to expose issues due to reputational impact and a culture of 'looking after their own'.

The Limits of Operational Independence?

- 4.11. PCCs reinforce the need for 'localism' – a good thing. The downside is that the modern complex policing environment reinforces a requirement for national standards and the ability to mandate to forces. There has been much fragmentation where there has been a lack of standardisation, and an inconsistency in disciplinary and management outcomes. Standards need to be imposed and their compliance monitored. This wider issue was

recognised in parts of the Neyroud report in the need for key national standards.

DISCIPLINARY ACCOUNTABILITY

4.12. There are four basic models that have potential to enhance public trust that the police will address and resolve unethical behaviour. These are:

- Public review: In this system every aspect of the complaints and disciplinary process would be handled externally to the police by the PCC or IPCC.
- Police Review/Public oversight: The police handle every aspect of the complaints process, but these are reviewed by the PCC or IPCC. The PCC involvement would aid in the engagement and empathy of their local constituencies aspect of accountability and transparency.
- Police review/public-police appeal board: For complaints, the complainant may appeal to the PCC or other empowered body nsuch as the IPCC.
- Independent public auditor: The police remain primes inter pares for all aspects of the disciplinary and complaints system but their actions and processes are reviewed and audited with feed back loops to further improve process and effectiveness.

COMPLAINTS AND APPEALS

4.13. The appeals process for complaints was changed in November 2012. The Chief Constable is now the appeal authority in low level complaint cases (local resolutions and local investigation cases) although this function may be delegated. The majority of most forces appeals are against local resolution issues (and a large percentage of those, for example 47% in the case of one force, are from vexatious complainers).

4.14. With the introduction of PCCs arises the question of how independence of the complaints system should operate at the local level. In particular, the caveat that public confidence is potentially diminished by ‘police investigating police’, with the Chief Constable the appeal authority after a complaint. Public confidence in the police is not the same as confidence in the complaints system. A responder put it this way: “It comes back to the same body i.e the police – that cannot be right terms of accountability and public perception”⁷⁶. Low level complaints require a much more user

⁷⁶ This is a wider issue within the complaints system where relatively few complaints meet the IPCC referral criteria, and 94% are referred back to the initiating force. A separate review is looking in to this.

friendly system which is not hidebound by over complex regulations (of which Schedule 3 of the Police Reform Act is a prime example).

4.15. In retrospect, the PRSRA 2011 may have been a missed opportunity in changing the appeals process for complaints. Local resolutions are a way of handling complaints that by resolving, explaining or clearing up a matter directly with the complainant. It can be a proportionate, flexible and timely way to resolve many complaints that would not justify formal disciplinary or criminal proceedings. There is the potential for a role for the PCCs in local resolutions to enable timely solutions as part of the process of accountability – some already do so. The 2011 White Paper⁷⁷ did not wish to shackle Commissioners with reams of guidance and prescription on their role. The complaints system that is firm but fair and engages the police, the public and the complainant is vital. The PCCs have a role to play in this. Engagement during this review has shown that:

- PCCs⁷⁸ believe they have a role in local resolutions for timeliness and at the lowest level possible. Low level complaints require a more user friendly system which is not hidebound by over-complex regulations (of which Schedule 3 of the Police Reform Act is a prime example). Such a role fulfils a “checks and challenge” function as well as having a role in influencing chief officers to influence their own force behaviours. It restores the public as a focus.
- PCCs should be given (again presumptively) access to data when requested to enable their oversight function to occur which is a component of transparency and accountability. Some forces have not grasped the oversight function and too readily ask the awful “why” question. It is this oversight function that should be the source of ‘complete access to the discipline system’ rather than direct interference with outcomes.
- The 2012 legislation that gave appeals authority to the Chief Constable may have been a mistake. There is a role for PCCs as part of their account holding responsibility.
- The notion of ‘regionalising’ PCC complaints (that is, giving an adjacent PCC for a boundary forces’ complaints) is not supported because of the need for localism and democratic accountability (even though concerns were raised that some PCCs, may, as is the nature of relationships, line up with their Chief Officer rather than hold them to account).
- As PCCs are independent in their own manner, they may need to have their own approach to consistency.
- Local resolutions may rise if they are given this role (the percentage of local resolutions has remained stubbornly low as outlined in the table of

⁷⁷ Policing in the 21st Century: Reconnecting the police and the People (2012) – *check date*.

⁷⁸ Less the largest forces such as the Met where LR’s are dealt with within the boroughs.

the three forces in chapter 2). It may aid in leverage over 'service failures' and 'service recovery'.

- The potential for moving PSDs in to the PCC is not supported due to the managerial function for force discipline needing to remain with the Chief Constable.
- Appeals for serious cases should remain with the IPCC.
- Inserting a role for the PCCs may aid in treating local complaints as valuable feedback to the local force.

4.16. There is a risk that the close relationship between a chief officer and a PCC (and where 'holding to account' may be replaced with 'lining up with') could, along with the PCC electoral cycle, be problematic. The virtues of 'localism' and democratic accountability currently outweigh concerns (from, for example, the IPCC) that their challenge and statutory oversight is diminished. Some complaints fall in to the category of 'service failures': it is quite right that the PCC should hold the chief officer to account in such circumstances. Within the spirit of the 'transformational' part of the reversing of the paradigm table (Figure 18, p74) this should be as much about 'service recovery' (and learning the lessons) and improving performance.

CHAPTER 5 – TOWARDS THE FUTURE

APPROACHES TO THE PROBLEM

5.1. Any process will not, by itself, make things better. Discipline is not a proxy for poor management of people where ‘what should we do about it’ is often a better response than ‘did he (or she) do it’. Themes around the reform of police discipline can be broken in to five areas:

- a. **No Change:** This school of thought would argue that there is no problem with the current conduct and performance regulations, and they work perfectly well up to and including the outcomes of hearings. Support for this ‘status quo’ approach argues that it is not the regulations themselves that are the problem, but the implementation and training in their use. However, I have heard multiple descriptions of, and seen, police disciplinary flow charts that “look like a wiring diagram from the star ship Enterprise”. I can but agree. The current 2012 regulations for conduct and performance have replaced and modified those of 2004 and 2008 and achieved the opposite of the desire to remove, rationalise and streamline systems and processes. An illustration of the current complexity is at Annex H.
- b. **Slight Change:** This argues that the conduct and performance regulation are largely fit for purpose and require only minor changes. There is some support for this, with the changes confined to the composition of hearing panels and their need to be seen to be public facing and more transparent. The public facing notion is recognised as a minimum requirement of those who support slight change. Each following option includes the necessity for the public to be allowed access to disciplinary hearings and PATs. This would show that the police take dismissal seriously and are keen to rid themselves of those officers who have broken every value and standard that the police should uphold. Transparency and public scrutiny are engaged. Allowing the public into hearings and PATs would shine a light on the system such that the appearance of secrecy surrounding such hearings would disappear and police misconduct would be exposed to the full (and appropriate) glare of publicity – in just the same way that other (regulated) professions have their professional hearings in public⁷⁹.

⁷⁹ There will need to be qualifying discretion to hold parts of a hearing in private and/or withhold parts of the determination where the public interest or welfare concerns so requires it. These ‘rules of engagement’ will need to be further defined.

