

# Chief Constables' Council

## Title: Understanding Disproportionality in Police Complaint & Misconduct Cases for BAME Police Officers & Staff 2019

16 January 2020 / Agenda Item: 10

<b>Security Classification</b>	
NPCC Policy: Documents <u>cannot</u> be accepted or ratified without a security classification (Protective Marking may assist in assessing whether exemptions to FOIA <u>may</u> apply):	
OFFICIAL-SENSITIVE	
<b>Freedom of information (FOI)</b>	
This document (including attachments and appendices) may be subject to an FOI request and the NPCC FOI Officer & Decision Maker will consult with you on receipt of a request prior to any disclosure. For external Public Authorities in receipt of an FOI, please consult with <a href="mailto:npsc.foi.request@crp.pnn.police.uk">npsc.foi.request@crp.pnn.police.uk</a>	
<b>Author:</b>	DCC Phil Cain
<b>Force/Organisation:</b>	North Yorkshire Police / NPCC Race Religion & Belief Working Group
<b>Date Created:</b>	10.12.2019
<b>Coordination Committee:</b>	NPCC - Equality, Diversity and Human Rights
<b>Portfolio:</b>	DEI Committee
<b>Attachments @ para</b>	App A
<b>Information Governance &amp; Security</b>	
In compliance with the Government's Security Policy Framework's (SPF) mandatory requirements, please ensure any onsite printing is supervised, and storage and security of papers are in compliance with the SPF. Dissemination or further distribution of this paper is strictly on a need to know basis and in compliance with other security controls and legislative obligations. If you require any advice, please contact <a href="mailto:npsc.foi.request@crp.pnn.police.uk">npsc.foi.request@crp.pnn.police.uk</a>	
<a href="https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework#risk-management">https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework#risk-management</a>	

### 1. HEADING

- 1.1 "Understanding Disproportionality in Police Complaint & Misconduct Cases for BAME Police Officers & Staff 2019"

### 2. BACKGROUND

- 2.1 In recent years research has identified disproportionality for Black, Asian, & Minority Ethnic (BAME) police officers in complaints and misconduct investigations. However there is no clear understanding of why this disproportionality is occurring and the previous academic work completed only focussed on a small number of forces.
- 2.2 Further research was carried out by National Police Chiefs Council (NPCC) working group for Race Religion & Belief in 2019 in order to improve understanding of the reasons for this disproportionality across the wider service. The results of this research concur with many of the findings of the previous academic research with the added evidence base to show that the issue is reflected across the service and not limited to those metropolitan forces who formed part of the initial work undertaken. This research also highlights some good and promising practice that has resulted since the previous academic research was undertaken.
- 2.3 It is important to add the context that evidence of disproportionality has been available to NPCC since 2012. Staff associations have called for action to address this key issue since then and see this report and its recommendations at 'the' opportunity for meaningful change to begin. The staff associations describe



being 'tired' of raising this issue and no progress met. A lack of action to action meaningful change would be damaging to the moral of BAME colleagues across the service.

### 3. EXECUTIVE SUMMARY

#### 3.1. EXECUTIVE SUMMARY

3.1.1 Below is the executive summary. The full report is attached also for further detailed reference.

3.1.2 The results of the 2019 NPCC research describes the following journey of BAME police officers when facing conduct allegations:

It begins with the BAME officer being referred to Professional Standards Department (PSD) by their supervisor for low level conduct allegations, with that supervisor failing to deal with the conduct allegation proportionately and at the earliest opportunity. This is either out of fear of being called racist or not having the knowledge to deal with the matters raised appropriately. As a result, BAME officers were often only made aware that their performance or conduct was in question when their supervisor informed them they had been reported to PSD.

**Key Finding: Disparity is found in the amount of internal conduct allegations against BAME officers being assessed by PSD and a failure of supervisors to deal with low level matters at the earliest opportunity and proportionately.**

Once the conduct allegation against the BAME officer is put through to PSD for a case to answer and/or severity assessment to be conducted, cultural factors, guidance and working practices are inconsistently applied or considered. Furthermore several PSD's rarely consider the wider context other than that officers discipline/conduct history, particularly failing to explore if there is a 'trigger incident' e.g. whistleblowing or complaints of racism and that this can happen at any point in their career, at any rank. Whilst there is some promising good practice emerging in some forces, the inconsistent way the case to answer and severity assessment processes are conducted for BAME officers is leading to a postcode lottery across the service for severity assessment findings for BAME officers.