- c. **Amalgamation:** This school of thought argues that having separate regulations for conduct and performance makes no sense. They should be brought together, and should include attendance within them as a specific category (which is separate from the sickness absence management policies that pertain to those who may be required to leave the service through ill health retirement). Only by such an approach can the interventions that are required to restore the link between culture and behaviour, in areas of both performance and conduct be embedded. This may become an accelerant for change in reducing the risk of misconduct whilst restoring the management of personnel to become better officers. In other words, help and improve those who can be improved (transformational approach), and dismiss those who cannot (transactional approach). For this to work in practice the leadership need to be empowered to fulfil their managerial and leadership roles.
- d. **De-regulation and Adoption of ACAS model in its entirety:** This school argues that the current regulations are themselves an impediment to change, and that harmony with police staff and the wider police family can only be achieved by sweeping away the police regulations and employing the ACAS model and employment procedures across the board. Those who support this approach see the current police regulations as providing a top cover of inappropriate and outdated protective complexity, and of providing a 'circus' element to the process. The police implement the regulations for good or bad: they do not write them. Such an approach should be seen as a goal to aim for the future rather than a short term change. In order to set the scene for such a goal, one needs to look at the nature of the Office of Constable. Currently, there is no contract of employment, and once employed a police officer has a job for life if there are no misconduct, attendance or performance issues that might lead to dismissal. This option may create a vulnerability for the government as it could lead to calls for greater employment rights, including the ability to take strike action.
- e. **Increase Regulation for Police Staff:** Police staff currently have no right of appeal (other than taking an Employment Tribunal route). An option (given that regulation for the office of constable may not wish to be engaged) is to move police staff members towards the regulatory regime of the police. Harmonisation can only be achieved via the route of employment or regulatory conditions. In the absence of harmonisation, there will remain two different systems. The ratio of police officers to police staff is roughly two to one, as outlined in Annex D. Various legal experts have argued that the ET route is more complex and takes far longer than the regulatory option. To move police staff towards the police officer would require primary legislation and potentially the removal of some police staff

rights (which could only be achieved by negotiation with the Unions prior to such a move). But it would also give police staff enhanced rights in other areas of the disciplinary system. For example staff members currently have no access to legal representation or right of appeal to a PAT. Moving towards one regime by moving police staff the other way might enable both. There is already some support for this from the Police Staff Council who agreed in 2011⁸⁰ that:

“It would be desirable, where possible, for the disciplinary procedures for police officers and police staff to be compatible in order to drive consistency nationally” and “considers it important that police officers and police staff receive equal treatment when subject of an investigation into an allegation of misconduct. Some cases already involve police officers and police staff being investigated for matters arising from the same incident and therefore having procedures that are as compatible as possible is clearly desirable.”

TOWARDS THE FUTURE

- 5.2. It is perverse that, in a system where performance should be about restoration, the current system (and process diagrams) are adversarial to the point where there are appeals even concerning the interventions that should be part of the restorative process: if performance management takes on an adversarial context, then managers are seen as barriers rather than enablers to better performance. To use a military analogy:

*“Leadership and management is solving problems. The day soldiers stop bringing their problems is the day you have stopped leading them. They have either lost confidence that you can help or have concluded that you do not care. Either case is a failure in leadership”.*⁸¹

- 5.3. There is a further perception that the ‘severity assessments’ introduced in 2012 have led to a need to see over-assessments. If true, this is counter to (outside of zero tolerance) the requirement to allow people to get things wrong and to learn from them. The severity assessment regime has led to approaches that operate on the left of Figure 15 when, for those incidents which are not ‘beyond the pale’, the operative nature should be on the right.
- 5.4. Notifying a police officer or member of staff at an early stage what the maximum potential outcome would be if the behaviour or performance was

⁸⁰ Police Staff Council Joint Circular No.68: Police Staff Council Handbook: Part 3 Guidance on Police Staff Misconduct Procedures (15 August 2011).

⁸¹ Colin Powell, former Chairman of the Joint Chiefs of Staff, USA.

admitted or proved should be extended across all police employees. If staff know they will not be dismissed when they are below a benchmarked infraction they are more likely to admit the behaviour, apologise (in the case of a complaint), to learn from it, and not do it again. This is the “admission and move on” philosophy used in some US forces that often negates the requirement for a lengthy investigation.

Recommendation 18: A ‘dismissal test’ is applied to disciplinary issues as a second stage to the ‘police test’, replacing severity assessments, making clear through benchmarking (cf. with recommendation 2) what would lead to dismissal. Anything that is below the dismissal threshold is rehabilitative. The terms gross misconduct and gross incompetence are abandoned

- 5.5. It is a right to appeal against any formal disciplinary penalty. This is a metric worth tracking as the intent of the future system to be outlined is to move to the characteristics on the right of Figure 15. Ethical behaviour is the single biggest factor determining the amount of misconduct that takes place in a workplace. The current and (proposed) future characteristics of the police process are shown below:

Figure 15 - Present and Future Characteristics of the System:

Current Characteristics of the Disciplinary Systems	Future Characteristics and Requirements of the Disciplinary Systems
“Out to get you”	“Here to help improve you”
Adversarial	Co-operative
Based on confrontation and disengagement	Based on ethics, individual responsibility and engagement
Culture of internal distrust	Culture of internal trust
Line management as barriers	Line management as enablers
Self-interest defensive avoidance	Performance and organisational values at core of the intervention
Compliance as an approach	Compliance advice/intervention as an outcome
Legalistic approach	Management approach
Negative potentially de-motivated behaviour	Positive motivated behaviour.
Rules led institutional culture and compliance	Values led institutional culture and compliance
Balance of probabilities ⁸²	Balance of probabilities

⁸² The nature of police training for criminal cases seems to lead to the ‘balance of probabilities’ being questioned. It is often a default to approach to use a ‘beyond reasonable doubt’ approach as used in criminal law.

- 5.6. The proposal for change that will follow will not work if the spirit of the above table is not implemented.
- 5.7. Hearings are internal matters that due to the vulnerabilities identified earlier, need to have their mystique removed to further public confidence and transparency. In the words of one senior officer “they are not secret, but contained”. An alternative view, put forward by a PAT chair, was that the police do not like airing their dirty laundry in public. To enable the outcome to be seen to be transparent – not contained - and to remove the view that the police ‘look after themselves’, the removal of privacy from the hearings should occur. This would include allowing the public (including the press) to be present with the following benefits:
- It would ensure that panels would conduct their business in a professional manner at all times or be exposed to the public and to the media.
 - It would ensure that those office holders who have elongated the system (and the vulnerability of timeliness) might think twice about the pursuit of cases where their actions would be exposed as hopeless and ill-judged.
 - It would remove any notion of backroom deals contrary to the public interest for the same reasons as above. It would further remove any perceived ‘conflict of interest’, particularly in smaller forces where those involved in hearing cases might be known to a panel member (and so invoke the mitigation of unconscious psychological sympathy).
 - Greater consistency would be promoted.
 - The public would see that the police takes the issue of rogue officers very seriously and dismisses those who have transgressed.
- 5.8. To fulfil the requirements of hearings being conducted in a professional manner, and overcome some of the impediments outlined, two future options are considered:
- Regionalising hearings
 - Centralising hearings

Figure 16: Table of options for police disciplinary hearings:

Level	Characteristics	Composition	Remarks
Local	• Determinations are kept within the local force area and all decisions are taken by those	1. Current • Senior police officer of the local force • Police officer of	The current model delivered by all police forces Disadvantages:

	of the parent force • Held in public	Supt rank • Lay member 2. Future Option 1 • Legal chair • Senior officer of local force • Police officer of Supt rank 3. Future Option 2 • Legal chair • Senior officer • Lay member	• Personnel in the hearings may be known to panel in smaller forces. • Inexperience of panels does lead too frequently to potentially badly written determination with inadequate reasons leading to a “regulatory field day” for legal counsel at a PAT⁸³ • Delay built-in by the availability of members • Inconsistency and variable outcomes
Regional	• Determinations are conducted in Regions⁸⁴ with no officer of the local force to be part of the determination • Held in public	As per the above options except that the police members on the panel would come from one of the forces within the region (though not the same one as any party to the case)	• Greater consistency likely to be applied. • Greater experience delivered in dealing with cases. • Avoids localism and notions of back-room deals
National	• Determinations are made via a central body such as the College of Policing • Held in public	As per regional model plus the senior police officer is appointed for a rotating period	

5.9. The arguments on panel composition are finely balanced. A legally qualified chair for a 3-person panel ought to speed up hearings, reduce appeals and increase public confidence. Hearings are conducted by majority decisions. If a legal chair is considered, the balance could swing towards having police representation by two officers. In tribunals where there is a lay person, legal chair and a professional expert, the balance tips more often towards acquittal than it might. However, the balance of opinion rests on whether the system can be made less adversarial within the proposed changes. If it cannot, the balance tips towards a legal chair. If it can, the balance is in favour of the current composition. I believe a legally qualified chair may be necessary to impart a level of independence where a panel is considering dismissal so that the management in the police can focus upon the restorative outcomes that are necessary below dismissal.

⁸³ A direct quotation from a PAT Chair.

⁸⁴ See Annex E.

- 5.10. Another issue with the current system is where, following an independent IPCC investigation, the police force does not agree with the recommendation of the IPCC. This often results in the IPCC directing the force to hold a dismissal hearing; however there has not been a single case of an officer being dismissed after the IPCC has directed a hearing. In a full year from when the Police (Conduct) Regulations came into force on 22 November 2012 until 22 November 2013 the IPCC directed nine hearings. One officer resigned, two cases were not proven, three resulted in a finding of misconduct; of the three that resulted in a finding of gross misconduct all three officers received a final written warning⁸⁵.
- 5.11. The current system creates an accountability disconnect where the force and the IPCC do not agree on what should happen following an investigation. A healthy tension between forces and the IPCC is a good thing, but nobody has full accountability when this occurs in the current set up and this opens the door to both parties to blame each other. In future where the IPCC directs a hearing where the force does not accept their recommendation they should take full responsibility for the case including presenting it to the hearing.

Recommendation 19: All hearings are chaired by a legally qualified person.

Recommendation 20: All hearings and Police Appeals Tribunals are held in public.

Recommendation 21: All hearings are regionalised (see Annex E for map of regions).

Recommendation 22: Police officer membership on hearing panels is at the Superintendent level and above (and at least one rank above any persons subject to the proceedings).

Recommendation 23: The police officer member on hearing panels is not from the same force (or division in the case of the MPS) as any individuals who are subject to proceedings.

⁸⁵ Data collected by the Home Office from forces, this data has not been verified and should be treated as provisional.

Recommendation 24: Where the IPCC directs a dismissal hearing in cases where the force does not accept their recommendation, the IPCC should present the case to the hearing panel.

- 5.12. The College of Policing is already responsible setting standards and for identifying, developing and promoting ethics. Centralising hearings would take us closer to national standardisation – and further on the road to a formal regulatory body. It would also mean that public attendees would also be those genuinely interested in the cases rather than voyeuristic attendees.
- 5.13. There are separate issues that surround either publishing disciplinary outcomes on websites, or publishing a register of officers who have been dismissed. Protocols will need to be established to ensure that no disclosure of potentially sensitive personal data to ensure compliance with Article 8 of the European Convention on Human Rights, and that it is proportionate considering the potential damage that it might cause individuals. These may need to be set out in legislation.

SANCTIONS AND OUTCOMES

- 5.14. In civilian employment law, gross misconduct would justify summary dismissal. That means dismissal without any notice period with the dismissal being effective on the date that it is announced to the employee. Such a dismissal is neither unfair (Section 94 and 98 Employment Rights Act 1996) nor wrongful. Whilst the office of constable and the status of the police as Servants of the Crown mean that they are not employees nor are they employed under a contract of employment, it does not mean that the application of the principles of employment law should not apply. It is following best practice. There are still instances where dismissal with notice has been applied in some police forces for offences which have attracted summary dismissal in other forces. Dismissal with notice in an environment where trust and confidence is a requirement lacks credibility: few employers would follow such a route due to the residual damage that a gross misconduct offender in the notice period could cause.

Recommendation 25: Remove the sanction of ‘dismissal with notice’.

- 5.15. Taylor removed various sanctions from the 2004 regulations. This included the removal of fines as a sanction. This study looked again at whether

those in use are appropriate. The following table illustrates the processes currently in use in both the Performance and Conduct regulations.

Figure 17: Table of options for police disciplinary hearings:

Performance Regulations	Conduct Regulations
Harm test	Harm test
Police friend	Police friend
Private	Private
Appeals	Appeals
3 panel members (stage 3)	3 panel members
Outcomes • Management advice • Written improvement notice (12 months) • Reduction in rank • Final written improvement notice (12 months). • Extension of a final written improvement notice • Dismissal with notice (for unsatisfactory performance) • Dismissal without notice (for gross incompetence)	Outcomes • Management advice • Written warning (12 months) • Final written warning (18 months) • Extension to a final written warning (Reg 35(7)(b)) • Dismissal with notice • Dismissal without notice
Fast track (going straight to stage 3)	Fast track
Legal rep	Legal rep
Investigator report	Investigator report

5.16. Side by side comparison shows that there are anomalies in both the length of time for final written warning/improvement and that reduction in rank can be used for performance infractions but not in conduct infractions. The comparison also illustrates that it would be possible to just have one combined system to deal with all disciplinary issues including performance and conduct. I would also propose to include attendance as well.

5.17. Many officers in gross misconduct cases appeal. This is particularly so in dismissal cases. There is currently a large gap between dismissal and the outcomes that an appeal board might give should it confirm the decision of a hearing, but feel that a lesser sanction is required. It is anomalous that reduction in rank is not used in conduct cases for those above the rank of constable. It should be reintroduced.

Recommendation 26: Remove the sanction ‘extension of a final written warning’ from possible outcomes.

Recommendation 27: ‘Reduction in rank’ becomes a sanction available in misconduct cases.