**Key finding: There is disparity in the initial case to answer and severity assessment processes applied by PSDs and a disparity between BAME and white colleague's results for those found to be misconduct or gross misconduct.**

BAME officer's subject to a misconduct investigation and the final outcome is significantly more likely to result in low level or no sanction outcomes than their white colleagues.

Some BAME officers have therefore been disproportionality subjected to a misconduct investigation by PSD, when the matter should have been dealt with by their supervision at the earliest opportunity. Thus preventing an unnecessary lengthy investigation period which subsequently has a significant negative impact on that BAME officer's health, reputation, career progression, family and community of that BAME officer.

**Key finding: A significant higher proportion of conduct allegations for white officers were assessed as management action, misconduct or gross misconduct compared to those for officers from a BAME background.**

Whilst it has been possible to draw the above conclusions from the analysis carried out it is also clear that there remains a significant issue with the variety and inconsistent methods used by individual forces to capture data around protected characteristics within PSD. This extends to Home Office and IOPC data set requests which currently do not encourage a joined up approach to data presentation in this area.

**Key finding: Despite the 2015 HMIC finding around inconsistent data capture hindering the ability to provide meaningful service-wide analysis this issue still remains.**

This understanding of the journey of a BAME police officer in 2019 was established through the 2019 NPCC research. This research was conducted in the following ways:

- UK wide workshops and one to one interviews - asking BAME officers to describe their journey through complaint and misconduct investigation to understand why this disproportionality is occurring. In the same study supervisors were also asked to describe the challenges they face supervising BAME officers.
- For the first time a UK wide snapshot analysis of PSD complaint and conduct allegation data to identify what disparity exists in 2019 was conducted.
- A questionnaire was also sent out to all UK police PSDs to identify establishment composition and to understand current working practices in addressing the issue of disproportionality.

#### UK Workshops and One to Ones to Understand the Journey of BAME Police Officers Facing Complaint and Misconduct investigation

BAME police officers describe their journey as one of unfair treatment compared to their white colleagues and that this journey begins when joining the service. BAME officers describe being put through unfounded and unfair investigations based on poor evidence with clear comparators of white colleagues being treated more favourably than BAME officers when facing the same situation. They describe 'weak and incompetent' supervisors failing to deal with performance and misconduct issues at the earliest opportunity, either not dealing with the issues for fear of being labelled ignorant or racist or waiting until there are a sufficient number of issues to package together and then passing the responsibility by escalating grouped low level issues to PSD, enabling the supervisor to feel 'they have done their bit'. BAME officers highlight a lack of cultural competence in PSD's and were critical of their approach and failure to consider culture when assessing and conducting often lengthy misconduct investigations. Also that PSD's rarely consider the wider context other than that officers conduct history, particularly failing to explore if there is a 'trigger incident' e.g. whistleblowing or complaints of racism and that this can happen at any point in their career at any rank.

When consulting with IOPC over this point they state:

*"Severity assessments should be made in light of all the available evidence. As the whistleblowing guidance suggests, this should include investigators and decision makers being alive to the possibility that an allegation is retaliatory in nature following a protected disclosure when making their assessments/determinations".*

Further to this Home Office guidance to be found in Annex H of the Home Officer circular on Whistleblowing states at para.21:

*"This [guidance] should not prohibit allegations being made against whistle-blowers and investigated, but, where an officer who has made a protected disclosure is subsequently subject to a contested allegation, the possibility of a reprisal should be part of the consideration at the 'case to answer' decision, the severity assessment and at any subsequent disciplinary proceedings, once all the evidence is available".*

In accordance with s47B (1) Employment Rights Act 1996, "a worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure". It should also be noted that even after a whistleblowing complaint has been dealt with it could be argued that the protection from suffering a detriment remains in place, so long as the officer subject to the allegation can show a causal link between the initial protected disclosure and any subsequent detriment.