The Language of Sanctions

- 5.18. Despite the desire for increased harmonisation akin to ACAS guidelines, a number of interviewees felt that the nomenclature of sanctions or outcomes is unsatisfactory. It may be appropriate to recast the nomenclature of sanctions to make the intent clear.
- 5.19. In the current hierarchy of sanctions, management advice (following on from verbal interventions – the ‘quiet word in the ear’) came in for criticism. Most were unclear what it was required to achieve as an outcome. It should, like all other sanctions short of dismissal, specify what the corrective action for behaviour or performance should be, and how the corrective actions will be achieved.
- 5.20. A final written warning/final written improvement notice has been deemed to “not feel like a warning” for some, whilst others interpreted it as “the equivalent of a suspended sentence”. Nor is the length of time that it is in place felt to be appropriate. This was particularly felt to be so for sexual predatory behaviours. Most PSDs favoured a final sanction short of dismissal to be recordable for 5 years. The recordable period should be further assessed but should be lengthened. If an officer moves through a future system (which does not have to be sequential), it exhibits that an officer has not learnt from the advice and action plans that will be required. Moving above a written warning should therefore be seen and feel to be escalatory. It should last longer than a previous warning or at least have an upward variable. It should also have both an impact and mark time element composed of both time spent on a PDR file and an inability to achieve future promotion. The PDR element should last longer than the mark time element.
- 5.21. There is a requirement to change nomenclature. All the proposed changes should focus on action plans for improvement and the language changed accordingly.

Recommendation 28: ‘Memo of Correction’ replaces management advice as a sanction in one common set of sanctions.

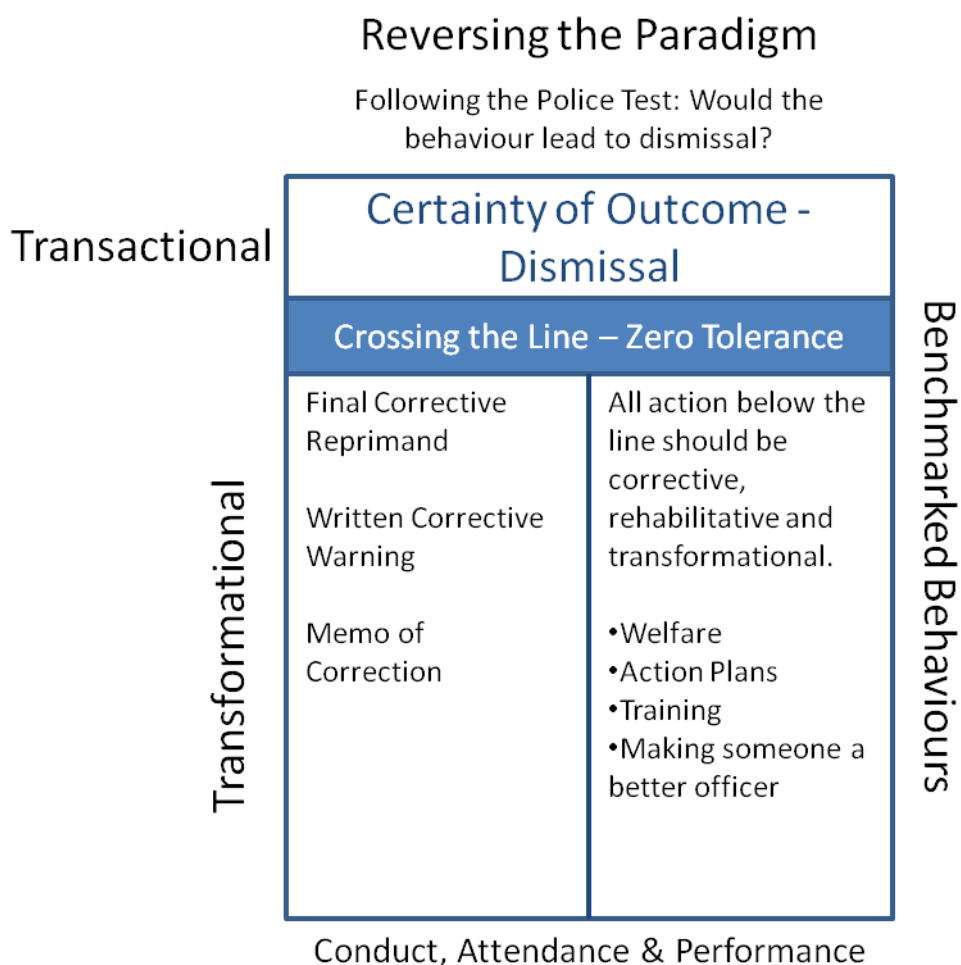
Recommendation 29: ‘Written warning’ is replaced by “written corrective warning” in one common set of sanctions.

Recommendation 30: ‘Final corrective reprimand’ replaces ‘final written improvement/final written warning’ with time spent on officers’ reports and mark time to be increased from its current level to a newly assessed (higher) level.

5.22. Fines are still used in forces in non-UK jurisdictions, either instead of or as an adjunct to another punishment. In the RCMP, when the Canadian code of conduct is contravened and the gravity of the contravention makes informal action insufficient, formal action can include fines of up to 10 days pay. Many US police forces also have a fining regime often linked to suspension. I do not propose the re-introduction of fines for the reason that the majority of sanctions, even short of dismissal, should attempt to be seen as part a transformational culture: we ultimately want better police officers or staff members. Fining would move away from that intent. To quote the purpose of a sanction from another regulatory body: “The purpose of a sanction is not to punish but to protect the public, to maintain public confidence in the profession and to declare and uphold proper standards of conduct”.⁸⁶ We need to reverse the current paradigm as illustrated in Figure 18 below.

⁸⁶ The General Pharmaceutical Council.

Figure 18 – Reversing the paradigm:



5.23. The features are: there should be 'zero tolerance' for benchmarked misconduct and performance behaviours where there will be certainty of outcome. Once the 'line is crossed' there will be an expectation of dismissal above the line. This should include consistency in areas where police forces approach cases differently. As examples, drinking and driving off duty is treated as a dismissible offence in some forces and as a formal warning matter in others. The same applies in cases of misuse of the Police National Computer (PNC). Section 55 of the Data Protection Act (DPA) stipulates that it is an offence for a person to knowingly or recklessly obtain, disclose or procure personal data⁸⁷. There are a number of exceptions such as if the person acted in the public interest or if it were necessary for the prevention and detection of crime. The Information Commissioner's Office (ICO) report that the cases they have seen do not come in to that

⁸⁷ An officer pleaded guilty to misconduct after repeatedly accessing information on family, friends and partners he had relationships with. He subsequently resigned. Eight officers in another force resigned after accessing the PNC to find personal records of celebrities and passed the information to people outside the force. The force launched an inquiry after a 'whistleblower' told senior officers about routine abuse of the computer system. These are the zero tolerances that the public would expect: the whistleblower lived up to the tenth tenet of the code of professional standards.

category.⁸⁸ There needs to be standardisation. Crossing the line is a ‘transactional’ approach: if you do A then B will follow. Using the ‘is the CAP a benchmarked dismissal offence’ circumvents the observation made by Transparency International⁸⁹ that “it is a danger to have ‘misconduct’ and ‘gross misconduct’ as categories when robust integrity demands otherwise. It communicates that there is the potential for relaxation for certain breaches of misconduct and detracts from a zero tolerance policy”. There is a strong case for removal of all references to gross misconduct and gross incompetence and moving to a dismissal/rehabilitation test only.

5.24. Zero tolerance as a term can be both a blessing and curse due to the nuances and subtleties that may surround it with mitigations, and the expectations that it might bring – and the disappointments that might follow in the public perception if it is not seen to be enacted as they might perceive it should. This has particularly been the case in some of the IPCC directed cases of misconduct following complaints that have not had the outcome that they expected. Healthy tension between the police and IPCC is a good thing: conflict and confusion on gross misconduct cases outcomes is not. With hearings and appeals potentially to be held in public (including admittance to the press) there is a danger that public confidence might be adversely affected in those cases where the application of the concept were not applied – for whatever reason. However, the benefits of such an approach outweigh the risks.

5.25. There should be positive interventions ‘below the line’ following the right hand column of Figure 18. The intention should be to provide rehabilitative interventions to ensure that we gain better future officers and staff - even where there is formal action. ‘Below the line’ is intended to be transformational: ‘follow this and we’ll achieve supportive benefits and make you a better officer’. This must include early warning of officers of any welfare needs that might impinge on performance or future behaviours. There are far too many cases where mitigations above the line have involved welfare or similar issues where interventions should have made a difference. There should be an “obligation to declare” in the future. Often the culture has inhibited such an approach – where a declared weakness can be perceived as a failing, and pride has taken precedence over preventative measures. This needs to be addressed. The question is not “did he or she do it” but “what should we do about it”. The weight of evidence has been that disciplinary action has been used too frequently as a proxy for not managing people properly. Below the line interventions should include counselling, medical assistance, education and training,

⁸⁸ Information Commissioner’s Office submission dated 22 August 2014.

⁸⁹ Transparency International UK: Benchmarking Police Integrity (March 2013).

mentoring, coaching and peer supervision⁹⁰. The 'below the line' process is not primarily as a means of awarding sanctions. It is an aid to good people management. There is no reason that welfare should be separated from conduct and performance matters to help in that regard. Further, there is a need to move to a culture of 'admit and move on' for infractions that would not lead to dismissal.

- 5.26. For complaint and conduct matters the grade of the appropriate authority should be reduced to inspector or equivalent in PSD for those matters that are not dismissible. If the conduct is dismissible, this should be endorsed by the Head of Professional Standards to ensure that resources are not wasted and delays are not built in. The Taylor reforms introduced the need to give an officer 10 working days to prepare their written response, and the Home Office Guidance has built on this delay by introducing very precise steps to go through. This has built in a significant level of bureaucracy that is supposed to be rehabilitative for the future. The 10 working day response for below the line cases should be removed for all but those cases where dismissal may occur.

Recommendation 31: Mitigations that have not been previously mentioned that involved welfare or might have lead to positive early interventions should be disregarded in most cases. Non-disclosure will tell against the mitigation.

Recommendation 32: There should be an obligation to have previously declared mitigations where appropriate.

⁹⁰ **Interviewing** is a technique to provide a way forward for the future. It can include an indirect method to elicit a solution from the interviewee, or a direct solution from the interviewer. Both should provide a plan for the future. The range of interviewing includes: a casual conversation; an informal interview; and a formal interview.

Coaching is the development of mental and physical skills in a person, and measured by improvement in performance. It is intended to help individuals learn rather than being taught. Individuals and not the coach have ownership. Questions are framed to raise the awareness of the individual: "what do you think you have to do to improve your performance/behaviours" with identification of gaps in skills, knowledge, or behaviour allied to future requirements to engage in these areas

Mentoring is the process by which a mentor oversees the career development of a person in an organisation. A mentor will have the necessary experience to act as a guide. He is not there to solve problems but to highlight issues and help plan ways through them.

Recommendation 33: All stages as currently defined in performance regulations are removed.

Recommendation 34: Conduct and performance regulations are aligned and combined in a single document.

Recommendation 35: Consider lowering the level to which the 'appropriate authority' can be delegated to inspector or equivalent for matters that do not lead to dismissal.

5.27. Fining as a form of sanction would not be consistent with the transformational interventions. To follow this approach should also get away from the adversarial nature of the present system. The key features of the ACAS system would, as is the right by employment law (including appeals for each of the transformational actions), remain.

FAST TRACK PROCEDURES (SPECIAL CASES)

5.28. Language matters. Opaque language obscures. Fast track procedures are those where there is sufficient evidence in the form of written statements or other documents, to establish on the balance of probabilities that gross misconduct occurred; and where it is in the public interest for the police officer to cease to be a police officer without delay. In employment law, this would be termed summary dismissal proceedings. The public would understand such language. All regulations should be changed to reflect what it is and means.

Recommendation 36: All terminology and language is changed to reflect what the system is designed to do - that is to say it should be 'corrective' or 'rehabilitative' for all infringements short of dismissal.

POLICE (DISCIPLINE) APPEALS TRIBUNALS (PDAT)

A Future Position for PDATs

5.29. One cannot look at the future of PDATs without cross referencing to the Figure at 16 (p67) for there is a relationship between the future of hearings and PDATs. At its simplest, inserting a legal chair in a hearing may lead to diminishing requirements for a PDAT with a volumetric drop in their use. All future options for PDATs include:

- A public/press presence.
- That if a hearing is regionalised a PDAT should also be regionalised as a minimum.
- That a regional hearing may lead to a central PDAT.
- That the alternatives to a PDAT cannot be considered until the question of the composition of hearings is further established and determined.

Figure 19: Table of options for Police Appeals Tribunals:

Level	Characteristic	Composition	Remarks
Local	• PAT determinations are currently locally delivered in each HDPF force area. • Held in public	1. Current • Legal chair • Police officer of ACPO rank • Retired officer of an appropriate police association 2. Future option 1 • Legal chair • Senior officer of local force • Police officer of Supt rank 3. Future Option 2 • Legal chair • Senior officer of outside force • Lay member	The current model delivered by all HDPFs Disadvantages: • Personnel in the hearings may be known to panel in smaller forces.
Regional	• Determinations are conducted in ACPO Regions with no officer of the local force to be part of the determination • Held in public	As per the above options less the removal of local police members in the determination	• Greater consistency likely to be applied. • Greater experience delivered in dealing with cases. • Avoids localism and notions of back room deals
National	• Determinations are made via a central PAT body delivered possibly at the College of Policing • Held in public	As per regional model plus the senior police officer is appointed for a rotating period	Advantages • Centrally listed and administered minimising delay. Disadvantages • Police remain in decision chain but not from the local force where the original misconduct

			occurred (legal chairs see this as an advantage not as a disadvantage)
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5.30. In the relationship between hearings and PDATs my preference is for regional hearings and central PDATs.

Recommendation 37: That consideration is given to the third member of the PDAT being a lay member, and that a pool of lay members be recruited.

Recommendation 38: All Police Appeals Tribunals are centralised.

5.31. There are alternatives to the current PDAT system. The basis of these might involve:

- **Proceeding from a Hearing to Judicial Review:** This would necessitate recasting of the current hearing system. A legally qualified chair would be inserted (alongside the public facing elements previously mentioned). The composition of the panel would be altered, but would mirror the triumvirate of a judicially qualified chair, a senior police officer, and a lay member.
- **Utilisation of the HMCTS procedures for Tribunals:** HMCTS has offices throughout the country based on regions utilising employment judges. They are held in public and centrally organised with regulated processes. First-tier or other tribunal may not have judges versed in the nuances of the enforcement environment which the police work within.
- **Employment Tribunals:** In the case of harmonisation with the police staff with de-regulation this avenue for dismissal is opened. For non-operational issues, officers who misbehave in the workplace or in their private lives may be treated exactly the same way as other police employees.
- **Appeal to the High Court:** The PATs could be repealed and replaced with a route of appeal to the High Court – as happens with some other regulated professions. This would bring greater consistency of guidelines and precedent and, with the usual high court cost penalties, would deter frivolous appeals.