The practical difficulty for a PSD is that they may not always know who has made a protected disclosure and whilst a protected disclosure may not meet the legislative criteria, say does not meet the public interest test, it may still be a protected disclosure for misconduct purposes, if the detriment was due to a breach of standards of professional behaviour.

The impact on the BAME officers under investigation has a detrimental effect on their health, career progression and family life. BAME officers feel the impact extends also to their communities, which there tends to be closer connections than their white colleagues. Also the study heard that BAME officers are less likely to promote joining the service to others and are now telling their communities, family and children not to join because of their lived experiences. Support for BAME officers going through investigation was described as inconsistent and reflected a feeling that the Federation were too close to PSD's. However, further exploration of this revealed BAME officers feeling the Federation did not always understand cultural differences and therefore some BAME officers would turn to their BPA's for support. The risk this creates is that BPA members are not routinely trained in misconduct procedures and therefore those BAME officers may not be gaining the appropriate advice and guidance.

This study also provided detail from the perspectives of supervisors of all backgrounds from across the UK. They described a lack of confidence challenging BAME colleagues for fear of being labelled racist and being subjected to misconduct investigations and employment tribunals themselves, so either ignore or pass the responsibility to PSD. The study heard from supervisors that they feel there is a clear need to for the leaders at all levels to develop cultural awareness to improve their cultural competence so they can improve their ability to lead. To achieve this, training and new approaches such as Wellbeing Passports are needed and the time to conduct regular one to one contact with the members of their team, something that is not happening due to the demand they face day to day. They also describe a 'move the problem' rather than deal with the problem culture is still present in policing today.

Both BAME police officers and supervisors were in agreement for the causes of this disparity as well as the measures that are required to improve this situation.

#### An Assessment of Complaint and Conduct Allegations from Across the UK Police.

Analysis conducted by the College of Policing provided for the first time a snapshot of UK wide Professional Standards Department (PSD) data for complaint and conduct allegations from the beginning of 2019 (1<sup>st</sup> January to 31<sup>st</sup> March 2019). Around 5,000 complaint and conduct allegations were recorded by forces every month, with a total of 15,441 complaints included in the analysis, however, whilst the sample size allowed for findings to be drawn it is important to note there were significant challenges and issues with the quality of the data collected by PSD's onto the Centurion system.

#### Findings:

- **Disparity found in the amount of 'internal conduct allegations' against BAME police officers.**  
In 2018/19, 7% of police officers in England & Wales identified as being from a BAME background. The Centurion data indicated that 6% of 'complaint' allegations were against officers from a BAME background. A higher proportion of 'internal conduct allegations' were against officers from a BAME background (10%). Therefore there is a disproportionate amount of internal conduct allegations against BAME police officers highlighting that when the public complain about officer's conduct there is no disparity but there is when matters are raised from within the service.
- **Consistent evidence of disproportionality in the initial severity assessment of allegations for police officers**  
A significantly higher proportion of allegations for officers from a BAME background were initially assessed to be misconduct or gross misconduct compared to those for white officer – in both complaints (33.1% for BAME and 12.4% for White) and conduct (92.6% for BAME and 84.6% for white) processes.
- **Significant evidence of disproportionality in the initial severity assessments for police staff in 'complaint' processes**  
When assessing disproportionality in the initial severity assessment of allegations for police staff a significantly higher proportion of allegations for staff from a BAME background – in complaint processes but not conduct processes.
- **No evidence of disproportionality in allegation results for complaint allegations against police officers, but some evidence of disproportionality for conduct allegation results.**

A **significant higher proportion of conduct allegations for white officers were assessed as management action, misconduct or gross misconduct compared to those for officers from a BAME background.**

No complaint allegations against BAME officers resulted in dismissal, and two resulted in a final written warning (out of a total of 8 allegations) 25 allegations against white officers resulted in dismissal, and 15 in a written warning or final written warning (out of 60 allegations). 7 'conduct' allegations against BAME officers resulted in dismissal, two in final written warnings, and five written warnings (out of 28 allegations). 109 allegations against white officers had an outcome of dismissal, 28 a final written warnings, and 29 a written warning (out of 218 allegations).