5.32. All these options are a variant of the issues of regulation and the office of a constable. That remains the key strategic question of this review as a driver or impediment to change towards harmonisation.

The Final Word – Agents for Change

5.33. Much of what I have written and recommended involves cultural or other changes that the police will need to take forward if they are to be successfully implemented. It is key that the police own these proposals and become the 'agents for change', if the senior leadership in the police do not grasp the need for change and take ownership of it there is a danger that such changes will be seen as something that is being done to the police rather than with them.

Recommendation 39: A chief officer is identified to act as the principle agent of change in the police for the implementation of these recommendations.

Annex A: Summary of recommendations

Recommendation 1: A body (ideally the College of Policing) to take on the role of overseeing the police disciplinary system. It should ensure consistency across all police forces, taking responsibility for setting and reviewing standards, and issuing appropriate guidance to forces.

Recommendation 2: A benchmarking exercise is undertaken to determine the level of sanctions for both internal misconduct and performance standards, and for sanctions consequent upon civil convictions, to be universally applied across all forces.

Recommendation 3: A values based-assessment is undertaken to measure the values of police forces against those in the Code of Ethics, and that further assessments be undertaken to help the police leadership manage cultural change.

Recommendation 4: The police institute psychometric and ethics scenario testing in the recruitment and the selection process to remove those who may exhibit potential future behaviours inimical to decision making and service as a police officer.

Recommendation 5: Provide training to all officers, PSDs and hearing panel members in the disciplinary system to ensure consistency and increase effectiveness across all forces.

Recommendation 6: All management interventions short of dismissal are focused on transformation, clearly defined, reviewed, taught and reinforced across all police forces.

Recommendation 7: Conduct further work around the concept of voluntary exit windows and future manning models.

Recommendation 8: A 'police test' is defined, to guide intervention for all disciplinary issues, including performance and conduct. The 'test' would have applicability for cases that might also arise from complaints.

Recommendation 9: All police training courses are reviewed for their 'people skills' content.

Recommendation 10: A register of police officers and staff members is established. Any officer or police staff member that is dismissed is struck off and disbarred from service in any police force, and from working in bodies such as the IPCC and HMIC. Any police officer or staff member who resigns or retires prior to misconduct hearings is similarly struck-off.

Recommendation 11: Investigations for chief officers must be carried out by an independent body such as the IPCC.

Recommendation 12: The provision in PRA 2002 Schedule 3 should be amended to include a provision to tackle vexatious complainers.

Recommendation 13: Data on dismissal, resignation and retirement cases linked to disciplinary action is published yearly to ensure transparency and accountability.

Recommendation 14: To guide future training, a Training Needs Analysis is conducted to identify the competencies required in:

- leadership and management (to the core gearing level of the police at Sergeant and Inspector level, and for the DE scheme); and
- PSDs to investigate disciplinary cases effectively.

Recommendation 15: Future IT upgrades should integrate databases on complaints, discipline, HR and alerts necessary to manage personnel holistically.

Recommendation 16: Further work is commissioned that clearly defines why the office of constable is unique and why its interpretation resists change to either:

- Set the future context for harmonisation, or
- Finally determine whether harmonisation of the police family in employment terms is not an achievable or necessary goal.

Recommendation 17: A common set of fair attendance triggers must be defined and applied across all police forces.

Recommendation 18: A 'dismissal test' is applied to disciplinary issues as a second stage to the 'police test', replacing severity assessments, making clear through benchmarking (cf. with recommendation 2) what would lead to dismissal. Anything that is below the dismissal threshold is rehabilitative. The terms gross misconduct and gross incompetence are abandoned.

Recommendation 19: All hearings are chaired by a legally qualified person.

Recommendation 20: All hearings and Police Appeals Tribunals are held in public.

Recommendation 21: All hearings are regionalised (see Annex E for map of regions).

Recommendation 22: The police officer membership on hearing panels includes Superintendents and above (at least one rank above any persons subject to the proceedings).

Recommendation 23: The police officer member on hearing panels is not from the same force (or district in the case of the MPS) as any individuals who are subject to proceedings.

Recommendation 24: Where the IPCC directs a dismissal hearing in cases where the force does not accept their recommendation, the IPCC should present the case to the hearing panel.

Recommendation 25: Remove the sanction of ‘dismissal with notice’.

Recommendation 26: Remove the sanction ‘extension of a final written warning’ from possible outcomes.

Recommendation 27: ‘Reduction in rank’ becomes a sanction available in misconduct cases.

Recommendation 28: ‘Memo of Correction’ replaces management advice as a sanction in one common set of sanctions.

Recommendation 29: ‘Written warning’ is replaced by ‘written corrective warning’ in one common set of sanctions.

Recommendation 30: ‘Final corrective reprimand’ replaces ‘final written improvement notice/final written warning’ with time spent on officers’ reports and mark time to be increased from its current level to a newly assessed (higher) level.

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Recommendation 37: That consideration is given to the third member of the PDAT being a lay member, and that a pool of lay members be established.

Recommendation 38: All Police Appeals Tribunals are centralised.

Recommendation 39: A chief officer is identified to act as the principle agent of change in the police for the implementation of these recommendations.

Annex B: Principles of effective regulation between the PCC and police forces

The table below illustrates best practice for effective regulation from public sector regulatory bodies. It is also partially applicable to the relationship between the PCC and the Chief Officer, and therefore worthy of inclusion:

Principle ⁹¹	
1	Determine the purpose and values of an organisation, and review these regularly.
2	Forward and outward looking, focusing on the future, assessing the policing environment, engaging with the outside world and setting higher level strategy.
3	Determine the desired outcomes and outputs of the organisation in support of its purpose and values.
4	Any greater level of policy formulation is then a matter for the determination of the police force's chief officer.
5	The means by which the outcomes and outputs of the police forces are achieved should be a matter for the chief officer. The PCC/regulatory body should not distract itself with operational matters.
6	The chief officer should be accountable to the PCC for the achievement of the force's outcomes and outputs.
7	In assessing the extent to which the outcomes and outputs have been achieved, the PCC should have pre-determined criteria which are known to the chief officer.
8	The PCC/regulatory body should engage with its key interest groups, including members of the public, to understand the key priorities of each of them.
9	The regulatory body/PCC should have sufficient skill and capacity to understand the above groups priorities.
10	Information received and considered by the regulatory body/PCC should support one of three goals: to allow informed decision making, to fulfil control and monitoring processes, or to be accountable to parliament.
11	Issues of diversity and equality are considered as part of all its work.
12	The PCC should govern itself well, with clear role descriptions for itself and its members with agreed methods of working and self-discipline.

⁹¹ This is adapted from Implementing the White Paper *Trust, Assurance and Safety: Enhancing confidence in healthcare regulators*.