PSD Establishment Composition

Each force was asked to provide data of the ethnicity of their PSD's. **Key Finding:** This report found that, **out of all home office forces 63% [25 PSDs] had no BAME police officers or staff. Of the 39 PSDs that responded effectively, within their Counter Corruption Units (CCU), 79% (31 PSDs) had no BAME police officers or staff.**

PSD Working Practices

A questionnaire was sent out to all PSD's to understand current working practices in addressing the issue of disproportionality. This identified that out of the 35 forces that responded and provided a clear responses, 62% (22 forces) did not apply additional consideration when conducting severity assessments and assessments of conducts for allegations against BAME officers. Out of the 38 forces that responded and provided a clear response, 78% (29 forces) of forces did not have a specific positive action plan for their PSD. **The study found PSD's are inconsistent in their approach on the use of guidance or working practices to understand cultural difference for allegations and counter corruption intelligence.** There were some forces who can demonstrate a variety of guidance's and working practices but there were many who relied on one set of guidance notes or legislation. The approaches taken by PSD when failings in supervision are identified were found to focus on personal and organisational learning.

Professional Standards Promising and Best Practice

Following engagement with PSD's across the service there has been some promising and good practice that has emerged where forces who have reacted to the previous academic research have taken upon themselves to address issues they have found within their own force.

A synopsis of those force approaches is contained within the detail of this report and there is an opportunity for NPCC to bring this group together to identify a unified approach to support the development of all PSD's and help to create a common standard.

The introduction of new legislation around Police Integrity Regulations and practice requiring improvement provide an opportunity to develop a standardised approach across the service and it is noted work is ongoing in this area.

Additional findings outside the remit of NPCC

When seeking to understand the approach taken by PSD's to capture data and the guidance followed when applying misconduct processes it was apparent that there are differing requirements placed upon the service by external organisations.

Data requests from the Home Office, IOPC and HMICFRS are inconsistent and could better support NPCC to identify a single common data set to capture performance within this arena. Better alignment of data requests would then allow the College of Policing to create an accurate periodic report of service-wide performance around PSD using the Centurion data base, which is utilised by all but one force. The College of Policing have confirmed that the Centurion Data Base is capable of producing such automated reports already, but is prevented from doing so, due to the inconsistent approach to data capture. It should also be noted that the single force not currently on Centurion is due to adopt the database which further supports the recommendation.

The IOPC guidelines for carrying out a severity assessment allow for previous conduct and discipline history to be taken into account, but it is not clear with regards to taking into account any 'trigger incident' that may be the root cause of such matters, which then leave BAME officers and staff being subjected to scrutiny on a regular basis. This is particularly pertinent when taking into account whether or not a BAME officer or staff member has been afforded protected status as a whistle-blower from a 'trigger incident' and then finds themselves suffering a detriment as a result in later allegations, where there can be shown to be a link.

The above guidance is further required as it has become clear from this study that, with good intentions, some PSD's have adopted different methods to identify disparity when assessing allegations they receive which has resulted in a postcode lottery of sorts across PSD's.

The identification of a collective common standard across NPCC, Home Office, IOPC and College of Policing will also allow HMICFRS to develop an effective inspection regime.

### **3.2. APPROVAL OF THE COORDINATION COMMITTEE**

3.2.1 NPCC Diversity, Equality and Inclusion Coordination Committee signed off the paper on 28 November 2019.

### **3.3. RESOURCE IMPLICATIONS**

3.3.1 Associated NPCC portfolio leads to take responsibility for progressing the tactical solutions to the recommendations presented in this report.

## **4. CONCLUSION & RECOMMENDATIONS**

4.1. The report makes the following recommendations to address disproportionality:

### **Executive Summary Conclusion and Recommendations for Consideration**

Whilst the research undertaken has focussed on the disparity in misconduct for BAME officers and staff it must also be noted that other protected characteristics may also face similar issues, however, the academic work in these areas is not mature enough to allow the same level of work to be conducted at this time. Therefore, the recommendations from this study have been deliberately written to allow for them to be applied across all protected characteristics.

We should remember that over 150 individuals from across all forces have taken the time to place their trust in the NPCC through sharing their personal experiences either as a BAME employee or supervisor and it is from their lived experiences that we have been able to draw out the human consequences of the 'why' disparity exists within misconduct proceedings.