Annex C: Misconduct snapshot – January 2013 – March 2014

The table represents the totality of ‘outcomes’ over a 14 month period in one of the Home Department Police Forces (police vfo). The figures are of the totality of the police ‘family’ and includes those who hold the Office of Constable, police staff and PCSOs.

Level of Award	Number	Remarks
Dismissed	131	
Resigned prior to hearing	41	Resigned prior to hearing Includes cases of: rail travel concession breached, failure in duty, behaved in a disorderly fashion in a restaurant, incivility and impoliteness, corrupt practice (provided inaccurate data to secure a mortgage), honesty and integrity (mishandled public property), failure in duty (regularly failed to parade for duty owing to alcohol abuse), allegation of criminal damage off duty, inappropriate claims of working hours, domestic assault, fare dispute with a taxi driver, inappropriate comments on social network site.
Resigned prior to hearing (pending outcome of criminal investigation) ⁹²	3	
Resigned prior to gross misconduct hearing	17	Resigned prior to gross misconduct hearing Includes cases of: discreditable conduct (drink drive), arrested for Section 5 public order and being drunk and disorderly, failure in duty (computer misuse), corrupt practice (inappropriate claims of pay and allowance), failure in duty (unauthorised absence), discreditable conduct (criminal damage, assault, irregularity in procedure, inappropriate conduct whilst on duty), honesty and integrity (misuse of staff pass), possession of offensive images, using a vehicle without authority, inappropriate disclosure of information,
Discreditable conduct	1	
Final written warning	30	
Written warning	11	
Formal reprimand	22	Formal reprimand Principally a tool for police staff. This does not apply to warranted officers.

⁹² Includes sexual assault.

Dismissed and appealed: sanction varied to formal reprimand	1	
Extended final written warning	1	
Not proven	3	

The disciplinary process for police officers in England and Wales is governed by statute and national guidance. These allow an officer facing an accusation, to submit an application to resign and/or to retire prior to the conclusion of disciplinary proceedings. Officers that are permitted to resign or retire (an officer cannot be stopped from retiring unless he is suspended) leave with their record indicating that they left whilst under investigation and/or subject to disciplinary proceedings. The alternative may be a lengthy period of full pay on restricted duties or suspension. The resignation and/or retirement of a police officer does not affect any criminal investigation or the ability to seek forfeiture of an officers' pension (governed by Regulation K5 of the Police Pensions Regulations 1987). These allow seeking forfeiture of an officers' pension when an officer has been convicted of a criminal offence in connection with their service, which is certified by the Secretary of State either to have been "gravely injurious to the interests of the state" or "liable to lead to serious loss of confidence in the public service".

Annex D: Police workforce, England and Wales 31 March 2014

There were 209,362 police workers in the 43 police forces of England and Wales on 31 March 2014.

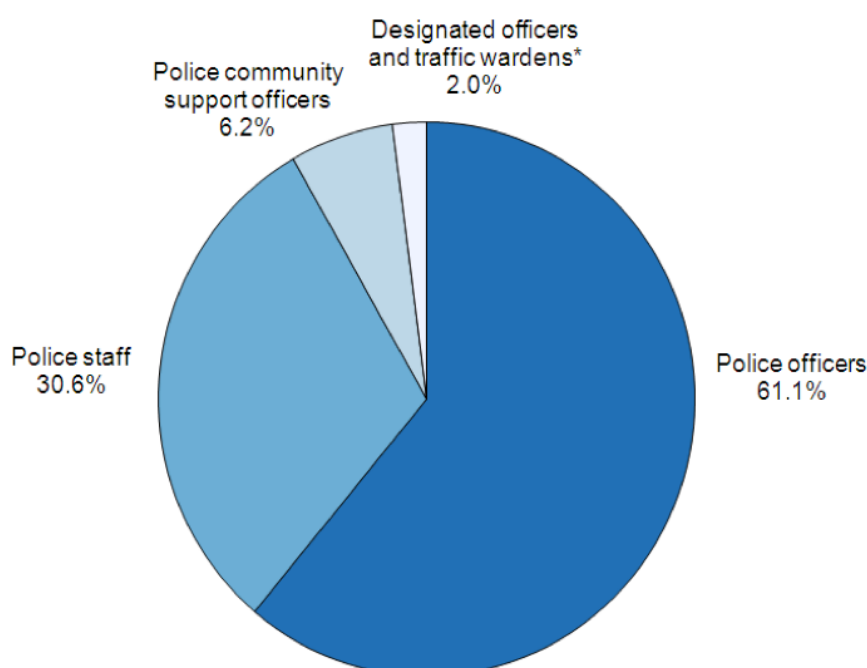
There were: 127,909 police officers.

6,715 Minority Ethnic police officers (5.2% of the police officer total).

64,097 police staff.

13,066 police community support officers (PCSOs).

17,789 special constables.



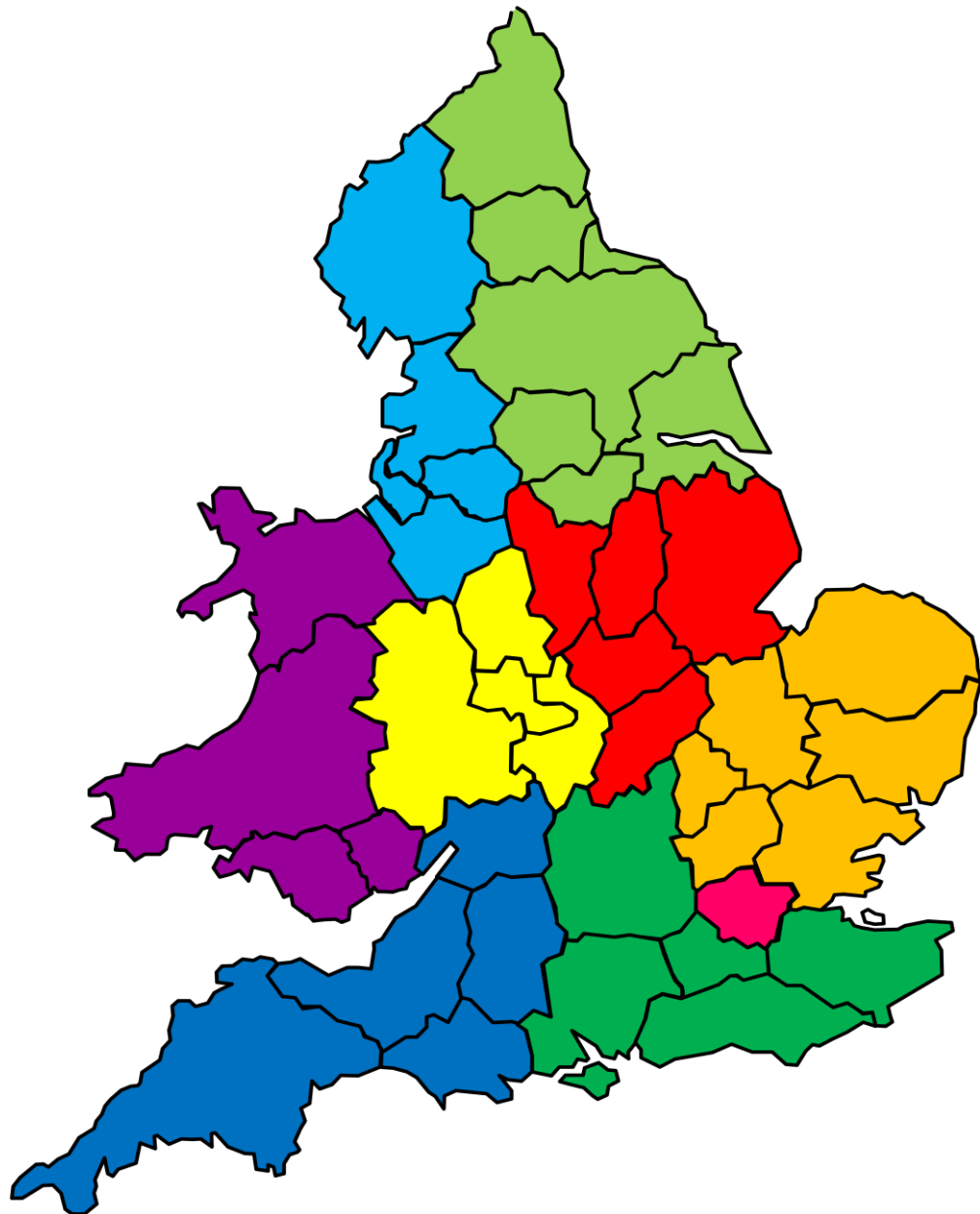
Officer numbers rose from the previous year in 10 forces and decreased in 33 forces. The Metropolitan Police had the most officers (24.2%). The 8 metropolitan forces (City of London, Greater Manchester, Merseyside, Metropolitan Police, Northumbria, South Yorkshire, West Midlands and West Yorkshire) comprised 47.8% of all officers.

A police officer is a member of a police force or a special constable.

A police staff member is a member of the civilian staff of a police force, within the meaning of section 102(4) and (6) of the Police Reform and Social Responsibility Act 2011.

Annex E: Map of police regions

Region	Police Forces in Region
North East	Cleveland Police Durham Constabulary Humberside Police North Yorkshire Police Northumbria Police South Yorkshire Police West Yorkshire Police
North West	Cheshire Constabulary Cumbria Constabulary Greater Manchester Police Lancashire Constabulary Merseyside Police
Wales	Dyfed Powys Police/Heddlu Dyfed Powys Gwent Police/Heddlu Gwent North Wales Police/Heddlu Gogledd Cymru South Wales Police/Heddlu De Cymru
London	City of London Police Metropolitan Police Service
Eastern	Bedfordshire Police Cambridgeshire Constabulary Essex Police Hertfordshire Constabulary Norfolk Constabulary Suffolk Constabulary
South East	Hampshire Constabulary Kent Police Surrey Police Sussex Police Thames Valley Police
South West	Avon and Somerset Constabulary Devon and Cornwall Constabulary Dorset Police Gloucestershire Constabulary Wiltshire Constabulary
East Midlands	Derbyshire Constabulary Leicestershire Constabulary Lincolnshire Police Northamptonshire Police Nottinghamshire Police
West Midlands	Staffordshire Police Warwickshire Police West Mercia Constabulary West Midlands Police



Annex F: Glossary of abbreviations

ACAS	Advisory Conciliation and Arbitration Service
ACPO	Association of Chief Police Officers
BME	Black and Minority Ethnic
CPOSA	Chief Police Officers' Staff Association
CPS	Crown Prosecution Service
DPA	Data Protection Act
ECHR	European Convention on Human Rights
GMP	Greater Manchester Police
IAG	Independent Advisory Group
ICO	Information Commissioner's Office
IPCC	Independent Police Complaints Commission
HDPF	Home Department Police Force
HMIC	Her Majesty's Inspectorate of Constabulary
MOPI	Management of Police Information
PAT	Police Appeals Tribunal
PCC	Police and Crime Commissioner
PCSO	Police Community Support Officer
PSAEW	Police Superintendents Association of England and Wales
PSD	Professional Standards Department
PRSRA 2011	Police Reform and Social Responsibility Act 2011

Annex G – List of Consultations

Organisation	Representatives
Information Commissioner's Office	- Senior Policy Officer - Group Manager for Police Justice & Borders
Metropolitan Police Service	- Assistant Commissioner - Deputy Assistant Commissioner - Commander - Members of the Directorate of Professional Standards - Lead for Police Now Campaign - Members of the Independent Race Advisory Group
Association of Chief Police Officers	- National Portfolio Lead on Professional Standards and Ethics - National Portfolio Lead for Complaints and Misconduct - National Portfolio Lead for Counter Corruption
College of Policing	- Assistant Chief Constable - Detective Superintendent (Integrity Programme)
Police Superintendents Association of England and Wales	- National Secretary - Assistant Secretary - Professional Standards Coordinator
Independent Police Complaints Commission	- Chair - Acting Chief Executive Officer - Chief Executive Officer
Patrols in Cleveland	- Inspector Led - Sergeant Led
Forums in Cleveland	- Constables - Sergeants - Inspectors
Police Advisory Board for England & Wales	- Independent Chair - Association of Police and Crime Commissioners - Police Federation of England and Wales - Chief Police Officers' Staff Association - Police Superintendents Association of England and Wales
Her Majesty's Inspectorate of Constabulary	- Her Majesty's Chief Inspector of Constabulary - Assistant Inspector of Constabulary - Programme Inspector of the legitimacy strand of the PEEL Inspection - Associate Inspector and Programme Manager for the Police Integrity &

	Corruption Inspection
Ministry of Justice	- Policy Managers (Tribunals Transfer and New Jurisdiction Team)
Association of Police and Crime Commissioners	- Avon and Somerset - Cheshire - Dyfed Powys - Northumbria - North Wales - North Yorkshire
Police Federation of England & Wales	- Vice Chair - Deputy General Secretary - Research Department - PFEW Advisor - Welsh Regional Representative
Police & Crime Commissioner for Thames Valley Police	
Police (Discipline) Appeal Tribunal	- Panel Chairs - Panel Members
Chief Police Officer's Staff Association	- Vice Chair
Mayor's Office for Policing & Crime	- Chief Operating Officer - Professional Standards Manager - Head of Professional Standards & Workforce Development
UNISON	- Chair of UNISON's Police and Justice Executive - National Officer
Police Professional Standards Departments	- Avon and Somerset - Cheshire - City of London - Cleveland - Derbyshire - Devon and Cornwall - Durham - Dyfed Powys - Essex - Gloucestershire - Greater Manchester - Gwent - Hampshire - Kent - Lancashire - Leicestershire - Lincolnshire - Merseyside

	- Metropolitan Police Service - Northamptonshire - Northumbria - North Wales - Nottinghamshire - South Wales - South Yorkshire - Staffordshire - Suffolk - Surrey - Sussex - Thames Valley - Warwickshire - West Mercia - West Midlands - West Yorkshire - Wiltshire
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Annex H – Process Diagram of the current system

POLICE (COMPLAINTS AND MISCONDUCT) REGULATIONS 2012
IPCC STATUTORY GUIDANCE TO THE POLICE SERVICE ON HANDLING COMPLAINTS

Handling a Complaint, Conduct or DSI Matter