The impact upon an individual should not be underestimated and the national well-being and inclusion survey will allow for further considerations against this report.

In the main this study has reaffirmed the previous academic work completed but has identified that the issue is service wide yet the response to identifying and removing disparity within misconduct has been sporadic. This has resulted in an inconsistent approach to misconduct across the service.

That said, it has also resulted in some good and promising practice being identified and this provides the service with an ideal platform to build from in order to develop a consistent approach.

The internal culture within the service is feeding the levels of disparity due to fear of reprisals or being labelled. Inadvertently the avoidance of dealing with low level matters at the earliest opportunity is magnifying those levels of distrust and resulting in the exact consequences those supervisors are seeking to avoid. The introduction of Practice Requiring Improvement (PRI) is an opportunity to address this.

Professional Standards Departments need to reflect the workforce and communities they serve and at present far too many do not. There needs to be better development of cultural understanding across PSD's and bespoke positive action plans to improve representation within departments.

However, the service cannot set a common standard alone and needs to do so in partnership with the Home Office, IOPC, HMICFRS and College of Policing if data sets are to be aligned, standardised training delivered and appropriate guidance provided that ensures disparity is removed and 'trigger incidents' identified.

### **Recommendations:**

#### Strategic Partnership:

- NPCC to consider working in partnership with Home Office, IOPC, HMICFRS and College of Policing (CoP) to develop a common data set to be applied to all forces that enable the capturing of protected characteristic data within PSD's at appropriate points within the misconduct and complaints processes. This will enable IOPC and CoP to produce periodic reports on performance and impact of disproportionality.
- NPCC and HMICFRS to consider developing an inspection question set that measures the progress made against this and previous reports, with the aim of introducing it to the 2021 PEEL inspection framework.
- NPCC to consider working with the Home Office and IOPC to incorporate into the misconduct guidance a means to identify and assess 'trigger incidents' and in particular if individuals are subject to any detriment as a result of these.

#### Professional Standards:

- Support an agreed standardisation of data collection sets within PSD's so that disparity of all backgrounds and protective characteristic can be monitored and performance improved.
- PSD's to develop a UK wide consistent understanding and application of guidelines based on promising/best practice to understand cultural difference for allegations and counter corruption intelligence. In the interim consideration could be given to heads of PSD ensuring they are sighted and approve severity assessments against those with a protected characteristic.
- Support the increase in diversity and representation within PSD's through a bespoke positive action programme based on the NPCC Workforce Representation Toolkit. Furthermore, explore the reasons that may hinder or deter those from a BAME background from applying for roles in PSD.
- As part of PSD positive action programmes PSD's to ensure they have a programme to develop cultural understanding of protected characteristics, including ensuring cognisance is taken of any disparity arising from a failure of supervision to deal with matters at the earliest opportunity and at the lowest suitable level.
- For NPCC and IOPC to explore with consideration of current legislation the introduction of a test or mechanism prior to the PSD severity assessment at the case to answer point. That this equitable review is against all circumstances and considers cultural/protective characteristics as well as considering potential trigger incidents that maybe linked to whistleblowing.

#### Training & Development:

- Consider investment in comprehensive cultural awareness training for all. Consideration can be given to the Metropolitan Police 'Leading for London' programme that works to develop an understanding of localised cultural awareness of communities being served by the force.
- Consider investment in leadership training with emphasis on complaint and conduct captured within the practice requiring improvement programme being developed through CoP.
- Consideration to review the Appropriate Authority training to ensure it captures disproportionality and its impact on severity assessments.

#### Workforce & Wellbeing:

- Utilise the forthcoming results from the national well-being and inclusion survey to support a culture of empowerment to encourage supervisors to take responsibility and deal with complaint and conduct matters at the earliest opportunity.

## **5. DECISIONS REQUIRED**

- 5.1. NPCC to review the historic and recent evidence and support the strategic recommendations and for associated NPCC leads to be allocated and lead on specific recommendations.

**DCC Phil Cain**

**NPCC Race, Religion & Belief Strategic Group Deputy Lead NPCC Race Religion & Belief – Internal Confidence Lead**